

JOURNAL OF THE AUSTRALIAN ACADEMY  
OF FORENSIC SCIENCES

"DRUG LAW AND POLICY"

JOURNAL OF THE AUSTRALIAN ACADEMY  
OF FORENSIC SCIENCES  
DRUG LAW AND POLICY

THE HON JUSTICE MICHAEL KIRBY  
President of the Academy

\* \* \*

The need for complementary policies.

On Saturday, 20 August 1988, the Australian Academy of Forensic Sciences convened in the Sydney Town Hall an extraordinary public meeting. The purpose was to discuss options for dealing with the abuse of illegal drugs. The session was chaired by me in my capacity of President of the Academy. It was introduced by the Secretary General (Dr Oscar Schmalzbach). This is a report on the meeting.

A number of principal papers were presented before the session was thrown open to public comment.

Mr Richard Baldwin, Acting Deputy Director of the Drug Offensive, a Division of the New South Wales Department of Health, commenced the session. He outlined the choices which are before the Australian community in dealing with drugs. These include sticking with the present law; extending the availability of presently illegal drugs and decriminalising their use, particularly of heroin.

Mr Baldwin outlined the methadone programme of the Department of Health. Its purpose is to generate behaviour

which will allow persons, subject to heroin addiction, to change their lives. He said that there was an estimate of 12,000 people dependent on heroin in New South Wales alone. When methadone is used there tends to be an improvement in the health and social function of the subject and a reduction in the cycle of criminality. Mr Baldwin said that before legalisation of heroin was contemplated, the community would have to be sure that the legal supply of heroin would produce consequences better than the present methadone programme. He criticized talk of abandoning old policies. He said that the preferable course would be to introduce new policies to complement or supplement the methadone programme.

Mr Tom Carroll is the Co-ordinator of the Media Campaign in New South Wales in the National Campaign Against Drug Abuse. He expressed the view that Australia was generally on "the right track" in its approach to drug abuse. He produced figures which show that 7% of the overall Australian population had used illicit drugs at some time. However, this figure was much higher in the case of young people 20 to 24 years of age. In that group 29% of males and 13% of females admitted to illicit drug use. Mr Carroll stressed that what is "illicit" is what the community, through its laws, declares to be illegal. The laws define what is impermissible. He suggested that there was a need for a "broad band" approach and that this had the support of the Australian community. If he felt that improvement was needed it was in the area of community education and social marketing. The object should be to reduce the attractiveness of drug addiction, particularly heroin. He

emphasised that there was no easy solution nor any instant cure for the national problem of drug abuse.

New police approaches in the United States.

Commissioner Ross Nixon, (Regional Commander North, New South Wales Police) spoke in favour of stronger support for police in the battle against illicit drugs. He said that it was the greatest problem facing policing in Australia today. He referred to new approaches which he had seen in force in the United States where the problem of drug abuse was even greater than in Australia. The most apparently effective of the new approaches was the confiscation of the profits secured from dealings in drugs. Commissioner Nixon emphasised the cost to society of illicit drugs. These include the cost of building new prisons and providing personnel for them. He said that one estimate suggested that 75% of people in prison had some connection with the drug market. The aggressive pursuit of the assets of the major criminals was the only way in which the tide could be turned.

Commissioner Nixon referred to the President's Task Force in the United States with 3,000 officers devoted to a nationwide campaign against drug abuse. This had engineered a campaign against the infrastructure of the criminal element involved in supplying drugs to the community. But such was the dimension of the problem in the United States now, and so widespread was drug taking and so dilatory the procedures in the courts, that prosecutors made decisions not to pursue cases not having a substantial dealing in drugs. Arbitrary cut off

points were adopted which, to the more sensitive Australian eye, seemed very tolerant of serious drug dealings.

Mr Nixon described his visit to prisons in Miami, a city in which the drug industry is powerful. He said that the main industry in Miami now was building prisons to house drug dealers and users. He suggested that marihuana was the major problem of drugs facing the community in Australia and that additional powers should be given to the police to fight the insidious spread of its use. He said that police enforced the laws made by the legislature. But he believed that judges and Parliament should give more support to the police in their campaign to rid the community of illicit drug use.

