

Families and Friends for Drug Law Reform (ACT) Inc.

committed to preventing tragedy that arises from illicit drug use

PO Box 36, HIGGINS ACT 2615, Telephone (02) 6254 2961

Email mcconnell@ffdlr.org.au Web <http://www.ffdlr.org.au>

NEWSLETTER

March 06

ISSN 1444-200

IMPORTANT PLEASE NOTE:

**Date and time of next meeting has
been changed**

**Instead you are invited to attend a public
meeting organised by
Families and Friends for Drug Law Reform
&
The Australian Parliamentary Group for
Drug Law Reform**

**on
Thursday 30th March
12.30pm**

**at the Legislative Assembly
(sponsored by Mary Porter, MLA)**

Topic:

**Methamphetamines, Mental Health
and Drug Law Reform**

Speaker:

**Andrew Macintosh, Deputy Director
of the Australia Institute**

**(for more information see enclosed leaflet and
further information in this newsletter.**

airport on their way back to Australia with the heroin strapped to their body.

The AFP knew that for the young people to be caught in Bali under Indonesian law for drug smuggling exposed them to the death penalty. But the Australian Government has an official policy of opposition to the death penalty!

Although the family's lawyer said he had contacted an AFP officer and asked that Scott be stopped from boarding the plane to Bali. The AFP did not do that and Commissioner Keelty claimed to have no knowledge of the request. The AFP said they had no authority to stop Scott from boarding the plane and in any case it would have jeopardised their operation.

MIKE PHELAN, AUSTRALIAN FEDERAL POLICE: [Scott Rush] was not approached when he was at the airport, and that is common practice. The AFP in the first instance, had no lawful authority to stop Scott Rush. He is an adult. So, then you have to look at the next step. And that is will alerting someone disrupt the operational integrity of our investigation? Clearly, in this case, there was a risk that that would occur, therefore we wouldn't do it. (Australian Story, ABC)

The family naturally was very distressed and angry at the police's failure in this respect.

MIKE PHELAN, AUSTRALIAN FEDERAL POLICE: Well, I think it's... it's unfortunate that, er, you know, that people say that the AFP has blood on its hands. I think...I can understand the emotion in these... You know, I particularly understand it from the families. I understand it from certain, er, portions of the legal fraternity. I fully understand their position. But narcotics trafficking is a dirty business. If we talk about the young lives that have been destroyed by this, the people that have been arrested, there have also been a large number of young lives on the other side of the ledger that have been saved as a result of the AFP's operations over many years in interdicting, particularly heroin and other

Editorial

AFP and Bali 9

Many have mixed and sometimes strong feelings about the events surrounding the Bali 9 and their fate. Australian Story on the ABC presented a fairly balanced view from one family's perspective – that of Scott Rush. (Although there was some criticism that the ABC had not fully disclosed Scott Rush's previous criminal record. To which the ABC replied that to disclose such information when the appeal process had not been concluded could have exposed him to the death penalty.) It included interviews with family lawyers and with the Australian Federal Police (AFP).

Most will know the story but to recap: a group of nine young people traveled to Bali on a paid holiday and with a promise of a financial reward on their return for smuggling heroin back into Australia. Scott Rush's father became suspicious and talked to his lawyer who rang, whom he thought was the AFP, and asked them to stop Scott from flying out to Bali the AFP however advised the Indonesian police of the operation who in turn arrested the nine in the departure lounge at Bali

extremely harmful drugs, you know - in the thousands. Now, there are the parents and relatives of those thousands of people that we've helped. (Australian Story, ABC)

But having allowed the young man to go to Bali in the clear knowledge that he intended to traffic heroin back to Australia the AFP tipped off the Indonesian police who arrested Scott Rush and eight others at the last minute in the departure lounge at Bali airport as they waited for their plane back to Australia. (Of course it goes without saying that if our drug laws were different then the lives of the Bali 9 and those addicted to drugs would be very different than they are today.)

MIKE PHELAN, AUSTRALIAN FEDERAL POLICE: If you are supplying information to the Indonesian police, they cannot give that assurance [that the death penalty not apply]. It's the government level that can give that assurance. The government has made a conscious decision to leave those decisions prior to the charging of offenders to the AFP, and we are the ones that discharge that duty.

BOB MYERS, BARRISTER [for the Rush family]: As far as I'm concerned, Australian law is that no citizen of Australia, let alone Australian public servant, can expose another Australian citizen to the potential death penalty.

MIKE PHELAN, AUSTRALIAN FEDERAL POLICE: It was the AFP that supplied the information, you know. It was the alleged offenders that travelled to the country knowing that there was...you know, the penalties for drugs are death.

