

Drug Law Reform: Lessons from the New Zealand Experience

By Sanji Gunasekara¹

New Zealand's existing drug laws are out of date, overly complex and poorly aligned with official drug policy. In 2007, the Government entrusted an independent agency, the New Zealand Law Commission, to comprehensively review the country's drug law. The Commission's approach has been to make proposals for drug laws that support and enhance the country's drug policy – an important departure as, in many countries, and previously in New Zealand, drug laws have been developed and implemented with little consideration of their wider impact on social policy.

The Law Commission has produced an issues paper for discussion and will shortly present a final report to the Government. This is likely to feature a new approach to the personal possession and use of drugs which places less emphasis on conviction and punishment and more emphasis on the delivery of effective treatment, while ensuring that New Zealand remains in fulfilment of its international obligations. It is also likely to propose a new regulatory framework for non-convention drugs. New Zealand's approach to the reform of its drug laws may provide important lessons for other countries.

WHY THE REVIEW IS NECESSARY

In New Zealand, the recreational use of illegal psychoactive substances is regulated by the Misuse of Drugs Act 1975.² This Act is now 35 years old. Its main components were developed when the hippie counterculture was at its height and the illegal drugs of choice were cannabis, cocaine, opiates and psychedelics like LSD. Since that time, a great amount of research has been undertaken into the effects of different drugs. We have a much



KEY POINTS

- The independent National Law Commission has reviewed New Zealand's existing drug laws against the official drug policy and has formulated a series of recommendations for the Government to consider.
- The Commission believes there is significant scope for a more effective regulatory approach for personal drug use within the framework of the UN drug conventions. This will allow to direct drug users away from the criminal justice system and into education, assessment and treatment.
- The Commission's final report is likely to serve as a blueprint for drug law reform. Many of the recommendations will be applicable to other countries attempting to steer a balance between enacting progressive drug law reform while complying with their international treaty obligations.
- Politicians should devise legislation on the basis of evidence rather than populist sentiment. Civil society and the media can help to ensure that the drug law reform debate remains grounded on the evidence and does not become polarised.

better understanding about the harms of drug use and ways to reduce those harms. While the use of cannabis remains high, new drugs have appeared. In the 2000s, party pills like benzylpiperazine (BZP) and more harmful drugs like methamphetamine have joined cannabis at the forefront of New Zealand's drug scene. New Zealand's drug landscape is very different from that which the Act contemplated in 1975.

Over the years, various amendments have been made to the Act to respond to issues as they arose. For example, in 1988 an amendment introduced the concept of a controlled drug analogue to address the emergence of new synthetic designer drugs developed by subtle chemical changes to prohibited drugs to avoid the provisions of the Act. But this did not address the emergence of new synthetic drugs with distinct chemistry.

In 2005, an amendment provided for a new restricted substances regime to regulate access to new psychoactive substances such as BZP which were not controlled drug analogues and so were not covered by the Act. These ad hoc amendments have made the Act difficult to understand and navigate. A first principles review of the Act is well overdue. In 2007 the then Labour Government invited the New Zealand Law Commission, an independent advisory body (see below), to review the Act. This invitation arose partly in response to the debate over the reclassification of BZP as a Class C controlled drug.

There are several additional compelling reasons for drug law reform. Firstly, New Zealand's existing drug law is inconsistent with its official drug policy. The National Drug Policy 2007-2012 is based on the principle of harm minimisation and supports a balance of measures including supply control, demand reduction and problem limitation.³ Yet the Misuse of Drugs Act 1975 emphasises supply control while largely neglecting these two other important pillars. Greater legislative recognition of demand reduction and harm reduction strategies is needed.

Secondly, the deterrent effect of the law has been very limited. Despite the punitive ap-

proach of the last three decades, recreational drug use is widespread in New Zealand. In a 2008 survey, nearly one in two adults aged 16–64 years (49.4%) had used cannabis in their lifetime, representing 1,224,600 persons.⁴

Thirdly, the existing supply-control focussed approach consumes an inordinate amount of resource via demands on enforcement, justice and corrections. For example, in 2005-06, 333,684 hours of police time were devoted to cannabis drug enforcement at a cost to the taxpayer of \$116.2 million,⁵ a figure representing approximately 8.8% of the total police budget.⁶ Drug-related offending accounts for about 10% of New Zealand's total prison population.⁷

Fourthly, the adverse social consequences from an overly punitive approach are clearly disproportionate to the harms caused by drug use, with large numbers of young New Zealanders receiving criminal convictions for life as a result of minor drug offences.

