

Beyond the rhetoric:

Converting political doctrine into pragmatic drug policy reform

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March, 2007

Abstract: The politicised nature of drug policy frequently gives rise to mockery and vexation. While political support is essential, all too often politicians are blamed for ignoring the evidence-base or adopting populist policies. This has contributed to a somewhat simplistic view that politicians and pragmatism are at odds. The following paper examines the emergence of a pragmatic reform, the Illicit Drug Diversion Initiative (IDDI), which developed in Australia in 1999. The IDDI developed not only through a political venue, namely the Prime Ministers Office, but in spite of the political rhetoric of “Tough on Drugs”. This paper examines how and why the IDDI emerged, and why, in short, a pragmatic reform emerged against the rhetoric. It draws upon interviews with expert policy makers involved in the advocacy and negotiations preceding the development of the IDDI to highlight how in spite of a highly politicised environment, policy advocates converted an initial proposal for zero tolerance into a more humane drug diversion response. This paper contends that political rhetoric and politicisation is less important in obtaining reform, than the capacity to build persuasive arguments. It concludes that contrary to popular opinion heightened politicisation may in fact increase the potential to adopt pragmatic reforms. Implications for more effective advocacy are discussed.

Acknowledgements

This work was funded through an Australian Post-graduate Award. It draws upon doctoral research undertaken through the Department of Criminology, The University of Melbourne. Thanks to my colleague Assoc Professor Steve James from the University of Melbourne for his generous feedback, and the two anonymous reviewers of my PhD.

Introduction

The politicised nature of illicit drug policy frequently gives rise to vexation and mockery. History abounds with examples whereby pragmatic policies have been ignored in favour of populist but often more counter-productive policies . Arguably, the most notorious in recent years has been the failed proposal for a heroin trial in the ACT, Australia. In 1997 despite the support of all states and territories and the federal health minister, Prime Minister John Howard blocked the necessary importation of heroin, and hence the trial, for reasons summed up by Dr Alex Wodak:

Six years of careful scientific work on a significant community problem, widespread consultation, publications in peer-reviewed journals, openness to scientific scrutiny, support by the Australian Medical Association, presidents of medical colleges, numerous leaders of the medical profession, police commissioners, directors of public prosecution and a royal commission are not enough. An important, but controversial, scientific research project will be brought down politically if opposed by 51% of respondents in a community opinion poll and if subjected to a relentless campaign of media vilification and misinformation .

In short, political objectives took precedence over evidence.

While it is clear that “what works” often doesn’t coincide with political imperatives¹, cases such as this have contributed to the simplistic view that politicians and pragmatism are inevitably at odds . Moreover, due to the inherent belief that politicisation will decrease the potential for evidence-based policy making, politicisation of drug policy making is seen by most nations as undesirable . Australia is one such nation that has prided itself on the bipartisan and relatively non-political process of drug policy making. As Fitzgerald and Swards stated for almost twenty years Australian drug policy involved “the deliberate avoidance of electoral politics and public conflict.” Yet, changes following the blocking of the ACT heroin trial, including the introduction of a federal Coalition “Tough on Drugs” strategy and new bodies of policy advice, were heralded with fears of abstinence-based “centralised executive decision making through the Prime Minister’s Office” . Certainly such bodies increased the potential for politically-led policy making, but ought such changes, or indeed politicisation more generally, be deemed to reduce the potential for pragmatic reform?

¹ The reasons for the variable role of evidence are well documented, including differences in accountability of politicians (to the public) versus researchers (to the academic community) which in turn affects how politicians and researchers assess the value of evidence. See for example and

History has shown that in spite of the constraints politicians do adopt pragmatic reforms. Moreover, some pragmatic reforms appear to be adopted in spite of the political rhetoric. One such example was the Illicit Drug Diversion Initiative (IDDI) that developed in 1999 through the Prime Minister's Office in Australia. Such a reform reflects the international evidence base, and shift away from the traditional criminal justice response to drug users . Under the scheme approximately sixty thousand first and second time illicit drug users have been diverted by police and courts to drug education and treatment, instead of the traditional criminal justice system.² Such a reform has the potential to decrease drug use and crime and is subject to ongoing review, but of greater interest for the current paper is that such a reform was adopted in a political climate of "Tough on Drugs." Despite the rhetoric, the IDDI is as noted by Gino Vumbaca, essentially pragmatic:

"It is probably the centrepiece of the "Tough on Drugs" strategy so it should mean "Tough on Drugs", but what it actually does is provides what most people see as the humane option."

