

**THE WANING OF CLEAR THINKING IN DECISION MAKING:
THE CASE OF THE HEROIN TRIAL AND THE EFFECT OF LAW ENFORCEMENT ON THE
SUPPLY OF DRUGS**

by
W.M. Bush

Summary

This paper examines how irrationality, including the rejection of scientific method, characterises much of the drug debate. Examples include misquoting or misinterpreting the results of research. Certainty is often hard to come by in social science. Thus in the case of drug policy, we should be guided by the weight of evidence from research or other sources. This principle is frequently ignored in the drug debate. The article uses the Swiss heroin trial and the relationship of law enforcement to the causes of the Australian heroin drought as case studies to examine these themes.

The article gives as examples:

- the citation by the for Justice and Customs, Mr Ellison, of research of the NSW Bureau of Crime Statistics and Research as evidence that law enforcement had brought about the drought in spite of the fact that this point was not the subject of the Bureau's research;
- the attribution by the Federal Government of the drought to law enforcement rather than a range of other more likely causes revealed by law enforcement agencies including the existence of a commercial decision by Asian crime syndicates to promote amphetamine-like drugs rather than heroin; and
- the Prime Minister's dismissal of the accepted beneficial results of the Swiss heroin trial on the ground that the trial did not prove that those benefits arose from the heroin prescription as opposed to the other interventions that accompanied the prescription.

It makes the point that access to information and an environment in which the implications of information can be freely assessed and debated is necessary for rational decision making to prevail. This is threatened where agencies who have a monopoly of information are restrained from disclosing it and from engaging in a dispassionate analysis of it. These constraints appear to apply in the case of the Australian Federal Police that is directed to support the Government's *Tough on Drugs Strategy*. The current review of the National Crime Authority threatens to remove its capacity to provide independent assessments of the efficacy of law enforcement to control organised crime.

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“For judging of what you are by what you ought to be, I persuaded myself that you would not reject a reasonable proposition because it had nothing but its reason to recommend it.” (Edmund Burke on conciliation with the American colonies, delivered in the House of Commons, 22 March 1775.)

Clear thinking is a stranger to much current Australian political discourse. The gap between the intellectual rigour behind the computer we use, the human genome project or the Mars probe and its meagre application to the social problems that surround us has never been greater. We never question the need for uncompromising rigour behind the technology we use but do not think to apply it in assessing whether, for example, the federal government’s “Pacific solution” is the most cost-effective, not to mention humane, policy to reduce refugee flows. In the same way there is essentially no debate between both major parties in the forthcoming NSW elections about whether building more prisons and imposing severer penalties is the most effective means to reduce crime.

That technology applies the “hard” sciences and social issues call for the “soft” social sciences goes only some way to explain this different approach. By and large rational thinking of the social science of economics is regarded as very important in determining economic policy.

Drug policy throws up stark examples of irrational policy debate and of the spins used to undermine rational argument.

The approach of the federal government to two important issues furnishes examples. The issues are the causes of the heroin drought and its dismissal of a trial of prescription heroin. The heroin drought that became evident in Australia and no where else at the end of 2000 is a phenomenon of the greatest importance for drug policy. Coming as it did after years of rising heroin availability its causes merit the closest of study. The Government has claimed victory for law enforcement despite evidence that other external factors were more important.

The Government’s response to calls for an Australian trial of heroin prescription has also ignored the weight of evidence. Such a trial has been a matter of recurrent political controversy for 10 years. A Swiss trial reported reduced overdose deaths, improved health and social functioning of long-term dependent users and big reductions in crime. Those like the Prime Minister who oppose an Australian trial regard the step as a capitulation to drug use which sends the wrong message.

Misquoting research: the Minister for Justice and Customs and research of the NSW Bureau of Crime Statistics and Research

An obvious error is to state that research produced a certain finding when it did not. The Minister for Justice and Customs, Mr Ellison, did this in a media release of 18 October 2001 commenting on research issued by the NSW Bureau of Crime Statistics and Research on the heroin drought.¹ The release stated:

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“The Report also found: That key factors contributing to the heroin drought in Sydney include the record quantities of heroin seized by Australian law enforcement agencies and the arrest by the Australian Federal Police of significant figures in importing and distributing heroin in Australia” (Ellison (18/10/2001)).

In fact the report made no finding about the causes of the drought. It simply cited some views reported in the press and elsewhere. What it researched was the effect of the drought in Cabramatta on drug use, overdoses, health, access to treatment and crime. It included only speculation on the causes of the drought stating that: “The cause(s) of the heroin drought are not known with any great degree of certainty but there are probably a number of factors at work” (Weatherburn, Jones, Freeman & Makkai (October 2001) p. 2). It added that for the purpose of the research it did not “not matter whether the heroin drought has been caused by drug law enforcement, natural causes or some combination of the two.”²

The Minister was not alone in putting a spin on the report’s findings that was not supported by the actual research. A media release issued by the Bureau itself also gave a misleading impression of the research findings. The release quoted its director as saying that “[t]here are good reasons for believing that the heroin drought was at least partly caused by increased heroin seizures and the arrest of major heroin suppliers.” He added that “the findings . . . provide the first direct research evidence in Australia that drug law enforcement has the capacity to limit heroin use and the public health risks associated with it.”³

Since the study did not research the causes of the drought such claims can only have misled and confused the public on a major social issue. The incident also raises questions taken up later about the capacity to bring political influence to bear on research and other bodies by budgetary and other controls.

