



Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill

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Report of the Justice Committee

September 2018

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Raymond Huo
Chairperson

Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill

Recommendation

The Justice Committee has examined the Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill. We have been unable to reach agreement on whether to recommend that this bill be passed. We recommend that the House take note of our report.

About the bill as introduced

This bill is a Member's bill in the name of Simeon Brown MP. As introduced, it seeks to amend the Psychoactive Substances Act 2013 to increase the penalty for selling or supplying psychoactive substances that have not been approved by the Psychoactive Substances Regulatory Authority.

The intent of the bill is to align the penalty for non-approved substances in the principal Act with the penalty for Class C drugs in the Misuse of Drugs Act 1975. The alignment would allow for longer sentences and provide more flexibility for judges when sentencing. The principal Act applies to all psychoactive substances that are not yet included in a schedule in the Misuse of Drugs Act, a process that can take up to a year. It is intended as a deterrent to the sale and supply of new or modified non-approved substances.

The bill proposes to amend the penalty in section 70(3)(a) of the principal Act, under which a person who sells, supplies, or possesses a substance with the intent to sell or supply is liable to a term of imprisonment not exceeding 2 years. This would align with the penalty in section 6(2)(c) of the Misuse of Drugs Act 1975, which sets out a penalty of imprisonment for a term not exceeding 8 years in respect of the sale, production, or supply of Class C drugs.

Petition of Simeon Brown MP considered alongside the bill

A petition in the name of Simeon Brown MP was referred to us by the House on 21 March 2018. The petition requests:

That the House note that 1,149 people have signed petitions requesting that the House pass the Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill to increase the penalty for those found guilty of dealing in synthetic psychoactive substances, and further requesting a select committee inquiry into addiction to psychoactive substances.

We decided to consider the petition alongside this bill.

We agree that synthetic cannabis and its various forms are causing harm in communities throughout New Zealand, and acknowledge Simeon Brown's advocacy to discourage its use

and help with addiction. We also agree that this issue requires a multifaceted approach, combining services and support from within the law and order sector with those from outside organisations in areas such as health and education.

We note that section 106 of the principal Act requires the Ministry of Health to review the policy and operation of the Act and present a report to the Minister of Health, who must then present it to the House as soon as practicable. The first review was required to be conducted no later than 17 July 2018, 5 years after the principal Act commenced.

We understand that the Ministry has carried out the review and provided a draft report to the Minister. The review considered the effectiveness of the Act against its intended purpose of protecting health and minimising harm. In preparing the report, the Ministry worked with the Police, the New Zealand Customs Service, the Ministry of Justice, the Institute of Environmental Science and Research, the New Zealand Drug Foundation, and Local Government New Zealand.

We will be very interested to see the report on the review of the principal Act when it is presented to the House.

The Government has also initiated an Inquiry into Mental Health and Addiction. This inquiry is well advanced, with an extensive consultation process now completed. We understand that the inquiry panel intends to report to the Government in late October.

Possible select committee inquiry

We have not reached agreement about whether a select committee inquiry into addiction to psychoactive substances is necessary.

Labour members of the committee note that the Government has indicated that it will take a health-based approach to drug use and that there will be the opportunity for a broad review of all the related issues that need to be considered. Those members see the statutorily required review as an opportunity to consider the issue of psychoactive substances as a whole. They note it unnecessary to launch a specific inquiry into a single aspect of the issue. They also consider that the report of the Government Inquiry into Mental Health and Addiction will touch on addiction to psychoactive substances. Labour members consider that it would be preferable to wait until the Government inquiry and the statutory review are completed before considering a select committee inquiry.

National members of the committee agree that the statutory review of the principal Act will allow the House to consider appropriate wider legislative change. However, they also consider it necessary to launch a select committee inquiry to create discussion and draw the attention of the House and the public to the specific issue and the harm that is being caused by psychoactive substances.

National members believe the advantage of a select committee inquiry is that broad terms of reference would enable multiple Government agencies involved with psychoactive substances in an enforcement or treatment role to be engaged and accountable for improving the public sector response. It would also enable a specific focus on the significant and growing issue of psychoactive substances rather than general work around drug issues.

Harmful substances and appropriate penalties

The principal Act covers a broad range of psychoactive substances through its provisions relating to non-approved products. However, while some substances may pose a greater risk than Class C drugs, others may pose less risk. The purpose of the principal Act is to regulate the availability of these substances in New Zealand to protect health and minimise the harm to individuals caused by the use of psychoactive substances.

We understand that the Coroner is investigating 40 to 45 deaths that are provisionally linked to the use of synthetic cannabis. This suggests that the substance being used is causing a higher risk of harm than Class C substances under the Misuse of Drugs Act. We agree that psychoactive substances that are causing significant harm should be listed under the Misuse of Drugs Act.

National members argue that the bill would provide appropriate penalties for harmful substances that have yet to be listed, this process can take up to a year. As these psychoactive substances are easy to create or modify, National members believe there needs to be a catch-all provision imposing a penalty that is proportionate to the harm being caused. These members consider that increasing the penalty applicable to a wide range of substances—whether they are new, modified, or waiting to be listed under the Misuse of Drugs Act—will deter people from being involved in their sale and supply. The bill could be quickly implemented to reduce harm in the short term while a wider review is undertaken. National members argue that keeping the maximum penalty at 2 years sends a message that psychoactive substances are not as harmful as other substances.

The Salvation Army argued in favour of increasing the penalty to act as a deterrent. They provided evidence that their drug treatment services across the country have had more people asking for assistance. The Manurewa Local Board also argued for increasing the penalty to recognise the harm being caused in their community.