Gino Vumbaca – ANCD

Such a reform poses the question as to *why* and *how* a pragmatic reform emerged.

Understanding the limits and potential of politicisation is critical to working within the politicised environment of drug policy. Yet drug policy researchers to date have tended to shy away from examination of the process of drug policy development . Studies that have contrasted successful and unsuccessful proposals have tended to identify "political receptivity" as *the* essential driver for pragmatic reform, yet what drives political receptivity remains unclear . This paper seeks to utilise the development of the IDDI to delve into the policy making process and move towards a more nuanced understanding of the relationship between politicians and evidence. Such knowledge is critical to enhance the likelihood of pragmatic reforms. Through examining firstly the proposed and resulting reform, and then weaving together the process through which the IDDI emerged, it concludes that the IDDI represents the conversion of a doctrinal into a pragmatic reform, and that politicisation ultimately facilitated the adoption of drug diversion.

² Exact figures are on the number of individuals diverted through police and court drug diversion are not publicly available, but the Alcohol and Other Drugs Treatment Services-National Minimum Data Sets (AODTS-NMDS) suggest over 10,000 individuals are diverted per year.

Methodology

This paper draws upon data gathered through interviews with key informants from the Australian drug policy arena between March and September 2005. This research was approved by the University of Melbourne's Human Research Ethic Committee no. 040105. The Australian National Council on Drugs (ANCD) identified key stakeholders from the Australian drug policy arena, particularly those who were involved in the development of the IDDI. Requests for interviews were sent to 30 stakeholders of whom 16 (male=14, female=2) participated in semi-structured interviews. While a small sample, this represented individuals who were integrally involved in Australian drug policy and the development of the IDDI, individuals who therefore provide highly qualified views. Key informants were derived from five key areas: the health sector; criminal justice sector; bureaucracy; non-government sector; and academia. Interviews were digitally recorded and key informants were sent copies of transcripts of their interviews to review the accuracy of the data. This data was then thematically coded. The views of key informants were supplemented where possible by publicly available accounts from media, political and academic sources.

Results

The evolution of the IDDI

Policy makers provided alternate views on why and how a drug diversion scheme evolved from the Prime Minister's Office. Members of the Prime Minister's Office contended that their intention was always to introduce a diversionary scheme:

The idea of the Diversion Initiative has been in my mind ever since we started the Tough on Drugs back in 1997 although it didn't get off the ground until 1999.

John Perrin – Prime Minister's Office – [4]

In contrast, individuals involved in private negotiations conducted within the Prime Minister's Office provided a different perspective. They contended that the initial proposals were to introduce a doctrinal, zero tolerance approach, characterised by *increased* law enforcement towards drug users:

I think there were some very senior political figures who had a mind to do something about it nationally, wanted to fund a response to that concern and who among other things gave consideration to increasing the capacity of the states and territories around law enforcement and incarceration including the potential to just increase bin space, you know increase jail.

DC – ANCD – [8]

From this more nuanced perspective drug diversion represents the conversion of a doctrinal into a more pragmatic reform. To understand how and why drug diversion evolved it is necessary to examine the dominant drivers and the methods of advocacy utilised in the years preceding the adoption of the IDDI. As the following section will show the desire for a doctrinal response to the “drug problem” was driven by crises and public concern, but the emergence of a pragmatic response was driven through the actions of experts, using a pre-developed evidence-based proposal.

Driving a doctrinal response

In the late 1990s a number of crises contributed to public and political concern over the “drug problem.” Heroin overdose escalated to a peak of 958 fatal overdoses in 1999 . This represented a rate of 112.5 per million persons and meant heroin overdose was the third greatest cause of death in Australia amongst 25-35 year olds . This gave rise to a public health crisis:

It was a crisis, we were losing 1,200 or 1,300 kids a year and drug use was expanding and people were worried, a horrible fear of the knock on the door late at night to say...