Choosing conclusions not supported by the weight of evidence: the origins of the Australian heroin drought

The above were examples of misquoting research. Misinterpreting research is a more subtle way of dismissing unfavourable findings. Propositions of social science are vulnerable to such mishandling because of the notorious difficulty in achieving scientific certainty. Evidence there may be, even strong evidence, but politicians can always seize on the uncertainty to dismiss the most likely proposition in favour of a less likely one that suits their purpose. In this they can take advantage of the cautious scepticism of the social scientists who, in the absence of proof, are trained to leave all possibilities open. It is all the more easy to dismiss a likely hypothesis at odds with accepted wisdom when there has been no methodical research and this is so even where there exists substantial “non-academic” evidence warranting careful examination of the hypothesis.

The Australian Federal Police have identified a number of factors responsible for the heroin drought. They included poor weather conditions in Burma from where most of Australia’s heroin is derived, intelligence that Asian crime syndicates had decided to push amphetamine-like drugs in Australia rather than heroin, that those syndicates have carried out market surveys that showed a potentially greater market for such

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drugs and law enforcement successes in terms of a high level of heroin seizures and conviction of a leading importer.

In contrast to the caution of the AFP in attributing the drought to “many factors and not just isolated ones”,⁴ the Government during and after the election has singled out the law enforcement of its “*Tough on drugs*” policy as the principal factor and thus claimed credit for the big reduction in overdose deaths that has accompanied the shortage.⁵ There has been no dispassionate assessment of the evidence. The Government has picked out law enforcement from a range of possible factors. It has not attempted to weigh the influence of all factors. Indeed, it omitted all mention of other factors. On the basis of publicly available evidence the most influential causes of the drought are the decline in heroin production in Burma and the commercial decision of the crime syndicates to promote amphetamine-like drugs rather than heroin. Such a conclusion has alarming implications for the Federal drug policy and is apparently ignored.

Dismissing a most likely conclusion because it has not been proven: the case for a heroin trial

Lack of proof of a proposition can be used as a reason not to accept that proposition even where evidence strongly supports it. This is what the Government did in order to dismiss the results of the Swiss heroin trial. The Prime Minister used the finding of an expert panel that found that the outcome of the Swiss heroin trial fell short of proving that heroin prescription was the cause of its spectacular outcomes. The panel acknowledged that the trials produced a large reduction in deaths and crime and improved the health and social integration of the patients but found, because of the trial’s design, that it was not possible to attribute those changes to the prescription of heroin as opposed to the associated psycho-social support.⁶ The absence of proof was seized on by the Prime Minister as a pretext for ignoring the greatly strengthened evidence produced by the Swiss trial in favour of heroin prescription (WHO (April 1999)).

Conditions required for rational decision making at odds with managerial tendencies in government

Rational decision making requires access to information and an environment that cultivates a questioning spirit. These conditions may be threatened by political tendencies. The Kennett years in Victoria exemplified a retreat in many places of the virtue of frank and fearless advice that for a century and a half was thought desirable in a public service. A different virtue, that of giving efficient, unquestioning effect to the programme of the elected government, has come to the fore. The Burke Government in the Northern Territory represented its more extreme form. There the will of the majority was regarded as a sufficient answer to objections to mandatory minimum sentencing.

In this managerial environment sources of independent power, advice and even of information within government are regarded with ambiguity if not hostility. It is an awkward fact that the strongest voices in government in favour of a trial of heroin prescription have come from independent offices: directors of public prosecution and the National Crime Authority (NCA). It is understandable that the Federal

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Government has resolved to change the NCA probably by adding its functions to those of the AFP.⁷

The independence of the NCA is presently secured by Federal and State legislation. Within the AFP its powers and functions would be subject to the direction of Government.⁸

Scope for political control of the Australian Federal Police

Ministerial Directions in accordance with section 13(2) of the *Australian Federal Police Act 1979* allow the Government a lot of control over the force. For example, under current directions the AFP is charged with “providing an effective contribution to the implementation of the Government’s ‘Tough on Drugs’ strategy” and “to the whole-of-government approach to unauthorised arrivals”.

Public reaction of AFP to an NCA assessment on the extent to which law enforcement is able to control the drug problem

Some indication of politically charged responses that such directions may induce can be gauged from reactions of the AFP to some comments about drugs over the past 6 months. In a commentary issued in August, the NCA reported that “. . . the illicit drug trade continues to flourish in our country. To the NCA’s knowledge [there is] an observable trend towards increased involvement in drug trafficking and an ongoing preparedness of criminals to meet market demand for different illicit substances.” In this context the NCA advised that: “Among the many measures worthy of consideration is to control the market for addicts by treating the supply of addictive drugs to them as a medical and treatment matter subject to supervision of a treating doctor and supplied from a repository that is government controlled.”⁹

The AFP Commissioner publicly promptly responded by stating that that the NCA commentary did not reflect the current situation namely the existence of a heroin drought, the reduction in overdose deaths and recent law enforcement successes. “It is also timely to reflect upon the fact,” added the Commissioner, “that these seizures are striking at the heart of organised and transnational crime.”¹⁰ The AFP’s media release to this effect did not address the substance of the concerns raised by the NCA about the Government’s drug policy: that the drug problem “. . . simply is not a battle that can be won by law enforcement alone or in partnership with the health sector. A co-ordinated and holistic approach is required, building upon and updating the foundation already established.” It would have been hard for the AFP to enter this debate on the merits of the NCA’s claims without breaching its ministerial direction to make “an effective contribution to the implementation of the Government’s ‘Tough on Drugs’ strategy”. The Government also avoided engaging in a rational debate by refusing to apply rules of clear thinking: the AFP media release was available to it to neutralise the NCA comments by the technique of setting one expert against another.¹¹

Changing emphasis of AFP public statements on the reasons for the heroin drought

There is more evidence to suggest the susceptibility of the AFP to political influence. In mid-June the AFP Commissioner, Mr Keelty, revealed the important intelligence

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that: “A major [cause of the heroin shortage] was a business decision by Asian organised crime gangs to switch from heroin production as their major source of income to the making of methamphetamine, or speed, tablets.”¹² Subsequently the AFP has reacted defensively to observations that this may have had more to do with the heroin drought than law enforcement. For example, in an article on 9 December in the *Canberra Sunday Times* Mr Keelty did not include reference to this business decision among the causes of the drought.¹³ His article also dealt “with broader issues than law enforcement”:¹⁴ it ranged over injection rooms, ethics and the dangers of legalisation. The Commissioner evinced no unease that this amounted to a defence of the federal government’s drug policy.

