

**SUBMISSION TO THE QUEENSLAND PRODUCTIVITY COMMISSION**  
**INQUIRY INTO IMPRISONMENT AND RECIDIVISM.**

**MICHAEL JOHN PALMER.**

My full name is Michael John Palmer. I am a former 33 year career police officer who enjoyed 25 years' service in State style policing in the Northern Territory and 7 years' service with the Australian Federal Police (AFP).

Having joined policing as a recruit in the Northern territory in late 1963 I served in Darwin and Alice Springs over a total period of 25 years. I was appointed Commissioner of the Northern Territory Police Service in 1988 and served in that position until 1994 when I was appointed Commissioner of the AFP, a position I held until 2001.

In a five year break from policing between 1978 until 1983 I qualified as a Barrister and practised as a barrister at law at the Queensland Bar in 1982 and 1983.

Since my retirement I have been involved in the conduct of a number of reviews and inquiries, including the Inquiry into the Immigration Detention of Cornelia Rau, and corporate governance related inquiries into prison management and reform in Tasmania and Victoria.

In Tasmania, in 2010 and 2011, I led an inquiry into the Risdon Prison Complex (RPC), situated outside Hobart, following a serious assault on six corrections officers by a number of the RPC maximum security precinct prisoners, and a number of related disruptions in the precinct over following days. The terms of reference required me to investigate, examine and report on matters related to design,

construction and, most importantly in my opinion, the operation of the prison.

In May 2012 I was appointed to lead a State Service Authority (SSA) team in Victoria in a special review of the implementation of the Ombudsman's recommendations relating to the management and operation of Victoria's correction system which were made following the murder of Carl Williams in Barwon Prison.

I served as the Federal Government's Inspector of Transport Security from 2004 until 2012.

Over the past 15 years, I have also been associated with a number of groups assessing current illicit drug policy and the need and means for change. In particular, I have worked closely with Matt Noffs of the Ted Noffs Foundation in supporting the Foundation's "Take Control – a safer, saner way" Drug Policy, and promoting the importance of Pill testing trials at festivals and similar events.

I am currently an Emeritus Director, (and was previously the Deputy Chair) of Australia 21 (A21), an unaffiliated, not for profit, research based organisation which attempts to bring together leading thinkers from all sectors of Australian society to brain storm and examine the evidence on a variety of significant issues confronting Australia and to prepare reports which aim to contain options for change or improvement, worthy of further consideration. A 21 has published two reports on the issue of illicit drugs.

My current attitudes and opinions have been fashioned by this mix of experience and have gradually matured over this period of time. I would like to explain my current opinion, why I have come to hold it and what I believe could and should be done to improve Australia's current drugs policy.

I will not attempt to divide my submission so as to separately deal with the headings or categories that have been supplied to me (as listed below), but my submission will touch on each of the issues raised.

- How much impact does law enforcement have on drug markets?
- What are the main effects of criminalising drug use?
- Is all drug use problematic and should it all be treated the same?
- Should all or some drugs be decriminalised or legalised?
- What are some of the most effective harm reduction alternatives to criminalisation?
- Law reform tends to be slow in Australia, what can be done to make it easier?

Essentially, I believe our current prohibitionist approach is badly broken, is ineffective and on reflection, probably always has been.

Despite our best endeavours over many years, drugs are as readily available now as they have ever been. Experimentation is probably at an all-time high, with an ever widening array of, increasingly dangerous, drugs available for use; the market is totally unregulated and controlled by Organised Crime figures, and drug trafficking criminals who make huge profits, pay no tax- and who follow no rules other than their own.

The 2018 Australian Criminal Intelligence Commission's Illicit Drug Data Report detailed that in 2016-2017, 113,533 seizures of illicit drugs were made and a total of 27.4 tonnes of illicit drugs seized/confiscated.

Figures also show the amount of heroin seized almost doubled from 2017 to 2018 and seizures of ecstasy almost tripled over the same period.

Despite these figures, and increasingly larger seizures of illicit drugs, including crystal methamphetamine, by Australian police, neither supply nor price has been measurably impacted and demand continues to grow.

In 1998, during my time as Commissioner of the AFP, some 398 kgs of heroin was seized from a boat off the Coast of NSW, near Port Macquarie. This seizure was almost 50 times larger than the 8.5 kgs that Andrew Chan, Myuran Sukumaran and the Bali 9 attempted to smuggle into Australia from Indonesia. Whilst the Bali 9 attempt cost Chan and Sukumaran their lives, the seizure of almost 400kgs of heroin off our east coast made virtually no impact on price or availability on our streets.

