National Council of Women of New Zealand
Te Kaunihera Wahine O Aotearoa

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Submission to the Law Commission on the Review of the Misuse of Drugs Act 1975

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 50 nationally organised societies and national members. It has 26 branches throughout the country attended by representatives of those societies and some 150 other societies as well as individual members. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

Introduction

NCWNZ has, since its inception 114 years ago, taken an active interest in the effects of alcohol and drugs on society, particularly as it affects women and children. Numerous submissions have been made over the years, and strong policy has been developed advocating the limitation and control of the voluntary use of mind-altering substances (legal and illegal) and their flow on affects to family and the wider society.

This submission draws on responses from branch members and affiliated societies throughout the nation in relation to the "Questions for the public" outlined in the Issues Paper.

Specific responses to the Questions:

Proposed approach to convention drugs

Classification of prohibited drugs

1. ***Should the ABC classification system be retained? If so, are changes to it required?***

Members generally felt the classification system should be retained, but perhaps tightened up. One member suggested Propofol be added to Class A. (That is the drug that killed Michael Jackson.)

2. ***If classifications are retained, are any changes required to the way in which classification decisions are made? If so, what?***

Again members felt the classifications should be tightened up. Judges need something as a guide when making their sentencing. One member commented that "Classifications for schedule 1A is too wide for Registered Nurses to administer. Decisions should be made by Registered Medical Practitioner".

Dealing

3. ***Should the current distinction in the Act between the sale of Class C drugs and the supply of Class C drugs be removed, so that supply for profit would not be a separate offence but a factor to consider during sentencing (together with other factors such as the scale of supply)?***

Members generally did not support a distinction between sale and supply, particularly in regard to cannabis. Whether for profit or not, suppliers are putting others at risk. Members believe that the supply of small amounts to friends and acquaintances still results in harm.

One member noted that some people do not have the freedom to make choices. In Switzerland there is a move to distinguish between the buyers and the suppliers. Addicts need to be treated for their disease and dealers as criminals.

4. ***Should social dealing be treated differently from other forms of dealing? If so, how?***

Members were adamant that social dealing should *not* be treated differently from other forms of dealing. There was some support for legalisation of small amounts of cannabis in order to control the distribution and use of the drug as in the Netherlands, in order to minimise the huge black market associated with the underworld.

5. ***Should there continue to be an offence of possession for supply?***

Members overwhelmingly supported the continuation of an offence of possession for supply.

If not, should there be two possession offences categorised by quantity, with the offence relating to the higher quantity having a higher maximum penalty?

Members supported two possession offences with higher penalties relating to the higher quantity.

Personal use offences

6. ***What approach should be taken to personal use offences (including possession)? In particular, what alternatives (if any) to prosecution should be used?***

Members responses varied, generally supporting measures to rehabilitate the user/offender, including counselling or drug education, although this depended upon the type of drug (class A, B or C), and the profile of the offender. There is concern about the increasing young age of offenders.

Other members supported prosecution, noting that too many users are offending without any consequences. Driving under the influence of drugs should be treated the same as driving under the influence of alcohol.

Automatic fines or periodic detention were suggested as alternatives to prosecution.

7. ***If a personal use offence is prosecuted in the courts, what approach should be taken?***

Members suggested Community Service but not for heavy drug users; it would depend on the classification of the drug.

The amount in possession would be a factor, with some tolerance for very small amounts.

8. ***Should there continue to be a criminal offence for drug use or does it suffice to rely on the offence of possession for personal use?***

Members supported the continuation of an offence for drug use. A person could be under the influence but have nothing in their possession.

9. ***Should the possession of utensils for the purpose of using drugs remain a criminal offence?***

Members expressed strong support for this, although it needs to be clearly established that the "utensils" were used for the purposes of using drugs. Some members suggested a widening of this offence to include the manufacture of drugs.