The AFP also reacted defensively to an opinion article by Dr Wodak in the *Sydney Morning Herald* on 4 December in which Dr Wodak cited the intelligence revealed by the Commissioner in June. Responses by Dr Gordon, a former intelligence co-ordinator of the AFP, prepared for media release by the AFP argued that Australian law enforcement success “either disrupted or warned off” large syndicates and that this rather than the longer term business decision revealed by the Commissioner was the dominant cause of the drought (Gordon (Dec. 2001) & Gordon (Jan. 2002)). Such a construction of the facts does not line up with either what the Commissioner disclosed¹⁵ and or with Dr Gordon’s own analysis in the September issue of the AFP’s *Platypus magazine* of the decline in South East Asia of heroin production and diversification into amphetamine-like drugs (Gordon (Sept. 2001)). Dr Gordon’s December piece seeks to explain away the decision of Asian crime syndicates revealed by Mr Keelty and referred to by Dr Wodak to promote amphetamine like drugs in place heroin. For example, Dr Gordon cites the higher price that heroin can command in Australia compared to Asian markets to suggest that it did not make business sense for Asian crime syndicates to forgo exporting heroin to Australia and that the decision could be explained only on the basis of Australian success in law enforcement.¹⁶

Dr Gordon’s December article did not address the large increase in imports into Australia of amphetamine-like drugs organised by the same Asian crime syndicates, their market research that showed a bigger potential market in Australia for those drugs rather than heroin, a higher profit margin for amphetamine-like drugs than for heroin at least throughout Asia¹⁷ and the fact that the syndicates are reaping the high Australian rewards for heroin during the drought on the limited quantities they have continued to export to Australia.¹⁸

In January 2002 the AFP emphasised again the view that law enforcement was principally responsible for the heroin drought. A reworked version of Dr Gordon’s December article was printed in the *Sydney Morning Herald* (Gordon (Jan. 2002)) and the AFP co-operated with the *ABC 7:30 Report* in an item on the drought (ABC (Jan. 2002)). As broadcast the police did not acknowledge the possibility of causes other than law enforcement. The Government’s espousal of the view that law enforcement caused the heroin drought and its direction to the AFP to support the *Tough on Drugs Strategy* leaves the AFP with little room to engage in a dispassionate debate on the causes of the heroin drought and growth in importation of amphetamine-like drugs.

Contradictory statements of the AFP on the efficacy of off-shore law enforcement

Inconsistent statements of the AFP on the efficacy of off-shore law enforcement benefit also suggest that it necessary to tailor its comments to the politics of the moment. The most recent AFP annual report was critical of the utility of crop substitution schemes in source countries:

“A strategy aimed at reducing heroin supply is crop substitution in opium growing areas, but this has been difficult to implement. It is hard to establish a crop that will compete in the marketplace, such as coffee, because these new crops have to survive in an already competitive marketplace and the returns to the people involved are very poor” (AFP, *Annual report 2000-01*, p. 3).

Mr Keelty has also revealed other enormous obstacles in the way of overseas law enforcement.

- Asian and Russian criminals have adopted a strategy of taking advantaging of unrest in countries in the Asia-Pacific region and lax and poorly resources immigration regimes in “weak Pacific Island countries”.¹⁹
- There is deep rooted criminal activity in weak and corrupt regimes among “our Asian neighbours”.²⁰
- It is difficult to stage offshore operations “in countries where regimes are weak and law enforcement resources poorly developed”; “it was very difficult to get convictions when sophisticated organised crime syndicates moved in to unsophisticated criminal justice systems”.²¹

The United States which has many times more resources and influence than Australia has summarised the recalcitrance of the Burmese authorities in the following terms:

“Although the Government of Burma took various measures to combat counter-narcotics production and trafficking, those efforts pale in comparison to the scope of the problem and showed little progress from 1999. The Government of Burma has also been unwilling or unable to take on the most powerful trafficking groups directly, and continues to refuse to surrender major drug traffickers under indictment in the United States, including the drug lord Khun Sa.”²²

The Department of State also paints the Burmese economy as significantly corrupted by drug money.²³ This is highly relevant because Burma, the AFP tell us, is the source of 80% of Australia’s heroin and of much of the amphetamine-like drugs now being promoted.²⁴

Add to all these difficulties the much reduced vulnerability to detection of synthetic drugs like amphetamines compared to cultivated ones²⁵ and the prospect of law enforcement making meaningful inroads seems hopeless. As if to make this point, Mr Keelty has ingenuously pointed out the difficulty of suppressing even the production of Australian made amphetamine-like drugs,²⁶ that is in a law enforcement environment where hopefully none of the foregoing obstacles exist.

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In spite of all this, the AFP appears to be putting great store on the success of off-shore law enforcement. "Unless we can do something at the source for these drugs we are absolutely going to be inundated with them in Australia," Mr Keelty has said.²⁷ He has also contradicted the assessment quoted above from his annual report that there was little hope in the effectiveness of crop substitution. In October he said "there had also been major successes in other opium growing regions with crop substitution programs that were dramatically reducing the world supply of heroin".²⁸

The Government believes in the importance of overseas law enforcement effort. According to the Prime Minister: "In the fight against the drug menace nothing is more important than having a capacity overseas to identify a potential threat by drugs to this country."²⁹ On the other hand the contradictory statements from the AFP on the effectiveness of that effort strongly suggests that the Government's law enforcement policy is ill thought out. At the very least we know from an important United States study on cocaine that that, measured in terms of expenditure, source country control is 3 times less effective than domestic law enforcement in achieving a given reduction in drug consumption and a massive 23 times less effective than treatment (Rydell & Everingham (1994)).