Fifthly, the absence of effective regulatory controls over new psychoactive substances entering the market is a glaring anomaly when compared with the prohibitionist approach to substances covered under the UN conventions and represents a serious threat to public health.

THE LAW COMMISSION AND THE REVIEW PROCESS

The Law Commission is an independent advisory body established in 1986 to undertake the systematic review, reform and development of the law of New Zealand. It makes recommendations to the Parliament. Its goal is to achieve laws that are just, principled, accessible, and that reflect the heritage and aspirations of the peoples of New Zealand.

The Law Commission is comprised of six Commissioners in addition to a team of legal researchers. Its President, Sir Geoffrey Palmer, is a former Professor of Law, former Prime Minister of New Zealand and has sat as a Judge on the International Court of Justice. He has been recognized for his expertise in

international and constitutional law and holds honorary doctorates from three Universities.

The terms of reference provided to the Law Commission by the Government for this particular review included the following.

The Commission will review the Misuse of Drugs Act 1975 and make proposals for a new legislative regime consistent with New Zealand's international obligations concerning illegal and other drugs. The issues to be considered by the Commission will include:

- (a) whether the legislative regime should reflect the principle of harm minimisation underpinning the National Drug Policy;
- (b) the most suitable model or models for the control of drugs;
- (c) which substances the statutory regime should cover;
- (d) how new psychoactive substances should be treated;
- (e) whether drugs should continue to be subject to the current classification system or should be categorised by some alternative process or mechanism;
- (f) if a classification system for categorising drugs is retained, whether the current placement of substances is appropriate;
- (g) the appropriate offence and penalty structure;
- (h) whether the existing statutory dealing presumption should continue to apply;
- (i) whether the enforcement powers proposed by the Commission in its report on Search and Surveillance Powers are adequate to investigate drug offences;
- (j) what legislative framework provides the most suitable structure to reflect the linkages between drugs and other similar substances;
- (k) which agency or agencies should be responsible for the administration of the legislative regime.

The Law Commission's review has been comprehensive and wide-ranging. Its objective is

to propose a contemporary legislative framework for regulating drugs that supports and enhances the effectiveness of drug policy. The framework should be consistent with New Zealand's international obligations concerning illegal and other drugs and reflect up-to-date knowledge and understanding about drug use and its related harms.

As part of its work, the Law Commission consulted widely with academics, community leaders, treatment providers, legal and policy experts, public health professionals and other agencies. In February 2010, it released an issues paper on the Misuse of Drugs Act.⁸ This paper makes tentative proposals for how New Zealand's drug laws can be updated to put in place a modern and evidence-based statute with the ability to respond to the inevitable changes that New Zealand's drug landscape will continue to face.

Following the release of its issues paper, the Law Commission called for public submissions and undertook a process of further consultations throughout the country. This robust consultation process has provided the opportunity for the public of New Zealand to have their say. The Law Commission is currently in the process of considering public submissions on its issues paper on the Misuse of Drugs and is expected to release its final report to the Government later this year.

A similar review of New Zealand's alcohol laws by the Law Commission attracted nearly 3000 submissions. The Law Commission clearly gave close attention to public consultations and submissions, revising some of its original recommendations in its final report to the Government.

PROPOSED APPROACH TO CONVENTION DRUGS

In its review, the Law Commission sets out by outlining the distinction between drugs that are covered under the UN drug conventions and those that are not. The Law Commission acknowledges that New Zealand is a party to the three long-standing UN drug conventions and considers that New Zealand must continue to comply with its obligations under the

conventions. However, this does not preclude changes to New Zealand's approach to the control of convention drugs.

The Law Commission outlines the considerable debate surrounding the nature of these obligations. It broadly concludes that while possession and use must continue to be restricted and unlawful, there is no requirement to establish criminal offences for drug use per se. Even within a global prohibitionist framework, the Law Commission points out that there is considerable scope to look at alternatives to prosecution, alternatives to conviction, the use of non-custodial sanctions, and the use of alternative civil or administrative sanctions.

The Law Commission has taken the view that the state's efforts should be concentrated on reducing harm rather than simply punishing drug users, an eminently sensible position from a human rights, social justice and cost-benefit perspective.

Ultimately, legislative reforms should aim to direct dependent drug users in particular away from punishment and towards treatment and education.

