



LAW COMMISSION
TE AKA MATUA O TE TURE

The Challenges of Reviewing Drug Laws



Background to Law Commission's review of New Zealand Misuse of Drugs Act

1. Impetus for government concerns – unsatisfactory process for dealing with new substances.
2. More generally, outdated, piecemeal and incoherent nature of legislation and perception that it is no longer “fit for purpose”.



Process we are following in conducting review

1. Review from first principles (without the constraints of any particular agenda or ideology).
BUT (as I will discuss later) must ultimately shape our recommendations within constraints of international obligations.
2. Consultation with key interest groups.
3. Issues Paper with options for reform and submissions from public.
4. Final recommendations to government



Problems with current legislation

1. National drug policy is to minimise harm through an appropriate balance between strategies of:
 - supply control
 - demand reduction
 - problem limitation
2. Some aspects of legislative response (e.g. needle exchange) based on problem limitation, but primary focus on supply control.
3. Perhaps inevitable, but two consequences:
 - Strategies to reduce demand and limit problems of drug use easily lost sight of – legislative emphasis on supply control becomes emphasis in practice.
 - Debate increasingly captured by rhetoric of “war on drugs”.



Problems with current legislation (cont.)

4. Limited evidence of effectiveness of current supply control strategies:
 - Problematic nature of terminology (“war without end”).
 - Misplaced emphasis on deterrent punishments regardless of nature of dealing.
5. Classification of drugs (Classes A, B & C) based on degree of harm
BUT
 - categories never updated to fit properly within harm framework.
 - unclear why severity of punishment determined by degree of harm (deterrence v proportionate punishment).



Our objectives

1. A statute that focuses on minimisation of harm to others.
 - Emphasis of prohibition should be on “harm to others”.
 - Prohibition should not generally be used to prevent people from harming themselves.
 - In drugs area, prohibition should not be used simply to enforce particular morals/ideologies/values.
2. A statute that attempts harm minimisation by supporting complementary strategies to control supply, reduce demand, and limits problems arising from use.
3. Thus an approach that provides a better balance between punishment, rehabilitative responses and education.
 - Supports and complements public health efforts.
 - Does not merely attempt to achieve overall reduction in amount of use or number of users (too simplistic).



Our objectives (cont.)

4. An approach that is evidence-based.
5. An approach that shifts away from the rhetoric of deterrence so that penalty levels are simply based on the seriousness of the harm to others and the offender's culpability in producing that harm.
6. A framework that is generic and principled.
 - Does not make decisions in an ad hoc way about new substances on basis of political and public "noise".
7. Greater alignment with other regulatory responses to drugs.



Challenges and Issues in Achieving Objectives

1. International obligations
 - Requires criminalisation of dealing except for medical/scientific purposes.
 - Possible scope for legalisation/regulation of possession or use.
 - At least can “depenalise” possession or use.
 - Harm reduction measures such as needle exchange permissible.
 - Obligations to identify and rehabilitate drug users.
2. Countries can’t legislate in isolation
 - Unintended effects of being out of step with others.
3. Drugs as moral panics
 - Demonised view of some drugs means that we can’t move too far ahead of public opinion.
 - Obstacles to a rational debate



Challenges and Issues in Achieving Objectives (Cont.)

4. Difficulty in identifying elements of harm relevant to determining appropriate regulatory approach
 - Various attempts have been made to assess aggregate drug harm but no consensus as to the appropriate methodology.
 - Aggregate drug harm is not the only measure. Also relevant is how drug harm is distributed.
 - Different harms fall on different groups (users, dealers, families, employers etc.)
 - Need to take into account the costs associated with a prohibition regime (impact of criminal convictions, black markets, criminal justice costs etc.) is not well understood in the public debate.



Challenges and Issues in Achieving Objectives (Cont.)

5. Difficulties in measuring those harms
 - Long term health effects of some drugs is unknown.
 - Some costs and benefits inherently unable to be quantified – ultimately value judgements.
 - Some simply not explored because locked within “war on drugs” rhetoric for so long.
6. Difficulties in comparing regulatory approaches
 - No information about the impact of other regulatory approaches to illicit drugs.
 - Analogy with other “vices” unsatisfactory.
7. Need to ensure debate is not diverted or captured by cannabis.



Possible ways forward

Convention Drugs

1. Prohibition must remain the general approach at least so far as drug dealing is concerned.
2. But within that framework there are a variety of options that can be considered with a view to minimising drug related harm.
3. These involve shift towards demand reduction rather than supply control initiatives, including:
 - Options that focus on the treatment rather than punishment of small scale dealer/addicts (with or without criminal prosecution).
 - Options for interventions other than criminal prosecution for the possession and use of some or all drugs (including for example confiscation of the drug, infringement offences, civil penalties, a formal cautioning system, referrals to education or treatment in appropriate circumstances).
 - A wider range of therapeutic dispositions following conviction for drug offences.
 - Possible integration of replacement for Alcoholism and Drug Addiction Act into unified legislative framework.



Possible ways forward (cont.)

4. Providing for other harm minimisation initiatives, such as needle exchange programmes.
5. A statutory committee with responsibilities that include advising on the need for, and effectiveness of, demand reduction and problem limitation initiatives such as drug treatment and drug education.
 - Statutory recognition of the importance of drug treatment, education and other problem limitation measures could assist in ensuring that treatment and education are not overshadowed by supply control.



Possible ways forward (cont.)

Non Convention Drugs

- New drugs offer greater scope for a different regulatory approach than drugs covered by the Conventions.

Possible New Regime

1. These could include matters such as:

- Approval to import/manufacture required, with onus on importer/manufacturer to provide information as to harm.
- Approval subject to conditions designed to minimise harm.
 - licensing of suppliers
 - restrictions on supply to minors
 - restrictions on advertising
 - restrictions on the number and type of outlet that can supply the drug
 - price reductions
 - restrictions on dosage
 - labelling requirements
 - requirements for health warnings



Possible ways forward (cont.)

- No prohibition on possession/use unless clearly justified by a cost/benefit analysis.
- 2. Need to prevent the commercialisation that surrounds alcohol and tobacco.
- 3. New drugs provide opportunity to be more systematic in assessing and evaluating costs and benefits of regulation versus prohibition.
- 4. Results would need to be monitored to ensure early intervention if the approach proves ineffective.