

**Queensland Legal Affairs and Community Safety
Committee**

**Criminal Law (Child Exploitation and Dangerous
Drugs) Amendment Bill 2012**

The Eros Association Submission

The “*Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012*” covers two vastly differing topics. This submission addresses the 'Dangerous Drugs' aspect of this proposed amendment.

Novel psychoactive substances have created legislative and health concerns worldwide, especially in Europe, the U.S. and here in Australia. Legislators and chemists appear to be involved in a Chemical Arms Race.

There are two important facets to this race: The one that legislators often cite is the need to protect people from the potential of harm. The other, which is the reason for the race in first place, is that people desire to alter their consciousness legally and safely.

MARKET:

The market for novel psychoactive substances, especially the particularly popular synthetic cannabinoids has created a large industry throughout Queensland, creating many jobs and adding enormous amounts of tax dollars through income tax and the GST. A conservative estimation shows the industry to be a \$AUD50-60 million per-year industry in Queensland alone¹².

Retailers report that a large portion of customers, including many in the 65+ demographic use synthetic cannabinoids for pain relief and to help them get to sleep. Cancer patients are also among those using these substances for therapeutic purposes, presumably due to the substances' advertised similarity to cannabis, which has surmounting research showing medical benefits.³ Retailers have estimated that less than 1% of their customers have reported having any problem with the substances.

Retailers across Queensland have noted that the main demographic purchasing synthetic cannabinoids is 30-50 year olds, typically purchasing 3 gram packs. It is estimated that between 5% and 15% of the total Queensland population have used synthetic cannabis, though exact figures are hard to determine without analysing the market more closely.⁴

With very few cases of incidence, it seems that restrictive legislation may be the least pragmatic response available to Queensland legislators, more likely to cause a market failure whereby the black market will fill in supply gaps and population health and safety will be further compromised. Making these products illegal does not necessarily reduce demand and is much more likely to reduce safety of the products even further.

1 R. Thorpe, *RE: QLD Market Details*, [e-mail to N. Wallis], 05/02/2013

2 F. Patten, *FWD: QLD Market Details*, [e-mail to N. Wallis], 06/02/2013

3 'Completed Studies', *University of California Centre for Medicinal Cannabis Research*, viewed on 06/02/13 <http://www.cmc.ucsd.edu/index.php?option=com_content&view=category&id=41&Itemid=135>

4 F. Patten, *FWD: QLD Market Details*, [e-mail to N. Wallis], 06/02/2013

HEALTH CONCERNS:

Health concerns are not without warranted reason, considering that any new substance for human consumption should be tested for toxicity and other negative side effects, especially to determine levels of potential impairment at given amounts (dosages). Research on patterns of synthetic cannabinoid usage in Australia suggest that people decide to try these products because of several main reasons: Curiosity over similarity to cannabis (around 50%), were/are legal (around 40%) and easier to obtain than cannabis (around 25%)⁵.

Although there are several anecdotal reports of harm associated with synthetic cannabinoids in the popular media, research in the U.K. suggests that the harms of psychoactive substances have been over-reported in their popular media in the past, particularly regarding currently illicit substances.⁶ Queensland retailers have also estimated that less than 1% of their large customer base report health concerns with these substances.⁷ There are no confirmed deaths that have been caused by synthetic cannabinoids to date.

The Morning Bulletin also points out that the ‘legal high’ alcohol is responsible for the vast majority of substance abuse issues, citing Australian Institute of Welfare statistics that show 47% of drug treatments carried out in 2010-2011 were for alcohol related issues, and 62% of the remaining substance abuse issues had alcohol as a second drug of concern.⁸

The Australia21 report entitled: “Alternatives to Prohibition” recommends that the future for Australian drug policy should aim to minimise deaths, disease, crime and corruption arising from drug use and drug policy.⁹ Prohibition has proved an ineffective method of minimising these harms. Regulation in this area would be a more effective regulatory avenue to reduce harms.

⁵ M. Barratt, V. Cacic, S. Lenton, ‘Patterns of Synthetic Cannabinoid use in Australia’, *Drug and Alcohol Review*, 09/10/2012, p. 4

⁶ A. Forsyth, ‘Distorted? A quantitative exploration of drug fatality reports in the popular press’, *International Journal of Drug Policy*, vol. 12, issues 5-6, November 2001, pp. 435 - 453

⁷ F. Patten, *FWD: QLD Market Details*, [e-mail to N. Wallis], 06/02/2013

⁸ A. Marshall, ‘Loose definitions and legal highs riddle QLD drug war’, *The Morning Bulletin*, 19/11/2012, accessed on 06/02/2013, <<http://www.themorningbulletin.com.au/news/loose-definitions-and-legal-highs-riddle-qld-drug-1626749/>>

⁹ B. Douglas, A. Wodak, D. McDonald, ‘Alternatives to Prohibition’, *Australia21 Roundtable on Illicit Drugs*, 06/07/2012, p. 34

REGULATORY ALTERNATIVES:

There are alternatives to control the “manufacture and supply of dangerous drugs”¹⁰, including novel psychoactive substances. New Zealand legislators have opted for a system of regulation for new psychoactives, an approach which is a far more pragmatic response to the issue than the arguably failed discourse of control-through-criminalisation. Manufacturers of the 'legal highs' in New Zealand will undergo a lengthy and potentially expensive testing process before the products can be sold.¹¹

Regulation controls could include:

- i. A minimum purchase age of 18 years.
- ii. Restrictions limiting advertising to only the inside of a premises selling restricted substances and a requirement that such advertising not be visible or audible from outside such premises.
- iii. Prohibitions on selling such products from service stations, or from non-fixed premises such as caravans or street carts.
- iv. Restrictions on where these substances can be sold ensuring that they are only sold in age restricted venues.
- v. Requirements for all products to contain warning labels, including warning against driving or operating machinery following use, and contact details of the manufacturer and the National Poisons Centre.
- vi. Requirements for all products to clearly state the synthetic cannabinoid they contain on the packet and the recommended dosage.