The need to base drug policy on a rigorous analysis of evidence

The value of law enforcement in connection with illicit drugs stands or falls according to extent it makes those drugs less available. This is why it is imperative that we analyse clearly, dispassionately and thoroughly this rare phenomenon of the Australian heroin drought. The 2001 Illicit Drug Reporting System (IDRIS) and other studies have shown that the drought has had some big effects, some of which, like the reduction in overdose deaths, are most welcome.

If, as the weight of publicly disclosed evidence shows, the principal causes of the heroin drought were the series of poor opium harvests in Burma and the marketing decision of the crime syndicates to promote amphetamine-like drugs,³⁰ then the Government is seeking to take the credit for the decision of criminals and weather conditions. In that case the implications for drug policy are enormous. A return of favourable weather conditions will mean that heroin is again plentiful. In the mean time there has been a big displacement to other drugs: particularly to cocaine in NSW and to amphetamine-like drugs in most other jurisdictions.

The AFP "presumes" that the drought has meant that "a new cadre of users that would otherwise have come onto the market has not done so."³¹ At the same time Mr Keelty has observed that "Amphetamines had quickly become the illegal drug of choice, especially for young people, during the heroin drought" (Ludlow (29/10/2001)). Police intelligence indicates that "Asian organised crime gangs have made a business decision to swamp the nation with pills deliberately made to look like ecstasy, but which contain no MDMA, ecstasy's main ingredient. . . . The gangs are aiming these pills at a whole new type of drug user. . . . 'These drug gangs are very clever marketeers,' Mr Keelty said. The way they market these pills as a Love Drug or party drug is obviously directed at young people"³² As if to emphasise this point, "Harry Potter" pills are now on the streets.³³ In other words whatever might be gained from discouragement of recruitment to heroin use is more than being

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countered by “clever” marketing of dangerous amphetamine-like drugs appealing to an even younger and wider audience. The Commissioner of Police has warned that it is unlikely that law enforcement alone can prevent this and that there is a need for demand reduction and harm minimisation strategies.³⁴ This is close to what the National Crime Authority was getting at:

“Whatever steps are taken, the scale of the illicit drug problem and its onward progression is such as to demand the highest attention of government and the community - it simply is not a battle that can be won by law enforcement alone or in partnership with the health sector. A co-ordinated and holistic approach is required, building upon and updating the foundation already established” (NCA (August 2001) p. 23).

Establishing the conditions for a rational debate on drug policy

When expert agencies are bound to defend the Government’s policy it is difficult to have a rational debate of public policy issues. The heroin drought debate shows what we stand to lose from making such agencies the lap dogs of the government of the day. It was thanks to the relative independence of the AFP that the Commissioner could make his frank disclosure about the existence of business decisions by drug importers to promote amphetamines rather than heroin and of the threat posed by the promotion of amphetamine-like drugs. Even so, it is clear that there is little or no scope for rational debate on those facts.

Before the reform of Australia’s law enforcement apparatus proceeds far we would all do well to recall the words of Edmund Burke “that the discretionary powers which are necessarily vested in the monarch. . . should all be exercised upon public principles and national grounds, and not on the likings or prejudices, the intrigues or policies, of a court” (Burke (1905)).

It is fair to say that the Federal Government’s refusal to subject drug policy to rational assessment as it has clearly refused to do is a menace to the social fabric and even security of our nation. We are not in control of our own house. Instead we are reacting to the bidding of criminals. To use the words of the National Crime Authority we need what we do not have, “a co-ordinated and holistic approach” that will reduce the availability and use of dangerous drugs as the community clearly wants, minimise the suffering and other harms of drug users and their families and cut the cost to the wider community in crime, loss of social amenity and taxes to pay huge health and law enforcement bills.

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1. Weatherburn, Jones, Freeman & Makkai (October 2001).

2. “The cause(s) of the heroin drought are not known with any great degree of certainty but there are probably a number of factors at work. Firstly, the quantity of heroin seized by authorities has risen significantly (Australian Bureau of Criminal Intelligence 2001, p. 34). In 1993-94, around 50 kilograms of heroin were seized in Australia by drug law enforcement authorities. In 1998-99 more than 500 kilograms were seized. The quantity seized fell back to about 270 kilograms the following year but, even at this level, the quantity seized is still substantially above that seized in the early part of the decade. Secondly, State and Federal police have arrested a number of significant figures involved in importing and distributing heroin in Australia (Totaro 2001; Palmer 2001). Thirdly, the opium poppy growing regions of Myanmar (Burma) are presently experiencing a severe (water) drought (Australian Bureau of Criminal Intelligence 2001, p. 29).

“The possibility that the heroin drought might have been caused by poor rainfall in source countries might seem to raise doubts about the relevance of the heroin drought to supply control policy. However in some ways it does not matter whether the heroin drought has in some ways it does not matter whether the heroin drought has been caused by drug law enforcement, natural causes or some combination of the two. If it is caused by drug law enforcement then we are provided with a unique opportunity to examine what happens when drug law enforcers actually succeed in reducing the supply of heroin. If it is caused by natural forces then we are provided with a unique opportunity to see what would happen if drug law enforcers did succeed in further reducing the supply of heroin” (Weatherburn, Jones, Freeman & Makkai (October 2001) pp. 2-3).

“In general the present results provide encouraging evidence of the *potential* value of supply control policy. Indeed, if drug law enforcement is credited with causing the heroin drought the results may be regarded as providing evidence of its actual value. The increase in heroin prices and the reduction in heroin purity and availability appear to have exerted a substantial suppression effect on the demand for heroin” (*ibid.*, p. 14, emphasis added).