Classification

There are significant differences in the potential for harms caused by different drugs. It is important to recognise these differences when formulating legislative and policy responses. Furthermore, drug classification per se matters little in terms of deterrence when it comes to personal use.

New Zealand uses a three-tiered ABC drug classification system. In 2005, an amendment to the Misuse of Drugs Act established a new 'restricted substances' category to deal with new recreational psychoactive substances that were not harmful enough to justify prohibition. This was briefly used to regulate BZP. However, BZP was subsequently reclassified as a Class C controlled drug and the 'restricted substances' schedule has since remained empty. This is due primarily to a loophole whereby new harmful psychoactive substances automatically fall into one or other of the exclusions under the amendment.

In New Zealand, as in many other jurisdictions, drug classification is vulnerable to media and political pressure. There is also debate about how to measure drug harm. Ideally, this should take into account physical harms, dependence potential, prevalence and social harms,⁹ as well as New Zealand's unique social and cultural landscape, but the difficulties in measuring the prevalence of drug use make definitive estimates of harms including social costs difficult.

The Law Commission argues that reform of the current approach to drug classification is essential as part of any efforts at reforming drug laws. The Law Commission proposes a number of options for reforming the approach to classification, including retaining the overall concept of a three-tiered system but with several modifications. Importantly, if an ABC-type classification system is retained, the Law Commission emphasises that it needs to be regularly reviewed. They also suggest the criteria used to decide whether or not to prohibit a drug should be different from the criteria used to decide the class in which a prohibited drug should fall.

These are quite different decisions, yet currently the same criteria are taken into account in deciding whether or not a drug should be prohibited as are taken into account in deciding the maximum penalties for drug offences. The Law Commission also highlights the need to take into account the costs and benefits of prohibition when deciding whether or not to prohibit a drug. It argues that harm is the most important consideration when it comes to classification decisions, categorised by the substance's physical harms, dependence potential and social harms.

The Law Commission stresses the importance of a statutory committee of experts to advise the Government on the regulation and classification of drugs, to ensure that all decisions made are evidence based. To this end, they suggest that this body should be independent, multidisciplinary and include consumer representation and experts in drug policy. They also argue that the drug classification process should be subject to full parliamentary scrutiny rather than by the current 'Order in

“ We think that the criminal justice system has a key role to play in identifying individuals whose drug use is causing harm and diverting them into drug education, assessment and treatment. Simply punishing a drug user, without taking steps to address their drug use, is a wasted opportunity.”

New Zealand Law Commission

Council’, a truncated affirmative resolution procedure which restricts public participation. It is important that decisions of this magnitude are made by primary legislation and this particular suggestion by the Law Commission would represent a significant advance over the existing, less transparent, process for drug classification.

Dealing

Some of the current offences for dealing in controlled drugs under the existing Act are problematic, partly because of the broad range of activities they cover and partly because they blur the distinction between ‘social supply’ of drugs and commercial dealing. Underpinning the Law Commission’s review is its view that any response should take into account the relative harms of the drug-related activity. Large scale commercial drug dealing is considered to be the most harmful of all drug-related activities and as such, the Law Commission stresses that it is important that offences and penalties adequately reflect the criminality of this behaviour.

While the Law Commission believes that supply should always be a criminal offence, it puts forward the case for differentiating social supply from commercial supply during sentencing and sets out the following factors as indicative of social supply: i) the supply was in small quantities; ii) the offender was also using the drugs; iii) the supply was to friends or acquaintances; iv) the offending was not motivated by profit. The Law Commission suggests that there should be a presumption against imprisonment for all cases of social supply, regardless of the class of drugs. This

position is consistent with moves to ensure that any punitive measures are proportionate to drug-related harms. Incarcerating people for minor drug offences such as social supply is a disproportionate response, a wasteful use of resources and not the most efficient way to ensure that drug education and treatment needs are met.

Currently, the offence of possession for supply includes a legal presumption that a defendant who possessed drugs above a certain quantity must have possessed that drug for the purposes of supply. This presumption is controversial and in 2007, a majority of the Supreme Court held it to be inconsistent with the Bill of Rights Act.¹⁰ In addressing this issue, the Law Commission favours repealing this presumption with an aggravated possession offence, with applicable quantities needing to be specified for each drug.

Personal Use Offences

The Law Commission believes there is significant scope within the framework provided by the UN conventions to put in place a more effective regulatory approach for dealing with personal use offences. This approach would achieve the following:

- enable law enforcement resources and activity to focus on more harmful drug-related offending like commercial dealing
- provide a more proportionate response to the harm that drug use causes
- address or mitigate some of the harms and costs that inevitably result from drug prohibition
- provide greater opportunities in the criminal justice system to divert drug users into drug education, assessment and treatment.

