



New Zealand Police Association, Te Aka Hāpai

Submission on the Misuse of Drugs Amendment Bill

# **Misuse of Drugs Amendment Bill**

**Submission of the  
New Zealand Police Association,  
Te Aka Hāpai**

Submitted to the Health Select Committee

[11 April 2019]



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on the  
Misuse of Drugs Amendment Bill**

**About the Police Association**

The New Zealand Police Association, Te Aka Hāpai (the Association) is a voluntary service organisation representing 9500 constabulary members across all ranks, and 2500 Police employees. Association members are generally very active in engaging in debate and discussion within the Association on matters relevant to policing. The high engagement level of the membership is critical to the Association's ability to speak and act credibly on behalf of members.

**Introduction and general comment**

- 1) The New Zealand Police Association welcomes the principle behind the government's legislative initiative to address the scourge of synthetic drugs in New Zealand as a major health issue.
- 2) The association has on a number of occasions, voiced concern at the lethality of the synthetic drugs available in New Zealand, and the tardy political response to the deaths of more than 55 people in the last two years, thought to be linked to 5RF-ADB and AMB-FUBINACA.
- 3) The association supports the commitment to classification of these drugs as Class A, and the creation of a temporary drug classification, CI, designed to enable a more simple process for bringing new harmful drugs under the Misuse of Drugs Act.
- 4) The association also supports the legislation's intent to go after the manufacturers and suppliers of these lethal synthetic drugs, and give police emergency powers to use electronic surveillance during synthetic drug investigations.



## Police discretion

- 5) By its very nature modern policing involves use of discretion in that officers must constantly exercise choice and/or judgement “whether to investigate, to question, to search, to arrest, to caution, to charge, to prosecute.”<sup>1</sup>
- 6) The association is highly attuned to the individual and societal benefits of the application of discretion.
- 7) However, it is also aware of the problems for individual officers in cases when their application of discretion is questioned, or not upheld. Officers can face accusations of discrimination and/or prejudice. This is particularly so when they are labelled part of the problem rather than the solution, with respect to the reality that while Māori make up 15 per cent of the general population, they account for 50 per cent of the prison population.
- 8) Effectively this bill codifies Police discretion, moving it from a presumption of prosecution to a presumption of non-prosecution. The association does not believe there is a need for inclusion of **section 7(5)** which merely affirms what is already established practice, and reinforced by the Solicitor General’s guidelines.
- 9) Police use of discretion follows very clear guidelines to determine whether a prosecution is appropriate for the particular person and whether a prosecution would be in the public interest – similar to elements of section 59(4) of the Crimes Act 1961, as set out in this bill.
- 10) This Misuse of Drugs Amendment Bill places officers at the forefront of decriminalisation, whereas if parliament is determined to ensure people are not prosecuted for personal possession of all controlled drugs, or for supplying Class C drugs, then that is the law change that should be made.
- 11) With respect to cannabis, New Zealand Police practise of discretion-in-action is documented in Massey University research where Dr Chris Wilkins notes apprehensions for cannabis use declined by 70 per cent between 1994 and 2014, and about half of all arrests now result in warnings only.<sup>2</sup>

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<sup>1</sup> Galligan D, “Regulating Pre-Trial Decisions” in Lacey N (ed), *A Reader on Criminal Justice* (OUP, 1994) p 151.

<sup>2</sup> Wilkins C, Prasad J, Rychert M, Romeo J, Graydon-Guy T, “Options for Cannabis Law Reform in New Zealand”, *SHORE & Whariki Research Centre, College of Health, Massey University*, 2018.

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- 12) Discretionary powers are permissive, not mandatory and for public sector officials discretion must be applied legally, “reasonably, impartially and avoiding oppression, injustice or improper discrimination.”<sup>3</sup>
- 13) The Association submits that this bill adds an extra burden to Police use of discretion because, in the spirit of the legislation’s emphasis on health outcomes, officers will be relying on access to addiction treatment and other health-centred or therapeutic facilities for those they deal with who are suffering from drug addiction, mental and health issues.
- 14) It should also be noted however, that experience on the front line tells us that a large number of those who are apprehended by Police for possession of drugs, would not fit a clinical definition of an addict requiring referral to addiction treatment programmes.
- 15) This reinforces the association’s concern that this bill is effectively decriminalising all drugs for personal use and tasking front line Police officers with enacting that.
- 16) With respect to those who do need drug rehabilitation and other forms of health care, officers know such facilities are scarce and not consistently available throughout New Zealand. Officers also know police cells are no substitute for health care.
- 17) The government must therefore prioritise its \$16.6m commitment to community addiction treatment services and make sure sufficient services are in place at the time this legislation takes effect.
- 18) The association supports **section 7(6)** which reconfirms the public interest test and adds as a relevant matter, consideration as to whether a health-centred or therapeutic approach would be more beneficial than a prosecution for the individual concerned.
- 19) In the spirit of **section 7(6)**, the association therefore asks the committee to include in this legislation a clear process for referrals to health and/or addiction services when they are deemed necessary by Police officers dealing with those who would, under a punitive approach, be arrested. In this

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<sup>3</sup> Editorial “Privacy Not a Shield Against Legitimate Scrutiny, *Volume 10, Issue 2, June 2004*, general [http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/87/10-2.pdf](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/87/10-2.pdf)



way parliament will demonstrate its support for the position officers are bound to find themselves in when applying the discretion this legislation calls on them to.

## Summary

- 20) The Police Association welcomes this bill's balance between a health-based rather than punitive approach to the users of synthetic drugs, and harsher penalties for manufacturers and suppliers.
- 21) This submission makes it clear that the association has legitimate concerns about the responsibilities placed on Police officers dealing with drug users. Discretion is an established part of modern policing and it is a progressive step for individuals and the public interest, but it is not without its issues in terms of consistency in its application throughout the country.
- 22) The association does not want officers, 99 per cent of whom are association members, to be placed in situations which have all the good intent, but no detail (so far) as to how officers are to make the referrals that they need to in the proper application of discretion.

**Please note: Police Association President Chris Cahill would appreciate appearing before the Health Select Committee to speak to the points in this submission, and answer any questions the committee members may have.**