

*Developments in Australian Drug Law Enforcement: Taking Stock**

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Introduction

To a casual observer, Australian illicit drug control policy must seem a hive of activity and contention. Over the last two years or so, sometimes fierce debate has arisen about such things as the need for, and the logic of, an opiates trial, the wisdom of zero tolerance for drugs in schools, the availability of rapid detoxification and the provision of safe injecting facilities.² New drug-related programs and funding initiatives are being announced with great regularity. Many of these developments have occurred at the Commonwealth level under the auspices of the National Drug Strategic Framework 1998-99 to 2002-2003 (Ministerial Council on Drug Strategy, 1998) and the National Illicit Drug Strategy (Commonwealth Department of Health and Family Services, 1999). The states have been highly active as well, with a raft of programs and proposals emerging from the New South Wales Drug Summit in 1999, including the trialing of a safe injecting facility (Swain 1999). The new Labor Government in Victoria also has moved quickly after its election late last year to establish a Drug Policy Expert Committee with a brief to explore the feasibility of safe injecting rooms and other harm reduction initiatives (Victorian Department of Human Services, 2000).

This paper contends, however, that despite the plethora of announcements and proposals, one crucial area – law enforcement policy – still remains at something of an impasse. Indeed, we will argue that for a variety of reasons, police and other supply reduction agencies are being edged out into a sort of intellectual ‘western front’, where they are exposed to fire from all sides, and it is becoming ever more difficult for them to achieve progress. On the one hand, the enforcement sector is being encouraged to redouble its efforts in the ‘drug war’: to be even tougher, especially on suppliers. On the other hand, enforcement agencies are incurring criticism for harms caused in the pursuit of drug law offenders, and are being urged to temper their work with compassion and discretion.

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2 See for instance, print media debates on these issues in *The Age* (11/3/99, 13/3/99 and 8/4/99), and the *Herald Sun* (8/2/00 and 10/2/00).

The enforcement sector's position is made difficult by the apparently immovable convictions of many key protagonists in policy discourse. There are those for whom the principle of prohibition and use of the criminal law to enforce prohibition remain essential, and their language is bellicose: 'tough on drugs', 'zero tolerance', 'no mercy for the pusher'. Ranged against them are those for whom prohibition has been a manifest failure, and who seek to replace prohibition and the criminal law with alternative control mechanisms. Their language is more pacific: 'inclusion', 'treatment and rehabilitation', 'tolerance and support'. Each set of protagonists seems convinced it has the authority in terms of scientific evidence, moral principle, expert testimony, political realities, common sense and so forth. While terms used may often sound the same, each side interprets the language and evidence differently.

In this enduring contention, it seems to us that 'grass roots' law enforcement personnel are becoming a little like armed stretcher-bearers. They are armed, because they continue to be employed as front line soldiers in the 'war against drugs'. Increasingly, however, as they recognise some of the futility of the overall campaign, many police also are taking on a stretcher-bearer function: trying to ferry at least some victims to safety. Ultimately, however, these efforts may satisfy neither side, and law enforcement is likely to become further enmeshed in drug policy stalemates.

The purpose of this paper is to map out the contours of the dilemmas of contemporary drug law enforcement, and to critically assess attempts made to resolve them. Some of these attempts are commendable, but we argue that much more could be done. Indeed we are concerned that Australia will continue to experience problems developing and implementing enlightened drug policies, unless and until contradictions and inconsistencies in the enforcement sector's role are resolved.

The Background

The present authors are not the first, of course, to advocate such reassessment. Critical reviews of the impact and cost-effectiveness of Australian drug law enforcement efforts have been appearing for at least a decade. Our concern, however, is that while much of this research – our own included – has been formally acknowledged by decision-making bodies, its underlying message has not been adequately translated into grassroots practice.

The watershed report was *Drugs, Crime and Society*, a 1989 publication by the Commonwealth's Parliamentary Joint Committee on the National Crime Authority.³ Recommendations from this Committee provided the specific mandate for the present authors' two-year evaluation of federal, state and territory drug law enforcement published in 1996 (Sutton & James 1996) by the (then) National Police Research Unit.⁴ To lay the foundations for this paper's critique of drug law enforcement it is necessary briefly to reiterate several key points from the 1989 and 1996 reports.