The 1998 seizure was one of many significant seizures that occurred during the 1990's, with the trend towards increasingly larger seizures continuing in the years since that time. The only common theme throughout these seizures has been that despite their size and street value, they have made little or no difference to price or availability on the street. Where there has been any evidence of an impact on supply, the reality is it has been minimal and short term.

Additionally, the quality of drugs being trafficked is totally unregulated and generally unknown, with buyers and users having no way of knowing the quality – or, often, even the actual product - which they are buying. Drug dependent users are treated as criminals and as a consequence are frequently reluctant to confide in family or friends as to the cause of any medical problems when they occur - or to seek medical help- or if they do, to tell the truth about the likely cause of their sickness.

Despite the fact that police are probably more effective and better resourced now, than at any time in our history, law enforcement strategies clearly have little effect on illicit drug availability and are, unavoidably, discriminatory in that only a very small percentage of total users fall foul of the legal system. The damage caused to the careers of those unfortunate enough to be apprehended for simple use and possession, may, however, be very substantial. As a consequence law enforcement outcomes are frequently counter-productive and operate to increase harm rather than reduce it.

I am in no way an apologist for illicit drug use and abhor drug traffickers and the harm they cause. Like many others, I am seriously disturbed by the damage and violence being caused by the current 'Ice epidemic' that appears to be sweeping Australia. But, even here, it is important to maintain perspective. Despite the publicity, it is estimated that only about 2% of Australians use ice and, as I understand the situation, the rate of usage is not markedly increasing, although availability is probably at an all-time high, despite law enforcement's best efforts.

I am convinced that our current approach is compounding rather than helping the problem and, indeed, the current publicity surrounding Ice is an illustration of this failure. Despite a huge investment in law enforcement resources on Ice related crime, Ice remains freely available, at relatively low cost to the street user. As Ken Lay, a former Chief Commissioner of Victoria Police and the head of then Prime Minister Abbott's "Ice Task force", has said 'we can't police – or arrest - our way out of this problem.' In my opinion he is absolutely right. As Mr Lay and other senior police have observed with increasing frequency in recent times, our approach has to be multi-faceted to have any chance of being successful.

It is perhaps illustrative to look at the U.S. as an example.

Despite a massive investment in drug law enforcement, in the order of \$3 trillion according to some commentators, a richly resourced and empowered Drug Enforcement Administration agency and the death penalty operating in many States, the United States has a huge drug related incarceration rate and yet a seemingly undiminished illicit drug supply – and demand - chain stretching across the country.

Over recent years Northern Mexico has degenerated into a virtual drug cartel stronghold with an estimated 64,000 homicides in the period between 2006 and 2012, and horrific evidence of violence and indiscriminate killings, not only of criminal gang members but of innocent people who simply would not support the traffickers or pay protection - or simply 'got in the way'. Most, if not all, it would seem, is to support the US Drug marketplace.

It pays to remind ourselves that In Australia in 2011 86% of users said that obtaining heroin was easy or very easy.

93% reported that obtaining hydroponic cannabis was easy or very easy.

In the US AND Europe the price of heroin and cocaine is reported to have decreased by more than 80% in the 20 years to 2012.

If this is success it is difficult to visualise what failure would look like.

We must be prepared to look for better ways to do business.

I suggest a genuinely honest debate and assessment of current illicit drug policy, and the actual results and outcomes that have been achieved, would be an excellent start: a debate which removes the fear and looks dispassionately and objectively at the facts and the options. These options, I suggest, could include:

- Identifying the illicit drug issue as a social and health issue NOT a criminal issue. Despite the very public examples of, sometimes extreme, violence linked to the use of ice, there is no sensible purpose to be served by attempting to address the 'ice problem' as a separate issue – or in isolation from other drugs.
- Better focusing law enforcement efforts solely on the production/ trafficking end of the market, where the benefits are likely to be highest and the harms to individual users lowest.
- Reviewing drug related funding so as to significantly increase the funding for health and support services - improving and increasing diversionary and treatment options. - improving access to treatment and reducing the risk of overdoses and death.
- Dealing with users as victims not criminals - fostering and encouraging honest reporting - removing the stigma AND the discrimination. Focusing our attention on the underpinning causes, not simply the symptoms. Providing support not punishment.
- Being prepared to genuinely assess the value of programs such as the Ted Noffs Foundation's "Take Control" campaign which aims to cause a review of current policy and the adoption of a safer and saner approach to drug use under which governments take genuine control of the drugs issue. (The Foundation, which is Australia's largest provider of drug and alcohol treatment services for young people, has experience and knowledge that intelligent governments should be clamouring to learn from)
- Improving education and deterrence initiatives.