It is remarkable that the study does not mention the marketing decision by Asian crime syndicates to push amphetamines rather than heroin. Intelligence to this effect was publicly revealed by the AFP Commissioner three months before the release of the Bureau’s research (Moor (19/06/2001)a and Moor (19/06/2001)b).

3. “Commenting on the findings of the study, the Director of BOCSAR, Dr Don Weatherburn said that they provide the first direct research evidence in Australia that drug law enforcement has the capacity to limit heroin use and the public health risks associated with it.

“Over the last couple of years, the quantities of heroin being seized at the Customs barrier have risen sharply and a number of important domestic

heroin traffickers have been arrested. Between August and December 2000 arrests for heroin use and or possession in Cabramatta doubled' "

"There are good reasons for believing that the heroin drought was at least partly caused by increased heroin seizures and the arrest of major heroin suppliers. In Cabramatta these factors have combined with more active street-level drug law enforcement to produce a dramatic fall in heroin use, heroin overdoses and expenditure on heroin" (NSW Bureau of Crime Statistics and Research media release (17/10/2001)).

4. Keelty (9/12/2001):
5. "Senator Patterson said she was confident that the *Tough on Drugs* three pronged approach to fighting illicit drugs through law enforcement, education and treatment was beginning to show results. 'Rates of death from heroin overdoses have fallen significantly, which is good news,' she said. 'One contributor to the decline in deaths is the recent reduction in the availability of heroin in Australia. This heroin drought is unique to Australia. Nowhere else in the world appears to have a similar shortage of heroin'" (Patterson (7/12/2001)).

6. "World Health Organisation (WHO) commissioned evaluation of the Swiss heroin trial has cast significant doubt over previous claims about the benefits of the trial.

"The WHO report entitled Report of the External Panel on the Evaluation of the Swiss Scientific Studies of Medically Prescribed Narcotics to Drug Addicts, found that 'some of the findings of the study' conducted by the Swiss Government 'have been somewhat over-interpreted as favorable to heroin maintenance treatment'.

"The evaluation pointed to the fact that the Swiss trial included comprehensive social and psychological services.

"Given the provision of the non-drug treatment and support, it cannot be concluded that prescribed heroin contributed to the improved the health and welfare of participants.

"The report said that with the absence of a control group it was not clear if the same results could have been achieved without the prescription of heroin.

"In other words, the improvements recorded in the health and well being of participants could have been due to the intensive non-drug treatment they received.

"Significantly, the evaluation found that there is not convincing evidence that heroin prescription generally leads to better outcomes than methadone treatment, even for hard core users.

"The report also found that while reported criminal activity declined no data was provided to indicate the frequency or financial costs associated with

these offences, or to back up claims that reduction in criminal behaviour persisted after dropping out from treatment” (Howard (7/05/1999)).

7. “. . . [I]f I am re-elected as Prime Minister, and the Government is returned on the 10th of November, one of the very first things I will do is put in train the convening of a special conference of Premiers and Chief Ministers of the States to develop a new cooperative framework under which trans-national crime and terrorism can be dealt with by law enforcement at a national level. Whilst there is a high level of cooperation I am not satisfied it is working as effectively, as effectively, as it might and I’m not satisfied that all of the responsibilities of the Federal Government are sufficiently clearly defined and have sufficient amplitude to respond at a national level to crime and terrorism, which of course do not respect international borders, let alone State borders within Australia.

“I believe that the structure of the National Crime Authority is too cumbersome for these challenging times and I hold open the possibility of that body being either restructured or absorbed into other arrangements” (Howard (30/10/2001)a).

8. “In addition, section 37 (2) of the *Australian Federal Police Act 1979* dated 25 February 1999 empowers the Minister for Justice and Customs to direct the general policy to be pursued by the AFP in performing its functions. Operationally, the current Ministerial Direction focuses the AFP on:

- countering and otherwise investigating illicit drug trafficking, organised crime, serious fraud against the Commonwealth, money laundering and the interception of assets involved in or derived from these activities;
- investigating special references and performing special taskings from the Government;
- providing an effective contribution to the implementation of the Government’s ‘Tough on Drugs’ strategy; and
- continuing to develop a capacity to deal with new forms of criminal activity requiring special attention to be directed at the investigation of economic crime, in all its forms, transnational crime and crime involving information technology and communications (including electronic commerce).

“A supplementary Ministerial Direction issued on 27 September 2000 expects the AFP to give special emphasis to:

- countering and otherwise investigating organised people smuggling; and
- providing an effective contribution to the whole-of-government approach to unauthorised arrivals” (AFP, *Annual report 2000-01*, p. 12).

9. “The NCA’s current operational knowledge and experience, details of which cannot be publicly exposed, is such that the illicit drug trade continues to flourish in our country. To the NCA’s knowledge the previously mentioned statistics and information reflect an observable trend towards increased involvement in drug trafficking and an ongoing preparedness of criminals to meet market demand for different illicit substances.

“While unrelenting concentration should be directed towards apprehending those who traffic and profit from the misery and degradation of others, there is a need for strategies to be constantly reviewed. This is a field where the dynamics do not remain static. The risk and cost to the community may well mount to a point where different measures or a different concentration of measures should be considered.

“There are always balances to be struck. It does, however, seem safe to observe at this moment that there is hardly a household in Australia that does not have personal knowledge or experience of the evils of drug addiction and its associated effects.

“This Commentary is not the appropriate place to rehearse different contentions in the long running public debate as to our drug problem. Suffice to say that experience should encourage us not to rule out consideration of new options or reconsideration of options previously deemed unpalatable. We must respond to the ongoing progression of this problem. Among the many measures worthy of consideration is to control the market for addicts by treating the supply of addictive drugs to them as a medical and treatment matter subject to supervision of a treating doctor and supplied from a repository that is government controlled.

