

# Legal highs and their use in New Zealand: a critical analysis of New Zealand Drug policy

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## Introduction

**This article will explore some of the issues surrounding drug policy and prohibition in New Zealand, focusing on the legislation surrounding 'legal highs',<sup>1</sup> 'party pills' or new psychoactive substances (NSPs). The focus will be on exploring the concept of 'moral populism' developed in an earlier piece of work.<sup>2</sup> Consideration will be given to how 'we' arrived at 'moral populism', and the myths, stereotypes and stigma that infuse both contemporary drug legislation and the history of drug policy.**

## New Zealand Drug policy: historical context

The use of illicit drugs in colonial New Zealand in the 1800s and 1900s raised issues of morality, stigma and racism. While the use of opium was often governed by etiquette rather than the law (for example, 'respectable' women drank opium, as smoking opium was frowned upon), when legislation did arrive it was aimed more at the Chinese population rather than controlling the use of opium among other groups in society.<sup>3</sup> Under the 1901 Opium Prohibition Act and the 1908 Opium Act, the police gained the power to search any Chinese premises without a warrant, but required a warrant if the occupants were not Chinese.<sup>4</sup> Globally similar issues arose with the infamous 'Reefer madness' propaganda in the US in the 1930s and 1940s urging 'respectable' Americans to beware of 'marihuana' connected with Mexicans and other stigmatized groups. Cocaine use by

Black Americans was also historically raised as a concern with the *New York Times* noting that 'negro cocaine fiends are the new southern menace' in 1914.<sup>5</sup> It must not be forgotten however that propaganda and sensationalist reporting like this had **consequences** for the groups concerned as well as for wider society. For example, a higher caliber gun was introduced in response to fears about cocaine affected Black men,

*The following day, the Chief exchanged his revolver for one of heavier calibre.....And many other officers in the South; who appreciate the increased vitality of the cocaine-crazed negroes, have made a similar exchange for guns of greater shocking power for the express purpose of combating the 'fiend' when he runs amok.<sup>6</sup>*

Similarly in Canada in the 1920s racialized debates focused on Chinese opium users resulting in punitive legislation such as; six months in prison for drug trafficking or possession; police gained the right to search premises without a warrant if they suspected drugs were present; the right to appeal trafficking sentences was abolished; the deportation of aliens convicted of drugs offences.<sup>7</sup> More recently in the US the sentencing discrepancies for crack cocaine and powdered cocaine have been noted,<sup>8</sup> as well as the 'three strikes' legislation that has driven US prison populations to unimaginable proportions.<sup>9</sup>

Contemporary UK research such as that by 'Release'<sup>10</sup> has noted that although Black people use fewer drugs than

1. 'Legal highs' is the common New Zealand term for substances such as BZP that are or were legally available. Other terms for such substances are 'party pills', 'new psychoactive substances' or 'novel psychoactive substances'.
2. The research this article is based on first appeared in the *Australian and New Zealand Journal of Criminology* – See Hutton, F. (2016) BZP-PPs, Populism and Prohibition, *Australian and New Zealand Journal of Criminology*, DOI: 10.1177/0004865816638906. Consequently there is some overlap between the two texts.
3. Eldred-Grigg, S. (1984). *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840–1915*. Wellington: Reed Ltd.
4. Eldred-Grigg, S. (1984). *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840–1915*. Wellington: Reed Ltd.
5. Negro Cocaine 'Fiends' New Southern Menace, *New York Times*, Sunday February 8, 1914, available at [http://www.druglibrary.org/schaffer/history/negro\\_cocaine\\_fiends.htm](http://www.druglibrary.org/schaffer/history/negro_cocaine_fiends.htm), accessed May 12th 2016.
6. Negro Cocaine 'Fiends' New Southern Menace, *New York Times*, Sunday February 8, 1914, available at [http://www.druglibrary.org/schaffer/history/negro\\_cocaine\\_fiends.htm](http://www.druglibrary.org/schaffer/history/negro_cocaine_fiends.htm), accessed May 12th 2016.
7. Carstairs, C. (1999 p.66). Deporting 'Ah Sin' to Save the White Race: Moral Panic, Racialisation and the Extension of Canadian Drug Laws in the 1920s, *CBMH*, 116: 65–88.
8. The Sentencing Project. (n.d). Race and Class Penalties in Crack Cocaine Sentencing, available at <http://www.prisonpolicy.org/scans/sp/RaceandClass.Sentencing.pdf>, accessed May 11th 2016. 500 grams of powder cocaine triggers a 5-year mandatory sentence, 5 grams of crack cocaine are required to trigger the same 5-year mandatory sentence (The Sentencing Project n.d.)
9. On December 31, 2014, state and federal correctional authorities held 1,508,600 individuals sentenced to more than 1 year in prison. Half of males (50%) and more than half of females (59%) in federal prison were serving time for drug offenses on September 30, 2014 (Carson, Minton, Kaeble & Zeng, 2015).
10. Release. (2013). The numbers in Black and White: disparities in policing and prosecution of drugs offences, available at <http://www.release.org.uk/publications/numbers-black-and-white-ethnic-disparities-policing-and-prosecution-drug-offences> accessed May 11th 2016.

White people, they are six times more likely to be stopped and searched by police. In the US contemporary data demonstrates that Black people are 10.1 times more likely to be sent to prison for drugs offences than White people.<sup>11</sup> Additionally in every year from 1980 to 2007, Blacks were arrested nationwide on drug charges at rates relative to population that were 2.8 to 5.5 times higher than white arrest rates.<sup>12</sup> Further in New Zealand, Māori<sup>13</sup> are three times more likely to be arrested and convicted for cannabis use than non-Māori,<sup>14</sup> as well as being more likely to be prosecuted and convicted of possession and/or use of an illicit drug or drug utensil.<sup>15</sup> The 2012—2013 New Zealand Health Survey into cannabis use also found Māori were nearly twice as likely as non-Māori to suffer legal problems as a result of using cannabis.<sup>16</sup>

New Zealand drug policy is embedded in this global context, as well as in a complex post-colonial context, which has affected the development of legislation surrounding illicit drugs. Growing international pressure to control drugs began in approximately the late 1800s and early 1900s. This international pressure culminated in the 1912 Hague convention which contained various provisions<sup>17</sup> aimed at controlling particular substances, although it was not until 1927 that the New Zealand Dangerous Drugs Act 1927 was passed

*A Reform Government finally decide[d] that New Zealand law on narcotics was 'well behind the rest of the world' and pass [ed] a dangerous drugs Act outlawing all unlicensed sales of opium, morphine, heroin, coca, cocaine and cannabis.*<sup>18</sup>