- Assessing and identifying the options and staged pathways towards decriminalisation - first of cannabis and, if successful, of other drugs.
- Considering particularly, as part of the above assessment, the options and means of regulation of supply – so as to ensure and maintain quality and purity of the subject drugs, control of the sale price, drug outlet points and the taxation of the profits.

A consequence of having the courage to move to regulate the supply of certain drugs it is likely, I suggest, that the size and profitability of the criminal market place would be materially reduced – something that prohibition has been unable to achieve over 70 plus years. Criminals are lazy; they go where the profits are largest and most easily obtained. They are involved in risk assessment and management like a legitimate business. If the going gets tough, history shows criminals get going – to somewhere else – or to some other product.

While the illicit drug marketplace, and the consequent untaxed profits, remain owned and controlled by criminals, law enforcement will always be chasing its tail, regardless of the level of operational sophistication and the relative effectiveness of their efforts. As starkly illustrated by the United States experience, without finding a way to reduce or remove the criminal marketplace, law enforcement is almost certainly doomed to failure in any attempt to police itself into a winning position.

The facts of life are - people, particularly young people will experiment (whether it be rail train "surfing" or drug use). Forbidden fruit are always more attractive. The reality is that we cannot hope to nanny ourselves out of risk BUT WE MUST BE COURAGEOUS ENOUGH TO CONSIDER A NEW AND DIFFERENT APPROACH.

As Winston Churchill once famously said "no matter how brilliant the strategy you must sometimes look at the results"

I truly believe it is time we did.

Our current use and possess illicit drug laws operate to criminalise a health problem, isolate and punish people who most need support, and address only the symptoms while ignoring the causes.

The laws put police officers into unnecessary conflict with decent, generally young, Australians, who police should be there to protect and whose trust they need if they are to be operationally effective in dealing with broader criminal violence and social disorder.

Police officers are drawn from the broader community. They share friendships with many people of their own age who are not police officers, enjoy many of the same interests and social pastimes as other Australians and see the world through very similar eyes to their non-police contemporaries. Contemporary police are well educated, and intelligent and, like most young Australians, are likely to question things, including laws that make little or no sense. Asking them to enforce laws by way of arrest and conviction of their contemporaries, for simply possessing or using an illicit drug makes no more sense, in many cases, than requiring them to arrest someone for smoking a cigarette or having a drink of alcohol. The reality is that some police officers, as with lawyers, teachers, entertainers and many prominent Australians, socially use illicit drugs, without such use impacting on the jobs they have and the outcomes they achieve.

Police are already faced with very significant and increasing pressures and challenges in dealing with crimes of violence and social disorder. If they are going to be successful in responding to these issues they need all the community support they can engender. Good relations with young Australians is critical to the effectiveness of this support.

We must introduce a drugs policy that clearly distinguishes between violent and anti-social behaviour and the drug use that, on occasions, may have contributed or be linked to it: to punish the criminal behaviour but treat the drug use; to implement a policy that aims to engage with and support drug users, not isolate and punish them.

The jury is no longer out on the failure of Australia's current illicit drugs policy. It does not work and everyone knows it.

Despite the increase in arrests in Australia, only a tiny proportion of the three million Australians who use illicit drugs each year are arrested. This is no criticism of police. They are more efficient and sophisticated than ever. Yet these arrests barely scratch the surface.

The reality is, though, that consumer arrests make little difference to illegal drug availability or price and do not reduce drug-related harms. There is also little or no evidence that targeting consumers leads to a reduction in drug use. A recent report from the UK Home Office compared drug law enforcement approaches in different countries and found 'no apparent correlation between the "toughness" of a country's approach and the prevalence of adult drug use.'