Drugs, Crime and Society pointed out that despite the substantial funds being devoted to drug law enforcement (at least \$300 million in 1989, and likely to be at least twice that now), little was known about the impacts or cost-effectiveness of enforcement. For example, it was not possible to assess which kinds of activities – following the 'money trial', 'buy-busts' of dealers, undercover penetration of trafficking groups, drug seizures – were more effective in reducing or disrupting drug supplies. The report argued that law

3 For other pioneering work, see: Wardlaw, 1992; Wardlaw et al, 1991.

4 The National Police Research Unit is now known as the Australasian Centre for Policing Research.

enforcement expenditures seemed to be based on ad hoc responses to intelligence, or adherence to investigative 'tradition'. This was a particular concern, because from evidence presented to the Committee, it seemed that at least some aspects of supply reduction could be counterproductive - that is more likely to exacerbate than to reduce harms associated with illicit drugs.

The Parliamentary Joint Committee's view was that drug law enforcement must be assessed against the strict yardstick of rationality, and this was the starting point for the present authors' Australia-wide review in the mid-1990s. Our task was to assess whether the enforcement sector as a whole had, or was developing, the capacity to set strategic and operational priorities in light of best knowledge of illegal drug production, distribution and consumption patterns, and to use such data to monitor the impacts of interventions. We were forced to conclude that national drug law enforcement was some way short of being a rational system. All data collected seemed to indicate significant inconsistencies between the sector's avowed aims and what in fact was being achieved. State and territory drug squads and other specialist agencies were unanimous, for example, in asserting that their primary goal was to reduce illicit drug supplies by targeting and apprehending major figures in the drug industry. However, there was little or no evidence that a significant proportion of those arrested and prosecuted for drug offences could in fact be seen as high level (see also Green & Purnell 1995). Senior enforcement figures were far from confident that drug law enforcement was successful in actually reducing supplies (an assessment strongly supported by research on the impact of enforcement initiatives by the New South Wales Bureau of Crime Statistics and Research in the mid-90s; see Weatherburn & Lind 1995).

Indeed, drug law enforcers often seemed comparatively indifferent to the ultimate effects of their work. Few agencies were making systematic use of drug market data to set strategic priorities and to monitor operational effectiveness. Moreover, while harm minimisation was being endorsed at the highest levels within organisations, grassroots law enforcement continued, by and large, to be 'business as usual' with large numbers of illicit drug users criminalised.

Even as we pursued the Parliamentary Joint Committee's 'rationality' mandate, however, it became clear that traditional cost-effectiveness assessments of drug law enforcement (see Wardlaw 1992) excluded dimensions of considerable importance to such agencies. For instance, many senior enforcers articulated the moral imperative of devoting energies to identifying and dealing with those deriving greatest profits from a highly illegal and 'poisonous' industry, even if the returns in terms of supply-reduction could not be demonstrated readily.

The issues above were reflected in our recommendations to the National Police Research Unit. The report recommended more systematic national and inter-jurisdictional cooperation between Commonwealth, state and other relevant enforcement agencies in their efforts to reduce the flow of illicit drugs into Australia and their production here, and to dismantle organised production and trafficking groups. However, like many of our expert informants in the enforcement sector, we were not optimistic about the likelihood that even the most highly skilled and resourced task-forces would be able significantly to reduce the supply of illicit drugs and to target the most important organised crime elements. All evidence seemed to suggest that it may simply be too easy for the more resourceful (e.g. wealthy) operators to put themselves beyond the reach of the law. Nevertheless, moral and political pressures seemed to dictate that such efforts would continue.⁵

Most recommendations in the report, however, related to the need for supply reduction agencies to make more coordinated and consistent attempts to ensure that their work in relation to illicit drugs became oriented toward harm reduction. In this context we pointed out that the bulk of drug law enforcement - and certainly the forms of enforcement of most immediate relevance not just to drug users but to 'ordinary' members of the community - is at the street-level. However for ongoing street-level enforcement adequately to reflect harm minimisation principles it would be necessary for operational police to have ongoing access to, and to base their interventions on, sensitive and up-to-date information on local drug markets and use-patterns. In all likelihood, much of this data would need to be drawn from sources outside traditional law enforcement systems. Only once such data were being collected, however, would police be able to assess and target the most serious of drug-related harms. Only then would the police be in the position to be aware of possible counterproductive side-effects of their enforcement work - effects such as deflecting specific groups of users into more harmful practices, or inadvertently triggering off an increase in robberies and other property crimes by users seeking finance to buy drugs - and to take steps to ensure that these effects were kept to a minimum. Among a range of means to achieve these ends, the report advocated that state and territory drug squads become more decentralised, and local partnership arrangements between enforcement and non-enforcement agencies be improved.