However it is worth noting that New Zealand did not have a significant problem with any of the drugs listed in the 1927 Act, and that the first prosecution for cannabis use

was not until the 1950s. In common with many countries globally New Zealand's drug laws were also heavily influenced by the 1961 Single Convention on Narcotic Drugs. The Single Convention on narcotic drugs requires signatories to legislate against possession, supply and manufacture of illicit substances, often defined under national legislation for example the Misuse of Drugs Act 1971 in the UK and the Misuse of Drugs Act 1975 (hereafter MDA 1975) in New Zealand. Drugs in New Zealand are currently regulated under the MDA 1975. Graded penalties are applied for possession, supply and manufacture/cultivation of substances labelled as class A, B or C based on their levels of harm and opportunity for misuse (class A being the substances considered to be the most harmful).<sup>19</sup>

### 'Moral populism'

In considering the issues related to drug use and the historical development of legislation one of the key concepts, recently developed is 'moral populism' (Hutton 2016). This term, in part, refers to the idea that drug policy and law-making are firmly stuck in the past, wedded to outdated notions of both drug harms and drug users. The single convention was crafted in 1961, now 56 years old, while the 1975 MDA is 41 years old. Huge adjustments have been made in scientific thinking and social relations since 1961 and 1975 so why are governments and policy makers unable to move forward with drug legislation, despite overwhelming evidence that the 'war on drugs' is having catastrophic effects worldwide, whilst not deterring drug use?<sup>20,21</sup>

One of the answers to this question is argued to be the rise of populist politics, and that populism is argued to influence political agendas in countries like New Zealand.<sup>22</sup>

11. Human Rights Watch. (2008). *Targeting Blacks: Drug Law Enforcement in the US*, available at [https://www.hrw.org/sites/default/files/reports/us0508\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0508_1.pdf) accessed May 11th 2016.
12. Human rights Watch. (2009). *Decades of Disparity: Drug Arrests in the United States*, available at: [https://www.hrw.org/sites/default/files/reports/us0309web\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0309web_1.pdf) accessed May 11th 2016.
13. Māori are the indigenous people of New Zealand. They are a diverse population affiliated to different iwi (tribes/tribal group). Māori make up 14.9% of the NZ population (Statistics New Zealand, 2013).
14. Fergusson D, Swain-Campbell N, Horwood L. (2003). Arrests and convictions for cannabis related offences in a New Zealand birth cohort. *Drug and Alcohol Dependence*, 70, 53–63.
15. Māori make up 15 percent of the population, and Māori aged 17–25 make up 37 percent of those convicted of possession and/or use of an illicit drug or drug utensil (New Zealand Drug Foundation 2013).
16. Ministry of Health. (2015). *Cannabis Use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.
17. These provisions were: To be controlled by national legislation; Opium smoking to be gradually and effectively repressed; The manufacture, sale and consumption of morphine and cocaine and their salts to be limited by national legislation to medical and legitimate purposes, and to be controlled by a system of licensing; Statistics relating to the drug trade, and information about national laws and administrative arrangements, to be exchanged through the Netherlands government (Barton, 2003 p.15).
18. *Eldred-Grigg, S. 1984, p. 240. Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840–1915*. Wellington: Reed Ltd.
19. Nutt, King and Phillips (2010) have challenged the way drugs and their harms have been defined and categorised under the UK Misuse of Drugs Act 1971.
20. The Lancet Commissions. (2016). Public health and International Drug Policy, *The Lancet*, [http://dx.doi.org/10.1016/S0140-6736\(16\)00619-X](http://dx.doi.org/10.1016/S0140-6736(16)00619-X)
21. Drug prevalence statistics in New Zealand also bear this out with 1.2 million New Zealanders stating that they have tried cannabis in their lifetime. In the past year, one in six (16.6%) adults had used 'any drugs' for recreational purposes, equating to 438,200 people (Ministry of Health 2010).
22. Bottoms, A. (1995). 'The philosophy and politics of punishment and sentencing', in C. Clarkson and R. Morgan, eds., *The Politics of Sentencing Reform*, 15–49. Clarendon; Pratt, J. and Clarke, M. (2005), Penal populism in New Zealand, *Punishment and Society*, 7: 303–322; Pratt, J. (2008a), 'When penal populism stops: Legitimacy, scandal and the power to punish in New Zealand', *Australian and New Zealand Journal of Criminology*, 41: 364–383; Pratt, J. (2008b). 'Penal populism and the contemporary role of punishment', in Anthony, T and Cunneen C. eds. *The Critical Criminology Companion*. Hawkins Press, Sydney; Simon, J. (2007), *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. Oxford University Press; Sparks, R. (2003). 'States of insecurity: punishment, populism and contemporary political culture', in McConville, S. ed. *The Use of Punishment*. Willan publishing, Cullompton.

The term 'populist punitiveness' is used to convey the idea of politicians 'tapping into, and using for their own purposes, what they believe to be the public's generally punitive stance'.<sup>23</sup> 'Populist punitive' strategies are argued to be adopted by politicians based on the belief that they will be popular with the voting public. It is further noted that drugs offences are one category of offending most likely to be subjected to 'populist punitiveness'.<sup>24</sup> Punitive populism is argued to be one of the key drivers of policy making in recent times which has resulted in increasingly harsh punishments **whether or not** they reduce crime or address issues related to offending behaviour.<sup>25</sup> Although punitiveness can recede as punishments are considered too harsh<sup>26</sup> drugs and drug users are still subject to '*moral populism*' as drug policy remains shrouded in 'ancient moral freight',<sup>27</sup> focused on harsh punitive responses towards drug use and drug users. A process of punitive '*moral populism*' has therefore occurred around drugs and drug users given the politicisation of substance use, and the historical legacy of harsh responses to particular drugs and groups of drug users.<sup>28</sup> Drug users have been viewed historically as 'containers of intolerable levels of risk',<sup>29</sup> a view that has continued to influence contemporary drug policy in the 2000s. Thus the discourses around drug use often focus on the social construction of particular groups as deviant or criminal, and as Khon notes

*The outlawing of drugs was the consequence not of their pharmacology but of their association with social groups that were perceived as potentially dangerous.*<sup>30</sup>

'*Moral populism*' is also a legacy of the individualisation of drug use as well as the construction of addiction within narrowly defined terms,<sup>31</sup> leading scholars to argue that drug use has 'indeed attained the status of being about morality'.<sup>32</sup> It is also worth noting that the category of 'drugs' is a socially constructed one. How some substances became designated as 'drugs', and what substances are considered as 'drugs' is not necessarily based in pharmacology and is subject to change over time;

*The word 'drug' does not designate a set of chemicals based on their molecular structure (Becker 2001). There are no pharmacological categories of 'illicit drugs', 'licit drugs' and 'medications'. They are social categories constructed because as a political community we have come to treat some substances differently from others depending on who uses them, how and for what.*<sup>33</sup>

