

**PARLIAMENTARY JOINT COMMITTEE ON LAW
ENFORCEMENT**

INQUIRY INTO CRYSTAL METHAMPHETAMINE (ICE)

I thank you for your invitation to make a submission to your Parliamentary Joint Committee on Law Enforcements' inquiry into crystal methamphetamine and apologise for the lateness of my submission, which, I sincerely hope, will not prevent it being considered.

As a 33 year police practitioner who was Commissioner of the AFP during then Prime Minister Howard's 'Tough on Drugs' period, beginning in 1998, I fully understand the widely held concerns about the apparent increased use of crystal methamphetamine (Ice), within the Australian community and the levels of violence and irrationality that sometimes accompanies its use. I am also aware, of course, of the amount of effort and sophistication that Australian police agencies apply to the enforcement of our current illicit drugs laws and the often quite public successes that they have achieved over recent years.

In regard to your terms of reference, I am disappointed that they so strongly focus on the law enforcement end of the illicit drug market place. I am aware, of course, that the Prime Minister's Task force on Ice, chaired by former Victorian Chief Police Commissioner, Ken Lay, has wider points of reference. The reason for my disappointment is that my combined experience as a State/Territory police officer (25 years' service with the Northern Territory Police, including nearly 7 years as Commissioner) and as Commissioner of the AFP for 7 years, together with some 15 months spent practising at the private bar as a defence barrister in Queensland and several years' experience associated with the drug and alcohol fields, has convinced me that it is not possible to police our way out of the Ice or any other illicit drug dilemma problems which are rife across the Australian landscape.

The reality is that, contrary to frequent assertions, drug law enforcement has had little impact on the Australian drug market or for that matter, on the markets of most, if not all, countries in the world.

As a consequence, my submission will mainly focus on issues which would need to be considered under your final term of reference “Other Related Issues” although I do also wish to address some of the more specific law enforcement terms.

Terms (a) The Role of Commonwealth Law Enforcement Agencies in responding to the importation, manufacturing, distribution and use of Ice, and (b) The Adequacy of Commonwealth Law Enforcement resources for detection, investigation and prosecution and criminal activities involving Ice

The reality is that in Australia, the police are better resourced, better trained, and more effective than ever and yet their impact on the drug trade, on any objective assessment, has been minimal. Assertions are made from time to time that ‘law enforcement does achieve significant results and is not yet at its peak of effectiveness’. But frankly the evidence does not stack up. Whilst the size of seizures of a whole range of illicit drugs, including Ice, heroin, cocaine and other methamphetamines and precursors continues to increase and significant criminal figures are arrested and frequently convicted, the impact on the marketplace in terms of both supply and demand has only ever been minimal and temporary.

In 1998, during my time as Commissioner of the AFP, 398kgs of heroin was seized off the NSW east coast (one of many, increasingly large seizures of illicit drugs made by Australian police over the past 20 or more years). This seizure was almost 50 times the size of the 8kg which Chan and Sukumaran and the Bali 9 were attempting to smuggle into Australia when arrested in Indonesia, and which cost Chan and Sukumaran their lives. But the 1998 seizure, despite its size made almost no impact on the price or supply of heroin within the Australian market.

If, however, changes were made to Australia’s current illicit drug policy, to remove the need for police to waste time and resources on the investigation and apprehension of people for personal use and possession, the increased capacity for police, in dealing with illicit drugs, to solely focus on drug cultivation, production and trafficking, would have the potential to improve the levels of success achieved. Combined with the fact that, if personal use was dealt with as a social and health issue and agreement could be reached on sensible licensing controls for the regulated supply of selected drugs (e.g. cannabis) inroads could, for the first time, be made into the size and profitability of the organised criminal market.

One area of weakness in the police armoury in their fight against this organised criminal marketplace, is the lack of clear or uniform national powers to seize and forfeit the unexplained wealth and assets of people strongly suspected of being involved at the higher end of organised crime - particularly drug production and trafficking.

As I understand the situation, there is strong police and, in many instances, DPP and political level support for a robust national approach which would involve the development of reciprocal laws across the country that would not require a related criminal conviction or a link to a predicate offence as a basis for forfeiture action. However, to date I am not aware of any national agreement to effect such changes and, as a consequence, the highest ranking criminal figures, who sit above the illicit enterprise, often flout huge unexplained wealth, and reap enormous profits, often escape punishment or penalty. As the Al Capone example proved almost 100 years ago, serious and organised criminals are in the business for profit and power. Remove the profit and we remove the power and their reason for being.