It should be emphasised that our intention was not just to ensure that the law enforcement sector modified its systems and priorities. We were convinced that there needed to be changes across the board, and that the concerns of police and other supply-side agencies needed to become more central to the ways that harm minimisation was thought about and practiced by all key sectors and agencies. Since the mid-80s, drug policy in Australia had tended to be dominated by health agencies, with enforcement work seen as only marginally relevant to harm minimisation (see Miller, Hamilton & Flaherty 1992). The harms of illicit drugs were seen, by and large, to be those associated with adverse health outcomes for drug users. It was clear from our research, however, that the enforcement sector was confronted with a much broader range of harms. For local police, for example, most immediate drug-related harms were at a community level: the fear, stigma and adverse impact on the quality of life which often ensued when a particular suburb became the site of highly visible illicit dealing and use. A less immediately visible problem - but nonetheless one that local police were required constantly to deal with - was shop thefts, burglaries and other predatory crimes committed by users in pursuit of drug finance. Perhaps the least conspicuous - but nonetheless also a palpable drug-related harm - was the corruption, violence and other problems which occur when industries are dominated by groups working outside the framework of law. In our view, unless and until all these problems were taken into account, it would be unreasonable to expect enforcement bodies to embrace harm minimisation as their own overriding objective.

We were in no doubt that our recommendations called for difficult adjustments, not just within the enforcement sector, but also within public health which for decades had seen harm minimisation as its province. Nevertheless, given the sheer presence of police at the local community level, and the authority and respect they often commanded, we saw it as essential that this authority and respect be harnessed to harm minimisation, rather than always being seen as an obstacle that health and user groups could at best hope to neutralise. In light of our research, moreover, we were convinced that incorporation of law enforcement perspectives and knowledge would improve, rather than detract from, harm minimisation.

5 The political kudos which flows from well-publicised drugs busts and seizures can be added readily to the moral dimensions in order to rationalise on-going expenditure on activities which would fail more clinical cost-effectiveness criteria.

Taking Stock Since 1995

Our mid-90s evaluation coincided with several other relevant Australian reports and assessments.⁶ Together these documents constituted an important set of resources for re-thinking drug law enforcement. The endorsement of our report by the board of the National Police Research Unit and by Australia's police ministers seemed to indicate a watershed. What has happened?

The most direct consequence has been the establishment of a National Community-Based Approach to Drug Law Enforcement (NCBADLE) fund, whose Board of Control consists of senior representatives from law enforcement and health. The key principles of NCBADLE mirror the essential themes from our report.⁷ Decisions by this Board and other authorities have fed into and supported a variety of initiatives in the drug enforcement field. These can be classified into five somewhat overlapping categories:

- enhancing supply-reduction efforts;
- enhancing police understanding of harm minimisation principles;
- improving drug-related data collections;
- trialing community-based drug law enforcement schemes;
- and the development of diversionary programs.

Before returning to our critical assessment, we will briefly take stock of developments in each field.

Supply-Reduction Initiatives

The level and extent of inter-agency supply reduction seems only to have improved since the early 1990s. The Australian Bureau of Criminal Intelligence's (ABCI) authoritative *Australian Illicit Drug Report* (1999) documents a number of joint operations in recent years between state and territory police, the Australian Federal Police, the National Crime Authority, the Australian Customs Service and other agencies. The Commonwealth Government has provided increased funding to the Australian Federal Police and the National Crime Authority for a range of trafficking investigation activities, and has allocated further funding to the Australian Customs Service to improve, inter alia, its drug-interdiction capabilities. All enforcement agencies have joined in the National Heroin Supply Reduction Strategy, which aims to coordinate anti-trafficking strategies and practices, and funds have been provided for the development of a Heroin Signature Program to assist in the tracing of seized heroin.

6 These included another NPRU-sponsored report which analysed patterns of drug-related investigations and apprehensions in Australia (Green & Purnell, 1995), the New South Wales Bureau of Crime Statistics and Research study of the impact of heroin seizures upon street level drug supplies in Sydney (Weatherburn & Lind, 1995), the Victorian Premier's Drug Advisory Council (1996) report *Drugs and Our Community*, and an evaluation of the latest phase of the National Drug Strategy (Single & Rohl, 1997).

7 The objectives are to: develop a framework to more effectively integrate the activities of specialist drug units and general duty police with a greater focus on harm minimisation; ensure a more effective assessment of drug law enforcement outcomes and the development of common data collection systems; enhance alliances with local government, community groups and government agencies in order to formulate an integrated strategy to address demand reduction and harm minimisation; develop a better understanding of harm minimisation across sectors and jurisdictions; develop an integrated training strategy for police services and other agencies. (National Community-Based Approach to Drug Law Enforcement, no date)

Harm Minimisation Training

There can be no doubt that recent years also have seen significant increase in efforts to train law enforcement personnel, both specialised and general, in concepts and techniques of harm minimisation. Most police agencies now have drug and alcohol policy or coordination offices which provide or promote drug education for officers. Educating police personnel in harm minimisation is an explicit component of the community-based drug law enforcement pilot programs to be outlined shortly. Acknowledging significant differences between Australian jurisdictions in curricula and emphasis, the NCBADLE granting body currently is funding a program to develop national standards for alcohol and drug training for police. We await the outcome of this project with interest. It is clear, however, that there still is a long way to go. We are aware of at least two research projects (Harrison 2000; Morrison 1999) which indicate that the majority of 'rank and file' police in several Australian jurisdictions still claim to have had no training in the area of drug harm minimisation, and to have little idea what this term means.