The "drug war" is "phoney".

Dr Norman Swan is the producer/presenter of the Health Report on ABC radio. He produced a major series called "The Drug War Has Failed" in 1987. Dr Swan said that there was an analogy between the earlier spread of AIDS and the way society was now tackling the second wave of AIDS. He referred to the book "And the Band Played On", in which there was described the indifference to the insidious spread of the AIDS virus through the homosexual and bisexual communities in the early 1980's. He said that, just as at that time the community stood by during the spread, so it was now standing by whilst the AIDS virus began to spread into the general heterosexual community through the covert activities of intravenous drug users. He said that the "war against drugs" was a phoney war in which a great deal of funding was deployed to the authorities, civil liberties were diminished and no significant impact was demonstrated on

drug taking. But at the same time, the "campaign" made it more difficult to tackle realistically the new problem of the spread of AIDS. To this new problem there was now added the additional problem of the spread of the use of cocaine. The ultimate hypocrisy of governments was demonstrated by their tolerance or acceptance of the tobacco and alcohol industries which had a tremendous influence on government policies because of their economic power. Hypocrisy was also demonstrated by the provision of sterile needles and syringes at the very time of a so-called "drug war". Dr Swan said that young policemen were often alienated because, like other young people in society, they had used marihuana. Introduced into the police culture they immediately found themselves in a conflict situation. This quite frequently undermined their respect for the law which it was their duty to enforce.

Dr Swan pointed out that in the last century, heroin and cannabis were perfectly legal. He said that this showed the way in which society, by its laws, creates its own problems. But he urged a fresh look at the issue of drug law because of the urgent issue now posed to the international community by the advent of AIDS.

#### The new spectre of AIDS.

Dr Alex Wodak is a medical practitioner working at St Vincent's Hospital, where as a Director of the Alcohol and Drug Service he is also involved in the treatment of AIDS patients. He took as his theme the approach of Alcoholics Anonymous. Change what you can. Accept what you cannot change. Dr Wodak said that the community could change the future pattern of the

AIDS epidemic. But it only had about twelve months to do so before the pattern was established by the spread of AIDS into the heterosexual community through the vectors of intravenous drug users. He said that the second epidemic of AIDS would be even bigger than the first because of the larger pool of potential recipients. He pointed out that Australia had the fourth highest incidence of AIDS in western countries. This was so despite the fact that the prevalence of HIV infection in intravenous drug users was still rather low in Australia. He suggested that the Australian community had a choice to make. It could not effectively tackle the spread of the AIDS virus amongst intravenous drug users if those users were sent underground by prohibitory laws. He said that the scarce resources available for the community to tackle AIDS themselves should put pressure upon governments for an immediate, all-out effort to contain the epidemic and to prevent its spread through the drug sub-culture. If heroin were legalised this would permit an expansion and liberalisation of treatment and attract many more drug users into treatment. Only by bringing this problem to the surface as a problem of public health would a terrible predicament in the spread of AIDS be contained in Australia and elsewhere.

Dr Oscar Schmalzbach (Secretary General of the Academy) referred to the recent Salwick poll which showed the growing support for the provision of free heroin to addicts. According to this poll published in The Age newspaper (7 July 1988), the total sample responded that 35% were in favour of free heroin given under supervision to addicts. 60% were opposed and 5% did

not know. This shows a significant shift in favour of treating heroin addiction as a public health and not a law and order problem. Dr Schmalzbach said that it had to be accepted now that the community had "lost" the "war against drugs". He said that the gaols were overcrowded. It was expensive to build new gaols. Within those new gaols the use of drugs would expand. This would in turn lead to further spread of the sub-culture and of the AIDS virus.

#### Dependence on chemicals.

Mr Milton Luger is Executive Director of the James McGrath Foundation and Supervisor of Odyssey Houses in Australia and New Zealand. He was former Director of the United States Office of Juvenile Justice. He said that, in his view, legalisation was a capitulation to the view of life that problems could not be solved except by taking chemicals. He pointed to the increased admissions to psycho therapy in countries which had legalised narcotic drugs. He said that there was certainly no simple solution by legalisation. It would bring problems of its own, in particular it was unlikely that any one jurisdiction could tackle the problem single handedly.