I was involved, together with former NSW Police Commissioner Ken Moroney, in conducting a review and preparing a report on Unexplained Wealth for the Federal Minister for Justice in 2013-2014. There was strong and almost uniform support for the implementation of increased powers of seizure and forfeiture as outlined above and the report was to be considered jointly by the Federal and all State and Territory governments. To the extent, that the recommendations have not been implemented or acted upon, I would recommend them to the Committee for consideration.

Other Related Issues

In Australia in 2011, 86% of drug users said that obtaining heroin was 'easy' or 'very easy' while 93% reported that obtaining hydroponic cannabis was 'easy' or 'very easy'.

The price of street heroin and cocaine decreased by more than 80% in the USA and Europe in the past 20 plus years and, despite a huge investment by the United States in drug law enforcement, northern Mexico has descended into a virtual drug cartel battlefield, with horrific homicide figures, driven by the demand for illicit drugs - essentially within the USA.

At the local level our young people can and do purchase illicit drugs with ease and generally with impunity. If this is an effective, policy at work I am not sure what failure would look like?

In any conversation that occurs on our current policy, however, it will be important to acknowledge that there are no good guys or bad guys in this debate, only concerned guys. I am a very concerned guy.

Too often, in my view, emotion tends to drive public commentary with proponents of either side branding their opponents as either 'soft on drugs loopies' or 'the prohibitionist Gestapo'. Neither label is correct nor does either add value to the debate.

Many argue that supporters of current policy are just as well informed on the subject as those arguing for consideration of change. The truth is I have found it difficult to find informed commentators willing to support the current drug policy.

The 2011 report of the Global Commission on Drug Policy which included former Presidents of four countries, a former UN Secretary General, a former Chairman of the US Federal Reserve and a former US Secretary of State essentially concluded that the argument for change was overwhelming. One of the advocates for drug law reform in South America is Otto Perez Molina, the President of Guatemala, who used to be in charge of drug law enforcement in his country.

We surely owe it to future generations to be realistic; to be prepared to listen and consider these commentaries and to examine the facts and the options.

Cautions are frequently given about using the experience of other countries that have benefitted from liberalising drug policy as a basis for any action in Australia.

I ask a counter question, why, in the face of a poorly performing policy, should Australia not attempt to benefit from the international drug policy experience? We try to learn from international policy advances and errors in almost every other area of community life, often with positive results. Indeed, in my previous position as the Federal Government's Inspector of Transport Security, I was directed by the relevant Minister on behalf of the Australian Government to conduct a range of inquiries into various aspects of transport and infrastructure security. In every inquiry a specific term of reference was that I assess the initiatives and practices in place in other parts of the world (including the USA, England, Europe and South East Asia) to see what lessons could be learnt to ensure that Australia's practises were at the cutting edge of world's best practice. This philosophy has equal relevance to the issue of drugs policy.

Law enforcement strategies are unavoidably discriminatory in that only a very small percentage of total users fall foul of the legal system whilst the damage caused to their careers may be very substantial. As a consequence much law

enforcement activity is demonstrably counter-productive and often operates to increase harm rather than reduce it.

I am in no way an apologist for illicit drug use and abhor drug traffickers and the harm they cause. Like many others I am particularly, disturbed by the damage and violence being caused by the current 'Ice epidemic' that appears to be sweeping Australia. But, even here, it is important to maintain perspective. Despite the publicity, it is estimated that only about 2% of Australians use ice and, as I understand the situation, the rate of usage is not markedly increasing, although availability is probably at an all-time high, despite law enforcement's best efforts.

Even in this environment, however, it is important to maintain a balance. Firstly the medical advice seems to suggest that the vast majority of people who use ice do not become dependent users and do not cause the violence that receives so much publicity: secondly many ice users are disadvantaged and unemployed young people (witness the huge ice problem sweeping many remote indigenous communities); thirdly, standing aside for a moment those who cause violence and social disruption, treating ice – and other illicit – drug users, as criminals rather than victims, simply aggravates the harm and is likely to cause the problem – and the behaviour - to worsen.