Improvement of Drug-Related Data Collection

As stated, a recurrent theme in assessment and review of the drug law enforcement effort is for agencies to have access to more accurate and timely data on illicit drug availability and drug-related harms. With the help of NCBADLE funding, a framework for the collecting, analysing and publishing standardised national illicit drugs statistics is being conducted by the Australian Bureau of Criminal Intelligence and the National Crime Statistics Unit of the Australian Bureau of Statistics (see ABCI 1999). A key component of the National Heroin Supply Reduction Strategy also is the development of better multi-agency information and intelligence gathering and sharing. More recently, the Australian Institute of Criminology has joined U.S. and British agencies in a program to measure drug use among people charged with criminal offences (Drug Use Monitoring in Australia – DUMA; see ABCI 1999; see Makkai 1999b for an overview of Australia's drugs and criminal activity data collections). In the context of the national community based drug law enforcement pilot programs, attempts also are being made to improve drug related data collections at the local (i.e. operational) level.

Trialing of Community-Based 'Partnership' Approaches Toward Drug Law Enforcement

As mentioned, a number of reviews have suggested that drug law enforcement should move away from bureaucratic models toward more flexible, grassroots-oriented approaches. In response, NCBADLE has funded a community-based drug law enforcement model for intersectoral harm reduction in sites in Western Australia (Mirrabooka in Perth, and Geraldton), Victoria (the LaTrobe Valley in Gippsland) and New South Wales (Fairfield-Cabramatta). The trials are based upon a British model which involves creating Drug Action Teams (local police, local government, health, education and welfare workers) and Drug Reference Groups (upper echelon officers from the same agencies) to cooperate in identifying local drug harms and devising inter-agency responses. The British system does not emphasise harm reduction, but for the four Australian sites this is the declared framework. All four schemes are being evaluated (Gippsland and Fairfield-Cabramatta by a team that includes the current authors). Final reports will be completed in early 2000.

Diversionsary Programs

Arguably the most important drug law enforcement initiatives in recent years have been those which seek to change the ways in which certain categories of drug offenders are dealt with by police (and subsequently by the courts). The significance of the concept and practice of diversion is reflected in NCBADLE's funding of a one-year assessment of police diversionsary schemes for alcohol and other drug offenders (Morrison 1999). Most jurisdictions now attempt to deal with minor cannabis offenders outside the criminal courts. Three jurisdictions have infringement notice systems for the possession, cultivation and use of minor amounts of cannabis: South Australia, the Australian Capital Territory and the Northern Territory. In 1998 Victoria Police introduced a state-wide cautioning program for adults detected with small amounts of cannabis, and Tasmania Police in the same year began a trial with similar provisions to the Victorian model. According to the ABCI (1999), the Western Australian Government is considering the possibility of cautioning some cannabis users.

For some years, South Australia has had in place procedures whereby, in lieu of a formal prosecution, police also can refer users of "harder" illicit drugs to assessment for treatment (Biven & Ramsay 1999). Albeit slowly, other Australian jurisdictions now seem to be moving in this direction. In 1998, for example, Victoria Police introduced a trial diversion program for some individuals detected possessing or using drugs other than cannabis. First-time offenders who admit guilt can be offered an assessment option where public health service providers evaluate their treatment and counselling needs and then mandate a regime in lieu of a court appearance (Ditchburn 1999). Of relevance also in Victoria is the Melbourne Magistrate's Court trial of the Court Referral Evaluation and Drug Intervention Treatment (CREDIT) scheme, where people who have been apprehended for non-violent crimes, and whose offending behaviour is seen to be linked to drug use, are assessed while on bail for eligibility to undertake a range of drug treatment options (see Popovic & McLachlan 1999). The development of 'drug courts' in general is also receiving considerable attention in Australia, with New South Wales establishing a two-year pilot drug court in February 1999, and Queensland, Western Australia and South Australia set to follow (Freiberg 2000; Makkai 1998).

Besides the five broad areas noted above, a further recent development has significant implications for drug law enforcement policy and practice. This is the proposal in two states at least to trial safe injecting facilities (Drug Summit Legislative Response Bill 1999; Victorian Drug Expert Advisory Committee 2000). Little public response by the enforcement sector to these proposals is evident to date, but the challenge to traditional enforcement practice represented by such facilities is clear.