Therefore responses to drugs and drug users are argued to be based on fears about particular groups,<sup>34</sup> and that drug policy should be considered as a reaction to the symbols related to drug use which take on an intense emotional significance.<sup>35</sup> Contemporary discourse about drugs is argued to be about **more than** the drugs themselves because '*drugs permit the terrors of the subconscious to be voiced*',<sup>36</sup> leading to punitive responses towards and punishment of drug users. Drug policy and prohibition are influenced by a wide range of issues, not necessarily evidence science and rationality.<sup>37</sup> The issues surrounding (im)morality and drug use were clearly demonstrated in the New Zealand debates about BZP-based

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23. Bottoms, A. (1995, p. 40). 'The philosophy and politics of punishment and sentencing', in C. Clarkson and R. Morgan, eds., *The Politics of Sentencing Reform*, 15–49. Clarendon.
24. Bottoms, A. (1995, p. 40). 'The philosophy and politics of punishment and sentencing', in C. Clarkson and R. Morgan, eds., *The Politics of Sentencing Reform*, 15–49. Clarendon.
25. Wood, R. (2013). 'Punitive Populism.' In Miller, D., and Hoboken, J. (2013) *Encyclopaedia of Theoretical Criminology*, NJ: Wiley-Blackwell.
26. Pratt, J. (2008a), 'When penal populism stops: Legitimacy, scandal and the power to punish in New Zealand', *Australian and New Zealand Journal of Criminology*, 41: 364–383.
27. Douglas 1992 cited in Sparks, R. (2003, p.159). 'States of insecurity: punishment, populism and contemporary political culture', in McConville, S. ed. *The Use of Punishment*. Willan publishing, Cullompton.
28. Barton, A. (2003). *Illicit Drugs Use and Control*, RoutledgeFalmer; Carstairs, C. (1999). Deporting 'Ah Sin' to Save the White Race: Moral Panic, Racialisation and the Extension of Canadian Drug Laws in the 1920s, *CBMH*, 116: 65–88; Eldred-Grigg, S. 1984, p. 240. *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840-1915*. Wellington: Reed Ltd.; Lancaster, K., Hughes, C., Spicer, B., Matthew-Simmons, F. and Dillon, P. (2011). Curiosity Killed the M-Cat: an Examination of Illicit Drugs and Media, ANZCCC: *The Australian and New Zealand Critical Criminology Conference 2010*, Institute of Criminology, Sydney Law School, The University of Sydney.
29. Sparks, R. (2003, p.160). 'States of insecurity: punishment, populism and contemporary political culture', in McConville, S. ed. *The Use of Punishment*. Willan publishing, Cullompton.
30. Kohn, M. (1992). *Dope Girls: The Birth of the British Drug Underground*, Granta Publications, London.
31. Alexander, B. (2012). Addiction: The Urgent Need for a Paradigm Shift. *Substance Use & Misuse*, 47, 13–14, 1475–1482.
32. Silverman, J. (2010). Addicted to getting drugs wrong. *British Journalism Review*, 21, 4, 31–36.
33. Bancroft, A. (2009 p.8). *Drugs, Intoxication and Society*, Polity Press, Cambridge.
34. Coomber, R. (2013). Social Fear, Drug-Related Beliefs, and Drug Policy, in Bergeron, H., Hunt, G., Maitena, M (Eds.), *Drugs and Culture: Knowledge, Consumption and Policy*, Ashgate, Publishing Ltd., Farnham.
35. Manderson, D. (1995). Metamorphoses: Clashing symbols in the social construction of drugs. *The Journal of Drug Issues*, 25, 799–816.
36. Kohn, M. (1992 p.1). *Dope Girls: The Birth of the British Drug Underground*, Granta Publications, London.
37. Bennett, T. and Holloway, K. (2010). 'Is UK drug policy evidence-based?' *International Journal of Drug Policy*, 21: 411–417; Hallam, C. and Bewley-Taylor, D. (2010), 'Drug Use: knowledge culture and context', Briefing Paper 21, *The Beckley Foundation Drug Policy Programme*, 1–11; Stevens, A and Measham, F. (2014), 'The 'Drug Policy Ratchet': why do sanctions for new psychoactive drugs typically only go up?', *Addiction*, 109: 1226–1232.

party pills (BZP-PPs)<sup>38</sup> and other legal highs, and it is to a consideration of this specific context that this article now turns.

### BZP-PPs in New Zealand

Legal highs such as BZP-PPs became popular in New Zealand from about 2000 onwards with a variety of party pills available in places like dairies (newsagents), garages, off licences and dedicated legal high outlets. There were approximately 120 different party pill brands available in New Zealand at this time.<sup>39</sup> They were marketed as a legal alternative to drugs such as amphetamine and ecstasy and became popular on the dance scene, with an estimated 8 million servings sold between 2000 and 2005.<sup>40,41</sup> The legal high market in New Zealand developed particularly quickly, partly due to New Zealand's small population and geographic isolation. Consequently it has an underdeveloped illicit drug market compared to European countries.<sup>42</sup> Illicit drugs are often poor quality and expensive, so legal alternatives that produce similar effects, more cheaply are highly attractive. New Zealand research demonstrates that BZP-PPs are often used as a substitute for ecstasy and other dance drugs such as amphetamine, usually when ecstasy or amphetamines are unavailable.<sup>43</sup>

BZP-PPs are also used as one substance among a variety of illicit/licit drugs; they are another substance on the menu for poly-drug users.<sup>44</sup>

However concerns arose about the unregulated nature of the party pill market with emergency doctors raising issues about party pill ingestion.<sup>45</sup> Such concerns paved the way for the 2005 Misuse of Drugs Amendment Act<sup>46</sup> (hereafter the 2005 Act) to try and impose some regulation on the market for legal highs. BZP-PPs were placed in this category until research could be carried out into their potential for toxicity and harm. Although the research evidence highlights some serious adverse effects related to BZP-PPs,<sup>47</sup> on balance they appear to be limited to a minority of users under particular circumstances, as well as related to a number of other factors.<sup>48</sup> Research has also noted a number of adverse effects related to taking BZP-PPs such as: headaches; tremors/shakes; stomach pains/nausea; sleeplessness; loss of energy; mood swings,<sup>49</sup> with more serious side effects, such as seizures,<sup>50</sup> noted as small in number. A qualitative study exploring BZP use by young people found that although there were some benefits to retaining a legal market for BZP-PPs such as the avoidance of the illicit market for users, there were also some negative impacts for example the assumption of quality control of BZP-PPs when the opposite was the case.<sup>51</sup> Party pill users