COLIN MCDONALD QC [for the Rush Family]: It's hard to make operational sense of what did occur. If it was to catch the big guys, that didn't happen. If it was to catch people here in Australia higher in the hierarchy in the drug scene, that didn't happen. Could they have been arrested in Australia? Yes, they could have. And did Indonesia get anything out of it? No. And did we as an Australian society get anything, really, out of it? Yes, some drugs were interdicted in Indonesia, but they would have been [interdicted] in Australia. And there was the potential to catch people who are higher up in the nefarious world of drugs, and that was lost.

MIKE PHELAN, AUSTRALIAN FEDERAL POLICE: The thing that is important here for everybody to realise is that even with the aid of hindsight, should the same set of circumstances present themselves again with another syndicate or other people, we would do exactly the same thing. (Australian Story, ABC)

The Rush family took the AFP to court claiming that they had acted unlawfully. Justice Finn found that the AFP had not acted unlawfully and dismissed the application. But he had this to say in his judgement:

The circumstances revealed in this application for preliminary discovery suggest there is a need for the Minister administering the Australian Federal Police Act 1979 (Cth) ("the AFP Act") and the Commissioner of Police to address the procedures and protocols followed by members of the Australian Federal Police ("AFP") when providing information to the police forces of another country in circumstances which predictably could result in the charging of a person with an offence that would expose that person to the risk of the death penalty in that country. Especially is this so where the person concerned is an Australian citizen and the information is provided in the course of a request being made by the AFP for assistance from that other country's police force.

There are many questions to be answered in respect of this affair. But the most significant one is "why did the AFP provide information to the Indonesian Police that they almost certainly knew would lead to the death penalty in that country when it is Government policy that Australia opposes the death penalty?" The police took a course of action that directly contradicted that government policy.

In a case that is unrelated but which exposes a stark contrast, a Chinese man has been arrested in China for the death of a young Chinese student in the ACT. The AFP, who undertake policing in the ACT under contract, have been instructed by the ACT Chief Minister not to provide assistance or information to the Chinese police until an assurance is given that the death penalty would not apply. The AFP has complied with that directive. Clearly in that case there was an awareness on the AFP's part of the position taken by the ACT government.

The Indonesian justice system operates differently to Australian. In Australia, as in Britain and the US, a person is arrested and then charged. In the Indonesian system, a "civil law" system, a person is first apprehended, the evidence is then gathered, a sentence is proposed and then the person is charged.

The provision of information and cooperation between countries operates on a series of memorandums of understanding (MOU). It would seem that the MOUs have been based on the assumption that all countries with which Australia exchanges information has been based on the system that applies in Australia and which says that cooperation will cease when a charge that carries the death penalty has been made.

In the case of Indonesia the charge comes last and after all the information and evidence has been gathered. Thus it is by design or default that the AFP has exposed Australian citizens to the death penalty. It matters not that the AFP was acting within the law and within its guidelines.

If it is by design then disciplinary action needs to be taken. If it is by default then the government needs to make it clear that the sanctity of human life should be upheld and that opposition to the death penalty should take primacy.

The Australia Institute completed and issued a report entitled "*Drug Law Reform: Beyond Prohibition*". The following is the Institute's media release and is followed by FFDLR's media release. A summary of the report can be found at www.tai.net.au.



5 March 2006

DRUGS POLICY FAILING New Directions Needed

Australia's 'Tough on Drugs' policy has failed to significantly reduce domestic drug markets or confront drug-related mental health disorders according to a new report from the Australia Institute.

The report, titled *Drug Law Reform: Beyond Prohibition*, by the Institute's Deputy Director, Andrew Macintosh, calls on governments to shift the emphasis in dealing with illicit drugs from law enforcement to treatment and prevention strategies. The issue of drug abuse needs to be confronted as a health rather than a legal problem.

"Four out of every five state and federal dollars allocated to dealing with illicit drug issues are going to law enforcement," Mr Macintosh said. "This hugely disproportionate spending of funds has not been accompanied by reductions in drug use and drug-related harm, but it has been accompanied by increased mental health and other social problems.

"Treatment on the other hand has been shown to substantially reduce drug and mental health problems and drug-related crime and corruption. Studies have shown that treatment is extremely cost effective, yielding savings of up to \$12 for every dollar invested."

Mr Macintosh said the Council of Australian Government's strategy to address mental health issues, which is due out in June, should adopt a treatment-oriented approach to drug misuse rather than the counterproductive stance currently espoused by the federal and several state governments.