An option, where drug users (including ice) cause violence or commit other crimes while under the influence of the drug is – as is the case under the Northern Territory Criminal Code in regard to alcohol – to not allow the fact that the person is under the influence to be a mitigating factor -or even to treat the fact they are under the influence as an aggravating circumstance, which operates to potentially increase the penalty upon conviction. If this approach is tied to a requirement to undergo treatment and rehabilitation, not simply incarceration, some benefits may be achieved. At least with this approach we would not be treating all users on a "one size fits all" basis but would be tailoring the response to the specific crime or actions of the perpetrator, including the need for help.

I am convinced that our current approach is compounding rather than helping the problem and, indeed, the current publicity surrounding Ice is an illustration of this failure. As Ken Lay, the head of the Prime Minister's Ice Task force made clear, we can't police our way out of this problem. In my opinion he is absolutely right.

Let's look at the U.S. as an example.

Despite a massive investment in drug law enforcement, in the order of \$3 trillion according to some commentators, a richly resourced and empowered Drug Enforcement Administration (DEA) agency and the death penalty operating in many States, the United States has a huge drug related incarceration rate -BUT a seemingly undiminished supply chain across the country.

As mentioned earlier, Northern Mexico has degenerated into a virtual drug cartel stronghold with an estimated 64,000 homicides in the period 2006-2012 - and horrific evidence of violence and indiscriminate killings- not only between gangs but of innocent people who simply would not support the traffickers or pay protection or simply got in the way. The essential aim of these activities – to feed the US Drug marketplace.

In Australia in 2011, 86% of users said that obtaining heroin was easy or very easy. 93% reported that obtaining hydroponic cannabis was easy or very easy.

In the US AND Europe the price of heroin and cocaine is reported to have decreased by more than 80% in the 20 years to 2012.

If this is success I would hate to see what failure looks like.

So what sensibly can be done about it? What are the options?

I suggest, as a first step, a genuinely honest debate and assessment would be an excellent start. One which removes the fear and looks dispassionately and objectively at the facts and the options. This could include:

Identifying the illicit drug issue as primarily a social and health issue NOT a criminal issue

Better focusing LE efforts purely on the production/ trafficking end of the market, where the benefits are likely to be highest and the harms lowest.

Reallocating drug related funding so as to Increase the funding for health and support services - improving and increasing diversionary and treatment

options. - Improving access to treatment - reducing the risk of overdose and death.

Dealing with users as victims not criminals - fostering and encouraging honest reporting - removing the stigma AND the discrimination.

Improving education and deterrence initiatives.

Decriminalisation - first of cannabis and, if successful, expanding incrementally to other drugs.

Considering the options and means of regulation of supply - to ensure and maintain quality and purity - control the sale price and outlets and tax the profits.

As a consequence, to reduce or remove the criminal market place. Criminals are lazy. They go where the profits are largest and most easily obtained. They are involved in risk assessment and management like a legitimate business. If the going gets tough, they get going - somewhere else.

The facts of life are - people, particularly young people will experiment (whether it be rail train "surfing" or drug use). Forbidden fruit are always more attractive - we cannot hope to nanny ourselves out of risk BUT WE MUST BE COURAGEOUS ENOUGH TO CONSIDER A NEW AND DIFFERENT APPROACH.

The more flexible approach to drug policy in Switzerland and Portugal in the last 20 years appears to have achieved many benefits with no serious adverse effects. In contrast, drug overdose deaths are high and rising in Sweden, one of the last developed countries to still champion a punitive drug policy.

Cannabis is the most widely used psychoactive substance in the world, with an estimated 180.6 million Users worldwide. The drug has therefore dominated the law enforcement response.

Since the 1970s, several local and national governments have introduced measures to decriminalise, what the American's term "de-penalise", or generally relax laws relating to cannabis use.

Most recently the states of Colorado and Washington in the US have passed ballot initiatives to allow for the creation of legally regulated markets for the recreational use of cannabis; and a bill in Uruguay is now on its way to becoming law – it proposes to allow registered cannabis users to buy up to 40 grams of cannabis a month from a pharmacist, and grow up to six cannabis plants at home or cultivate up to 99 plants as part of a ‘cannabis club’ with a minimum of 15 and a maximum of 45 members.