Summary And Assessment Of Developments

Viewed from one perspective, developments outlined above represent a prompt and impressive response by the law enforcement sector to problems identified in mid-90s reviews and research. At one end of the activity spectrum, there has been commitment to equip law enforcement with the organisational frameworks and technical tools needed to interdict illicit drug supplies and 'take down' organised drug criminals. At the other end, there has been an apparent engagement with practices of harm minimisation - and specifically the beginnings of a sustained effort to disengage consumers of illicit drugs from criminal procedures and to foster treatment options for other minor offenders whose crimes are deemed to be drug-related. Diversion of cannabis users can be seen as a particularly sensible and indeed overdue initiative, although the number of cannabis users formally charged by police still remains extraordinarily high (in 1997/98 there were 38,618 arrests for cannabis - ABCI 1999).

Despite measures implemented, however, we are not convinced that current policy settings are ensuring that drug law enforcement is on the way to fulfilling its potential to transform - and radically improve - illicit drug control policy and practice in Australia. In fact we are concerned that despite the best of intentions some developments may be taking law enforcement away from this goal.

In particular, we feel that the sector is being encouraged to focus aggressively and single-mindedly on just some dimensions of harm minimisation at the expense of others, with the net overall effect being that drug-related problems may well be exacerbated. For example, while evidence that it is virtually impossible for law enforcement to reduce overall levels of illicit drug supply appears to have been finally accepted, police still are being encouraged to make vigorous efforts to address local 'quality of life' issues by dispersing visible local drug markets through crackdowns.⁸ Together with the developments described earlier, such crackdowns - described and justified as responses to local concerns - appear to reflect an intriguing divide in contemporary enforcement policy. On the one hand, the introduction of diversion and referral provisions for drug users by police satisfies the enforcement sector that it is responding to the health dictates of harm minimisation policies. On the other hand, aggressive law enforcement against street dealers satisfies concerns - community fear, loss of amenity - with which police always have had to contend (albeit without much praise or understanding from the public health sector).

Superficially, this two-handed strategy looks attractive. It appears to embrace a wide range of drug-related harms, while still ensuring that enforcement activity can focus on that traditional sphere of police practice, community safety. Moreover, the sector even can point to implicit research support for aggressive drug law enforcement at the local, or street, level. In two recent New South Wales reports (Weatherburn, Lind & Forsythe 1999; Weatherburn & Lind 1999), the Bureau of Crime Statistics and Research argues that "being hassled by police" often plays an important role in encouraging heroin users to opt for treatment and drug-use cessation. According to this view, because crackdown policing interferes not just with dealing but with using behaviours, it can be a 'win-win' policy. However, we believe the approach to be flawed, and to reflect an incomplete grasp of harm minimisation principles. Our reasons are as follows.

The counterproductive outcomes of some kinds of drug law enforcement activities have been subject now to extensive research in Australia. Weatherburn & Lind (1999) themselves acknowledge an array of "induced harms" which arise from attempts to control or suppress drug use. Within that array, there are readily identifiable harms which flow directly from drug law enforcement practices. Maher & Dixon (1999) summarise these as harms to public health, to community safety, and to police-community relations. In the first category, fear of police intervention can generate unsafe drug storage and transfer, use of inappropriate equipment (for example, dirty needles), over-hasty use in unhygienic settings (for example, public toilets) and a tendency to administer drugs in more hazardous ways (for example, to inject rather than smoke or inhale). In the second category, community safety is jeopardised by various displacement effects of intensive enforcement interventions. Dispersal of visible markets can drive users underground, away from health and needle/syringe exchange service providers (see Fitzgerald et al, 1999); new markets can spring up in areas previously unaffected by visible drug dealing and use. Crackdowns may well eliminate the less efficient and professional dealers, while generating more organised,

8 See for instance accounts of Operation Puccini in Cabramatta (Maher & Dixon, 1999), Operation Juva in Fitzroy/Collingwood (Fitzgerald et al 1999) and Operation Minder in the Central Business District in Melbourne (*The Age*, 22/1/00).

enduring and dangerous trafficking organisations.⁹ In the third category, police-public relations can be jeopardised by perceptions among certain community or ethnic groups that they are being subjected to unwarranted police harassment (see Maher et al 1997). While some of these issues appear well-recognised by enforcement authorities in Australia (as evidenced by the promotion of 'hands-off' policies around needle and syringe exchanges, the non-criminal approach to overdose calls, and the burgeoning of diversion programs - see Comrie 1998), the persistence of crackdown policies indicates clearly that relevant agencies still see these harms as acceptable.