This is seen in many examples from around the world. Cannabis possession is tolerated in The Netherlands but cannabis use is less common than in Australia. Sweden's low rate of drug use is often claimed as an effect of its tough on drug approach but rates of drug use are similar to those in relatively liberal Norway. Mass incarceration of drug users in the United States has been a social and economic disaster but rates of drug use remain high.

Closer to home, decriminalising the possession and cultivation of small amounts of cannabis in South Australia, the ACT and the NT has had little if any impact on rates of cannabis use.

I have been encouraged by the recent calls for another Drug Summit in NSW. The 1999 NSW summit recommended that police focus on

traffickers and suppliers. It also recommended that the objective of drug legislation and policing be a reduction in aggregate social harm.

A summit would be a great opportunity to look at what is working and what is not.

Drug user arrests should be on the agenda. In my view, the decriminalisation of drug possession and cultivation of small quantities of cannabis in South Australia, the ACT and the NT has worked well and should be extended.

Removing criminal penalties for drug use and possession of small quantities would enable police to focus on drug traffickers while drug abuse is treated more effectively as a health and social issue.

This model has worked well in Portugal where decriminalisation has been supported by expanding and improving prevention, treatment, harm reduction and social reintegration programs. Since then they have seen a reduction in problematic use and drug-related harms.

It is my view that decriminalising drug consumer offences would be a step forward for police and for the communities they protect and serve.

The health and social consequences of drug use are serious and, too often, tragic. Our illicit drugs policy as it is cannot be considered 'good enough' by anyone who looks closely at the outcomes.

It must be recognised though, that most of the discussion about drug policy concerns the failing of our current approach. The alternatives to current policy and even the ideal approach are rarely discussed at a government or national level.

Change involving complex policy issues is usually evolutionary rather than revolutionary. Drug policy will probably change incrementally, but, I believe it is important that those of us who are critical of current policy think about where we should try to end up.

Alex Wodak prepared a paper some little time ago which discussed what an ideal drug policy should look like and how a community could achieve a much improved drug policy. I strongly agree with his assessment and would like to draw from strongly from his paper in attempting to illustrate the most effective harm reduction alternatives to prohibition.

The threshold decision needed to improve drug policy is, it is suggested, to re-define drugs as primarily a health and social issue. This means that health and social interventions would be adequately funded with funding and other policy decisions based on evidence and maximising the return on government investment.

A critical part of an ideal drug policy involves a drug treatment system which is readily available, attractive and of the same high standard as other parts of the healthcare system.

People who use drugs and develop problems should be considered as patients and not as criminals. People who use drugs must have the same rights as people who do not use drugs.

An ideal drug policy should aim to reduce, and if possible minimise harms from psychoactive drugs as well as from drug policy. Harm Reduction International (HRI) has defined harm reduction as 'policies, programmes and practices where the paramount aim is to reduce the health, social and economic costs of legal and illegal drugs *without necessarily* reducing drug consumption' (<http://www.ihra.net/what-is-harm-reduction>).

Each of the phrases in this definition is important. The definition identifies reducing harm as the paramount aim and distinguishes the harm reduction and drug law reform approaches from drug prohibition, the prevailing global drug policy for most of the last century.

In drug prohibition the primary aim has been reducing or eliminating consumption of specified drugs, regardless of any effect on health, social and economic costs. All three types of costs are identified rather than only health costs because these costs are usually interdependent. For example, threats to individual and public health usually have social and economic costs and *vice versa*. The definition identifies both legal and illegal drugs as the distinction between the two categories is historically arbitrary and cannot be justified on the grounds of pharmacology, public health, violence or any other consideration.

Many people who use illicit drugs also consume legal drugs and are often harmed more by legal than illegal drugs. It is unclear at this stage whether illegal drugs will ever disappear.

However, it surely should be acceptable to attempt to reduce drug consumption provided that reducing harm remains the paramount aim so that reducing consumption is seen as a means to an end rather than as the principal objective.

Often pursuing an objective of reducing illicit drug consumption has had the effect of exacerbating harm.

If harm reduction is the overarching approach, then this should apply to drug policy just as it applies to programmes and practices. That is, harm reduction should aim to reduce the harm from drug policy just as it aims to reduce the harm from drugs. Specifically, the ideal drug policy would aim to minimise harms including deaths, disease, property and violent crime, violence and corruption.

A harm reduction approach to psychoactive drugs should aim to maximise any benefits that legal or illegal psychoactive drugs might have. Sick people with distressing symptoms have in most countries been unable, until very recently, to benefit from medicinal cannabis

because of obstacles created by drug prohibition. The pathway is still cluttered with bureaucratic hurdles to common sense.