“Whatever steps are taken, the scale of the illicit drug problem and its onward progression is such as to demand the highest attention of government and the community - it simply is not a battle that can be won by law enforcement alone or in partnership with the health sector. A co-ordinated and holistic approach is required, building upon and updating the foundation already established” (NCA (August 2001) pp. 22-23).

10. “08Aug2001

NCA Commentary Paper - Illicit Drugs

The AFP recognises that the NCA Commentary 2001, released today, is a discussion paper and as such does not necessarily reflect the most recent statistics associated with the fight against illicit drugs, Commissioner Mick Keelty said.

‘For this reason it is important to place on the public record that it is now widely accepted by health authorities and others that there is a heroin drought in Australia.

‘This is reflected in the following statistics:

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- There has been a heroin 'drought' in Australia since last November. At the height of the drought this resulted in prices for a 'hit' in Cabramatta, Sydney, rising from about \$20-30, to \$70-80, and purity falling from around 60% to typically 15%.
- The situation in other capital cities broadly reflected the trend in Sydney, since we believe most heroin is supplied through Sydney.
- Significantly in determining the cause of the drought, no other country in East or South East Asia was affected like Australia. Since both Australia and this region are predominantly supplied by the Golden Triangle in South East Asia, this suggests that the causes of the drought were peculiar to Australia.

'In addition it is clear that deaths from heroin overdoses in the last 6 months are significantly lower than for the corresponding period last year, which is a further indication that supply reduction strategies are working.

'The AFP has always maintained the view that important harm minimisation and demand reduction strategies can not co-exist in an environment of unfettered supply.

'The effectiveness of demand reduction strategies is difficult to measure because of the complex nature of the illicit drugs market, however, what we do know is that last financial year the AFP, with the support of its partner agencies, was ranked second in an international benchmarking study of heroin seizures of some 18 developed nations.

'Record seizures in recent weeks of cocaine and amphetamine type substances also point to the success of supply reduction strategies.

'It is also timely to reflect upon the fact that these seizures are striking at the heart of organised and transnational crime. This is achieved through the efforts of some very courageous and dedicated women and men often working long hours in inhospitable environments as was the case with the record seizure of cocaine in a remote area of coastline in Western Australia.

'As I stated to the Ministerial Council on Drug Strategy Meeting in Adelaide last week we are confident the results achieved through the Government's NIDS funding, as well as our own internal reforms, will place the AFP in even better international standing in the future', Commissioner Keelty said.

Media contact: Steve Jiggins (02) 6275 7647"
(AFP media release (8/08/2001)).

11. See, for example, the following radio interview of the Prime Minister by John Miller on 4BC on 9 August 2001 concerning the NCA commentary:

"MILLER: But surely a man in Mr Gary Cook's position [chairman of the NCA] should know what he's talking about?

- “PRIME MINISTER: Well I could equally say, surely the Commissioner of the Australian Federal Police Mr Keelty should know what he’s talking about as well and he totally disagrees with the approach taken by the chairman of the National Crime Authority. And I just say again that we have had a lot of success in reducing the supply of heroin and that has been reflected in a reduction in the number of heroin deaths” (Howard (30/10/2001)b).
12. Moor (19/06/2001)b and Moor (19/06/2001)a.
 13. “The heroin drought is the result of many factors and not just isolated ones as reflected in some of the letters to this newspaper. Droughts in the Golden Triangle have had an impact; diversification into other substances has had an impact; engagement with law enforcement agencies in source countries has had an impact; increased resources for Customs and the AFP has had an impact; and good work by all these agencies has identified syndicates and smuggling methodologies that have resulted in major seizures” (Keelty (9/12/2001))
 14. “The views I am putting forward deal with broader issues than law enforcement . . .” (*ibid.*).
 15. See also Moor (19/07/2001); Moor (29/10/2001); Ludlow (29/10/2001).
 16. “Heroin in Yunnan Province of China, the main point of consumption in that country, currently sells at about \$2,500-\$5,000 per kilo. In northern Thailand it sells for about \$12,000 per kilo, and it sells for about \$22,000 in Bangkok. Currently in Australia the wholesale price is anything from \$120,000 to \$200,000 per kilo - probably given the drought, it is at the upper end of that range. Other things (such as the difficulty and danger of importing to the respective markets) being equal, it is obvious which market the traffickers would prefer” (Gordon (Dec. 2001)).

“Heroin in the Yunnan province of China, the main point of consumption in that country, sells at between \$2500 and \$5000 a kilo. In northern Thailand it sells for about \$12,000, and in Bangkok \$22,000. In Australia, however, the wholesale price is anything from \$120,000 to \$200,000 a kilo - probably given the drought, it is at the upper end of that range. Retail prices at some stages of the drought trebled and purity fell from about 60 per cent to as low as 15 per cent. Other things (such as the difficulty and danger of importing to the respective markets) being equal, it is obvious which market the traffickers would prefer” (Gordon (Jan. 2002)).
 17. “ATS also proved exceptionally profitable, due in part to the rapidly developing ATS market in Thailand and to the low production costs relative to wholesale price. While heroin may be a more valuable product per kilogram at both retail and wholesale levels, from the producers' point of view, the mark-up can be considerably greater for methamphetamine. In fact, in the context of exports from Burma to Thailand, at the laboratory door the mark-up for methamphetamine is greater by a factor of nearly nine. At each

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successive stage, it is still greater but not by so much. These differentials are set out in Table 1, which compares the mark-ups for methamphetamine tablets and heroin manufactured in the Golden Triangle and exported through Thailand. These data are calculated from Thai price data. Open source data produced by US authorities are somewhat different, but do not suggest different conclusions in respect of the profitability between the two substances from the manufacturers' point of view.