Labour members observe that the intent of the bill does not align with the intent of the principal Act, which is to regulate (and not prohibit) low-risk psychoactive substances. While they agree that appropriate penalties are necessary, they do not agree that changing a single penalty in isolation is the right response. They consider a broader response is necessary and that drug related offences should be dealt with in the Misuse of Drugs Act. It is their view that any changes to the legislation should be based on evidence and follow the statutory review process and wider review and consideration of drug-related legislation.

The New Zealand Drug Foundation argued that the principal Act is supposed to deal with substances that have a low risk of causing harm, and further that harmful substances are more appropriately dealt with under the Misuse of Drugs Act.

Reducing harm by increasing drug related penalties

We received advice that increasing penalties does not necessarily produce a corresponding deterrent effect. There is strong evidence that a deterrent exists, but the majority of the effect is considered to be linked to the certainty of a law-and-order response resulting in apprehension, rather than how severe any punishment may be. We heard that the advice is supported by international and domestic evidence.

The New Zealand Police Association argued that substance use and crime are often linked, due to the high cost of a drug habit, fed by a criminal marketplace. While the association supports the intent to target suppliers, it argues that the bill is not supported by evidence that increasing penalties will deter them. The association supports an holistic approach to the problem.

We also heard from Massey University's SHORE & Whāriki Research Centre. It argued that overseas jurisdictions showed that increasing penalties for drug trafficking had increased prison numbers, but only had a minimal effect on drug price and availability. The New Zealand Drug Foundation argued that increasing penalties for drug use and supply is not an effective long-term solution and has been found to make drugs more expensive and potent. They note the Psychoactive Substances Act was not created for this issue and suggested dangerous drugs should be addressed through the Misuse of Drugs Act.

The New Zealand Medical Association argued that penalties for selling or supplying are only one aspect of harm reduction. They submitted that any approach to minimise harm should also seek to reduce demand. They advocated an approach consistent with the Ministry of Health's National Drug Policy 2015 to 2020.

Labour members of the committee do not support the bill. They consider that law-and-order measures alone are unlikely to have any effect. They observe that there is no evidence that increasing sentences will have any tangible benefit or reduction of harm. They are of the view that increasing sentences as proposed by the bill is misconceived, and may have other adverse consequences.

National members of the committee disagree, and point to the classification of methamphetamine as a Class A drug, which has reduced the harm to New Zealand communities caused by this substance. They add that advice to the committee does not show that the prompt increase in the penalties for methamphetamine use stood in the way of harm prevention. The bill could quickly be enacted and prevent some harm from being caused while a multi-faceted approach is developed.

National members support the bill being passed so that judges are empowered to take into account the severity of the offence and appropriately punish criminals who profit from the misery of others.

Incremental change or broader reform

We agree that solutions to the issue posed by psychoactive substances need to involve both health and law and order aspects, and that broader change needs to take place. However, we disagree about how this should be done.

National members argue that the bill would be a part of the solution, and one change that would help in the short term to address supply while further assistance is developed. The petition seeking an inquiry and the statutory review required by the principal Act are both opportunities to assess the harm caused by psychoactive substances. They are also a chance to assess a future approach to providing support, treatment, and care for those who suffer from addiction to these drugs.

Labour members prefer an all-of-government approach, involving multiple organisations such as Police and Corrections and initiatives such as community housing, community policing, mental health services, addiction services, and education programmes. They note that the Government is committed to addressing questions of health, mental health, and addiction that are related to drug use, but believe it should occur as part of a wider programme of change. In their view, the bill fundamentally mis-categorises the issue as only a law-and-order issue.

The impact of psychoactive substances on Māori

We received several submissions that raised the specific impact that psychoactive substance have on Māori.

Te Rūnanga o Ngāti Whātua submitted that increasing penalties around psychoactive substances would have a disproportionate effect on Māori. They suggested that any changes to legislation should have an approach that includes support through health services, education, and rehabilitation, and the effects on Māori should be specifically addressed to avoid further disadvantage.

Hāpai Te Hauora agreed that drug-related legislation should be developed that would not disproportionately disadvantage Māori. They argued that a health-based approach should be applied and noted that some individuals involved in the sale and supply of the substances covered by the bill are themselves victims of substance abuse. They further submitted that rehabilitation for people involved in sale and supply should be a focus of any future legislation.

We agree the development of policy in this area must take account of its impact on Māori.

Brief overview of all the submissions that we received

We received 64 individual submissions and 14 submissions from organisations across health, justice, local government, business, research, and industry. Of these, 18 submissions supported the bill, 53 were opposed, and 7 did not make a position clear.

Submissions from individuals opposed to the bill discussed a number of similar themes. They generally argued that:

- there is a lack of evidence that longer prison sentences contribute to reduced harm
- prohibition of drugs causes harm
- drug use should be treated as a health issue
- this matter should be addressed by the Misuse of Drugs Act
- a wider approach should be used, to deal with the causes and effects of drug use.

Submissions from individuals in support of the bill generally argued that:

- drug sellers and suppliers should be punished
- penalties should be aligned with cannabis offences
- increased penalties should be a part of a range of initiatives.

Appendix

Committee procedure

The Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill was referred to the committee on 21 March 2018. The closing date for submissions was 5 May 2018. We received and considered 78 submissions from interested groups and individuals. We heard oral evidence from 7 submitters in Auckland and Wellington.

We received advice from the Ministry of Health and the Ministry of Justice.

Committee members

Raymond Huo (Chairperson)
Ginny Andersen
Hon Maggie Barry
Chris Bishop
Hon Mark Mitchell
Greg O'Connor
Priyanca Radhakrishnan (until 15 August 2018)
Hon Dr Nick Smith
Dr Duncan Webb (from 15 August 2018)

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.