

Australia's Long And Illogical War On Drugs

Greg Barns, *Drum Opinion* – ABC News (26/11/12)

As with all policy settings designed to stamp out drug use in Australia, the amendment to the Crimes Legislation Bill will fail, says Greg Barns.

The dangerous folly of Canberra's 40-year failed war on drugs took a sinister turn last week with the passing by the Senate of the Crimes Legislation (Serious Drugs, Identity Crime and Other Measures) Bill.

This new law allows the Commonwealth Government to declare drugs illegal literally at the click of a minister or bureaucrat's fingers. It uses powers that were common in WWII but which in a democratic society ought to be anathema to anyone who cares about the rule of law.

Naturally, just as with all other measures in the prohibition policy armoury, this latest erosion of liberties will not curtail in any way the demand for drugs and the ability of the market to supply them to millions of Australians.

Under this new law the Attorney-General or Minister for Justice will not have to introduce legislation to amend the Criminal Code Act 1995 which currently contains schedules of drugs and substances outlawed in Australia. These schedules are repealed by this new law and instead a minister simply has to issue what is to be called an

'emergency determination' which can last for 18 months.

In other words, at the stroke of a pen a minister can ban a substance for 18 months. Currently ministers can only ban a substance for 56 days.

The criteria for issuing such declarations are largely based on the so called detrimental effect the substance has on the individual and the risk to the community, reflecting what is currently found in the Criminal Code and what is in place in other jurisdictions for the listing of illicit substances. Does this include Coke, Pepsi and energy drinks? What about coffee, which is a psycho active drug? And then there is ridiculous criterion – 'the substance or plant is likely to be taken without appropriate medical supervision'. Most Australians at some point in their lives use drugs without appropriate medical supervision, even if it's taking an extra painkiller for a headache.

These emergency determinations not only cover drugs, but also the precursor chemicals used to make drugs and the burgeoning analogue market (the new breed of drugs). The latter is providing much enjoyment for party goers around the nation each weekend as many Australians buy them over the internet from New Zealand and other countries.

Because of the consequences for individuals in being charged with a criminal offence like possessing or

using drugs, the criminal law needs to be very clear about what is, and what is not banned. But how will any person know if banning substances is being done via obscure determinations about which there will be little or no community debate because there is no parliamentary or public scrutiny of these determinations? Thomas Bingham, one of the UK's most eminent judges of recent years said that the rule of law demands that the law must be accessible and so far as possible intelligible, clear and predictable. Ministerial emergency determinations are the antithesis of Bingham's view.

The reason for these new sledge hammer powers is because the Gillard Government, like all previous governments over the past few decades, can never beat the ingenuity of drugs manufacturers. The *Explanatory Memorandum* to this new law says as much when it states that the capacity to issue Emergency Determinations 'will provide the Minister with the capacity to respond rapidly to emerging unknown substances.'

Actually it won't and what this statement demonstrates is the cloud cuckoo land that drugs policy makers and their political masters live in in this country.

Providing government with the power to issue 'Emergency Determinations' and similar broad and relatively unaccountable exercises of power is not something that we see in a democracy, except in wartime. During WWII there were a number of

challenges in the High Court to similar powers which ministers sought in order to strengthen the war effort. But there is no such peril today; despite what the anti- drugs zealots might have us believe.

What this new law does is provide the Executive with enormous power to impact on the rights of the individual, including importers and users of what are currently legal substances, with little or no scrutiny by the Parliament.

As with all policy settings designed to stamp out drug use in Australia this one will fail and in fact endanger the community. The drug manufacturers and their allies will always beat governments through the creation of new formulae to get around prohibition. The risk is then increased for users who import such drugs.

Many millions of dollars will be spent on enforcing these new laws and they will achieve little, if the past is any guide. Our civil liberties have taken another hit – why not use the legal mechanism of emergency declarations in other areas of activity? – and there will be no reduction in demand for drugs.

What was so disappointing about this new grab for power by the Executive is that there was little or no opposition in the media or the Parliament to this new law. Do we care so little for the rule of law?

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