<i>Transition</i>	<i>Methamphet Tablets Mark-up %</i>	<i>Heroin Mark-up %</i>
Conversion of raw materials at production site	1900	214 (assumes 14% yield from opium)
Thai/Burma border area to Thai/Lao border	18	Heroin cheaper at Thai/Lao border than at Thai Burma border.
Thai/Burma border area to northern Thai regions	54	30
Thai/Burma border area to Bangkok region	99	36
Thai/Burma border area to central Thailand	152	Not available
Thai/Burma border area to southern region	266	71

Table 1: a comparison of the mark-ups for methamphetamine tablets and heroin manufactured in the Golden Triangle and exported through Thailand” (Gordon (Sept. 2001) p. 20).

18. “Mr Keelty said the Asian drug barons would continue to supply some heroin to the Australian market, but intelligence suggested they were gearing up to aim for a new and much bigger market of people prepared to use methamphetamine pills” (Moor (19/06/2001)b).
 19. “There is . . . evidence of major criminal activity in other comparatively weak Pacific island countries. Often these countries have very lax immigration regimes, in the sense that officials are usually poorly trained and resourced and sometimes corrupt. Such regimes provide opportunity for Asian criminals to base themselves on Pacific islands and become involved in activities like illicit drug smuggling and people smuggling, without being recorded or noticed elsewhere. . . . We have seen evidence of major drug trafficking and other crimes through Fiji, Vanuatu and the Solomon Islands. Papua New Guinea is not dissimilar to some of the South Pacific nations in that you can island hop your way to Australia, so PNG is an area of vulnerability for us. We have also seen drug and people smuggling come through the Torres Strait” (Moor (19/06/2001)c).
- “The deliberate strategy of the syndicates is to use countries where there is a failed state, or a breakdown of law and order, as a platform to get the stuff into Australia. They know they are relatively safe operating in these countries” (*ibid.*).

- “Being able to monitor and counter the rise of organised crime gangs keen to take advantage of civil unrest in Asia-Pacific regions was a key reason for the AFP being involved in peace-keeping missions, in addition to humanitarian aspects” (Moor (19/06/2001)a at p. 4).
20. “Corrupt officials in drug-producing nations made the trade impossible to stamp out” (Moor (19/06/2001)a at p. 4). “The nexus between poor governance and crime is obvious in countries like Afghanistan, Burma and Colombia - all with civil wars and all with significant drug production and trafficking problems. But it is also evident in the case of our Asian neighbours, where weak and sometimes corrupt regimes have become havens for all kinds of criminal entrepreneurs” (Moor (19/06/2001)c). “Russian organised crime gangs are preying on ailing Pacific island countries and laundering vast sums of money through them” (Moor (19/06/2001)a at p. 4).
21. “. . . [E]xternal operations have highlighted for the AFP the difficulty of staging offshore operations in countries where regimes are weak and law enforcement resources poorly developed. For example, extradition to Australia is extremely difficult when the legal and technical framework in the external country concerned does not support the kinds of forensic demands made in Australia. Joint operations are also difficult where there is a substantial technological and training gap between Australian law enforcement and police in the Pacific. These are the reasons we get involved in peace-keeping missions, in that having a presence adds value to the criminal justice system” (Moor (19/06/2001)c).
- “Mr Keelty said syndicate members also knew if they were caught in Pacific nations they faced far less severe sentences than in Australia” (*ibid.*).
22. US, DOS, United States, *2000 Narcotics Certification Determinations* (1 March 2001). More detailed information on Burma is found in the country report prepared by the State Department also available in the Section on Southeast Asia and the Pacific in US, DOS, *Narcotics Control Reports, 2000*.
23. “There is reason to believe that money laundering in Burma and the return of narcotics profits laundered elsewhere are significant factors in the overall Burmese economy, although the extent is difficult to measure accurately. Political and economic constraints on legal capital inflows magnify the importance of narcotics-derived funds in the economy. An under-regulated banking system and ineffective money laundering legislation have created a business and investment environment conducive to the use of drug-related proceeds in legitimate commerce” (*ibid.*).
24. “The major source of heroin imported into Australia is Burma, which accounts for some 80 per cent of supply” (AFP, *Annual report 2000-01*, p. 21). Mr Keelty quoted in Moor (29/10/2001).
25. “The fact that this family of drugs [amphetamines type stimulants] can be manufactured from synthetic substances removes the risk of being tied to

- crop production sites - ATS can be produced from clandestine laboratories anywhere” (AFP media release (17/10/2001)).
26. “Although we cannot be certain, we assess that the majority of amphetamines consumed in Australia is produced domestically. The distribution network is flatter with less middlemen, so it is harder to infiltrate. New players are involved and it will take some time to identify the Mr Bigs. The sheer volume of amphetamines is probably three times greater than heroin” (Keelty (9/12/2001)).
27. “‘Unless we can do something at the source for these drugs we are absolutely going to be inundated with them in Australia,’ Mr Keelty said. . . . Mr Keelty said increased cooperation between the AFP and law enforcement agencies in Asia had to continue to stop the flow of drugs to Australia. ‘We need to be working at the point of source or supply, but also back here in Australia with demand reduction and harm minimisation,’ he said. ‘That’s extraordinarily important and never in our history has that been more important than now’” (Ludlow (29/10/2001)).
28. “He said it was . . . reasonable to assume the US would do all it could to ensure a new regime did not return to mass opium growing. ‘I think this could be the end of Afghanistan as a major producer of heroin,’ Mr Keelty said. He said there had also been major successes in other opium growing regions with crop substitution programs that were dramatically reducing the world supply of heroin. ‘Those of us in law enforcement at the international level, working with the UN we have been able to do things like satellite imagery to expose crop production for opium. We have then been able to go in and entice farmers to grow something other than opium, just as the Taliban did in Afghanistan, although using different methods.’” (Moor (29/10/2001)). There were reports that cultivation of opium smuggling from areas of Afghanistan not controlled by the Taliban: “. . . most visitors reported during the same period [2000 during the Taliban ban] that opium continued to be smuggled from territory controlled by the Northern Alliance” (ICG (26/11/2001)). According to reports circulating in early January 2002 farmers had already resumed cultivation of opium in Afghanistan:

“Heroin boom fears as Afghan poppy fields return – Afghan farmers have begun growing poppies again sparking fears of a boom in the international heroin trade.