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38. BZP is short for Benzylpiperazine, a substance that has stimulant properties similar to amphetamine, although about one tenth the strength (Cohen & Butler, 2011). Party pills often, though not always, contained trifluoromethylphenylpiperazine (TFMPP) which supposedly mimicked the empathetic and energetic effects of ecstasy.
  39. Gee, P. Richardson, S. Woltersdorf, W. and Moore, G. (2005) 'Toxic effects of BZP-based herbal party pills in humans: a prospective study in Christchurch New Zealand', *The New Zealand Medical Journal*, 118: 1–10.
  40. Social Tonics Association of New Zealand. (2005), *Submission of Social tonics Association of New Zealand to the Health Select Committee on the matter of Misuse of Drugs amendment Bill (No.3) and the Supplementary Order Paper*. Social Tonics Association of New Zealand.
  41. It is worth noting here that the population of New Zealand is approximately 4 million (Statistics New Zealand, 2013)
  42. Cohen, B. and Butler, R. (2011). 'BZP-party pills: A review of the research on benzylpiperazine as a recreational drug', *International Journal of Drug Policy*, 22: 95–101.
  43. Butler, R. and Sheridan, J. (2007), 'Highs and lows: patterns of use, positive and negative effects of benzylpiperazine-containing party pills (BZP-party pills) amongst young people in New Zealand', *Harm Reduction Journal*, 4:1–10; Hutton, F. (2010), 'Kiwis Clubs and Drugs: Club Cultures in Wellington New Zealand', *The Australian and New Zealand Journal of Criminology*, 43: 91–111.
  44. Hammond, K. (2008), *Recreational Drug Using Behaviour and Legal Benzylpiperazine Party Pills*, PHD Thesis, Victoria University, Wellington, New Zealand.
  45. Gee, P. Richardson, S. Woltersdorf, W. and Moore, G. (2005) 'Toxic effects of BZP-based herbal party pills in humans: a prospective study in Christchurch New Zealand', *The New Zealand Medical Journal*, 118: 1–10.
  46. The 2005 Misuse of Drugs Amendment Act(2005), <http://www.legislation.govt.nz/act/public/2005/0081/latest/DLM356224.html> ,created a 'restricted substances' or Class D category for psychoactive substances. Being placed under Class D meant a range of restrictions on the sale and marketing of BZP could be put in place: BZP-PPs could not be sold to under 18s, could not be given away free as promotions in bars and clubs and could not be advertised in print media, TV or radio.
  47. Gee, P. Richardson, S. Woltersdorf, W. and Moore, G. (2005) 'Toxic effects of BZP-based herbal party pills in humans: a prospective study in Christchurch New Zealand', *The New Zealand Medical Journal*, 118: 1-10; Thompson, I. Williams, G. Aldington, S. Williams, M. Caldwell, B. Dickson, S. Lucas, N. MacDowall, J. Weatherall, M. Frew, A. Robinson, G. and Beasley, R. (2006), *The benzylpiperazine (BZP)/trifluorophenylmethylpiperazine (TFMPP) and alcohol safety study*, Medical Research Institute of New Zealand.
  48. Gee, P. Richardson, S. Woltersdorf, W. and Moore, G. (2005) 'Toxic effects of BZP-based herbal party pills in humans: a prospective study in Christchurch New Zealand', *The New Zealand Medical Journal*; Nicolson, T. (2006). 'Prevalence of use, epidemiology and toxicity of 'herbal party pills' amongst those presenting to the emergency department', *Emergency Medicine Australasia*, 18: 180–184; Theron, L. Jansen, K. and Miles, J. (2007), 'Benzylpiperazine-based party pills' impact on the Auckland City hospital Emergency Department Overdose Database (2002-2004) compared with ecstasy (MDMA or methylene dioxymethamphetamine), gamma hydroxybutyrate 9GHB, amphetamines, cocaine, alcohol', *The New Zealand Medical Journal*, 120: 1–8; Thompson, I. Williams, G. Aldington, S. Williams, M. Caldwell, B. Dickson, S. Lucas, N. MacDowall, J. Weatherall, M. Frew, A. Robinson, G. and Beasley, R. (2006), *The benzylpiperazine (BZP)/trifluorophenylmethylpiperazine (TFMPP) and alcohol safety study*, Medical Research Institute of New Zealand.
  49. Wilkins, C. Girling, M. Sweetsur, P. Huckle, T. and Huakau, J. (2006), *'Legal party pill use in New Zealand: prevalence of use, availability, health harms and 'gateway effects' of benzylpiperazine (BZP) and trifluorophenylmethylpiperazine (TFMPP)'*, Massey University.
  50. However the EACD minutes (3 May 2007) noted that 'seizures' were inconsistently recorded, and a 'seizure' was anything from a slight twitch to a grand mal type episode.
  51. Butler, R. and Sheridan, J. (2007), 'Highs and lows: patterns of use, positive and negative effects of benzylpiperazine-containing party pills (BZP-party pills) amongst young people in New Zealand', *Harm Reduction Journal*, 4:1–10.

were also argued to put themselves at risk of adverse effects by consuming alcohol in conjunction with BZP-PPs, and taking more pills than recommended.<sup>52</sup> However, consumers of legal highs such as BZP-PPs noted the legal status of BZP as a benefit of using 'party pills'. This enabled users to engage with the night time economy (NTE) and the club/dance scene without fear of criminalisation.<sup>53</sup> Furthermore identifying something as harmful does not necessarily mean that prohibiting it is the best way to address any issues that occur. For example, the decriminalisation of sex work in New Zealand, and the decriminalisation of all drugs in Portugal in 2001 exemplifies this alternative approach.

Under the 2008 Misuse of Drugs (Classification of BZP) Act<sup>54</sup> (hereafter the 2008 Act) BZP-PPs were banned in New Zealand. The decision to ban BZP-PPs was a genuine surprise to many (including myself) given that there was widespread support from respected agencies such as the New Zealand Drug Foundation as well as emergency doctors<sup>55</sup> for regulation rather than prohibition, and that there was provision to regulate legal highs such as BZP-PPs under the 2005 Act. Furthermore only 14 (22.95 per cent) of the submissions on the 2007 Bill supported the ban.<sup>56</sup> Nevertheless, BZP-PPs were banned despite the lack of evidence to be overly concerned about the risks they posed and the additional risks created by banning the drug (possession carries a maximum penalty of 3 months in prison, supply carries a maximum penalty of eight years in prison). Therefore what issues did influence the introduction of the 2008 Act and how evidence based were the arguments mobilised by politicians? Further what other influences might there have been that intruded into their debates?

To explore these questions and the wider assertions made by scholars in this area that 'evidence is only ever likely to be one of many factors that influence the policy process',<sup>57</sup> and that drug policy is notorious for the extent to which it has remained 'evidence free',<sup>58</sup> the following discussion presents the key themes from a thematic analysis<sup>59</sup> of the 2007 Bill readings<sup>60</sup> of the 2008 Act. The

following six key discourses were identified across all three Bill readings: prohibition is not an effective way to deal with drug use; BZP has a 'gateway effect'; availability and accessibility means young people can access BZP-PPs too readily; young people are at risk; BZP has contributed to establishing a pill popping culture in New Zealand; BZP has the potential for harm/has a moderate risk of harm.<sup>61</sup> It is acknowledged that Bill readings take place in a specific social and cultural context and that MPs will also be affected by their embedded social and cultural contexts such as party political expectations. Therefore the thematic analysis discussed here may not be applicable to drug debates in other countries, although the results may be useful in considering political decision making surrounding drug policy in other social contexts.

