



People Against Prisons Aotearoa

Submission to the Justice Committee on the Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill

People Against Prisons Aotearoa (PAPA) is a prisoner advocacy organisation established in early 2015. *PAPA* advocates for incarcerated people with respect to various issues, including housing, prison placement, access to medical and counselling services, complaints of sexual and physical assault, and cruel and inhumane treatment by the Department of Corrections. *PAPA* is currently campaigning to end the use of solitary confinement in New Zealand prisons.

We are united in the belief that prisons are inherently violent places and imprisonment must be entirely avoided. We see prisons as treating the symptoms of harm and injustice, rather than the root causes. The prohibition of drugs in New Zealand only increases the prevalence of drug-related harm. We are in favour of full decriminalisation of supply, possession, and use of illicit drugs. Drug-related harm ought to be treated as a health concern, rather than a criminal one.

It is for these reasons that we oppose the Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill in its entirety.

This submission has been written on behalf of *PAPA* by Kate McIntyre, who wishes to appear before the Justice Committee to present this submission.

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INTRODUCTION

The proposed Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill seeks to amend the Psychoactive Substances Act 2015 to increase the penalty for selling, supplying, or distributing psychoactive substances that are not approved products, from a maximum of 2 years imprisonment to 8 years imprisonment.¹

People Against Prisons Aotearoa opposes the Psychoactive Substances Amendment Bill in its entirety.

PAPA takes the issue of drug-related harm very seriously. We share the concerns of the Justice Committee that the use of synthetic drugs can have damaging, unhealthy, and even fatal consequences. The death of Calum Jones was a tragedy. Every drug-related death is a tragedy, and action can and should be taken to prevent future deaths. However, this Bill fails to address the root causes of drug-related harm in New Zealand.

We are concerned that this Bill's "tough on crime" approach fails to provide an effective, evidence-based solution to drug harm in New Zealand. It might feel good to punish drug dealers by imposing long sentences on them, but it will not result in fewer deaths. Instead, reducing drug-related harm can be achieved through directing resources into drug health and education programmes, rather than into the criminal justice system.²

New Zealand's current drug laws are punitive and have been ineffective at harm reduction. The unintended consequence of New Zealand's punitive drug laws has been to increase the prevalence of drug-related harm. We believe that if this Bill passes, at best it will have no effect on the scale of drug-related harm in New Zealand. At worst, it could result in more instances of overdose, addiction, and death.

This Bill proposes a step away from a harm-reductive model for drug legislation which New Zealand needs to be working towards.

¹ Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill, New Zealand Legislation, Accessed 3 May 2018.

<http://www.legislation.govt.nz/bill/member/2018/0016/latest/LMS9439.html>

² "Portugal: Country Drug Report 2017," European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2017, Accessed 3 May 2018.

http://www.emcdda.europa.eu/countries/drug-reports/2017/portugal_en; "Whakawātea te Huarahi: A model drug law to 2020 and beyond," New Zealand Drug Foundation, 2017, Accessed 3 May 2018.

<https://www.drugfoundation.org.nz/assets/uploads/Whakawatea-te-Huarahi-July2017.pdf>

PART 1: PROHIBITION EXACERBATES HARM

Proponents of this Bill have failed to supply evidence as to how increasing sentences for supply and distribution of psychoactive substances will reduce drug-related harm. Instead, arguments in favour of this Bill have focused on the harmful effects of synthetic drugs, believing longer sentences will serve as an effective deterrent from supplying and distributing drugs.³ We do not dispute the harmful effects of synthetic drugs, but instead of reducing harm and serving as an effective deterrent, prohibiting supply and use of drugs has historically had the opposite effect.

Drug prohibition has created an environment in which illegal drug markets thrive.⁴ As long as dealers are not caught, they stand to profit a great deal from the demand for illegal substances, as there are no legal avenues for users to purchase these substances elsewhere. Many drug traders will use violence to protect their illegal business.⁵ Fear of arrest, or the fear of being made to disclose the identity of their supplier, and face retaliation from their supplier, could prevent users from seeking support when drugs are causing them harm.

Drug use is not something New Zealand can avoid. 44 percent of adults in New Zealand will consume an illicit drug at some point in their lifetime.⁶ As long as there is a demand for a drug, and as long as that drug remains illegal, the underground drug trade will continue to exist unaccountable to regulations by which other legal businesses must comply.