Brian Watters – Former ANCD Chair – [12]

At the same time as the link between drug use and crime became more documented , and up to 70% of crime and 80% of property offences was reported as drug-related , community concern increased over the so-called “drugs-crime” nexus. Finally, the pragmatic realities of a burgeoning criminal justice system and increased cost and demands on time and resources provoked introspection by the criminal justice system:

You will find that the large numbers of people going through for low-level drug offences has expanded the criminal justice system so what we are trying to do is streamline it..... As a prosecutor I remember I prosecuted in Prahran 140 briefs before court, in court one on one day. That is what police do everyday of the week. That is the sort of volume that we see in court, the system doesn't cope with that. There has to be a better way.

K - Victoria Police – [9]

Such crises sparked increasing pressure for politicians and law enforcement officers to consider new responses to illicit drug users:

It didn't change the policy of drugs, what it did do was it focused politicians' and governments' minds on we need to do something about this, 1000 people dying, this can't continue.

Gino Vumbaca – ANCD – [7]

The heroin overdose crisis sparked considerable media attention with fierce debate about the best means of responding, the most topical of which concerned the provision of naltrexone, heroin trials, safe injecting facilities and zero tolerance . The call for heroin trials was taken up by the Victorian Premier Jeff Kennett, who increasingly called on Prime Minister John Howard to enable a heroin trial . Indeed one of the issues of the COAG meeting was to have been the heroin trial, specifically the proposal from Victorian Premier Jeff Kennett. Such a response was however antithesis to the Federal Coalition, who blocked the proposed trial in 1997, and continued to remain firmly opposed: “The last thing they wanted to do was be perceived to be liberal, not just to be perceived, but to be liberal.” (Professor John Saunders – Health Professional/ANCD member – [6]) Consequently, the states, territory and federal governments were at a bit of a standstill over the issue, a situation that was clearly summed up by Walker one month prior to the COAG meeting:

Grappling with heroin, as a policy issue, is something akin to herding cats. There are a host of conflicting legal, health, social, behavioural and moral concerns. The pyrotechnics between John Howard and Victoria's Jeff Kennett over zero tolerance policing and controlled heroin trials reflects a wider uncertainty as to how to proceed..... While the PM was continuing to insist yesterday that he was open to ideas - this, after all, is his rationale for putting heroin on the agenda of April's Premier's Conference - he has firmly slammed the door on the controlled trial. Staking out his position, Howard said on Wednesday: "Yes, I am looking for constructive alternatives but the views that I have on a heroin trial have not changed."

The push by drug law reformers and Premiers throughout 1998-99 to introduce safe injecting facilities, heroin trials and cannabis decriminalisation created a political imperative for the Federal Government to respond to the drug problem. Moreover, media debates from March 1999 showed increasing pressure on John Howard to seize the initiative . Analysis of talk back by Alan Jones and callers to radio station 2UE suggested a shift in public opinion *towards* heroin trials. This led to the conclusion that "the callers are not necessarily embracing the heroin trials but they are strongly against the Government strategy of doing nothing" .

This context appeared to drive political desire for a response, and hence produce a political window for reform. However, there was also a strong desire for a response that maintained a firm signal about the unacceptability of illicit drug use, and hence to turn around the drug law reform push in a politically acceptable manner:

I think there was a cry for new approaches and a re-evaluation, "how can we do it better and how can we turn this thing around without giving in to a call for what was really a decriminalisation?"

Brian Watters – Former ANCD head – [12]

In short, this gave rise to an initial response of a doctrinal solution: to increase law enforcement and show zero tolerance to illicit drug users. Yet due to the presence of three key drivers a doctrinal response did not evolve. As the following section will show this included the presence of a pre-tested and evidence-based solution of drug diversion, increased law enforcement support and advocacy that capitalised upon the perceived need to introduce a swift response.