“The international community is desperate to ensure there is no return to the 1990s when Afghanistan was the largest source of heroin in the world.

“The trade was almost eradicated by the Taliban which banned poppy growing last year.

“Suggestions for stopping the floodgates opening again include destroying poppy fields or even buying up next year's harvest.

“Monitors have had no access to the country's poppy growing areas since September so have not been able to establish how much land has been put under cultivation during the growing season in October and November.

“They may not know until February or March, when the poppies bloom, exactly how much has been grown.

“But the UN Drug Control Programme (UNDCP), which is currently re-establishing its Kabul office, said there were indications of a return to poppy growing by farmers.

“The ‘quick buck’ offered by poppy growing will also be more attractive now that brutal punishments handed out by the Taliban are gone.

“Before the Taliban's ban 90% of the heroin recovered in Europe came from Afghanistan.

“A UNDCP spokesman said: ‘Everyone agrees that the Taliban ban on poppy cultivation and almost complete eradication of it, with a decrease in production of 94%, provides an historic opportunity for drug control’” (Netscape news (3/01/2001)).

29. “We’ve had magnificent results because we’ve enhanced cooperation with overseas governments. . . . I want to announce today that we are going to commit additional resources of \$135 million over four years to fund comprehensive law enforcement initiatives. This will include \$47 million of new funding to expand the successful law enforcement cooperation program and this importantly enhances Federal Police cooperation with overseas law enforcement agencies. In the fight against the drug menace nothing is more important than having a capacity overseas to identify a potential threat by drugs to this country. Far better to intercept it at its source in another country than to devote the resources when it actually arrives here. And the placement of Australian Federal Police and other agencies, personnel overseas, has played a major part in the improvement of this country’s capacity to fight the drug menace” (Howard (30/10/2001)a).
30. This is the conclusion reach in W.M. Bush, “The Australian heroin drought: the case for an inquiry into its causes and the flood of methamphetamines” (January 2002) at www.ffdlr.org.au.
31. “As pointed out by a recent paper in *Crime and Justice* by Weatherburn, et. al, the good news from the heroin drought is that some of the harms

associated with heroin use, including overdose deaths, have been reduced. Presumably also, a new cadre of users that would otherwise have come onto the market has not done so” (Gordon (Dec. 2001)).

“As pointed out by a recent paper in Crime and Justice by Don Weatherburn, et al, the good news from the heroin drought is that some of the harms associated with heroin use, including over-dose deaths, have been reduced. Presumably also, a new cadre of users that would otherwise have come onto the market has not done so” Gordon (Jan. 2002)).

32. “Asian organised crime gangs have made a business decision to swamp the nation with pills deliberately made to look like ecstasy, but which contain no MDMA, ecstasy's main ingredient. These fake ecstasy tablets are made up of a variety of dangerous chemicals, including various forms of amphetamine and the veterinary anaesthetic ketamine.

“Of particular concern are the Burmese-made yaa baa pills, known as crazy medicine in Asia and which consist of about 25 per cent methamphetamine and 75 per cent caffeine. The gangs are aiming these pills at a whole new type of drug user. They are selling to fashionable young people with large disposable incomes who like to party and who mistakenly presume popping pills is much safer than injecting heroin. ‘These drug gangs are very clever marketeers,’ Mr Keelty said. The way they market these pills as a Love Drug or party drug is obviously directed at young people.’ “While Mr Keelty is not wiping off heroin as a problem Australia will continue to face, he is more concerned about the policy decision of Asian organised crimes to target young Australians with speed tablets” (Moor (29/10/2001)).

33. *Courier Mail* (Brisbane) Thursday 3 January 2002, p 6.

34. “Australian Federal Police Commissioner Mick Keelty said a massive increase in amphetamine seizures was a sign of things to come. He said Australia was about to be hit by a new generation of amphetamines, including variations of speed and ecstasy. And it would soon be Australia's No. 1 drug problem. Mr Keelty said despite recent seizures of the drug in Australia (one tonne in the past 18 months) it was more difficult to fight than heroin or other drugs that had to be cultivated. ‘Unless we can do something at the source for these drugs we are absolutely going to be inundated with them in Australia,’ Mr Keelty said. Amphetamines had quickly become the illegal drug of choice, especially for young people, during the heroin drought, he said. . . .

““We need to be working at the point of source or supply, but also back here in Australia with demand reduction and harm minimisation,’ he said. ‘That’s extraordinarily important and never in our history has that been more important than now”” (Ludlow (29/10/2001)).

“Why then aren't we achieving similar results for amphetamines? While we have record seizures this year, amphetamines have their own supply and

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demand characteristics. Amphetamines are not crop-based and can be produced anywhere, even within Australia, which is not the case for heroin.

“Although we cannot be certain, we assess that the majority of amphetamines consumed in Australia is produced domestically. The distribution network is flatter with less middlemen, so it is harder to infiltrate. New players are involved and it will take some time to identify the Mr Bigs. The sheer volume of amphetamines is probably three times greater than heroin.

“The UN estimates there are something like 29 million amphetamine users worldwide compared to 9 million heroin users. So amphetamines represent a much more difficult challenge for law enforcement” (Keelty (9/12/2001)).