### Bill reading debates: key themes

A key theme contained within the bill reading debates was that 'prohibition was not an effective way to deal with drug use', and rather surprisingly **both** those in favour of **and** opposed to banning BZP-PPs put forward these kinds of points: that the ban would not achieve anything; and that the ban would not address the problems related to BZP-PPs and legal highs in New Zealand. MPs also noted that substitute pills without BZP in them would simply replace BZP-PPs, rendering the legislation ineffective. So MPs passed a Bill into law that they thought would not achieve its purpose, although there were several references to 'using drug issues for electioneering purposes' (2007 3rd Bill reading), echoing the argument that 'prohibition may have largely failed as a crime-control strategy but it has been spectacularly successful as a political project'.<sup>62</sup> The issue of populism comes sharply into focus when exploring this theme from the analysis: prohibition is argued to be a political tool incorporated into 'tough on crime' stances in general elections. 2008 when BZP-PPs were banned was an election year, as was 2011 when synthetic cannabis was banned, as was 2014 when all legal highs were effectively

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52. Nicolson, T. (2006). 'Prevalence of use, epidemiology and toxicity of 'herbal party pills' amongst those presenting to the emergency department', *Emergency Medicine Australasia*, 18: 180–184.
53. Butler, R. and Sheridan, J. (2007), 'Highs and lows: patterns of use, positive and negative effects of benzylpiperazine-containing party pills (BZP-party pills) amongst young people in New Zealand', *Harm Reduction Journal*, 4:1–10; Green, J. (2008). Partying on? Life after BZP-based party pills. *The New Zealand Medical Journal*, 121, 35–42; Sheridan, J. and Butler, R. (2010), "They're legal so they're safe right?" What did the legal status of BZP-party pills mean to young people in New Zealand?' *The International Journal of Drug Policy*, 21: 77–81.
54. Misuse of Drugs (Classification of BZP) Amendment Act. (2008), available online at, <http://www.legislation.govt.nz/act/public/2008/0005/latest/DLM1152221.html>, accessed 13th May 2016.
55. Allen and Clarke Policy and Regulatory Specialists Limited. (2007). *Analysis of submissions Proposal to Classify BZP and related substances as Class C controlled drugs under the Misuse of Drugs Act 1975 Final report*, Wellington, New Zealand.
56. Health Select Committee (2007), *Misuse of Drugs (Classification of BZP) Amendment Bill Report of the Health Committee 1–146*. Available online at [http://www.parliament.nz/resource/enz/48DBSCH\\_SCR3903\\_1/f9c5d1a5d73016e5aa14667b54196200082af142](http://www.parliament.nz/resource/enz/48DBSCH_SCR3903_1/f9c5d1a5d73016e5aa14667b54196200082af142), accessed 13th May 2016.
57. Bennett, T. and Holloway, K. (2010 p.42). 'Is UK drug policy evidence-based?' *International Journal of Drug Policy*, 21: 411–417.
58. Hallam, C. and Bewley-Taylor, D. (2010 p.1), 'Drug Use: knowledge culture and context', Briefing Paper 21, *The Beckley Foundation Drug Policy Programme*, 1–11.
59. Braun, V., & Clarke, V. (2006). Using Thematic Analysis in Psychology. *Qualitative Research in Psychology*, 3(2), 77–101.
60. Bill readings refer to the Parliamentary debates held during the three readings of the 2007 Bill.
61. Hutton, F. (2016). BZP-PPs, Populism and Prohibition, *Australian and New Zealand Journal of Criminology*, DOI: 10.1177/0004865816638906
62. Shiner, M. (2006 p.71), 'Drugs, law and the regulation of harm', in P. Higate, R. Hughes and R. Lart, eds., *Drugs: Policy and Politics*, 59–74. Open University Press.

banned under the 2014 Amendment to the 2013 Psychoactive Substances Act<sup>63</sup> (hereafter the 2013 Act).

In considering the (alleged) evidence based nature of drug policy and legislation, a concern in the analysis of the bill readings was that BZP-PPs were commonly cited as having a 'gateway effect'. However the gateway effect is a large, complex and wide ranging debate that focuses on cannabis **only** and has not come to any concrete conclusions about the existence of a gateway effect.<sup>64</sup> New Zealand research was cited by MPs as evidence of the gateway effect of BZP-PPs, while the authors<sup>65</sup> themselves concluded that more research needed to be done in this area. Further the expert advisory committee on drugs (EACD) noted that 'this study provides little support for the gateway theory'.<sup>66</sup> Other studies<sup>67</sup> were also referred to in Parliament as conclusively demonstrating a gateway effect. However their research simply stated that those who used BZP-PPs also used other drugs: **this is not a causal effect**, BZP use does not **cause** the use of other drugs. Therefore although MPs referred to evidence in their debates, the evidence was not fully explicated and the caveats discussed by the authors of the research used were not fully represented in Parliamentary debates. This was also true in another of the key themes: 'BZP has the potential for harm/has a moderate risk of harm'. Studies identified a number of adverse effects of BZP-PPs,<sup>68</sup> although these appear to be limited to a minority of users under particular circumstances, as well as related to a number of other factors.<sup>69</sup> It is also worth noting that 'harm' within the Parliamentary debates referred to harm from using the drug, and the wider effects and harms related to prohibition and drug policy were not considered. Further, as noted earlier, just because something may be harmful does not necessarily

mean banning it is the best response to reduce those perceived harms

The key themes 'availability and accessibility', 'young people are at risk' and 'BZP has contributed to a pill popping culture in New Zealand', are all interrelated. It was seen as an outrage that BZP-PPs were so easily available, intersecting with the 'young people at risk' theme, as the public debate surrounding legal highs in New Zealand often focused on their availability to under age youth.<sup>70</sup> As a 'vulnerable and morally innocent group'<sup>71</sup> young people are seen as a group worthy of political and media attention. There was sustained media coverage of BZP-PPs in the months preceding the 2008 Act, including a documentary of the case of a young DJ who was in a coma after taking BZP-PPs (although he had also ingested alcohol, caffeine drinks and ecstasy)<sup>72</sup>. The notion of populism and fears of the corruption of vulnerable groups were evident in the analysis of these themes. MPs comments, that 13, 14 and 15-year-olds could access BZP-PPs easily, had resonance with parent's anxieties about their teenagers, further entrenching public sentiment regarding BZP-PPs. The words 'kids' and reference to preteens were also commonly used in emphasising the dangers of BZP-PPs throughout the 'young people are at risk' discourse evident in the Parliamentary bill readings.