Under current New Zealand law, the consequences of possession for personal use and related offences are officially dealt with through the criminal justice system. However, this approach is somewhat loosely upheld by law enforcement officials (particularly in relation to Class C drugs) who frequently resort to informal mechanisms such as cautioning and confiscation. However, to

provide certainty and transparency for the police, the wider public and people who use drugs, it is important that any new approach to personal use is provided for in legislation.

With respect to the personal possession of small quantities of drugs, the Law Commission advances two main options, both of which are worth detailing here.

The first option involves a formal cautioning scheme for all drugs. The police would be able to issue up to three caution notices rather than prosecute the user. A user receiving a third caution notice would be required to attend a brief intervention session and be assessed with a view to receiving drug treatment. A user on his or her first or second caution could be escalated to the level of a third caution and be required to attend a brief intervention session in appropriate cases. A user who had exhausted his or her caution options would be prosecuted.

The second option involves the use of an infringement offence regime for less serious drugs. The police would issue an infringement notice, which would require the user to pay a fixed monetary penalty or, possibly, attend a drug education session. Prosecution and conviction for a personal use offence would not be possible.

The Law Commission has also raised the possibility of a combination of the above two options, with the specific approach taken tailored according to the individual case. For this combination approach, a number of responses would be open to the police ranging from the issuing of a caution or infringement notice, to referral to drug assessment with a view to treatment, to prosecution. However, the Law Commission acknowledges that such an approach would give police discretion and be open to inconsistency.

There are certainly merits to a combination type approach that differentiates between lower risk of harm drugs such as cannabis and higher risk of harm drugs such as methamphetamine. The primary rationale for a differentiated response is to ensure that

those who are in greatest need of assessment and treatment receive it, while avoiding overburdening the treatment sector with those users who are not dependent. Not all people caught with drugs are dependent drug users. In general, users of higher risk of harm drugs such as methamphetamine are more likely to be in need of assessment and treatment than users of lower risk of harm drugs such as cannabis and ecstasy.

An infringement scheme for users of lower risk of harm drugs (or an education session as an alternative) could operate alongside a mandatory referral for assessment for users of higher risk of harm drugs. Failure to comply could result in a sanction that could take the form of diversion. It is essential that the implementation of any such new scheme be preceded and accompanied by a high profile public education campaign on the harms of drugs and the laws that apply. The scheme should also be subject to ongoing monitoring and review.

The Law Commission takes the view that any new regime that is applied to personal use by adults should not apply to young people on the grounds that there is already significant scope within the youth justice system to identify and deal with any drug treatment or other rehabilitative needs a young person may have. Youth are clearly more vulnerable to drug-related harms than adults and it is important that all youth apprehended with drugs receive an appropriate intervention.

Ideally, this should couple a caution or warning with at least one mandatory educational and/or assessment session. This should aim to increase their knowledge and understanding of the harms associated with drug use, and be flexible enough to provide or refer those who need it for further assessment and counselling.

In the event of prosecution for personal possession offences, the Law Commission identifies three options that represent a less severe approach to that applicable for more serious drug offences, and are aimed at directing dependent users into assessment and treatment. The first option is to make

greater use of an existing diversion scheme whereby it is extended to cover all drugs. The second option is for less severe penalties, with the current statutory presumption against imprisonment for Class C personal use drug offences extending to all classes. The third option is greater use of court-based diversion into assessment and treatment. With regard to diversion, New Zealand can draw on the experience from the Australian Illicit Drug Diversion Initiative which has been associated with numerous benefits including large reductions in criminal justice costs.¹¹

The Law Commission also questions whether it is necessary to retain a separate criminal offence of use (because the same behaviour is caught by the offence of possession), and whether the possession of utensils for the purpose of using drugs should continue to be a criminal offence. The current reality is that police do not often charge a person with a utensils offence as many people found in possession of a utensil will have some drugs in their possession. In that sense the possession of utensils does not reflect any additional criminality on their part.

Exemptions to prohibition – the use of medicinal cannabis

In its report, the Law Commission acknowledges that a number of exemptions from the overall prohibition framework are necessary to enable controlled drugs to be used for legitimate medical, scientific and industrial purposes. However, the Law Commission also recognizes that the diversion and misuse of prescription drugs causes significant drug-related harms.