Driving a pragmatic response

The first driver of a pragmatic response was research. Questions have long been asked in Australia about the effectiveness of drug law enforcement and its impacts upon drug users . Research increasingly demonstrated that drug-law enforcement could have counter-productive impacts upon drug users through encouraging unsafe using practices such as needle sharing . State, territory and Commonwealth inquiries called

for non-criminal justice responses to drug users. Most notable was the report from the Penington Drug Advisory Committee in Victoria, which concluded that “some existing laws have created harms and costs greater than those that result from the drugs themselves,” and recommended cannabis decriminalisation and diversion of drug users from the criminal justice system.

At the same time, researchers outlined the strengths and technical feasibility of non-criminal justice responses. A notable study was commissioned into drug diversion in 1994 by the National Drug Crime Prevention Fund. Undertaken by the Alcohol and other Drugs Council of Australia (ADCA) it resulted in the identification of strengths, challenges and best practice principles of drug diversion. Drug diversion was deemed to have considerable benefits, including the avoidance of a disproportionate response to drug users, increased partnerships between health and law enforcement sectors, increased consistency and accountability of law enforcement response, and the provision of a more cost-efficient, humane and potentially effective response. In particular it was noted that drug treatment offered much better returns for investment, with estimates that \$1 invested in drug treatment was equivalent to \$7 invested in supply reduction.³ Further, drug diversion offered the potential to decrease use or harmful drug use, increase individual and public health, and reduce drug-related crime. In short, studies contended that drug diversion could provide a more effective response.

The ADCA study also noted that a major barrier to the expansion of drug diversion was political and law enforcement reticence. In 1997 while the proposal for drug diversion was filtered through to the Prime Ministers Office and placed on the MCDS agenda, the proposal was not enacted at this time. Overcoming the perception that drug diversion was a “soft” option remained an impediment to the expansion of drug diversion. Nevertheless, the research and prior work provided a pre-developed evidence-based solution. As circumstances changed, a pragmatic solution became increasingly likely.

³ It should be noted that the estimate of returns for investment has been subject to some dispute, due primarily to the methodology used by Rydell and Everingham. See for example
Nevertheless, such research contributed towards acceptance of the benefits of alternate responses.

The second driver was increased law enforcement support. Following the increasing research, particularly the Penington and ADCA studies, support by the law enforcement sector increased in Victoria. This led to the trial of the Victorian Police Cannabis Cautioning Program in July 1997 and the Illicit Drug Diversion Pilot in July 1998. Victoria Police members contend this willingness was spurred by increasing knowledge of the harms of a criminal record:

We were to arrest people for small amounts of cannabis, they went into the criminal justice system, they would get virtually no penalty but it would be a harm maximisation of the system because they couldn't travel, they couldn't get jobs, there were a range of harms associated with that. We weren't breaking the cycle of drugs.

K - Victoria Police- [4]

The launch, particularly of the Illicit Drug Diversion Pilot, was seen as very bold and innovative. It was also counter to the political climate of the time and therefore sparked some criticism of Victoria Police. This move saw Victoria Police Commissioner Neil Comrie portrayed as a “reluctant drug reformer”:

He [Police Commissioner Neil Comrie] is the driving force behind the most radical realignment in drug policing yet to be attempted in this country – a pilot scheme to caution, rather than prosecute, heroin and other hard drug users. That it is the police, not politicians, who are setting the pace speaks volumes. Since John Howard toppled the controversial ACT heroin trial the issue has disappeared from the political agenda.

Both pilots were deemed successful by Victoria Police. During the five month trial of Cannabis Cautioning 97 people were cautioned, of whom 19 (20%) re-offended . This led Victoria Police to conclude that cautioning was a significant deterrent to first time offenders, and a means of saving police time and resources. The Illicit Drug Diversion Pilot was similarly deemed a success: “It is a practical and strategic response to an often intractable problem” . Since they spurred advocacy by Victoria Police for Commonwealth funding and reduced law enforcement opposition within other states and territories, such pilots became increasingly important in the latter push to expand drug diversion:

Well we had the tool, we'd already done it and we'd already done an in-house evaluation to say it worked. So we had something on the table to offer

Paul Ditchburn – Victoria Police – [5]

From a political perspective they also demonstrated the technical and political feasibility of drug diversion.

