THE NATIONAL CHARTER FOR DRUG LAW REFORM

Tina Van Raay
Australian Parliamentary Group on Drug Law Reform
ACT

Introduction

On 14 April of this year, Michael Moore, Member of the ACT Legislative Assembly convened an historic meeting. Following three years as Chair of the Select Committee on HIV, Illegal Drugs and Prostitution during which time he brought down three reports and initiated the Heroin Trial, and subsequently as Chair of the Select Committee On Drugs, he decided that drug law reform had to be addressed on a national scale, if any changes were to occur.

Having introduced the Bill to decriminalise personal use of marijuana in the ACT, following South Australia's lead it was realised that the time was right for further change. It was no longer tolerable to keep stating that prohibition has not worked, that was patently obvious; what was needed were strategies to change the legislation that fuelled and supported the "war on drugs" which has exacted an enormous cost both financial and human.

Thus a meeting was held between politicians who had expressed an interest in drug law reform to discuss what national strategies could be taken.

Before articulating these national strategies, some of these costs will be addressed.

Ian Mathews, (Fox and Mathews 1992), in his address to the inaugural Parliamentary Group's meeting put the following scenario to the group. He asked the group to imagine that they were shareholders in one of the most lucrative businesses in the world; second only to arms as a profit-making business. The most welcome report of all time, assuring one of a continuing profit beyond one's wildest dreams, would be that given by that United Nations body dedicated to prohibition, the International Narcotics Control Board.

Georgio Giocommelli, Executive Director of the UN's Narcotics Control Program actually stated in the National Press Club on December 17, 1992 that "The drug problem is getting worse; it has been getting worse for quite some time." The International Narcotics Control Board Report admits that "More and more evidence suggests that the various trafficking organisations are establishing a worldwide cooperation network using each others trafficking channels, facilities and other resources" (Mathews, 1993).

As the result of this increasing traffic, the illicit drug trade has displaced oil as number two in the economy. Coincidentally, this statement by Giocommelli was made on the same day as Jim Snow, Federal Member for Eden-Monaro put a motion to the House of Representatives for heroin to be prescribed by doctors and dispensed through pharmacies.

Robert Marks in Chapter Eleven of `Drugs: Fact, Fiction and the Future', (Fox and Mathews, 1992) puts forward a compelling argument for regulation and control, rather than prohibition through a comprehensive cost-benefit analysis. His study focuses on those costs to non-users caused by the laws prohibiting the use of certain drugs. These include
costs paid by the taxpayer for the criminal justice, social welfare and health care systems, and costs paid by society at large for home security and forgone production through ill health or death. There are some costs which are less tangible, of course. These include costs of stigmatising drug users, making criminals with criminal records for life out of those who would not otherwise be law breakers; the everyday fear and anxiety from the threat of drug related crime and the victimisation and loss of civil liberties experienced by many as a result or enforcing prohibition.

The Report by the Parliamentary Joint Committee on the National Crime Authority, better known as the Cleeland Report, cites examples of intrusive searches, reputations being damaged and freedom of movement from one country to another being curtailed on a mere "suspicion" of illicit drug distribution.

A social worker in the drug rehabilitation field recently described the current system of prohibition as providing an excellent excuse to marginalise the poor and to vent hatred on ethnic groups. She equates the current system of drug law enforcement programs along with the accompanying evangelism inherent in the "war against drugs" as reminiscent of the Inquisition. Perhaps more enlightened societies in the future will document this period as being similar to that experienced under McCarthy in the USA. Miller (1991), "The U.S. Opium laws of the 1870's were aimed less at the drug than at the primary users - the Chinese immigrants" (Miller, 1991, p 88).

And in Fox and Mathews (1992 p. 82); "Opium smoking was hated as a symbol of the Chinese, as an agent of vice, lethargy and filth, and the tool by which "innocent white girls" were allegedly seduced by "lustful and unscrupulous Chinamen".

"Cocaine use began as an upper and middle class practice among whites, but around 1903 reports began to associate cocaine with African-Americans" (Miller, 1991, p. 90).

As concern about Mexican-American labour competition grew in the West and Southwest of the USA, so did alarm about the new drug peril - marijuana, then identified as 'Mexican Opium' (Miller, 1991, p. 99).