Currently, both the Medicines Act and the Misuse of Drugs Act have exemptions for controlled drugs that are medicines. These are often framed differently, making it unclear, in some circumstances, what the precise powers of the exemptions are. The Law Commission recommends that controlled drug exemptions applying to medicines should be in one Act (with cross-references) and subject to one consolidated set of conditions. Clarity is of paramount importance when stipulating these exemptions.

In tackling the misuse and diversion of medications, legislative approaches alone are insufficient. In its issues paper, the Law Commission draws attention to the importance of supplementary measures such as additional professional training and guidance for prescribers and dispensers, more appropriate administrative systems and improved monitoring and review.

When evaluating exemptions to prohibition, the Law Commission also addresses the issue of medicinal cannabis. Currently in New Zealand, exemptions for prohibition deal with cannabis-based medications like Sativex[®] although because this is a Class B1 drug, the Minister of Health's approval is required before it can be supplied, prescribed or administered. The Law Commission highlights the more difficult issue of whether there should be greater access to unprocessed cannabis for therapeutic use.

Providing that the potential for diversion and misuse can be controlled, the Law Commission states that it can see no reason why cannabis should not be able to be used for medicinal purposes in limited circumstances. It goes on to propose the establishment of a scheme for that purpose whereby those suffering from clearly designated chronic or debilitating illnesses would be able to use cannabis under medical supervision to obtain relief from their symptoms, particularly where conventional treatment options have proven ineffective. In this regard, the Law Commission disagrees with the approach taken in California whereby discretion is left to the treating physician. The Law Commission believes that the Californian approach exposes doctors to pressure and encourages the medicinal use of cannabis in situations where other suitable alternatives are available.

The Law Commission believes that cultivators of medicinal cannabis should be licensed in the same way as other legitimate dealers in controlled drugs. This would minimise the risk that the cannabis would be diverted into illegal activity, and would ensure the cultivation of a limited supply of cannabis in a controlled and standardised way. The commercial viability of a closely controlled licensed

model remains a significant question, given that only small numbers of people are likely to be eligible to use cannabis medicinally.

The Law Commission also favours the establishment of a central register of authorised users of cannabis for medicinal purposes who, once registered, would be able to obtain prescriptions for cannabis from their medical practitioner or another authorised prescriber. However, it is likely that the maintenance of such a central register would entail significant further regulatory costs.

PROPOSED APPROACH TO NON-CONVENTION DRUGS

Despite the 2005 amendment and provision for a new restricted substances regime, there is a current lack of active regulation of new psychoactive substances which come onto the market. This makes it possible for potentially unsafe substances to be marketed and sold without restriction. Indeed, since BZP was reclassified as a Class C Controlled Drug in 2008, a range of synthetic and herbal non-BZP party pills have emerged. In most cases, the precise ingredients of these new pills are poorly understood. The Law Commission argues that the existing approach to regulating new psychoactive substances needs a major overhaul and proposes that a new regime be implemented, designed specifically for non-convention psychoactive substances.

When considering different models of drug regulation for non-convention drugs, the Law Commission concludes that, with some limited exceptions, regulation of drug use is generally only justified to the extent necessary to prevent harm to others. The benefits arising from that reduction in harm must also outweigh the costs arising from regulation itself.

The Law Commission proposes that a model of legalisation with regulatory restrictions should be the starting point for non-convention psychoactive drugs. They go on to stipulate that these restrictions should be the minimum necessary to prevent or reduce harm, reflect the nature of the risks that drug poses and not cause more harm than they prevent. The Law Commission takes the view that full

prohibition of a non-convention drug should only be considered when legalisation with regulatory restrictions has proven ineffective in reducing the harm associated with that particular drug's use.

Such a regime would require manufacturers and importers of a new substance to obtain an approval for it before it could be released onto the market. This effectively reverses what happens now in practice, where a substance can be manufactured, imported and sold without restriction until it is proven to be harmful.

The Law Commission believes there should be some minimum requirements on all approved psychoactive substances. These may include, for example, restrictions on their sale or supply to people under 18, advertising restrictions and a prohibition on where these substances may be sold. The regulating body could also impose additional conditions on individual substances, depending on the particular harms they posed. If an approval to manufacture or import a substance were declined, the appropriate course would be to bring it within the regime that applies to prohibited drugs. Similarly, if the regulatory regime proved to be ineffective in minimising the harm of a regulated drug, prohibition could then be considered.

