A paradigm shift in recreational drug use: the challenge of legal highs in New Zealand

Over recent months there has been a wave of public concern over the unrestricted sale of Kronic in New Zealand. Kronic is one of at least 80 synthetic cannabis products identified by the Ministry of Health comprised of vegetable matter infused with different synthetic cannabinoimetic substances.¹

Some compounds (i.e. CP 47,497) have already been deemed illegal in New Zealand under the Misuse of Drugs Act 1975 (MODA) drug analogue provisions as they are considered similar in chemical structure to THC.¹ The most common compounds currently used in New Zealand are JWH-018 and JWH-073.¹ Many countries have prohibited JWH compounds including Australia, the United Kingdom, France and Germany.¹

The health effects of synthetic cannabis include cardiovascular problems, panic attacks and loss of consciousness, and some users have required hospitalisation and artificial ventilation.² Very little is known about the toxicity of these compounds and their long term cumulative effects.²,³ There is no research on the prevalence of use and related harms in New Zealand.¹

Those who can recall the New Zealand experience with the legal market for benzylpiperazine (BZP) party pills in the mid 2000s⁴ may be feeling a level of frustration that the same people are again making considerable profits from the sale of largely unknown substances.⁵

Synthetic cannabis products have been sold from a range of convenience stores for a number of years without restrictions. In the case of BZP, age restrictions and the eventual prohibition took years to enact, giving sufficient time for a small number of entrepreneurs to accumulate considerable financial returns. Many countries worldwide have reported the emergence of new psychoactive substances for recreational use.⁶ In Europe, there were 40 notifications of new drugs in 2010, up from 24 in 2009 and 13 in 2008.⁷

In May of this year I attended the First International Meeting of ‘new drugs’ (i.e. so called legal highs) organised by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). In the closing address of the meeting it was concluded that we are witnessing a ‘paradigm shift in drug use’ driven by globalisation and advances in information technology.³

Controlling these new substances presents considerable challenges due to the ease with which new uncontrolled compounds can be created and modified, the difficulty of regulating internet marketing and sales, the willingness of suppliers to misrepresent the purpose of substances (e.g. mephedrone sold as ‘bath salts’), the financial expense of forensic chemical analysis of products and the slowness of the legislative process.³,⁸
The effectiveness of drug control statutes can be greatly enhanced by introducing drug analogue provisions which cover all drug types that are ‘structurally similar’ to a scheduled drug, as has been done with MODA, although such blanket controls can sometimes capture entirely harmless substances.9

There was considerable interest at the EMCDDA meeting in the proposed New Zealand ‘restricted substances’ regime. The ‘restricted substances’ regime was established in 2005 and essentially allows drug types deemed by the Expert Advisory Committee on Drugs (EACD) to be ‘less than moderately harmful’ be continued to be legally sold subject to certain regulatory conditions, such as age, advertising and place of sale restriction.9

Over the past three years, the EACD has recommended that two drugs (i.e. salvia divinorum and 1,3 dimethylamylamine (DMAA)) be placed in the restricted substances category.10,11 The JWH synthetic cannabis compounds appear to be also destined for the restricted substances category. It is planned to make the restricted substances category operational in the next few months launching a regulatory framework which will cover a whole new sector of legal highs.

The introduction of the restricted substances category raises a number of concerns. Firstly, the wider debate about the wisdom of a legal highs sector is yet to be had in New Zealand. The restricted substances category will introduce a whole new group of legal intoxicants to join alcohol and tobacco. These are the same two legal drugs which we still continue to struggle to control, particularly in regard to adolescent use (despite age restrictions), and that impose considerable health and social costs in New Zealand. A previous study of New Zealand’s experiment with legal BZP party pills found 49% of males aged 20-24 years had used BZP party pills in the past year in 2006.

The establishment of the restricted substances category will be seen by many entrepreneurs as an opportunity to get a piece of a new lucrative market which may rival alcohol and tobacco. Secondly, many technical reviews of these new drugs acknowledge they are relatively new compounds and there is limited scientific research on their toxicity.2 A simple precautionary principle would seem to indicate we should prohibit their sale until sufficient research evidence evaluating their health risks is available. Thirdly, advocates of the legal highs industry commonly argue the value of legal highs is they provide a safer alternative to illegal drugs.1 It is just as plausible that legal highs actually introduce adolescents to the use of more harmful illegal drugs. For example, two-thirds of those who used BZP in 2006 were also using other illegal drugs. Fourthly, there is some evidence that prohibition of these substances is actually a pretty effective response.

The last year use of BZP in New Zealand declined from 15% in 2006 to 3% in 2009 following the ban of BZP in April 2008.12 The principle attraction of BZP appeared to be that it was legal, cheap and easily available, and the prohibition effectively undermined these advantages.

I have advocated for the development of an alternative regulatory framework for legal highs based on a ‘reverse onus of proof’ principle where instead of the regulator chasing the seller of new substances (often allowing years of profits) the seller would have to provide advance evidence of the safety of their product and their ability to sell
substances responsibly before any product could be sold. However I think the more important issue that needs to be more widely debated in New Zealand is do we even want this new sector of legal intoxicants?

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