We cannot accurately measure the enormous social costs of this socio-politically contrived marginalisation and victimisation, which are very real indeed, but we can measure the costs of drug law enforcement, those of the associated crime and other very tangible social costs of the prohibitionist drug policies.

**Preamble to the National Charter**

The founding members of the Australian Parliamentary Group on Drug Law Reform brought with it a mass of expertise, not only from politicians (current and retired), but also medical practitioners, researchers into epidemiological studies and members of the legal profession. The politicians involved span all political parties and come from all States and Territories in Australia. The retired Premiers, as well as the active members, bring with them a wealth of political experience so necessary to achieve pragmatic and lasting results. The political climate being what it is, it is the retired and independent politician who is most vocal on this issue at present. Ironically, in the very near future, drug law reform will be a positive issue on which to stand, instead of a perilous one as seen by many party politicians today.
At the first meeting, Justice Michael Kirby, Supreme Court Appeals Judge, congratulated those politicians present on their courage before he passionately exhorted them to take the lead in changing laws that he knew from his experience, to be unjust and counter-productive.

**The findings of the Royal Commission, Parliamentary and Official Enquiries.**

Since 1971, there have been at least ten major reports which have dealt with drugs, drug use and minimising the effects of drug use. One would imagine that these reports would have revealed some degree of controversy, but in fact, there is a great deal of consensus on the nature of the problem and the appropriate ways of dealing with the problem.

The Marriott Report in 1971, stated that

> The evidence is clear that drug abuse in Australia is mainly a problem within the individual and therefore greater emphasis should be placed on the treatment of an illness rather than a punishment for a crime (Senate Select Committee 1971, p. 3).

Senator Peter Baume's Report in 1977 entitled 'Drug Problems In Australia - an Intoxicated Society?’ called for a national strategy in harm minimisation. Drug use was seen as a social and medical problem by the Committee, not a legal problem.

The Sackville Report on the Royal Commission into the Non-Medical Use of Drugs, 1979 endorsed the notion of harm reduction in the non-medical use of drugs.

The Rankin and Kerr Reports also stressed social and medical solutions for drug abuse in preference to legal deterrents. These reports were among the first to address the notion of controlled availability of drugs.

Ironically, the emergence of AIDS as a major public health issue and the role of unsafe drug injecting practice in the spread of the AIDS virus, has been perhaps the single most important agent of change in drug policy in recent years. Neal Blewitt, as Minister for Health in 1987 endorsed moves to provide needle exchange programs in Australia. This action signalled that, faced with an epidemic of disastrous proportion, a response based on a harm minimisation approach was the only effective solution.

Apart from the findings of the Williams Royal Commission which was established in response to Peter Baume's earlier report and not surprisingly, given its terms of reference, came down hard on the side of tighter law enforcement, all of the other reports have in some way acknowledged the failure of Australia's current drug policies and called for alternate strategies to be employed on a national scale.

The findings of these reports added impetus to the Charter.

**The uncontrolled growth of the illicit drug trade, concern over the general failure of current national and international policies and the inevitability of associated crime**

As stated earlier in this paper, the drug trade has recently won over oil as number two in the world's biggest industry charts. Prohibition has led to the fostering of large scale criminal organisations, corruption and violence on an unprecedented scale. According to International Narcotics Control Strategy Reports produced by the Bureau of International Matters of the US State Department, 350 tonnes of heroin are produced in the world each
year and this has been increasing at a rate of 5-10 per cent per annum. Cocaine production is increasing at a rate of 2-5 per cent. We have yet to analyse the major shifts in illicit drug production following the announcement that two republics (Kazahastan and Krygyzstan), formerly under USSR dominion will be growing and selling illicit opium. The enormous income that can be gained from this industry under prohibition is too tempting for those unable to compete on other trade levels.

The technological advances in mobile communication have incidentally been an absolute boon to the drug traders as surveillance by those who would contain this growth becomes even more remote.

The extraordinary costs of current policies to the community.

Robert Marks, following analysis of data from the Cleeland Report, and from the NSW Bureau of Crime Statistics and Research (Dobinson and Ward 1985, 1987; Dobinson and Poletti 1988) estimated in Chapter 11 (Fox and Mathews) the social costs and drug related transfers to be in the order of $1.7 billion.