Research suggests that diversion from the criminal courts and criminal sanctions tend to reduce re-offending, particularly in the case of young and ‘first time’ offenders. However it has to be recognised that there are also costs associated with changes in approaches, at least in the short term, relating to training, the preparation of publication of policy and guidance, the design of data capture systems and independent evaluation and monitoring. These are counter-balanced by the potential benefits of policing alternatives to arrests which include lower costs for police and courts, the reduced stigmatisation of users and encouraging users to enter drug dependence treatment, but these benefits may not be immediately identifiable.

Despite limited research evaluating the enforcement aspects of alternative models of policing, two key issues should be highlighted. The first one is the risk of net-widening. Alternative mechanisms to arrests and/or prosecution have created speedy and effective means for police officers to deal with minor cannabis offences they might have previously ignored, thereby increasing the number of people exposed to the criminal justice system. A decriminalised yet more targeted approach primarily focusing on the 20% most problematic users can be considered an attractive alternative in this regard.

The second issue is discretion. While some senior officers may support calls for alternatives to arrests and/or prosecution for minor cannabis offences, some lower level officers may continue to arrest cannabis offenders despite guidelines.

In New York, the annual number of arrests for cannabis possession quadrupled between 1996 and 2007 despite the 1977 law explicitly seeking to eliminate arrests for cannabis possession and the associated stigma. Performance indicators and financial incentives appeared to encourage officers to arrest more people.

Discretion can also specifically lead to increased discrimination – a recent report by Release shows that in the UK ethnic minorities are more likely to be targeted than white people: for instance black people are 6.3 times more likely to be stopped and searched than white people, and that once arrested, 78% of black people are charged, compared to 44% of white people, despite similar levels of consumption amongst black and white people. The figures in many areas of Australia may not be too dissimilar.

In addition, there should be appropriate guidance and training to understand what particular cases may require the resort to arrest and detention – for instance in Portugal and Switzerland individuals can be arrested if they are unable or unwilling to present evidence of identity and residence. Diverting offenders to education and rehabilitation (following the law enforcement model regarding traffic offences) could also prove beneficial.

Worldwide, however, drug production has increased, drug consumption has increased, the number of new kinds of drugs has increased, drugs are readily available, drug prices have decreased and the purity of street drugs has increased. There is no evidence that I can find of different policies sending different messages.

Indisputably, the world's attitude to currently illicit drugs and the prevailing drug prohibition policy is changing. The change is probably – I suggest – irresistible.

On 16 September 2013 Chatham House hosted a day-long seminar in London as part of the “Modernising Drug Law Enforcement” (MDLE) project, led by the International Drug Policy Consortium (IDPC), with the participation of the International Security Research Department at Chatham House and the International Institute for Strategic Studies (IISS).

The project aims to examine new strategies for drug law enforcement that focus on beneficially shaping – rather than entirely eradicating – drug markets, and managing them in a way that minimises harms on communities. Their assessments and prima facie conclusions are food for thought and we would all benefit from a public consideration of them.

The Americas, is a region in which there is growing consensus on the need to re-evaluate existing drug policies, as illustrated by the recent OAS report on the Drug Problem in the Americas. OAS Member states are clearly dissatisfied

with current drug policies, and agree on the need to break the taboo. There is also a shared acceptance that the drug problem is not just a law enforcement issue, but primarily a social and economic issue, and one that requires regional and international cooperation.

While OAS countries agree that current approaches are not all broken, there is a recognised need for more flexibility in drug policy, including potential decriminalisation of drug consumption and alternatives to incarceration.

However, numerous challenges remain. The American hemisphere accounts for 8% of the world's population but approximately half of its homicides, kidnappings, and incarcerations; and among homicides, 80% are carried out with firearms, as opposed to 40% on average worldwide. Many are related to the trafficking and use of illicit drugs.

There is a significant disconnect between governments and the public. Populations across the region are still reluctant to support more relaxed drug policies. Being tough on crime is an easy argument to be made politically.

Evidence shows, however, that more progressive responses to the drug problem are needed. Change will be difficult, given the considerable suspicion and mistrust between the people and their governments, and between various government agencies and it will take courage and perseverance to achieve it. But, there is growing recognition of the ineffectiveness of old approaches, the lack of progress, and the need for a change towards alternative policies including a renewed focus on the rule of law instead of law enforcement.

In other words, equal access and protection by the law; more proportionate, effective and accountable law enforcement strategies focusing on the reduction of harm created by the drug markets; public health and socio-economic policies; and education reform, which necessitates close cooperation with non-government actors, including local organisations and the media.

Such an approach is highly recommended.

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