Similar issues are raised by the 'BZP has contributed to establishing a pill popping culture in New Zealand' theme, where BZP use by young people was presented as beyond the comprehension of MPs, and that the availability and accessibility of BZP-PPs had caused a lamentable propensity on the part of young people to 'get blotto' (ACT<sup>73</sup> 2nd Bill reading). Young people were constructed simultaneously as a 'risky' group in terms of substance use and intoxication, as well as a vulnerable group in need of protection by the law.

63. Psychoactive Substances Act. (2013), available online at, <http://www.legislation.govt.nz/act/public/2013/0053/latest/DLM5042921.html?src=qs>, accessed 13th May 2016.

64. Fergusson D, Swain-Campbell N, Horwood L. (2003). Arrests and convictions for cannabis related offences in a New Zealand birth cohort. *Drug and Alcohol Dependence*, 70, 53-63; Kenkel, D. Mathios, A. Pacula, R. (2001), 'Economics of youth drug use, addiction and gateway effects', *Addiction*, 96: 151-164; Morral, A. McCaffrey, D. Paddock, S. (2003), 'Reassessing the Marijuana Gateway Effect', *The Id*, 1:61-65; Van Gundy, K. and Rebellon, C. (2010), A Life-Course Perspective on the 'Gateway Hypothesis' *Journal of health and Social Behavior*, 51: 244-259.

65. Wilkins, C. Girling, M. Sweetsur, P. Huckle, T. and Huakau, J. (2006), 'Legal party pill use in New Zealand: prevalence of use, availability, health harms and 'gateway effects' of benzylpiperazine (BZP) and trifluorophenylmethylpiperazine (TFMPP)', Massey University.

66. Expert Advisory Committee on Drugs. (2006 p. 4). Meeting minutes, Wellington, New Zealand.

67. Bryson, K. and Wilson, M. (2007). *Recreational drug using behaviour and legal party pills*, Report submitted to the National Drug Policy Unit, Ministry of Health.

68. Gee, P. Richardson, S. Woltersdorf, W. and Moore, G. (2005) 'Toxic effects of BZP-based herbal party pills in humans: a prospective study in Christchurch New Zealand', *The New Zealand Medical Journal*; Thompson, I. Williams, G. Aldington, S. Williams, M. Caldwell, B. Dickson, S. Lucas, N. MacDowall, J. Weatherall, M. Frew, A. Robinson, G. and Beasley, R. (2006), 'The benzylpiperazine (BZP)/trifluorophenylmethylpiperazine (TFMPP) and alcohol safety study', Medical Research Institute of New Zealand.

69. Gee, P. Richardson, S. Woltersdorf, W. and Moore, G. (2005) 'Toxic effects of BZP-based herbal party pills in humans: a prospective study in Christchurch New Zealand', *The New Zealand Medical Journal*; Nicolson, T. (2006). 'Prevalence of use, epidemiology and toxicity of 'herbal party pills' amongst those presenting to the emergency department', *Emergency Medicine Australasia*, 18: 180-184; Theron, L. Jansen, K. and Miles, J. (2007), 'Benzylpiperazine-based party pills' impact on the Auckland City hospital Emergency Department Overdose Database (2002-2004) compared with ecstasy (MDMA or methylene dioxymethamphetamine), gamma hydroxybutyrate 9GHB, amphetamines, cocaine, alcohol', *The New Zealand Medical Journal*, 120: 1-8; Thompson, I. Williams, G. Aldington, S. Williams, M. Caldwell, B. Dickson, S. Lucas, N. MacDowall, J. Weatherall, M. Frew, A. Robinson, G. and Beasley, R. (2006), 'The benzylpiperazine (BZP)/trifluorophenylmethylpiperazine (TFMPP) and alcohol safety study', Medical Research Institute of New Zealand.

70. Barton, J. (2014). 'Kronic specifically attracts children': the construction of lay roles in New Zealand media reports on synthetic cannabis, *Journal of Sociology*, <http://jos.sagepub.com/content/early/2014/11/11/1440783314550514>

71. Barton, J. (2014 p.6). 'Kronic specifically attracts children': the construction of lay roles in New Zealand media reports on synthetic cannabis, *Journal of Sociology*, <http://jos.sagepub.com/content/early/2014/11/11/1440783314550514>

72. See Crewdson P. Party Pill ban good news for DJ's mum. *The Dominion Post*, 29 June 2007.

73. The ACT party is a free market political party.

Young people's reasons for taking BZP-PPs were absent from MPs (and public) debates, reflecting that the demand from substance users is often not addressed in drug legislation, despite that an understanding of the subjective motives for drug use, including pleasure, is an essential part of any coherent response to drug use.<sup>74</sup> There was also a clear moral tone identified throughout this discourse, with MPs referring to an imagined moral issue, that of young people and a (supposed) pill popping culture in New Zealand. 'Moral populism' is also evident in these themes and discourses, with MPs citing alarm at the behaviour of young people 'get[ting] blotto' (despite that no evidence for these alarms was presented). The historical construction of drug use is pertinent here: drug use is seen as damaging and destructive, with BZP-PP users tainted by the stereotypes associated with drug users over the past century.

It has been argued that throughout the debates surrounding BZP-PPs in the 2007 Bill readings the evidence was not fully explicated and that politicians relied on the appeal of emotive, sometimes misinformed, arguments to win support for the passing of the 2008 Act. In relation to the questions raised at the start of this discussion: what issues did influence the introduction of the 2008 Act; how evidence based were the arguments mobilised by politicians; what other influences might there have been that intruded into their debates?, it is clear that the wider social context that MPs operate within affected the debates and ultimately the banning of BZP-PPs, and that factors *other than* evidence intruded on their debates and decisions. Unproven academic constructs such as the gateway hypothesis were relied on and presented as concrete 'evidence' of the harms of BZP-PPs. Evidence about the harms of BZP were also not fully explored, with an extreme reluctance on the part of MPs to consider anything other than prohibition to tackle any harms related to the use of BZP-PPs. There was provision already in place in under the 2005 Act to regulate BZP-PPs and to address concerns over availability and accessibility, something noted in 38 out of the 61 (62.29 per cent) submissions on the 2007 Bill,<sup>75</sup> with researchers in the field also noting that using the full powers of the 2005 Act would have presented new opportunities to manage the harms

from psychoactive drug use.<sup>76</sup> Again the historical legacy of punitive responses to drug use has resonance in these contemporary debates, with drug policy still shackled to its 'ancient moral freight'.<sup>77</sup>