The third and arguably most important driver was the policy advocates. Experts from the ANCD were involved in closed discussions led by the Prime Ministers Office. They played a key role questioning doctrinal proposals, and encouraging consideration of not only political, but also pragmatic considerations:

I sat on some high level committees where it was amazing the primitive, political conservative ideas that were constantly being put forward and had to be prevented from dominating; unrealistic, stupid ideas. I will never forget that I was part of a high level committee chaired by Max Moore-Wilton and in the public service. All the heads of department acquiesced to the Prime Minister's department but I happened to be involved as an independent person with [ANCD members]. We changed the dynamics of those meetings, so that people would realise that a, they had people there who knew what was going on and b, it enabled government departments to say, instead of being just quiet, saying this is what we do. The dialogue changed so that public servants were more open about what the problem would be and what should be done.

Ian Webster – Health Professional/ANCD – [9]

In particular they argued that a zero tolerance approach could be counterproductive for drug users:

The early knee-jerk reaction was to increase law enforcement as a response to this but then a recognition or senior politicians were persuaded that these are young people for whom a law enforcement response alone was inadequate and may actually be dysfunctional.

DC – ANCD – [8]

Through doing so they facilitated a more evidence-influenced style of policy formulation. This increased the chances that a doctrinal reform was not adopted.

Moreover, such advocacy was supplemented by arguments *for* drug diversion. Following their study into drug diversion, ADCA designed strategies to facilitate the expansion of drug diversion. This resulted in a grass-roots campaign in 1997 that “treatment works,” and advocacy to leading bureaucrats and politicians, including the Prime Minister's Office on the long term benefits to drug diversion. Such advocacy was led by David Crosbie, the then CEO of ADCA:

There was a concerted advocacy around how this was going to be a, we tried to market it as a win for everybody, politics 101 there are no losers here, this is a win for everybody, it may cost a bit but in the longer term it actually saves money. I have to say the Prime Minister was receptive and so were people in his office.

David Crosbie – Former CEO of ADCA – [8]

In 1999 such advocacy became more persuasive, since it was contended that the pre-developed pragmatic proposal of drug diversion could resolve community concern and hence the rising political problem:

When I talked with them drugs were in the top five priorities for people in the community so they needed to be seen to be doing something about drugs. Crime was also up there and we were basically saying you could be seen to be showing real leadership on both drugs and crime and at the same time reducing expenditure on prisons and enforcement....

David Crosbie – Former CEO of ADCA – [9]

Moreover, policy advocates contended that drug diversion could fit the “Tough on Drugs” rhetoric. The pre-developed solution of drug diversion was promoted as “Tough on Drug Traffickers,” and even “Tough on Users” since it maintained criminal laws and introduced a “social contract” for drug users.⁴ Drug diversion could therefore send the message to the community that the Federal Coalition was not “soft” on drugs, and was within the operating platform:

Diversion was within the operating platform where you could still be seen to be tough, having laws in place but doing the nice thing, trying to divert people to treatment as a better option.

Ian Webster – Health professional/ANCD member – [5]

This appeared critical to enhance the acceptability of the pre-developed evidence-based proposal. In this context drug diversion appeared a good political compromise: it was not only evidence-based but also a politically acceptable option. Consequently, the doctrinal proposal was converted into a pragmatic reform and was followed by the provision of \$325 million in federal funding.

Discussion

Given that drug diversion “flies in the face of the rhetoric” of Tough on Drugs, ADCA’s proposal for drug diversion was unlikely to have been adopted through the Prime Minister’s Office. This was particularly given the initial proposal for “zero tolerance” towards drug users. The adoption of the IDDI was therefore a masterful piece of persuasion, since it not only converted a doctrinal reform – zero tolerance – into a more humane and potentially more effective response, but was adopted against

⁴ The notion of a social contract reflected the Federal Coalition emphasis upon individual responsibility. Similar to work for the dole schemes, drug diversion was promoted as a means for the government to provide drug users with a chance, but it was then up to the individual drug user to “take responsibility” and face up to their drug problem. See for example

the rhetoric of “Tough on Drugs:” Given this turnaround even those who had concerns over the initiative, have supported the policy making process:

I think if you'd left it with the knee-jerk you would have had a much more law enforcement, justice, corrections response. I think what we've ended up with is not a bad mixture given where we could have ended up.