**TABLE 1**
SOCIAL COSTS AND TRANSFERS FROM ILLICIT DRUG USE 1987-88

<table>
<thead>
<tr>
<th>Losses</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>* Drug Law Enforcement Costs</td>
<td>$320 m</td>
</tr>
<tr>
<td>* Present value of future production lost</td>
<td>$178 m</td>
</tr>
<tr>
<td>* Methadone maintenance costs</td>
<td>$48 m</td>
</tr>
<tr>
<td>* Value destroyed in property crime</td>
<td>$165 m</td>
</tr>
<tr>
<td>* Defensive costs against crime</td>
<td>$230 m</td>
</tr>
<tr>
<td><strong>TOTAL COSTS</strong></td>
<td><strong>$941 m</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transfers</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Crime Losses</td>
<td>$466 m</td>
</tr>
<tr>
<td>Social security payments</td>
<td>$190 m</td>
</tr>
<tr>
<td><strong>TOTAL TRANSFERS</strong></td>
<td><strong>$656 m</strong></td>
</tr>
</tbody>
</table>

(Fox and Mathews, Drugs: Fact, Fiction and the Future, 1992)

Drug law enforcement costs can be broken down into the following four groups:

1. Drug Law Enforcement - that is the costs of the customs service, the various drug squads and related policing costs;
2. Legal Services - that is all legal staff involved in prosecution and defence of drug offence charges;
3. Court Procedures - that is court and forensic staff costs;
4. Correctional services and rehabilitation (if any) whilst in custody - that is prison warders, related correctional service officers, recurrent prisoner costs.
The high rate of morbidity and mortality under prohibition results in an enormous loss of revenue through reduced production. Marks (Marks, Fox and Mathews, 1992, p. 130) calculates that "709 deaths from illicit drug use in 1987 resulted in 20,490 working years foregone through premature death. At an average annual labour cost of $23,980 in 1987/88, that amounts to $178m." He adds that another hidden loss is the tax foregone which amounts to another $45m, at a tax rate of 25 per cent.

The defensive costs against theft result from drug related property crimes. These costs include services, equipment and techniques installed in order to prevent or reduce these crimes, as well as the costs of insuring against these losses.

Note that the figures are for 1987/88; and given that the drug trade has increased enormously since then, (as has the price of drugs) it can be safely deduced that the costs have risen in proportion to the increased trade. These costs, which were conservative at best, still remain undisputed.

In 1993, it is estimated that $1700 million is spent each year on prohibition. That amounts to $1,000 per every man, woman and child in Australia being spent on a system that has not only failed to curb drug use, but has in fact increased it to disastrous proportions. One can not help wondering how many lives would be saved if this money were to be spent on breast cancer research or health services. One certainly can marvel at how governments have managed to escape vociferous condemnation at Parliamentary Estimates hearings.

**The increased risk to personal and community health**

Whilst drugs remain illegal and therefore morally evil, sensational misinformation will continue to abound. Education programs tend to exaggerate the effects of drugs for recreational use and misunderstand the real dangers inherent in long term and irregular use.

Most illicit drug deaths occur as a result of accidental overdose because of uncertain purities of street drugs. Other deaths are caused by microbiological and chemical contaminants which are also consequences of lack of quality control. It is an impossibility to control the purity and quality of drugs whilst they remain illicit. The more diligently prohibition is pursued, the more likely it is that deaths will increase.

The risk of HIV, Hepatitis B and the AIDS virus has raised an indisputable argument for control and regulation over prohibition. We are now not only faced with the need for strategies to improve the individual's health but to protect the community as a whole from a fatal disease. Drug injectors actually form the second largest group of AIDS cases in developed countries. In 1990, they accounted for 28 per cent of AIDS cases in the United States (Fox and Mathews, 1992, p. 147). The United Nation's International Narcotics Control Board Report for 1992 curiously omits the statistics for the United States but gives statistics such as 40-60 per cent in Spain as an argument to increase prohibition!

It is worth noting at this point that a referendum in Italy recently resulted in the decriminalisation of possession. This move will not only relieve the enormous pressure on Italy's gaols but force the health ministry to upgrade its 473 drug rehabilitation centres, to deal with the increased number of addicts coming forward for treatment.

The illogical practice of sentencing a drug user to a prison where the chances of HIV and Hepatitis infection are very high (through homosexual activity, with or without consent, and needle sharing) results in a large proportion of our community compulsorily being placed in a high health risk situation. On their release, these perhaps previously healthy but now stigmatised criminals become a dangerous health risk to the community.
Overcrowding of courts and prisons

According to NSW Court statistics, in 1990 there were 7,444 offences proven in those courts and of these 5,248 (60.8 per cent) were for drug possession and/or use (Fox and Mathews, 1992, p 127).

