

A DECADE ONWARD: DRUGS, ALCOHOL AND THE COMMUNITY SINCE THE ERA OF THE PENINGTON REPORT¹

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It is an honour to be invited to give the Yarra Drug and Health Forum Oration for 2010. And it is an intriguing challenge to be asked to look back today at a comparison with where we were a decade ago.

The Drug Policy Expert Committee, informally named the Penington Committee after its chair, produced its main report, the Stage Two report, in November 2000, almost ten years ago.² The Committee had been appointed by the state government in November 1999, with seven committee members with varied backgrounds, including academic, medical, legal, public health, social welfare, local politics, and community organizing expertise. It was reasonably well staffed with a secretariat, and broad terms of reference for its second report: taking account of consultations, data and government policies, to advise on policy options and ways and means of improving the effectiveness of policies.

The general circumstance of the committee's appointment was what was seen as a gathering crisis in illicit drug problems. The report spoke of the "seriousness of the deteriorating situation" (p. 6), in a circumstance in which there were 359 heroin overdose deaths in Victoria in 1999, a steep rise from about 50 in 1991 and 176 in 1997. The report endorsed a projection that the number of deaths would reach 496 in 2005 (p. 49). Non-fatal overdoses attended by Melbourne ambulances had also been growing (p. 49), and the age of initiation of illicit drug use was falling (p. 8). In this context, a main task set for the Committee's first report, in fulfilment of the

¹ Presented as the Yarra Drug and Health Forum Oration for 2010, Reading Room, Fitzroy Town Hall, 23 March.

² Drug Policy Expert Committee, *Drugs: Meeting the Challenge: Stage Two Report*. Melbourne, Victoria: Department of Human Services, November 2000.

https://www.dhs.vic.gov.au/drugservices/downloads/dpec_stg2fi.pdf

government party's election platform in 1999, had been to report on a heroin-specific intervention: considering and designing a multisite trial for medically-supervised facilities for heroin injection.

The Stage 2 Report was a wide-ranging document indeed, covering the whole spectrum of state and community responses to drug issues – prevention and education, welfare provisions, treatment and support services, law enforcement and criminal justice, corrections, and community mobilisation. The report is comprehensive, well-founded on research and consultations, and moderate and persuasive in tone – a leading example of the harm minimisation/harm reduction perspective which has been the mainline approach of Australian medical and other professionals to drug issues and policies. Reading the report almost ten years later, the general framing and indeed much of the analysis still seems up-to-date and useful for current policy considerations.

But one important aspect of the circumstances has changed quite radically. The Report appeared two months before the Australian heroin drought began; heroin overdose deaths in Victoria dropped dramatically from 331 in 2000 to 50 in 2001, and have since not risen above 120 in any year.³ What had looked in late 2000 to be a deteriorating situation with no foreseeable end-point suddenly changed. In retrospect, the period between 1993 and 2000 has been characterised as “the Australian heroin bubble”.⁴

The main legislative and policy changes called for or analysed by the Penington Committee did not in fact happen. Its call for repealing the criminalization of drug using (as opposed to possession) and its endorsement of the 1996 call by the Premier's Drug Prevention Council for decriminalization of cannabis possession and use were not adopted. Even diversion measures such as cautioning which were endorsed in the report have been used less than was expected. The Victoria Police had estimated that they would average 2000 cautions for cannabis possession or use per year, in lieu of arrest (p. 139), but

³ Statistics and trends in this and the next two paragraphs are mostly from Cogger, S., Barratt, M. Matthews, S., Lloyd, B. & Strickland, H., *Victorian Drug Statistics Handbook* 10. Melbourne: Department of Health, 2009.

<http://www.health.vic.gov.au/drugservices/pubs/drugstats.htm>

⁴ Jiggins, J. The Australian heroin bubble. *International Journal of Drug Policy* 19:295-296, 2008.

the current rate seems to be only about 1000 per year, as against 6000 arrests. And of course the implementation of drug injection facilities in Victoria was opposed and blocked by a variety of forces, international, federal, state and local.⁵ For evidence of direct effects of the Penington Committee's report, one would have to examine more closely developments and trends in the different social response systems – treatment and corrections, for instance.

One potential explanation for the failure of Victorian governments to implement the Committee's legislative recommendations would be the abrupt change in the circumstances shortly after the report appeared. Looking back over the decade of the 2000s in the Victorian Drug Statistics Handbook, the trends for illicit drugs other than heroin have generally been stable or downward, whether in terms of rates of teenage and adult use, drug driving detections, or arrests (apart from some increase in amphetamine/Ecstasy arrests). Illicit drug problems are certainly still with us, but as a political issue the drug issue has been contained. Some in the drug policy field, in fact, have been heard to complain that all the emphasis is on alcohol these days, with not enough attention to illicit drugs.