"We are coming at the problem from the wrong way. Eighty per cent of people charged with drug offences in 2003/04 were charged for using drugs and 72 per cent of them were charged for using cannabis," Mr Macintosh said.

"This is back to front thinking. Users are at the end of the line. Moreover the statistics show that legal threats are not deterring them. Prevention and treatment programs within a health context hold far more promise."

The report finds that strict drug law enforcement policies have failed to dent illicit drug markets and have exacerbated the social cost of illicit drug use.

"There is much that is illusory in present claims to success in confronting the illicit drug trade," Mr Macintosh said. "The recent heroin drought for example is not so much the result of law enforcement but of a decision by heroin producers and traffickers to switch to methamphetamines. The Federal Government pats itself on the back for the decline in heroin use, while methamphetamine problems have increased dramatically."

"When you lay the facts on the table, they are indisputable. If we really want to get anywhere with this issue, we must start taking viable alternatives seriously."

FFDLR Media Release

DRUG POLICY: A PLEA TO PUT HEALTH AND WELL BEING FIRST

6 March 2006

"We plead with governments to abandon their drug policy that places law enforcement at the centre and pushes public health strategies to the margin," said Brian McConnell, President of Families and Friends for Drug Law Reform. "Drug policy is about the health of our young people yet what we are doing is arresting 75,000 of them each year and failing to prevent the drugs reaching them."

Mr McConnell was reacting to the Australia Institute report, "Drug Law Reform: Beyond Prohibition", that was released today. The Australia Institute, as governments' own experts warned, found:

- that in 1996 the Office of Strategic Crime Assessment warned that criminals would substitute methamphetamines for heroin because there was a growing shortage of it in South East Asia,
- in 2001 when the heroin drought was biting, the Australian Federal Police Commissioner warned that the same crime syndicates had cut back on heroin and were targeting the much bigger market of young people prepared to swallow a pill rather than inject a drug,
- that when crystal methamphetamine was first detected (about the time of the heroin drought) health professionals warned it would lead to violence and psychoses that was beyond the capacity of drug and mental health services to manage.

"It is time to change direction altogether and adopt a more public health approach that minimise the harm rather than focus almost exclusively on a law enforcement strategy," said Brian McConnell, "Many politicians are proposing tougher law enforcement but that has failed in the past and will continue to fail. More arrests and imprisonment of drug users is harm maximisation."

"We can now see that these chickens have come home to roost," said Mr McConnell.

- The 73,000 seriously impaired active injectors of heroin in 1999 have become 73,000 seriously impaired dependent methamphetamine users.
- Over half a million Australians have recently used methamphetamines or what was sold to them as the less harmful ecstasy but which often contains methamphetamine. That includes over 12% of 20-29 year olds.
- The mental health system has been brought to its knees.
- Families are in chaos attempting to reach out to their children who have lost track of reality through bingeing on the new potent drugs. Even professionals are finding it hard to cope.

"We plead with all governments to open their eyes to the facts. Please do not continue to look the other way, hoping the problem will go away or ineffectively attempting to force people to become drug free through the criminal justice system. It is not a time to focus on tougher laws, it is a time to focus on the health and well being of the whole person. We must act now, young people's lives and the wellbeing of society depend on it."

ABC FACING FURTHER UNDER-FUNDING

John Ley

The national broadcaster, the ABC, which has often given balanced and in-depth coverage to issues concerning drug policy, is facing a funding crisis - and needs the help of its supporters?

Between now and the Federal Budget in May, decisions will be made about how much the ABC will receive over the next three years.

Readers may not know that last year the ABC produced only 21 hours of Australian drama - an all time low -- compared with 100 hours five years ago when series such as *Sea Change* were screened to general acclaim. In earlier years drama series such as "Wild-side", which dealt realistically with drug issues, were made.

This is not the only cut in the ABC's programming. The ABC has been forced to make cuts in all areas because of inadequate funding. The outstanding, award-winning current affairs program *Four Corners* is now able to produce locally only 64% of its annual 41 programs. Savings are being made by buying significantly more programs from overseas broadcasters than previously.

Those who value the comprehensive broadcasting role of the ABC and don't want to see it eroded any further are being encouraged by the Friends of the ABC to write and let the decision-makers in Federal Cabinet know how they feel.

Friends of the ABC have set up a website to provide further information and some ideas about how supporters can help. This can be visited at www.noabcnoway.org.

John Ley is Vice-President of Families and Friends for Drug Law Reform and Public Officer, Friends of the ABC (ACT and Region)