The effect of such tolerance appears to be that, however well-intentioned, those responsible for applying drug enforcement policy at the street level are being enjoined to 'first, ignore the possibility of doing harm' (by trying to suppress illicit drug markets and use regardless of the consequences), but to 'then to try to rectify the damage' (by referring users for treatment, by cautioning first offenders and so on). For the present authors, such an approach fundamentally contradicts harm minimisation principles. In their evaluation of the first National Drug Strategic Plan, Single & Rohl (1997: 47) are adamant: "First, do no harm. This is the first and foremost strategy from which all other harm minimisation principles derive."

It might be argued that Australia's current laws leave police little choice. That is, while the criminalisation of drug use remains part of our laws, relevant agencies are obliged to enforce them, even if aggressive interventions run the risk of causing some 'collateral damage' to users. Moreover, the NSW research may seem to provide reason for believing that even under current control regimes, gains from vigorous enforcement could outweigh any harms produced (see Weatherburn et al 1999). For example, 'induced' harms can be moderated by user diversion schemes and 'hands-off' policies in relation to needle exchanges and other selected areas. Partnerships can also be established at the local level, so that health and user groups will have formal mechanisms for warning police when specific operations are becoming excessively counterproductive. Ultimately, therefore, it is best that police be left to concentrate on their 'core business': making life difficult for illicit drug traffickers and users. This seems to be the logic which informs recent shifts in drug law enforcement policy, outlined earlier in this paper. However, we have concerns on a number of grounds.

First, it implies that enforcement agencies will be in a position to take account of possible counterproductive effects of their interventions, and to 'back-off' where appropriate. We see insufficient evidence of this. Despite explicit recommendations in our 1996 report, little effort has been made to involve Australian police in systematically collecting and monitoring local level data not just on illicit drug availability, but drug related harms. Moreover, while 'hands-off' policies in certain areas may be formally in place, as noted earlier there is evidence that these are not always followed in practice (see Maher & Dixon 1999). The language of senior police describing intentions and expected outcomes of crackdowns hardly resonates with concerns about possible unintended harms.¹⁰ Any distinctions which are made

9 See also Hamid (1991) for an account of ways New York Police interdiction of 'ganja' (cannabis) supply networks may have led Rastafarian traders and users to shift to crack cocaine.

10 Detective Superintendent Gary Jamieson of the Victoria Police Crime Department provides a recent example in his account of Operation Minder in the Melbourne CBD: "(this is) high-impact and quick-response policing... They (dealers) are just desperadoes... someone described it as being seagulls flying in, we arrive and they fly into the air, and soon as we leave they land again, but eventually there may not be any seagulls left." (*The Age*, 22/1/00: 1)

tend to revolve around the traditional sharp differentiation between the user (declared to be of little or no interest to police other than for intelligence gathering or diversion purposes) and the venal dealer (of very great interest). This distinction is, we believe, simplistic; not only are users still being arrested in great numbers (ABCI 1999), but even if users could be left alone, the removal (temporary or otherwise) of the dealers has obvious flow-on effects to consumers which can be counterproductive. In summary, we see little recognition that aggressive enforcement crackdowns and saturation approaches are likely to have significant adverse outcomes in terms of harm - despite at least a decade of accessible research alerting us to that possibility.

We also feel that it is disingenuous to suggest that formal obligations under a prohibition regime demand strict law enforcement intervention, even if that intervention may be counterproductive. It is certainly the case that perceived failure to enforce laws prohibiting specific behaviours can place enforcement personnel in a difficult position - particularly if sections of the community (for example, local business) demand a 'hard line' approach. However, police themselves have never accepted that formal prohibition always calls for strict enforcement; in other areas (such as crowd control), Australian police agencies have developed a range of discretionary responses which offer greater flexibility than strict enforcement or zero tolerance policing. There is no reason why such flexibility, grounded in a coherent understanding of intended and unintended outcomes, should not be applied to illicit drug use and drug markets.

We are here neither advocating the maintenance of drug prohibition nor clamouring for its repeal. The case against drug prohibition has been made often enough, but rationality alone has proved to be poor ammunition against the prohibitionist urge. As one of us has argued elsewhere (Sutton, *in press*), banning the consumption of various products has many long religious, cultural and social histories; the enduring symbolic importance of defining oneself, one's group and one's culture by identifying unacceptable consumption among 'others' is ignored by anti-prohibitionists at the peril of their project. Our position here is pragmatic: at least for the immediate future, drug law enforcement reform will need to work within the broad framework of current prohibitions.