Enforcement and the criminal law

10. ***In addition to dealing and personal use offences, what other offences are required to regulate drug-related activities?***

Members suggested offences relating to the trafficking of drugs, (ships that never come into port but are off the coast were mentioned) manufacture of drugs from prescription drugs, (including the possession of large quantities of prescription drugs unless licensed) and businesses profiting from the proceedings of drugs (e.g. firearms sales, sellers of hydroponics or horticultural equipment if it could be established that they suspected its use for growing cannabis) could be included.

11. ***Are changes required to the provisions in the Act that specify the process for proving particular matters in court when a charge is being laid? If so, what?***

It was suggested that the standard the prosecution has to prove be lowered. It was noted that lawyers can make a deal on technicalities. For example, if a drug sample has the name "Jean Norma" on it and the persons real name is "Norma Jean" then the sample is not correct and the case is thrown out of court.

12. ***Are any changes required to the powers in the Act that allow police and customs officers to detain someone they suspect of secreting drugs in his or her body (the "internal concealment powers")?***

Generally members supported strengthening police and customs officers' powers if it is established that they do not have sufficient powers to detain a suspect of secreting drugs in his or her body. One member noted that the technology exists to conduct medical imaging, but police or customs officers require the power to detain a suspect to obtain an image.

Exemptions to prohibition

13. Are all the current exemptions (contained in the Misuse of Drugs Act and regulations made under it) still needed or are some obsolete? Are any new exemptions needed?

Members commented that the original Act is old, although there have been amendments, but new drugs are coming out all the time.

14. Are the legislative controls currently in place adequate to address the diversion and misuse of prescription drugs? What further controls do you think are needed?

Some members thought that some drugs should not be given out in three month supplies, and some perhaps only on a weekly basis. However, it is recognised this would put increased pressure on pharmacists. In addition it is difficult to monitor if the person is actually swallowing the pill or keeping it for distribution.

Some members suggested that further controls need to be addressed and this is the responsibility of GP's (General Practitioners).

15. Should the law authorise the medicinal use of cannabis by people suffering from chronic or debilitating illness? If so, how should any new regime work?

Members generally supported the use of cannabis or other drugs for pain relief or relief from a debilitating illness. However, it would need to be medically prescribed, and could perhaps be restricted to authorised Pain Relief clinics, hospitals or similar institutions. One member, who is a health professional, believed there is enough flexibility through special permits through Ministry of Health to allow use of controlled substances for new therapeutic uses.

One member suggested strictly controlled use such as the new methadone programme, although others questioned its effectiveness.

One member commented that some patients in public hospitals have a need for stronger pain relief following surgery and on questioning have been found to be illegal users, thus increasing the need for conventional medicine when it is required.

Members did not support licensing of cultivators of cannabis for one's own use.

Proposed approach to non-convention drugs

16. Should new recreational drugs that are not covered by the international drug conventions be regulated rather than prohibited, with prohibition only used as a last resort?

Members expressed strong views that *all* drugs, including new "recreational" drugs, should be prohibited, or at least subject to the law. Party drugs should never be imported. One member knew of three deaths caused by recreation drugs.

The Act needs to be couched in terms wide enough to include new drugs not yet invented or present in New Zealand. Drugs are drugs whatever the 'brand'. Any relaxation of this stance is "opening up a can of worms".

17. Should such drugs require approval before they can be manufactured or imported for recreational use?

Most members did not support manufacture of any recreational drugs in New Zealand, but others supported strict controls on importing or manufacture.

NCWNZ is aware that New Zealand is party to three United Nations drug conventions around narcotic and psychotropic substances, to prevent trafficking. They take all practicable measures to prevent abuse, to minimise harmful impact on persons and on society, to educate re drugs and to rehabilitate, to limit the use of such substances to medical and scientific purposes. NCWNZ suggests that current practice and policy is in breach of these conventions, and that urgent action is required to meet our international obligations in regard to our drugs policy.