Drug related crime, which is much more difficult to assess, as motivation for theft cannot always be established, must account for a very high proportion of prisoners in all gaols in Australia and other developed countries.

The most astounding statement made on this issue recently was in relation to the number of prisoners in Victorian gaols; that some 70 per cent were on drugs! It does not take a quantum leap in logic to deduce that the figures generally correspond to those sentenced to gaol for drug use in the first place.

Recent changes in the legal reactions to domestic violence have received criticism as resources in our courts and detention centres have not been adequate to deal with the increased reporting and the subsequent legal responses. Even if a conservative 40 per cent level of vacancy was to occur as a result of regulation, the resources made available for redeployment would be immense and could be used for productive and constructive ends.

Increasing infringements of civil liberties

The Cleeland Report devoted a page in their report to this subject and stated:

Prohibition has been responsible for the erosion of many generally acceptable civil liberties. This has been particularly marked in relation to police raids on rural areas where helicopters have disturbed innocent citizens, properties have been entered by heavily armed police in search of non-existent drugs and road blocks have been set up for the random search of passing vehicles. Persons may be liable to intrusive searches upon suspicion and persons' reputations may be damaged not because of any crime that has been proved against them but because they are suspected of having had some involvement in the drug trade.

The laws themselves have eroded traditional liberties, one typical feature being that reversal of the onus of proof" (Fox and Mathews, 1992, p. 157).

The reversal of onus of proof is particularly insidious as the accused must convince the courts of their innocence beyond doubt! This approach may net more convictions and be cost-efficient, but it is blatantly based on the premise of fundamental injustice.....innocent until proved guilty.

The police have been given wide and discretionary powers in the name of ridding society of the drug trafficker. Unfortunately very few serious traffickers are caught but many users, or suspected users are subjected to intrusive body searches, and can be arrested and put on trial on circumstantial evidence which may have some loose connection with an offence.

The myths created by propaganda that the drug user is an evil, filthy corruptor of our society and therefore deserves this treatment is one that supports these otherwise intolerable actions by the police.

Corruption of the legal system
The Costigan Report, Fitzgerald Inquiry and the Cleeland Report are but a few of the reports pointing out the inevitability of corruption under the present system.

The Parliamentary Joint Committee concluded its report by stating:

"The enormous profit to be made from the drug trade also promote corruption within law enforcement agencies. Their officers are human and the temptation to take very large sums of money for turning a blind eye or to participate actively in the trade, making use of all the specialised skills and knowledge available to law enforcement officers, must at times be overwhelming. As one witness told the Committee:

Our wonder in this society is not that we have got bent coppers, it is that we have got straight ones" (Cleeland, 1989, pp. 82-83).

Given that the police are in the front-line of the drug war, there exists great potential for an easy graduation from bribery to dealing. Once involved in any level, the sanction of blackmail often ensures that they continue.

The same applies for customs officers and prison warders. As it is in the trafficker's interest to maintain prohibition laws and exert some influence over the enforcers, it is naive to think that they do not apply pressure on every aspect of the legislative and legal system.

**The profit motive in recruiting new drug users**

Not only are the enforcers of prohibition lured into the drug trade due to irresistible dividends, any small time trader with an amount of capital can distribute, with very few overheads and make enough capital to retire before the authorities have any chance to react. The distributors employ distributors, who supply dealers that spread out selling on a pyramid basis with tremendous incentive for increased buyers. Whilst we ensure that the prices of drugs remain high on the streets through prohibition, the profit motive is very high indeed. No other industry can boast of such control over their supply and demand as those trafficking in drugs. All they need do if there is an over supply, is to organise a "bust" which may remove the competition's supply temporarily while they usurp the market at an inflated price.

These are some of the reasons, presented briefly, for overwhelming drug law reform.

**Reforms**

The Australian Parliamentary Group, consisting of members from all political parties and all states of Australia recognise that Australia has current obligations under international treaties and that its government will need to make hard choices when re-negotiating those treaties. It is clear that Australia, like the rest of the world, has been influenced by the American "war against drugs". Much of the campaign has been fear-based and highly successful in convincing many of us that the only solution is to step up the war, with even greater resources, to rid the world of this evil.