MPs also cited their alarm at young people's substance use and intoxication which underpinned their debates. Therefore issues such as 'populist punitiveness' and '*moral populism*' would appear to have some relevance to this debate. The EACD stated that one of the key reasons for their recommendation of a ban on BZP-PPs in 2007 was the 'recreational context of BZP use',<sup>78</sup> so was the ban related to who was using BZP-PPs and for what purposes? Contemporary researchers<sup>79</sup> have pointed to a 'wave of criminalisation' that has focussed on particular groups of recreational drug users such as those engaging with the NTE. People's 'impermissible pleasures'<sup>80</sup> are legislated against which is significant in modern societies driven by populist agendas. However, although the public may not be as punitive as proponents of 'populist punitiveness' suggest,<sup>81</sup> it would appear that on issues related to drugs, punitive '*moral populism*' is a significant issue, underpinning drug policy and political responses to drug use. It has also been noted that drug policy is *itself* a social construction, subject to diverse influences (including '*moral populism*'), meaning that only *some* policy avenues are followed, even though they may be ineffective.<sup>82</sup>

### What happened after the 2008 Act?

After the introduction of the 2008 Act BZP was made illegal, as a Class C substance with punishments for possession and supply (possession carries a maximum penalty of 3 months in prison, supply carries a maximum penalty of eight years in prison). However pills without BZP in them were still able to be marketed, with emergency doctors noting problems with new 'party pills' only a couple of months after the 2008 Act had been passed.<sup>83</sup> So it would seem that previous BZP-PP users had substituted them for other legal highs. Therefore prohibiting BZP-PPs did not reduce drug use, nor did it address the 'pill popping culture' that MPs argued existed in New Zealand, as they themselves

74. Moore, K., Measham, F., Griffin, C., Morey, Y. & Riley, S. (2008), *Addiction Research and Theory*, 16: 205–207.

75. Allen and Clarke Policy and Regulatory Specialists Limited. (2007). Analysis of submissions Proposal to Classify BZP and related substances as Class C controlled drugs under the Misuse of Drugs Act 1975 Final report, Wellington, New Zealand.

76. Sheridan, J. and Butler, R. (2010), "'They're legal so they're safe right?' What did the legal status of BZP-party pills mean to young people in New Zealand?' *The International Journal of Drug Policy*, 21: 77–81.

77. Douglas 1992 cited in Sparks, R. (2003 p. 159). 'States of insecurity: punishment, populism and contemporary political culture', in McConville, S. ed. *The Use of Punishment*. Willan publishing, Cullompton.

78. Expert Advisory Committee on Drugs. (2006 p.13). Meeting minutes, Wellington, New Zealand.

79. Buchanan, J. (2009). Understanding and misunderstanding problem drug use. In R. Carnwell, & J. Buchanan (Eds.), *Effective Practice in health, social care & criminal justice: A partnership approach* (pp. 111–129). McGraw-Hill Education, Maidenhead: Open University Press; Measham, F., & Moore, K. (2008). The criminalisation of intoxication. In P. Squires (Ed.), *ASBO nation: The criminalisation of nuisance* (pp. 273–288). Cambridge, England: Polity Press.

80. Measham, F., & Moore, K. (2008 p. 284). The criminalisation of intoxication. In P. Squires (Ed.), *ASBO nation: The criminalisation of nuisance* (pp. 273–288). Cambridge, England: Polity Press.

81. Hutton, N. (2005). Beyond Populist punitiveness?, *Punishment and Society*, 7: 243–258.

82. Lancaster, K. (2014). Social construction and the evidence based policy endeavour, *The International Journal of Drug Policy*, 25:948-951

83. 'Next generation of Party Pills to Rollout' available online at, <http://www.stuff.co.nz/southland-times/news/340334/Next-generation-of-party-pills-to-roll-out>, accessed 13th February 2015.

predicted in the 2007 bill reading debates. This problem was also replicated in other international contexts such as the UK, Europe. For example, Naphthylpyrovalerone (Naphyrone), marketed as legal mephedrone, was available in the UK six weeks after mephedrone was made illegal in 2010, while a replacement legal 'Spice' (a cannabis substitute) analogue was on the market in Germany four weeks after 'Spice' was banned in 2009.<sup>84</sup>

In order to try and address the endless 'cat and mouse' syndrome of banning a substance, only to find producers tweak the chemical compounds to produce legal substitutes, banning the new substance and so on,<sup>85</sup> the New Zealand Government introduced the 2013 Act. This Act aimed to regulate instead of prohibiting legal highs, with the onus on manufacturers to prove that their products were safe for sale to the public. This new approach to intoxication and legal highs caused considerable attention internationally and was regarded as a revolutionary way of dealing with substance use and any related harms.<sup>86</sup> However the 2013 Act was short-lived in the face of small vocal campaigns based on the harms of synthetic cannabis,<sup>87</sup> and comments suggesting that politicians were 'wimpish' for not banning legal highs instead of regulating them.<sup>88</sup> In 2014 barely a year after the 2013 Act came into force the 2014 Amendment to the Psychoactive Substances Act<sup>89</sup> (hereafter the 2014 Act) was passed into law, revoking all licenses granted under the 2013 Act, effectively banning all legal highs.

Scholars who had expressed reservations about the 2013 Act on the basis that it may simply add another layer of punishments in the Criminal Justice System for another set of drugs offences,<sup>90</sup> had their fears realised with the passing of the 2014 Act which widened the net of prohibition and criminalisation. 'Moral populism' came sharply into focus once more in 2014 as it did with the passing of the 2008 Act, related to BZP-PPs. The effects of vocal, emotive campaigns on the deliberations of expert

committees means that they can 'be brought under intense public pressure to conclude their findings',<sup>91</sup> and that 'faced with media headlines and grieving parents the majority of countries simply continue with the default option to classify these new substances as 'illegal drugs' as quickly as possible'. Despite the developments in other countries such as Portugal, the Netherlands and US in recent years, decriminalising or regulating drugs appears to be unthinkable in a New Zealand context. For example, to date, the recommendations of the New Zealand Law Commission in 2010 to relax punitive approaches to possession and 'social or small scale dealing', in a thorough and far reaching review of the 1975 MDA, have not been taken up.