18. Where they are approved for manufacture or import, should minimum standards covering distribution and supply (e.g. age restrictions, place of sale restrictions, advertising restrictions) be imposed? What should the main minimum standards be?

Members universally supported imposition of minimum standards on a par with alcohol i.e. the same age restrictions, licensing of outlets, but with a ban on advertising. Some members suggested the standards need to be higher than the lower barrier i.e. lowering of the drinking age to 18 has resulted in increased use by 16-17 year olds.

By the same token stronger measures are needed to reduce drug use, with better services for treatment, prevention of harm and especially education. For many members, the aim is to be rid of all drugs.

A greater focus on treatment, prevention and education

Achieving balance in drug policy

19. ***Would the development of a blueprint for drug and alcohol and other addiction services be a practical way of giving more emphasis to treatment? What else might be done?***

Members expressed strong support for development of a blueprint, but emphasised that funding needs to be allocated to support these services. Whether these services are provided by the state of by provider agencies such as the Salvation Army or local iwi, the services need to be state funded. Many members lamented the closure of services such as Hanmer Springs, Kimberly and Queen Mary. Services that provided treatment, care, and rehabilitation on a 24/7 basis were urgently needed, including for young people (some as young as 10-12 years).

Education programmes targeted at schools, including Primary Schools, are also needed.

Courts could also be empowered to require treatment.

20. ***Should more use be made of treatment for alcohol and drug dependence when people come before the courts? If so, how?***

Members expressed strong support for strengthening the courts powers to direct offenders to drug rehabilitation and treatment programmes, but these programme need to be properly established and funded. We need to ensure the methods used are proven to be effective.

Some members suggested programmes need to be voluntary, and there is good reason for this, in that if an offender or user does not recognise they have a problem, the treatment will be ineffective. However, choices may be offered, such as continued surveillance, monitoring of behavior etc. or an option for treatment.

Treatment services need to be tailored to meet the needs of the offenders, i.e. be age appropriate, involve family and whanau etc. More could be done in investing in treatment and prevention for street kids and their families before they get to the courts.

Alcoholism and Drug Addiction Act 1966

21. ***Should a regime allowing civil committal for the detention and treatment of alcohol and drug dependence be retained? If so, what should its key features be?***

There was strong support for allowing civil committal for treatment of drug and alcohol addiction. Many addicts may recognise they have a problem, but not know what to do. Why wait until they commit an offence before they can receive the treatment they require?

However, once a person begins a programme, they must be required to commit to completing it, or it is likely they will slip back into old habits.

22. ***Should a person only be able to be detained under this regime when all of the following conditions are met:***

(a) the person has a dependence on alcohol or other drugs; and

(b) detention and treatment is necessary to protect the person from significant harm to himself or herself; and

(c) the person is likely to benefit from treatment for his or her alcohol or drug dependence but has refused treatment; and

(d) no other appropriate and less restrictive means are reasonably available for dealing with the person?

Members generally supported these requirements, although some flexibility is recommended as perhaps a person may recognise they need treatment, but not be in danger of harming themselves, unless the drug addiction itself is considered harming their health. Some standards for assessment of drug or alcohol dependence are also needed.

Additional comments

NCWNZ is aware that this whole issue raises significant questions of the balance between individual freedom and social responsibility. It is a difficult balance to achieve, but when society has to pick up the tab for the effects of drug use and abuse in terms of the impact on individuals, their partners and families, the increased activity in drug related violence and crime, the cost of enforcement, justice system, imprisonment, as well as the cost of rehabilitation, treatment and education, one may well ask "what good does it do?" In this respect, a curb on individual freedom may well be justified. Some research into who is using drugs, and why, may produce some useful understandings on why we are facing an increase in drug use and abuse.

Conclusion

NCWNZ is keen to see strengthening of measures to deal with this problem that has plagued our society forever, and is indeed increasing as big money is to be made from it, and global networks become more sophisticated. NCWNZ thanks the Law Commission for the opportunity to make this submission.

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