A harm reduction approach to drugs would facilitate the use of Heroin Assisted Treatment (HAT) for a small minority of people with severe heroin dependence who have not benefitted from all previous diverse treatments. HAT involves the supervised provision of prescribed pharmaceutical heroin together with intensive psychosocial interventions. Research involving more than 1,500 subjects in six countries has shown that this is an effective, safe and cost-effective intervention. It is now provided in a number of countries including Switzerland, the Netherlands, Germany, Spain, Denmark, the United Kingdom and Canada.

An ideal drug policy would be based on strong scientific evidence and be protective of human rights. In contrast to the 'top down' and secretive processes of global drug prohibition, ideal drug policies should be 'bottom up', that is, inclusive, democratic and transparent. Apart from UN and government officials, policy development should also include people who use drugs, their families, researchers, clinicians and law enforcement officers.

Drug prohibition involves a one-size-fits-all, universal approach. A public health and rights-based drug policy should recognise the vast differences between nations and allow countries to determine what drug policy is most appropriate for their specific conditions.

An ideal drug policy would maximise the benefits of scarce resources by ensuring that interventions would be selected according to evidence of effectiveness, lack of serious side effects and cost effectiveness. Policy makers should try to maximise the return on investment by maximising the allocative efficiency of the distribution of funding to supply reduction, harm reduction and demand reduction.

An ideal drug policy would still impose sanctions on people convicted of producing, transporting, selling, purchasing or possessing substantial unsanctioned quantities of currently illegal drugs just as these same activities involving legal drugs are punished.

But the number of people arrested or convicted of offences involving currently illicit drugs should be as few as possible. The aim should be to try to undermine the market for currently illicit drugs by economic means rather than through criminal sanctions. Consequently, few if any prison inmates should be serving sentences for drug related offences. But criminal sanctions are sometimes imposed on people who produce, transport or possess unsanctioned and large quantities of legal drugs. Why should currently illegal drugs be handled differently?

An ideal drug policy would accept that there will always be a number of people who want to use psychoactive drugs. As much as possible, this demand should be supplied by regulated sources. Policy makers should try to discourage the use of more dangerous drugs and where possible try to replace these with less harmful drugs.

There will always be a part of the drug market which is unregulated. The best that can be achieved is to minimise the unregulated part of the drug market.

But demand and supply will still have to meet somewhere. In Australia until 1906, edible opium was taxed, regulated and lawfully sold. In the USA until 1903, Coca Cola contained cocaine. In 2013, New Zealand operated a system of regulated supply of certain approved psychoactive substances for almost a year. Identifying drugs that will more or less satisfy demand while also being reasonably acceptable to the community will be a difficult challenge. But it can be done.

Methadone is an example of a drug that is more or less acceptable to people who prefer heroin. In the case of methadone, the supply is

controlled by medical prescription and often, direct supervision of dispensing. Some low risk drugs might be identified that could be sold in small quantities. Coca tea bags are sold in some South American countries. Cannabis is now taxed and regulated in a growing number of states in the USA.

Corruption is an inevitable cost of drug prohibition. An ideal drug policy would also aim to minimise or even eliminate corruption associated with drug policy.

Efforts to reduce the demand for drugs by mass campaigns or school-based interventions have only had modest benefits. But the generally higher prevalence of illicit drug use and problems in countries with greater disparities of income and wealth should prompt policy makers to support measures to reduce inequality. This can be achieved by reforms to taxation, welfare and education.

Even with an ideal drug policy, there will still be some drug-related deaths and disease. Our goal should be to minimise the health, social and economic cost of all psychoactive drug use. Minimising the size of the black market will be critical to efforts to minimise the costs of drug use. But minimising the black market will only be possible if the white market for drugs is expanded.

At the heart of this issue are economic and political forces pulling in opposite directions. For the last century, political forces have prevented the establishment of a viable supply system, while economic forces unleashed by a dynamic black market have ensured that drug prohibition was doomed to fail.

An ideal drug policy will somehow allow the square peg of economic forces to fit in the round hole of political forces.

MICK PALMER.

A handwritten signature in black ink, appearing to read 'Mick Palmer', written in a cursive style.

Former Commissioner AFP. Emeritus Director of Australia 21  
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