In summary, our 1996 report to the National Police Research Unit contended that law enforcement concerns about crime and quality of life problems needed, in sensible ways, to be 'factored in' to the drug harm reduction equation. Failure to do so, we argued, would result in law enforcement continuing to run the risk of undermining other sectors' attempts to minimise harms associated with illicit drug use. We are concerned that, despite apparent endorsement of these recommendations, police agencies continue to be encouraged to treat crime and other neighbourhood level quality of life issues as their own separate domain. As researchers such as Fitzgerald et al (1999) and Maher & Dixon (1999) confirm, the net result has been that at the grassroots or street level, public health concerns continue to be subordinated to 'law and order' preoccupations. There is no reason to believe that this approach is necessary - and ample and mounting evidence that unreflective crackdowns are simply counterproductive.

Moving Towards The Effective Regulation Of Drug-related Harms

Our task in this paper has been to take stock of contemporary Australian law drug law enforcement practices and initiatives in light of best knowledge about illicit drug use, drug markets and drug control policies. We can summarise contemporary theory in this field by suggesting three different ideal types arranged on a continuum (see Canty et al 2000 for a

detailed account). At one end is a strict **prohibitionist model**, where the illegality of drug use and supply is the primary consideration. In this model, rigorous law enforcement is the only tool employed by police, and no attention is paid to unintended consequences which may arise from enforcement activities. Illicit drug market disruption is pursued at any cost. The next model along the continuum is what might be called **coexistent supply reduction**, in which police continue to emphasise undifferentiated supply-reduction and market disruption as their primary activity, but where they also recognise that specific harms to drug users should be dealt with outside the criminal law. In this model, users become to some extent the responsibility of health authorities. The third model is **drug market regulation**, where the primary role of policing shifts from one of undifferentiated market disruption to one in which the most harmful forms of drug market activity are targeted for rigorous enforcement, and less harmful forms are regulated with a mixture of enforcement and order maintenance approaches. This final model recognises that while enforcement may not be able to reduce overall supplies of illicit drugs, it can reshape drug markets and patterns of use in significant ways. Its primary emphasis is on ensuring that the net effect of such reshaping is benign rather than harmful.

The era of the unmitigated prohibitionist approach in Australia appears, for the moment, to be over. We would argue that **coexistent supply-reduction** now is the prevailing orthodoxy. It is epitomised by the 'armed stretcher-bearer' metaphor, in which law enforcement wages all-out war on the enemy-supplier, while also ferrying user-victims to the health system. The stretcher bearer in this metaphor never quite realises that his all-out war on the enemy may in fact be the reason why so many victims must continually be taken to hospital. For the reasons we have discussed in this paper, we believe that while this model's attraction to law and order lobbies is understandable, it remains unsatisfactory. Our preferred model is clearly that of drug market regulation, a preference we share with a number of commentators and researchers (see, for instance: Cohen 1998; Dixon 1991; Dorn & South 1990; Fitzgerald et al 1999).

The basis for our drug regulation model can be summarised by four premises that police could build explicitly into their practices:

1. Law enforcement is only one of the tools available to police for the resolution of the harms arising from illicit drug use and drug supply.
2. Some patterns of drug use and drug supply are demonstrably more harmful than other forms.
3. Rigorous and inflexible law enforcement itself can cause harm.
4. The essential task for police is to regulate markets for illicit drugs in ways that reduce the most serious harms, including those harms that arise from prohibition.

The drug regulation model poses a number of challenges for law enforcement agencies. The first is that this sector must develop a non-rhetorical, practical and sophisticated taxonomy of drug-related harms. Recourse to conceptions of the universal 'evils' of illicit supply and suppliers are better left to others. Police need to be able to differentiate concretely between harms within the illicit market-place. For instance:

- Traffickers who use violence as components of their activities are more harmful than those who don't.
- Suppliers who promote drug use among young people are more harmful than those who sell to adults with an established use pattern.
- Dealers embedded in organised crime groups are more harmful than those who deal through collectivities of users.

- Suppliers who also engage in wide-spread receiving and on-selling of stolen goods are more harmful than those who don't.
- Traffickers who corrupt public officials are more harmful than those who don't.
- Dealers who blatantly intimidate local communities are more harmful than those who don't.
- Manufacturers who steal ingredients for illicit drugs are more harmful than those who don't.
- Users who engage in robberies, assaults and other predatory crimes in order to finance drug purchases are more harmful than those who raise their money legally or, even if illegally, through less predatory activities, such as selling drugs to other established users.

And so on. At the same time, police need to identify clearly and avoid the harms that arise from their own interventions:

- Enforcement which reduces access to less-harmful drugs and routes of administration – thereby inadvertently steering users toward more harmful drugs and routes of administration - is itself harmful.
- Enforcement which simply results in illicit markets not characterised by associated predatory and acquisitive crime being replaced by markets which are characterised by these behaviours is itself harmful.