As part of an improved approach to non-convention psychoactive drugs, tailored criteria would need to be devised and applied when deciding whether a substance should be regulated and an approval issued. The Law Commission identifies the following criteria for this purpose: i) The nature of the harm caused by the substance and any benefits associated with its use; ii) Whether that harm can be effectively managed by the imposition of regulatory controls; iii) The likely consequences of any proposed regulatory controls or prohibiting the substance (including cost effectiveness); iv) Any possible displacement effects that might occur because of the way other substances are regulated.

Criteria used in this determination process must be transparent to ensure that all decisions are evidence-based. It is also important

that any regulatory regime for new psychoactive substances is closely and actively evaluated.

GREATER FOCUS ON TREATMENT, PREVENTION AND EDUCATION

Achieving balance in drug policy

A key part of the Law Commission's review is devoted to providing a greater focus on treatment, prevention and education. This is part of attempts towards achieving a better balance between strategies of supply control, demand reduction and problem limitation. Demand reduction, in particular, does not receive the level of support required in New Zealand. Current funding for prevention and treatment services is clearly inadequate. Furthermore, there are specific problems in some geographical areas, for some service types (e.g. residential programmes), and for some population groups – especially youth. Treatment services available to the court and prison systems are also insufficient.

The Law Commission draws attention to the fact that the international drug conventions impose a responsibility on national governments to make treatment available for drug dependent users and highlights the need for a much greater emphasis on drug treatment in New Zealand. They also cite evidence for the cost-effectiveness of specialist drug and alcohol treatment. For example, for every \$1 spent on addiction treatment, there is a \$4 to \$7 reduction in the cost associated with drug-related crimes and for some non-residential programmes, total savings can exceed costs by a ratio of 12:1.¹²

While the Law Commission considers the need for further statutory mechanisms to support and encourage government efforts in the treatment area, it suggests that developing a blueprint for drug and alcohol and other addiction service delivery for the next five years provides a more practical way to increase the emphasis on treatment.

Nevertheless, the Law Commission recommends that any new legislative framework should better recognise and support all three

pillars – supply control, demand reduction and problem limitation – with much greater emphasis on treatment.

Concerns about the significant lack of re-sourcing for prevention and treatment in New Zealand are not new. Treatment and public health professionals have been bringing similar concerns to the attention of governments for decades. Indeed, the 1973 Blake-Palmer review,¹³ a foundation document in terms of drug policy, raised the same concerns. In its recommendations, it called for the level of financial support for the work of approved organisations in the field of drug misuse to be augmented.

Alcohol and drug addiction Act 1966

As part of its review of New Zealand's drug laws, the Law Commission has looked at reform of the Alcohol and Drug Addiction Act 1966.¹⁴ This is the legislation that allows drug addicts to be compulsorily detained to undergo assessment, detoxification and treatment. Dating from 1966, it is even more obsolete than the Misuse of Drugs Act. There are difficulties in reconciling its broad powers of detention with the rights and protections in the New Zealand Bill of Rights Act 1990.

The Law Commission has indicated its belief that there is a place for a limited compulsory civil detention and treatment regime containing appropriate safeguards. Their rationale is that people who are drug dependent are often incapable of making rational decisions over their substance use and personal welfare.

Short-term compulsory intervention may get them to a position where they are able to more readily help themselves. If there was no compulsory regime, their access to treatment might be significantly eroded. However, they emphasise that any such regime should only be a last resort and come into effect when all the following conditions are met:

- the person has a dependence on alcohol or other drugs;
- detention and treatment is necessary to protect the person from significant harm to himself or herself;

- the person is likely to benefit from treatment for his or her alcohol or drug dependence but has refused treatment; and
- no other appropriate and less restrictive means are reasonably available for dealing with the person.

NEXT STEPS AND BARRIERS TO CHANGE

The Law Commission is currently in the process of considering public submissions on its issues paper and is expected to release its final report to the Government towards the end of 2010. However, there is no guarantee that any of its recommendations will be adopted. As in many other countries, drug policy in New Zealand is a socially divisive issue and the issue of drug law reform is an area where politicians are often more influenced by populist sentiment than by the best evidence.

In this regard, the Government's initial response to the issues paper has not been encouraging, with the Minister of Justice assuring journalists "there's not a single, solitary chance" he would be relaxing drug laws. Unfortunately, debate on drug policy is all too often polarised between two extremes – proponents of complete legalization at one end versus those advocating a continued zero tolerance stance on the other. The media contributes to this oversimplification, preferring the sensationalism more likely to boost their ratings rather than the reasoned middle ground which is often perceived as dull.