## Conclusions

It is clear from this analysis that the debates surrounding BZP-PPs and other legal highs in New Zealand are complex and interrelated. It is equally clear that these debates have been ongoing for at least a decade, as New Zealand grapples with the issues related to legal highs. It is not the contention here to argue that BZP-PP use was not sometimes harmful, rather that prohibition was not necessarily the best way to deal with any harms arising from using such products. As poignantly demonstrated in 2012 with the first death attributed to BZP noted four years after the substance was banned.<sup>92</sup> The Expert Advisory Committee on Drugs (EACD) further noted that

*There is no guarantee that scheduling a substance ..... reduces the availability or potential risk of harm from a drug.*<sup>93</sup>

Unconsciously echoing the words of liberal MPs a century earlier that it is 'almost impossible to make people virtuous by legislation'.<sup>94</sup>

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84. Johnson, L. Johnson, R. and Portier, R. (2013), 'Current "Legal Highs"', *The Journal of Emergency Medicine*, 44: 1108-1115.
85. Measham, F., Moore, K., Newcombe, R., & Welch, Z. (2010). Tweaking, Bombing, Dabbing and Stockpiling: The emergence of mephedrone and the perversity of prohibition, *Drug and Alcohol Today*, 10 (1), pages 14-21.
86. Wilkins, C., Sheridan, J., Adams, P., Russell, B., Ram, S., and Newcombe, D. (2013). The new psychoactive substances regime in New Zealand: a different approach to regulation, *Journal of Psychopharmacology*, 27(7) 584-589.
87. The New Zealand Herald (2014), 'Families Elated at Legal-Highs Ban', available online at [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11245298](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11245298), accessed 13th May 2016; Waikato Times. (2014), 'Son's Death Prompts Legal High Protest', available online at <http://www.stuff.co.nz/waikato-times/news/9842187/Sons-death-prompts-legal-high-protest>, accessed 13th May 2016. Waikato Times. (2014), 'Former Legal high Addict Building a New Future', available online at <http://www.stuff.co.nz/national/health/10275559/Former-legal-high-addict-building-a-new-future>, accessed 13th May 2014.
88. The New Zealand Herald (2014), 'Government 'wimpish' over legal highs- Napier Mayor' Available online at [http://www.nzherald.co.nz/hawkesbaytoday/news/article.cfm?c\\_id=1503462&objectid=11232889](http://www.nzherald.co.nz/hawkesbaytoday/news/article.cfm?c_id=1503462&objectid=11232889), accessed 13th May 2016.
89. Psychoactive Substances Amendment Act. (2014), available online at, <http://www.legislation.govt.nz/act/public/2014/0024/latest/whole.html>, accessed 13th May 2016.
90. Buchanan, J. (2013). Submission to the Health Select Committee on the Psychoactive Substances Bill. Retrieved from [http://www.academia.edu/3487019/Submission\\_to\\_Health\\_Select\\_Committee\\_on\\_NZ\\_Psychoactive\\_Substances\\_Bill\\_Regulating\\_Legal\\_Highs\\_](http://www.academia.edu/3487019/Submission_to_Health_Select_Committee_on_NZ_Psychoactive_Substances_Bill_Regulating_Legal_Highs_)
91. Hughes, B. and Winstock, A. (2011 p.1895), 'Controlling new Drugs under Marketing Regulations, *Addiction*, 107: 1894-1899.
92. Mead, T. (2013). 'Dunedin Man Dies of BZP Party Pill Overdose', TV3 News Online, available at, HYPERLINK "<http://www.3news.co.nz/nznews/dunedin-man-dies-of--bzip-party-pill-overdose-2013020512>" "axzz3nBAtaUZg" <http://www.3news.co.nz/nznews/dunedin-man-dies-of--bzip-party-pill-overdose-2013020512#axzz3nBAtaUZg>, accessed 29th September, 2015).
93. Expert Advisory Committee on Drugs. (2006 p.12). Meeting minutes, Wellington, New Zealand.
94. Eldred-Grigg, S. (1984 p. 222). *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand 1840-1915*. Wellington: Reed Ltd.



MPs themselves from **both** sides of the debate also argued that the 2008 Act would not address any harms associated with legal high use, while the research on BZP-PPs did not provide robust evidence of significant harms. The harms imposed by prohibition such as net widening, and criminalisation of those people who use illicit drugs<sup>95</sup> were rarely referred to. Similarly the evidence that prohibition had not acted as a deterrent for drug users, that drugs were cheaper, more available and purer than ever before,<sup>96</sup> were lacking from the discourses surrounding the banning of BZP-PPs. The 'drug policy ratchet'<sup>97</sup> therefore appears to be set to continue unabated,<sup>98</sup> and this discussion has focused on why this should be the case, when there are other ways of approaching drug use such as regulation and decriminalisation which are successful at reducing harms without criminalising drug users. 'Moral populism' is argued to play a key part in societal responses to drug users with an historical legacy focussed on drug users as a dangerous, contaminating, morally reprehensible group who are in need of harsh punishment and control. The focus has also been on making transparent the processes through which legislation about issues such as drug use are enacted.

Therefore although it could be argued that MPs simply followed the EACD's recommendations, and that this is what the EACD is there for, to guide MPs who are not experts in the field in their decision making, it could equally be argued that there was enough doubt over processes and research evidence to recommend caution in banning BZP-PPs. This is especially so in the case of BZP-PPs in New Zealand where there were benefits identified in keeping a legal market,<sup>99</sup> and where an alternative to prohibition was already in place under the 2005 Act. It would appear that the assertion that 'evidence is only ever likely to be one of many factors that influence the policy process',<sup>100</sup> rings true in this instance, and that the banning of BZP-PPs in New Zealand was influenced by wider societal factors. Among them a 'moral populism' aimed at drug users who are constructed as 'containers of intolerable levels of risk',<sup>101</sup> feeding into punitive policy and regulation. Furthermore, that the historical construction of drugs and drug users is underpinned by stereotypes of particular groups and infused with 'moral populism', makes it all the more urgent to respond to drug use in a different and more effective way.

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95. Jurgens, R. Csete, J. Amon, J. Baral, S. and Beyrer, C. (2010). 'People who use drugs, HIV and human rights', *Lancet*, 376: 475-485.

96. The Lancet Commissions. (2016). Public health and International Drug Policy, *The Lancet*, [http://dx.doi.org/10.1016/S0140-6736\(16\)00619-X](http://dx.doi.org/10.1016/S0140-6736(16)00619-X)

97. Stevens, A and Measham, F. (2014 p. 1232), 'The 'Drug Policy Ratchet': why do sanctions for new psychoactive drugs typically only go up?', *Addiction*, 109: 1226-1232.

98. The 2016 United Nations General Assembly on drugs was hoped to be a catalyst for drug law reform. However despite some welcome shifts in emphasis and that many countries (including New Zealand) are stepping back from a 'war on drugs' rhetoric, prohibition remains firmly in place as a response to drugs in the document approved the UNGASS in April 2016 (Lohman 2016).

99. Sheridan, J. and Butler, R. (2010), "'They're legal so they're safe right?'" What did the legal status of BZP-party pills mean to young people in New Zealand?' *The International Journal of Drug Policy*, 21: 77-81.

100. Bennett, T. and Holloway, K. (2010 p.42). 'Is UK drug policy evidence-based?' *International Journal of Drug Policy*, 21: 411-417.

101. Sparks, R. (2003 p.160). 'States of insecurity: punishment, populism and contemporary political culture', in McConville, S. ed. *The Use of Punishment*. Willan publishing, Cullompton.