DC – ANCD – [8-9]

While the development of the IDDI represented the culmination of factors, it was the advocacy of experts that was most critical in the conversion from a doctrinal reform. Their advocacy was persuasive since it capitalised on the context and showed the technical and political feasibility of the pre-developed solution. But it was also persuasive due to the methods of advocacy utilised, particularly the venue and messages or images promoted. Principally, advocacy reflected what the Baumgartner and Jones , theorists of Punctuated Equilibrium, term strategic advocacy. It occurred direct to the Prime Minister's Office, not to the public or to the dominant venues of policy making such as the Ministerial Council on Drug Strategy.

Advantages and disadvantages to policy making through political venues

Advocating for drug diversion through the political venue of the Prime Minister's Office had a number of advantages. The expansion of drug diversion necessitated overcoming key impediments of political and law enforcement reticence and acquiring funding. Obtaining drug diversion through the Prime Minister's Office enabled the provision of a national framework and considerable funding. Further, the politicised context of heightened pressure for a political response, created an environment in which a pragmatic reform, that was previously unlikely to be adopted, became more attractive. The context therefore facilitated a swift and pragmatic policy agreement.

There are multiple venues for advocacy, but the primary benefit of political venues is increased access to decision makers and money. Moreover in a federal nation like Australia political venues increase the capacity for a swift response. Further, this research suggests that policy advocates may be able to utilise political venues to obtain reform with less conclusive evidence or with reduced levels of consensus, particularly if advocacy occurs during periods of heightened community concern. In the development of the IDDI there was some dispute over the likelihood of obtaining the predicted benefits , and indeed support from the health sector was largely lacking.

Such may have proved obstacles to reform through normal mechanisms of policy making, but were less so in the Prime Minister's Office. The primary advantage of politicisation is therefore that it increases the capacity for experts to build persuasive arguments, and the political receptivity to pragmatic proposals.

However, political venues of policy making also have some limitations. The political opportunity through the Tough on Drugs strategy constrained the type of response that could emerge. The need to at least appear "tough" meant it would not have been possible, in the arena of the Prime Minister's Office, to have challenged the necessity of criminal penalties for drug users. Most importantly the development through the Prime Minister's Office meant that the initiative had to fit the political mandate. Further, such a venue could only have been used by individuals who had access to the Prime Minister's Office and were prepared and able to advocate effectively.

Conclusion

This research has shown that the presence of pre-developed solutions can assist in the conversion of doctrinal proposals to pragmatic reforms. Ultimately, however enhancing political receptivity to "what works" demands strategic advocacy and persuasion, not simply greater promotion of the research. Policy actors are therefore critical in *how* proposals are shaped. The challenge is to better understand *how* to capitalise upon political opportunities and how to mesh the politic and evidence. Contrary to dominant perceptions, this research has demonstrated that political venues and politicisation can increase opportunities for drug policy reform. Future research is needed into how to better use opportunities such as the emergence of and political success of Tough on Drugs, to maximise opportunities for pragmatic reforms. Moreover, this research suggests that the expansion of governance arrangements beyond the traditional bureaucracy, particularly into political arenas, may be advantageous. New bodies such as the Australian National Council on Drugs may increase the capacity for political decision making, but also the capacity to *input* expert advice. While it would be foolish to ignore or downplay the disadvantages to such forms of policy making, this research contends that greater attention to the advantages of political venues and politicisation is warranted. Most importantly this research points to the need for greater understanding of the powers of persuasive advocacy, since ultimately it was the power of persuasion, not the evidence that gave rise to the IDDI. Given the political arena in which illicit drug policy is devised and

the obvious success of political rhetoric, the challenge is for researchers and policy advocates to see how they too can use such rhetoric, to facilitate policy making beyond the rhetoric.