Two years before the Penington Committee was formed, in September 1997 the Minister for Small Business in the Victorian government announced a Review of the Victorian Liquor Control Act. The primary goal was to increase the Act's conformity to the Australian National Competition Policy, but the Terms of Reference did foreshadow a fairly broad scope for the review: it was to examine "alternative means (both legislative and non-legislative) of addressing public health concerns while minimising economic and compliance costs" – which, it was noted, might include "greater industry self-regulation". Three persons were named to the Review Panel, supported by a Secretariat of three. The Review reported in April 1998.⁶

⁵ Gunaratnam, P. *Drug Policy in Australia: The Supervised Injecting Facilities Debate*. Discussion paper 05-2. Canberra: Asia Pacific School of Economics and Government, Australian National University. <http://dspace.anu.edu.au/handle/1885/43149>

⁶ [Review Panel], *Liquor Control Act 1987: Review: Final Report, April 1998*. Melbourne: State Government of Victoria, 1998.

http://ncc.gov.au/search/results?doc_type=3&pagesize=10&offset=0&searchstring=Victoria+liquor+control+act+1987

The Review followed four earlier inquiries, in 1965, 1976, 1978 and 1986, which had greatly liberalised Victorian liquor control laws, resulting already in a substantial increase in alcohol licenses, particularly for on-premise consumption. But there were remaining legal provisions which were seen as conflicting with the National Competition Policy's goals of opening up markets and increasing competition, and the review was to test these in terms of whether there was sufficient public health justification for them.

The review was reportedly overseen with a heavy hand by the federal Competition Policy watchdogs, threatening essentially to fine the state if it did not act sufficiently forcefully to remove barriers to competition. The departmental context in Victoria meant that the emphasis from that level was on increasing business opportunities. In this context, it is notable that some regulatory provisions were nevertheless recommended for retention, such as provisions forbidding petrol stations to sell alcohol, and that the Review recommended that "the principal object of the Act should be the minimization of harm" (p. 44).

The Review commissioned two studies which were included as appendices in its Report: a KPMG "economic analysis of certain restrictions on the sale of liquor in Victoria", and a literature survey by Ann Roche on "Availability of liquor and incidence of harm". Roche's review referenced and quoted the main international review literature on the effects of alcohol availability controls, but it took a sceptical view of the literature's conclusions, which it regarded as having "anomalies and inconsistencies" (p. 119). In Roche's view, a new focus on drinking patterns undercut the literature's emphasis on per-capita consumption's relation to alcohol problems, and "harm minimisation approaches" were put forward as counterposed to "control policies". Summarizing, the review asserted that "the following findings are supported by the literature":

Overall availability is too gross and insensitive a measure to be used in isolation to determine or to guide the development of alcohol policies; [and] the number of outlets and hours of trading are not strong and consistent predictors of problems, with some important exceptions.... (p. 102)

Roche's interpretation of the literature thus tended to undercut any argument that legal provisions which potentially restricted the

number of licenses or hours of trading could have a public health justification. This argument was complemented by the fact that there had not been a general increase in per-capita consumption in the period after 1988, when there had been a substantial increase in the number of licenses. The Review accordingly recommended that any criterion of community “need” as a consideration in deciding whether to grant a new liquor license should be dropped; that the 8% restriction on the concentration of ownership of licenses should be removed; and that inconsistencies in the trading hours for different licenses should be resolved by extending the hours. It was also recommended that community interest in amenity should not be a proper consideration in liquor licensing, but should be a matter only for local planning authorities, in the planning approval process.

Unlike the legislative recommendations of the Penington Committee, the recommendations of the Review were by and large carried into law. The aftermath has been troubling. There were further sharp increases in the following years in the numbers of liquor licenses, both for on-premise and for package sales. As was true in 1998, reported levels of alcohol consumption have generally not risen (sales data are no longer available for Victoria for this period). But rates of the majority of harms from drinking for which we have indicators have shown an increase in the last decade. Alcohol-related mortality and single-vehicle nighttime crashes have stayed steady, but alcohol-related hospitalizations, alcohol-related domestic violence, alcohol treatment episodes, and nighttime assaults have all increased, and alcohol-related ambulance presentations and intoxicated ED presentations have more than doubled. Roche’s scepticism about a close relation between per-capita consumption and rates of harm has been borne out in the Victorian experience, but in a very ironic way. The liberalization of the Victoria alcohol licensing laws has turned out not to lead to harm minimization, but rather to harm maximization – increased harm per unit of alcohol. My research colleagues are presently hard at work trying to understand better the mechanisms of the perverse effects of the legislative changes.