The Australia21 report, “Alternatives to Prohibition” addresses alternatives for regulation of illicit substances, but many of the same lessons can be applied to current legislative work to control the market for novel psychoactive substances.

The report suggests a move toward evidence-based policy, noting that, “As much as we deplore it, we must learn to live in a world where some... people use drugs. All drug use is not inherently evil. We would be better off keeping the focus on reducing the harm caused by drugs and drug policy.”¹²

The Independent Scientific Committee on Drugs published a look into attempts to control synthetic cannabinoids. The author notes that the European Monitoring Centre for Drugs and Drug Addiction is detecting an ever-growing number of novel psychoactive substances. Alongside this he notes that regulation through analogue control presents a new set of problems and that attempts in the U.K. have been frivolous, with no prosecutions in the first year of controls in 2010.¹³

Attempts to prohibit are likely to be expensive and waste resources, as well as have many potentially unintended consequences.

10 *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012 - Explanatory Notes* 2012 (QLD) p. 4

11 H. Rutherford, ‘Britain ‘Impressed’ with NZ’s legal high laws’, *stuff.co.nz*, 15/01/2013 <<http://www.stuff.co.nz/world/europe/8179402/Britain-impressed-with-NZs-legal-high-laws>>

12 B. Douglas, A. Wodak, D. McDonald, p. 31

PHARMACOLOGICAL SIMILARITY:

Amending the definition of what constitutes a 'dangerous drug' by removing the necessity to prove both chemical structure similarity AND pharmacological similarity has the potential to catch a lot of unintended substances, including those used in industry and for household purposes, rendering them effectively illegal in Queensland. Pharmacological similarity is determined by which receptors the substance binds with in the body. The new law would allow many substances to be made illegal, even where they only have a 0.01% binding capacity compared to a currently illicit substance¹⁴:

- i. The illicit substances muscimol and barbiturates are GABAa agonists. Drinking alcohol is also a GABAa agonist.
- ii. Other alcohols such as methanol, isopropyl alcohol and butanol are all also GABAa agonists.
- iii. A common herb, Skullcap (*Scutellaria lateriflora*) is also a GABAa agonist.
- iv. Saffron contains safranal, a serotonin agonist and crocin, a dopamine agonist. MDMA is also a serotonin and dopamine agonist.
- v. Amphetamine, methamphetamine, MDA and cocaine are all dopamine agonists. Hordenine, an alkaloid in barley, especially beer, is also a dopamine agonist.
- vi. Phenethylamine is one of the chemicals in chocolate. It is a noradrenaline and dopamine agonist, like methamphetamine, MDA and cocaine.
- vii. Tyramine is an alkaloid present in aged foods, such as cheese, salami and beer. It is also a noradrenaline and dopamine agonist, just like amphetamine, MDA and cocaine.
- viii. Various natural analogs of anandamide such as oleamide are cannabinoid agonists. Oleamide is present in most seeds and nuts and is particularly high in poppy seeds. Oleamide is also used in industry as a plastics extrusion lubricant.
- ix. The common herb Echinacea contains alkylamides, which are cannabinoid agonists.

With this in mind, it is of vital importance that the legislation not be amended to include pharmacological similarity as a sole definer of 'dangerous drug'.

13 Dr. King, 'Are current attempts to control new synthetic cannabinoids futile?' , *Independent Scientific Committee on Drugs*, London, 2012, accessed on 05/02/2013, <<http://drugscience.org.uk/external-resources/controlling-cannabinoids/>>

14 T. Wiedemann, *FWD: QLD Questions*, [e-mail to N. Wallis], 05/02/2013

CONCLUSIONS:

The amendments proposed in the Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Bill 2012 relating to evidentiary difficulties on proving whether an analogue has substantially similar pharmacological effect and chemical structure are likely to have severe unintended consequences, be costly to enforce and have serious impact on a large market which only includes a very small minority who have a problematic experience. The amendment will not stop demand for the products, instead likely causing a market failure and sending the \$50-\$60 million per year industry underground, losing tax revenue and current industry-driven regulation. There are many alternatives available to Queensland legislators, with New Zealand's model being the most obvious candidate for investigation, especially considering the attention it is receiving from other countries, like the United Kingdom, which has praised the New Zealand model and may seek to emulate aspects of it.¹⁵

Thank you for the opportunity to contribute in this process.

¹⁵ K. Malinowska-Sempruch, 'New Zealand, legal highs and sensible supply-side policies', *New Statesman*, 24/01/2013, <<http://www.newstatesman.com/lifestyle/2013/01/new-zealand-legal-highs-and-sensible-supply-side-policies>>