The second challenge is for enforcement to acquire and maintain sufficient information to be able to monitor the relative harms associated with different kinds of illicit drug markets. Such information is best acquired in partnership with other agencies, services and expertise. We do not underestimate the difficulties of forging effective partnerships between agencies which have not been close allies historically (see Crawford & Jones 1995). Sutton & James (1996) argued that the key to effecting working arrangements which offer the prospect of genuine transformations in policy and practice is to establish a strong sense of 'reciprocal need' based on the shared goal of harm minimisation. To date, such partnerships are not conspicuous, and the evaluations of the Drug Action Teams in New South Wales and Victoria currently being completed by the present authors seem unlikely to contradict this observation. Nevertheless, such collaboration is necessary, and it behoves both the enforcement and health sectors to strive for its realisation.

The third challenge is that enforcement must explore a range of policing tools beyond those of strict law enforcement to manage drug consumption and supply at the community level. All of the techniques of routine order maintenance should be considered: formal cautioning and diversion programs when necessary, informal cautioning and advice, benign neglect, the judicious use of 'move-on' provisions, the adoption of civil processes and penalties. These techniques have been used for decades to manage conflict and potential harm outside the illicit drug scene, and there is no reason why they should not legitimately be used to deal with this particular problem. It needs to be emphasised here that we are advocating development of a flexible array of problem-solving techniques under the broad heading of traditional order maintenance. However, we do not endorse recent political trends which associate order maintenance with aggressive law enforcement based on 'zero tolerance' rhetoric (see Marshall, 1999). It is precisely this kind of undifferentiated and indiscriminate enforcement that this paper has been concerned to critique.

The fourth challenge for enforcement organisations is to allow and reward the use of appropriate discretion by frontline personnel. Fears that the hierarchy will not look kindly on exercises of sensible, innovative and accountable discretion should not be allowed to paralyse street-level problem-solving. Once again, we are not sanguine about immediate prospects for transforming Australia's enforcement bureaucracies into organisations that equip and trust their operational personnel to make sensible, effective and accountable discretionary decisions. In the drugs arena, problems of reform are exacerbated by histories of police corruption, often drug-related. However, as the recent Royal Commission in New South Wales shows, traditional 'top-down' command and control methods have not been at all successful in controlling such activities. In fact, research by bodies such as the New South Wales Independent Commission Against Corruption would seem to indicate that devolution of decision-making and accountability to the local level, along the lines we are advocating, is entirely consistent with anti-corruption measures (Gorta 1998).

Fifth, and last, enforcement agencies need to sell the logic and the wisdom of these approaches to the community and to the political constituency. We have not argued for anything that we do not believe is 'do-able' within existing broad legal and organisational parameters. The task for law enforcement is to convince others, as it must be convinced itself, that this approach is preferable (see James & Sutton 1998; Lough 1997).

Our suggested strategy must not be read as the abrogation of law enforcement responsibilities. Indeed, we argue that police can shoulder greater responsibility, and should bring its impressive array of powers and tools to bear in executing that responsibility. The regulation of drug markets needs to be rigorous. But we include in our understanding of responsibility the requirement to do no further harm.

Conclusion

Australian drug law enforcement faces some sharp choices. Observations and arguments in this paper suggest that despite recent reforms, current approaches still represent an awkward compromise. The supply reduction sector has flirted with harm reduction, but still has difficulty in embracing it as a core ethic. If anything, police and other agencies are being encouraged to pursue single-mindedly law and order priorities. Indeed, sophisticated arguments are emerging that rigorous traditional-style local policing may even be in the best interests of users.

If the enforcement sector succumbs to these pressures, it will risk becoming further stranded in 'no man's land', satisfying neither prohibitionists' demands for zero tolerance, nor reformers' calls for an end to the adverse outcomes of prohibition. However, we believe there is an alternative. If they adopted a market regulation approach, police and other agencies could move away from no man's land, and towards a 'middle ground'. The terrain would still be difficult, but there would be much greater potential for support and cooperation from others concerned with addressing the challenge of minimising drug-related harms. Indeed, the enforcement sector could find itself in a powerful leadership role, ensuring that policy decisions finally took account of the need to deal with quality of life concerns among local communities, while at the same time being scrupulous about not exacerbating harms. As Weatherburn et al (1999) point out, there is still much to be learned about the impact of police work upon illicit drug use and drug market behaviour. It is important that this sector be encouraged to embark upon this process of discovery and reflection, rather than being urged to persist with traditional approaches which are known to be counterproductive. Enforcement must move from the periphery to the centre of the debate, and make much needed contributions on such issues as ways to implement and manage safe injecting facilities and other harm reduction initiatives at the local level.

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