

House of Representatives

Supplementary Order Paper

Wednesday, 28 November 2018

Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill

Proposed amendment

Kiritapu Allan, in Committee, to move the following amendment:

Clause 4

Replace *clause 4* (page 1, lines 10 and 11) with:

4 Section 70 amended (Offences relating to psychoactive substance that is not approved product)

In section 70(3), replace paragraph (a) with:

- (a) in the case of an individual,—
- (i) to a term of imprisonment not exceeding 8 years; and
 - (ii) when sentencing under **subparagraph (i)**, where relevant, the court must take into account—
 - (A) kanohi ki te kanohi (face to face reconciliation between the offender and any affected person):
 - (B) whakamā (appreciation and shame in respect of wrongdoing and its impact):
 - (C) whakahoki mauri (rehabilitation):
 - (D) te taha tinana (the physical aspect):
 - (E) te taha wairua (the spiritual aspect):
 - (F) te taha whānau (the family aspect):
 - (G) te taha hinengaro (the psychological aspect):
 - (H) the offender’s whānau background:

**Proposed amendments to
Psychoactive Substances (Increasing Penalty for Supply
and Distribution) Amendment Bill**

- (I) the principle that we should strive for values and practices of aroha (love and compassion), manaakitanga (support and kindness), wairuatanga (the importance of spirituality), and whanaungatanga (the value of connectedness to family and community):
- (J) any wider matters that indicate that social and cultural influences may have had an impact on the offending:
- (K) any matters drawn to the court's attention under section 27 of the Sentencing Act 2009:

Explanatory note

This Supplementary Order Paper replaces *clause 4* of the Psychoactive Substances (Increasing Penalty for Supply and Distribution) Amendment Bill, which amends section 70(3)(a) of the Psychoactive Substances Act 2013.

This amendment seeks to recognise the principle established in *Solicitor-General v Heta* that Māori are overrepresented in our prisons and that there may be historical and cultural reasons for this that should be properly taken into account. It is well recognised that disenfranchisement is prevalent amongst Māori and this can, at least in part, be attributed to post-colonial factors that have resulted in Māori being statistically overrepresented in more or less every measure of deprivation (wealth, education, literacy, health, family violence, incarceration, etc.). Any sentencing in respect of psychoactive substances should reflect these matters.

The deaths and harm caused by synthetic drugs are extremely disturbing to the public and our legislation must reflect this level of concern. However, imposing a long term of imprisonment would simply reinforce the historical inequities resulting from the incarceration of Māori offenders, rather than address the root cause of these issues.