Speakers from the floor raised a number of important points. Some emphasised the need to consider the moral question of the right of the community to impose such controls on other citizens' conduct, at least where those citizens were adults and were not complaining victims. A Gosford woman protested at the constant theft of property from her home. But the question, according to the Chairman was whether that problem (which

concerned many members of the community) would be better solved by a fresh approach which destroyed the necessity of illegality to feed a drug habit.

#### Public Concerns.

Questions were asked and answers were offered in relation to the intrinsic harmfulness of marihuana. Dr Wodak gave details of the British experiment on the provision of heroin to established addicts. He concluded that this experiment had never been given an effective chance and it remained a viable alternative policy. Questions were asked concerning the root cause of personality disorders which led to drug addictions of various kinds and whether a problem of drug taking should be better tackled by dealing with the root causes. One questioner suggested that the forthcoming Royal Commission on Mental Health Services should include attention to treatment in the case of drug use. A woman who had joined the Neighbourhood Watch and had seen widespread burglary, apparently by young drug users, said that she had reached the conclusion that each adult was entitled to determine his or her own destiny. Our present laws on marihuana at least were hypocritical and had lost the respect for the law of the younger generation.

#### The principal issues.

I then summed up the issues raised by the meeting. I said that several reasons suggested the need for a new approach to the laws on illicit drugs. These included:

- \* Principle: The proper function of the criminal law is not to control adult behaviour where no person, other than the adult concerned, was affected. It was this principle which had led to the retreat of the law from the attempted control of conduct considered by some to be immoral but by others to be the business of the subject and no-one else.
- \* Disproportion: Despite the drug "war", 23,000 Australians die each year from tobacco related causes, 3,400 from alcohol related causes and only 250 from illicit drugs. This and the provision of syringes to drug users showed the inconsistency of the present official policies.
- \* Official powers: Many citizens were concerned at the ever increasing powers being provided to police and other authorities as aspects of the drug war. These included telephonic interception, mail interception, access to tax files and the increase in staff numbers devoted to the drug offensive. \$100 million had been devoted over three years to the national drugs campaign. A question was raised as to whether there were not better things that could be done in society with these sums.
- \* Burglary: By making drug taking illegal, a whole sub-culture of illegality was created through the cycle of petty burglaries which were constant harassment to ordinary citizens in their homes.
- \* Designer drugs: The new development of drug

analogues which, by chemical processes, mimic the effect of drugs produced naturally, presented even greater difficulties to the law maker and law enforcer. Old laws were not yet expressed in terms of the new "designer" drugs. As well, such drugs could be readily made locally and thereby escape the net of customs officers who, in any case, only ever catch a small proportion of imported drugs.

\* AIDS: the truly urgent problem was that of AIDS with the growing incidence of AIDS amongst intravenous drug users who, unless this problem is effectively tackled, will spread the virus into the general (heterosexual) population.

#### No Easy Solutions.

It was acknowledged by all participants in the meeting that there were no simple solutions to the problems dealt with. Nor were there likely to be solutions which could be easily tackled in one jurisdiction alone. On the other hand, the urgency of reconsidering our laws was emphasised by the new spectre of AIDS. A warning was provided in Dr Swan's analogy to the early days of the first AIDS epidemic and his reference to the book "And the Band Played On".

This was one of the two major images that I will take away from the meeting. The other was the image of gaol building as the major industry of Miami. When so many members of the community become caught up in criminality, the question that is posed (particularly in the case of crimes involving adults with no complaining victim) is whether the community has a right, in

the face of so much conduct by so many citizens to the contrary, to insist upon, and persist with, its present approach to drug law and policy.

The meeting concluded with expressions of thanks to Butterworths Ltd which had provided advertisements for the meeting, to the speakers, to the Odyssey Choir which had provided musical entertainment and to all others involved in the organisation of a public discussion on such an important topic.

-----