The fact is there is no approach to the issue of drugs of dependence that will ever provide a drug-free community. Controlled availability will not necessarily lead to massive reduction in drug use. At worst, drug use will remain at the same level it is today, but the costs will be minuscule compared to that of prohibition both in social, population health and financial terms.
The harm minimisation approaches adopted so far have shown some measure of success. These are the Methadone distribution and needle exchange programs. The ACT and SA have decriminalised marijuana. The SA experience has shown that this legislative move did not pave the way for increase in usage. In the Netherlands, controlled availability and decriminalisation for personal use has also resulted in a fall of usage. Perhaps the real measure of success is in terms of increased community health, decreased mortality rates, decreased numbers of institutionalised victims incarcerated in our prisons, higher productivity, decreases in criminal activity and massive increases in the budget employed for productive economic growth.

The reforms that the Parliamentary Group consider urgent are:

The establishment of sufficient needle exchange programs which are readily accessible to users throughout Australia; the immediate availability of broad based programs to all heroin users seeking this type of assistance; the expansion of rehabilitation programs in range and number to provide access and choice; the provision of financial support without political interference for properly conducted scientific studies into the treatment of drug users as well as the use and misuse of drugs of dependence, including alcohol and tobacco and the provision of education programs based of self-reliance and solid scientific research.

The short term goals include increased focus on the reduction of harm associated with drug use; rejection of criminal sanctions for the personal use of drugs; the adoption of a medical model including consultation and prescription for distribution of selected currently illicit drugs and the adoption, on a national basis, of the expiation notice model for the reform of laws pertaining to personal use of marijuana.

The Charter calls for a commitment to undermine the black market and illicit trade in drugs through conducting independent cost-benefit analyses of all policies which seek to resolve the problems of dependence and substance abuse, to modify the Australian participation in the relevant treaties and to evaluate each stage of law reform in terms of its impact on the population health, social welfare and economy.

The Charter seeks to encourage a more tolerant, humanitarian and understanding approach to those who currently use illicit drugs in our community. The aim of the Parliamentary Group for Drug Law Reform is to minimise the adverse health, social and economic consequences of current policies and the harmful responses of society to those substances.

The Parliamentary Group can only aim for that which is politically achievable - bit by bit. It is acknowledged that the reform of Australia's current drug laws can only be achieved through evolution, not revolution. Just as changes in the laws governing conservation and the environment have been achieved through accrual so do we anticipate the changing laws and attitudes to illicit drug use.

Whatever the proposals made by this Group, they will be modified through either constriction or liberalisation as assessments are made of their viability and acceptability.

The groundswell for support for these drug law reforms is growing rapidly. Not only from judges, magistrates and those lawyers horrified with the hypercritical and draconian laws that bring into courts and prisons those more fitting for the attention of public health authorities than the law; not only from the very many doctors who are faced with the treatment of victims of impure drug use, those with Hepatitis B or AIDS; not only the coroners who are faced with daily inquiries into deaths from accidental overdoses caused
by impure street drugs or lack of accurate information; not only from legislators who, although wary of the political vulnerability caused by such a stand cannot be silent any more; but from the many people who are the victims of house burglaries, the parents of adolescents who fear the worst for their children, the teachers and referral workers who are aware of the need for accurate and up-to-date information and a more humanitarian approach to the people they see and those whose lives have been ruined through fear, suspicion and prejudice.

The solutions are very complex and require courage and long term determination.

I conclude by paraphrasing the same quote from Cicero that appears in the front cover of the ACT Select Committee of Drugs Report. "Those of sound nature, therefore, are summoned by the voice of true reason to justice, equity and honesty".

References

ACT Legislative Assembly Select Committee on Drugs Interim Report, 1992. Methadone Treatment Services in the ACT.


Fox, R. & Mathews, I., 1992 Drugs: Fact, Fiction and the Future, the Federation Press.

Mathews, I. 1993, Unity, April


Report by the Parliamentary Joint Committee on the National Crime Authority 1989, Drugs, Crime and Society, AGPS, Canberra.

Royal Commission into the Non-Medical Use of Drugs 1979. Report of the South Australian Royal Commission into the Non-Medical Use of Drugs, AGPS, Canberra.

Senate Select Committee 1971 Report of the Senate Select Committee on Drug Trafficking and Drug Abuse, AGPS, Canberra.