Between 1920 and 1933, when the supply and consumption of alcohol was prohibited in the United States, illegal alcohol markets thrived. As a consequence, there were much higher rates of alcohol-related deaths than when alcohol was legal. The barriers and costs that alcohol suppliers and distributors faced resulted in pressure to minimise the volume of alcohol, while maximising the profits. Less potent forms of alcohol were replaced by highly distilled spirits, and potency of alcohol rose over 150 percent. Lower potency drinks were just not accessible to consumers. This directly resulted in tens of thousands of poisonings

³ “Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill — First Reading,” New Zealand Parliament, Accessed 3 May 2018.

https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20180321_20180321_20

⁴ Joanne Csete et al, “Public health and international drug policy,” The Lancet Commissions, 2016, Accessed 3 May 2018. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)00619-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)00619-X/fulltext)

⁵ Ibid

⁶ “Drug Use in New Zealand,” New Zealand Drug Foundation, Accessed March 19 2018, <https://www.drugfoundation.org.nz/policy-and-advocacy/drugs-in-nz/>

and deaths.⁷ These deaths could have been avoided if supply of alcohol had been legal and regulated, and less potent forms of alcohol had been available.

When a substance is decriminalised, suppliers of that substance are held accountable to regulations. In New Zealand, you must have a license to sell alcohol. This license can be revoked if you breach the laws and regulations pertaining to the sale of alcohol.⁸ While the illegal supply of alcohol might still continue, the demand is greatly reduced as people are able to access it legally and safely elsewhere. If a person suffers from alcohol poisoning, they or the people with them are more likely to seek medical help without fear of arrest. Alcohol addicts are also able to seek support for their addiction without fear.

As long as drugs remain illegal, drugs will continue to be obtained through unsafe, unregulated sources, and consumed in unsafe environments. The stigma associated with illegal drug use and supply means that users will continue to be dissuaded from seeking help in cases of addiction, overdose, and other drug-related harm.⁹

PART 2: THE SUCCESS OF PORTUGAL

In 2001, Portugal decriminalised all drug use. Instead of spending money on police and prisons to curb the use of drugs, that money was redirected into education and health programs. This strategy has resulted in reduced drug use and drug-related harm. Young people in Portugal now use the least amount of “legal high” synthetic drugs compared to the rest of the European Union. There has been a 15 percent reduction in youth addiction rates. The rate of new HIV infections fell from 1,016 to just 56 between 2001 and 2012. Overdoses and drug-related deaths have greatly decreased. Portugal’s rate of drug-related deaths is now five times lower than the European Union’s average.¹⁰

⁷ Leo Beletsky, “Today’s fentanyl crisis: Prohibition’s Iron Law, revisited,” *The International Journal of Drug Policy*, 2017, Accessed 3 May 2018. [https://www.ijdp.org/article/S0955-3959\(17\)30154-8/fulltext](https://www.ijdp.org/article/S0955-3959(17)30154-8/fulltext)

⁸ Sale and Supply of Alcohol Act 2012, New Zealand Legislation, Accessed 3 May 2018. <http://www.legislation.govt.nz/act/public/2012/0120/84.0/DLM3339333.html>

⁹ “Joint United Nations statement on ending discrimination in health care settings” World Health Organisation and United Nations, accessed 3 May 2018, <http://www.who.int/mediacentre/news/statements/2017/discrimination-in-health-care/en/>

¹⁰ “Portugal: Country Drug Report 2017,” EMCDDA; Csete et al, “Public health and international drug policy”; “Drug decriminalisation in Portugal: setting the record straight,” Transform, 2014, Accessed 3 May 2018. <http://www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight>

Portugal's approach to drug-related harm has succeeded at harm reduction and fewer deaths. The World Health Organisation and the United Nations have endorsed Portugal's approach, and encourage other countries to follow it.¹¹

"Tough on crime" approaches to drug-related harm have continually failed in New Zealand and elsewhere. This Bill would continue the "tough on crime" approach which is proven to exacerbate the problem of drug-related harm. Instead, New Zealand should follow Portugal's example and decriminalise all illicit drugs. *PAPA* cannot support the proposed Psychoactive Substances Amendment Bill. If implemented, it will not reduce drug-related harm.

RECOMMENDATIONS

PAPA would like to reiterate our recommendations to the Justice Committee:

1. Reject the Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill in its entirety.
2. The Misuse of Drugs Act 1975 should be repealed and replaced with new legislation that is humane and research-based. Drug laws ought to prioritise harm reduction, rather than pursuing retribution.

¹¹ "Joint United Nations statement on ending discrimination in health care settings," World Health Organisation and United Nations, 2017, Accessed 3 May 2018, <http://www.who.int/mediacentre/news/statements/2017/discrimination-in-health-care/en/>