If the Law Commission's issues paper is anything to go by, then its final report to the Government is likely to be comprehensive, carefully considered and firmly supported by the evidence. Its tentative proposals can hardly be described as 'radical'. Indeed, the Law Commission has acknowledged that many of its recommendations regarding an alternative approach to personal possession offences are already in existence in other jurisdictions, including several states in Australia.

Regardless of how the Government responds to the Law Commission's final report, the agency's work has been enormously useful

and the final document is likely to represent a blueprint for change over the coming years.

CONCLUSION

Over a hundred years ago, New Zealand became the first country in the world to give women the right to vote. In the mid 1980s, it enacted bold anti-nuclear legislation, decriminalised homosexuality and established needle exchange and opioid substitution programmes for intravenous drug users. Yet sadly, its drug laws have remained frozen in a 1970s paradigm. It is time for these to be dragged into the 21st century to better support and enhance drug policy.

As a small and geographically isolated country on the periphery of the world, New Zealand's review of its drug laws represents an opportunity for it to once again join the ranks of progressive countries in terms of innovative, fair and effective social legislation.

Drug law reform is a socially divisive issue but the approach that New Zealand is taking may offer some useful lessons for other countries. Tasking an independent and well-respected entity to research the issues and formulate a series of recommendations for the Government to consider may partially depoliticise the issue.

While it is still premature to ascertain the extent to which actual drug law change will occur, the Law Commission's comprehensive issues paper and final report is likely to serve as a blueprint for drug law reform in New Zealand for the next few years. Many of its recommendations will also be applicable to other countries attempting to steer a balance between enacting progressive drug law reform while complying with their international treaty obligations.

Even within the framework provided by the existing UN conventions, the Law Commission concludes that there is significant scope to put in place a more effective regulatory approach for personal drug use. A key aspect of this is to provide greater opportunity to direct people who use drugs away from the

criminal justice system and into education, assessment and treatment.

Despite the excellent work done by the Law Commission, there is no guarantee that any of its final recommendations will be adopted by the Government. If New Zealand is to achieve progressive drug law reform, it will require its politicians to be guided by the best available evidence, not by populist sentiment. In this regard, civil society, NGOs and the media have an integral role to play in ensuring that debate relating to drug law reform remains balanced and grounded firmly on the evidence.

NOTES

1. Senior Policy Analyst, New Zealand Drug Foundation
2. Text available from: www.legislation.govt.nz/act/public/1975/0116/latest/DLM436101.html
3. Ministerial Committee on Drug Policy. 2007. National Drug Policy 2007-2012. Wellington: Ministry of Health. [available from: www.ndp.govt.nz]
4. Ministry of Health. 2010. Drug Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey. Wellington, New Zealand. [available from: www.moh.govt.nz]
5. Business and Economic Research Limited (BERL). New Zealand Drug Harm Index (Report prepared for the New Zealand Police, Wellington, 2008).
6. New Zealand Police Annual Report for the year ended 30 June 2006 [available from: <https://admin.police.govt.nz/resources/2006/annual-report/police-annual-report-2006.html>]
7. Provoost D. The Cumulative Effect: Uncovering the contributing factors behind the increasing prison population. Presentation to New Zealand Police Research Symposium. Justice Strategic Policy Unit, July 2008.
8. Controlling and Regulating drugs (Law Commission issues paper;16). February 2010, Wellington, New Zealand. [available from www.lawcom.govt.nz]
9. Sellman, J.D. & Adamson, S.J. (2007), Proposed scale for rationally assessing the risk to public health from using a drug. National Addictions Centre, Otago University, Christchurch, New Zealand.
10. *R v Hansen* [2007] 3 NZLR 1 (burden of proof and evidential burden under Misuse of Drugs Act

1975 in relation to Bill of Rights). The Court tackled a series of key methodological issues in the application of the Bill of Rights, many of which have been the subject of extensive academic commentary over the last few years. Although the result in this case was unanimous, all five justices issued separate opinions and there were significant differences of approach on a number of issues.