In the last three years or so, problems from drinking – particularly street violence associated with drinking by young adults on weekend nights – have captured media and political attention. With the formation of Responsible Alcohol Victoria within the

Department of Justice, a civilian cadre of licensing inspectors to enforce the alcohol control regulations, the state has put in place the means for a much more effective enforcement of the regulations. But the emphasis tends to remain on solutions which try to weed out “bad apples” – whether troublesome drinkers or buccaneer licensees – rather than more effective structural solutions such as reducing numbers of licenses or limiting trading hours, or contextual solutions such as providing more late-night public transport, or bringing back deposits on glass bottles. The ideology of the free and open marketplace remains strong, even for a troublesome drug like alcohol, and is of course backed up by many vested economic interests. Local governments such as Yarra are encouraged to criminalise street drinking, but are discouraged by state legislation and VCAT decisions from using planning decisions to control local alcohol problems.

Let me now stand back from the details of the picture, and ask what the last decade of experience has taught us. The first lesson, surely, is the need for a sense of humility about the power of policymaking. There has been much debate about the causes of the heroin drought, but it seems fair to conclude that there is no obvious policy action in Australia which caused it.⁷ When policy does have an effect, as it appears to have had in the case of the Liquor Control Act Review, the effect can be perverse: the review generally dismissed the idea that rates of problems might go up if availability went up, but that is what in fact happened. Other factors besides deliberate policies also influence trends in consumption of drugs, and trends in harms from drug use.⁸ Future policymakers will need to know more about these factors, and how they interact with policy initiatives.

A second lesson, from the liquor control Review, is that the interests of public health and order are not well served if a competing state interest, such as competition policy, is given predominance. The Review did make some effort to consider the potential relation between increased availability and increased harm. But it commissioned and depended on a rather one-sided review of the

⁷ Dietze, P. What more can we learn from the heroin drought? *International Journal of Drug Policy* 19:270-272, 2008.

⁸ Room, R., Österberg, E. Ramstedt, M. & Rehm, J. Explaining change and stasis in alcohol consumption. *Addiction Research and Theory* 17(6):562-576, 2009.

literature, and too easily accepted a facile conclusion that availability of alcohol had little or no relation to rates of harm.

A third lesson concerns the potential for stalemate inherent in a consensus model of policymaking. Unlike the situation for alcohol or for pharmaceuticals, in the illicit drug field there is no legitimate vested interest in increasing or sustaining such drug sales. But there are a variety of professional and institutional interests at stake in the handling of drug problems. Each of the middle chapters of the Penington Committee report is concerned with one of these sets of professional and institutional interests. Typically, drug strategy documents in Australia – and not only in Australia – cover all these interests, with overarching formulations, as in the Committee report, in terms of the need for a “comprehensive strategy”, for an “integrated approach”(p. 177), and for “program coordination” (p. 172). But along with the advantages of coordination and comprehensiveness, there may also be a down side. Consensus is easier to reach if there is a tacit agreement that each profession can define and defend the interests of its own sector. The strategy can thus become relatively immobile, projecting into the future the balance of interests and power of the present moment. Even if bold moves are proposed, as the Penington Committee did in some areas, professional or institutional interests can come into play within the government or in parliament to defeat the efforts at change. This is apparently what happened to the Penington Committee’s substantive proposals for legislative change. The challenge, then, becomes to maintain a comprehensive approach without the result being a policy stalemate.

When a drug is legal, as in the case of alcohol, these professional interests associated with the various institutions for “social handling” are also in play, but they are joined by the vested economic interests which gain from alcohol sales. Given the dominance of free-market ideologies in recent decades, the economic interests have been able to break through any professional consensus, and move the state much closer to a free and open market in alcohol. As I have noted, the results in terms of alcohol-related harms are troubling. Graphs with the kind of alarming projections for heroin overdoses in the Penington Committee report could presently be produced for cirrhosis hospitalization or for Emergency Department presentations for intoxication. And there is no likelihood of an imminent alcohol

drought. In such a situation, it may take a substantial popular social movement to break through the influence of the vested interests in pushing availability upward. This has in fact happened before in Victoria, when the surfeit of alcohol licenses issued under free-market ideology of the late 19th century was eventually curtailed, with the number of licenses cut in half by the action of the Licenses Reduction Board under legislation in 1906.⁹

A last lesson, I propose, is that there is much to be gained from considering our policy experience with illicit drugs and with alcohol in the same frame. When it comes to alcohol and drug treatment or education, they are commonly considered together in the same frame. Front-line workers in community emergency services are acutely aware of how much overlap there is in patterns of use and of harm. Yet in the policy world, there is still a strong tendency to consider and handle them separately. What if the Penington Committee had also been given a charge to consider alcohol policies, or if the liquor control Review was also charged with considering the supply of illicit drugs? Contemplating such questions may take an effort of imagination. But thinking outside the customary policy divisions is needed if we are to develop and implement policies which will truly minimize the harms from psychoactive substances in our communities and our society.

⁹ Fitzgerald, R. & Jordan, T.L. *Under the Influence: A History of Alcohol in Australia*. Sydney, etc.: HarperCollins, ABC Books, 2009.