11. Hughes C. Australia's alternative to drug law reform: diversion. Sydney, NSW, 2010
12. National Committee for Addiction Treatment (NCAT). Investing in Addiction Treatment - a Resource for Funders, Planners, Purchasers and Policy Makers. Christchurch, 2008.
13. Blake-Palmer (Chairman). Drug Dependency and Drug Abuse in New Zealand (second report). Board of Health Report Series: No 18. 1973
14. The text of the legislation can be obtained from: www.legislation.govt.nz/act/public/1966/0097/latest/whole.html#d1m380353

REFERENCES

- Blake-Palmer (Chairman). Drug Dependency and Drug Abuse in New Zealand (second report). Board of Health Report Series: No 18. 1973
- Business and Economic Research Limited (BERL). New Zealand Drug Harm Index (Report prepared for the New Zealand Police, Wellington, 2008).
- Controlling and Regulating drugs (Law Commission issues paper;16). February 2010, Wellington, New Zealand. [available from www.lawcom.govt.nz]
- Hughes C. Australia's alternative to drug law reform: diversion. Sydney, NSW, 2010
- Ministerial Committee on Drug Policy. 2007. National Drug Policy 2007-2012. Wellington: Ministry of Health. [available from www.ndp.govt.nz]
- Ministry of Health. 2010. Drug Use in New Zealand: Key Results of the 2007/08 New Zealand Alcohol and Drug Use Survey. Wellington, New Zealand. [available at www.moh.govt.nz]
- National Committee for Addiction Treatment (NCAT). Investing in Addiction Treatment - a Resource for Funders, Planners, Purchasers and Policy Makers. Christchurch, 2008.
- Provoost D. The Cumulative Effect: Uncovering the contributing factors behind the increasing prison population. Presentation to New Zealand Police Research Symposium. Justice Strategic Policy Unit, July 2008.
- Sellman, J.D. & Adamson, S.J. (2007), Proposed scale for rationally assessing the risk to public health from using a drug. National Addictions Centre, Otago University, Christchurch, New Zealand.

Series on Legislative Reform of Drug Policies

Pardon for Mules in Ecuador: A Sound Proposal

Pien Metaal

Nr. 1, February 2009

Drug Policy and the Courts: A Brazilian experience

José Henrique Rodrigues Torres

Nr. 2, August 2009

Mexico: The Law Against Small-Scale Drug Dealing - A Doubtful Venture

Jorge Hernández Tinajero & Carlos Zamudio Angles

Nr. 3, October 2009

Prohibition, a Backwards Step: The Personal Dose in Colombia

Diana Esther Guzmán & Rodrigo Uprimny Yepes

Nr. 4, January 2010

Sentencing for Drug Offences in England and Wales: Law Reform without Legislative Reform

Genevieve Harris

Nr. 5, June 2010

Argentina: Reform on the way ?

Graciela Touzé

Nr. 6, July 2010

A Matter of Substance: Fighting Drug Trafficking With a Substance-Oriented Approach

Ernestien Jensema

Nr. 7, July 2010

Drug Law Reform: Lessons from the New Zealand Experience

Sanji Gunasekara

Nr. 8, August 2010

Drug Law Reform Project

The project aims to promote more humane, balanced, and effective drug laws. Decades of repressive drug policies have not reduced the scale of drug markets and have led instead to human rights violations, a crisis in the judicial and penitentiary systems, the consolidation of organized crime, and the marginalization of vulnerable drug users, drug couriers and growers of illicit crops. It is time for an honest discussion on effective drug policy that considers changes in both legislation and implementation.

This project aims to stimulate the debate around legislative reforms by highlighting good practices and lessons learned in areas such as decriminalization, proportionality of sentences, specific harm reduction measures, alternatives to incarceration, and scheduling criteria for different substances. It also aims to encourage a constructive dialogue amongst policy makers, multi-lateral agencies and civil society in order to shape policies that are grounded in the principles of human rights, public health and harm reduction.

The International Drug Policy Consortium (IDPC) is a global network of NGOs and professionals that specialise in drug policy issues. The Transnational Institute (TNI) has gained a reputation as one of the leading drug policy research institutes and is widely recognised as a critical watchdog on UN drug control institutions and policies.

Visit the website at www.druglawreform.info

Twitter: <http://twitter.com/DrugLawReform>



Transnational Institute (TNI)

De Wittenstraat 25
1052 AK Amsterdam
The Netherlands

Tel: -31-20-6626608

Fax: -31-20-6757176

E-mail: drugs@tni.org

www.tni.org/drugs

www.ungassondrugs.org



International Drug Policy Consortium (IDPC)

c/o Release

124-128 City Road

London, EC1V 2NJ

United Kingdom

E-mail: contact@idpc.net

www.idpc.net