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UK DRUG POLICY COMMISSION

The UK Drug Classification System: issues and challenges

Written evidence to the Advisory Council on the Misuse of Drugs as part of its review of the classification of MDMA ('ecstasy')

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About this paper

As part of their current review of the classification of MDMA ('ecstasy') the Advisory Council on the Misuse of Drugs (ACMD) wrote to the UK Drug Policy Commission (UKDPC) in July 2008 with an invitation to submit written evidence. The UKDPC is in no doubt that the Advisory Council's review will be of the highest quality, based on rigorous scrutiny of the best available scientific evidence. In this respect, we recognise that it would be difficult for any contribution from the Commission to 'add value'. Furthermore, the Commission has not produced any work to date that can be usefully referenced to inform the specific issue of ecstasy classification.

However, we believe that the recent debate over the issue of cannabis classification and the subsequent decision by the Government to reject the Advisory Council's advice to keep cannabis in Class C raises a range of deeper questions about drug policy than simply which class a drug should be placed in. For example, it challenges the role of expert advisory bodies and the analysis of scientific evidence in the formulation of policy. It also demonstrates a lack of clarity and understanding in some quarters about the purpose of the classification system and the ways by which "harm" is assessed.

Therefore this paper does not offer evidence that is specific to the classification of ecstasy but aims to demonstrate that **a wider review of the classification system is now overdue.** In reaching its final conclusions on ecstasy, we hope the ACMD will not miss the opportunity to highlight the wider issues outlined in this paper concerning:

(a) the purpose of the classification system; and
(b) how best to make decisions about classifications.

To allow for a readership outside of the Advisory Council, this paper has been written for a general audience and addresses issues which will be familiar to many of the Council members.

1. The current system of drug classification

The Misuse of Drugs Act (MDA) 1971 established the system by which illicit drugs (or 'controlled substances') are classified. Its fundamental purpose is to provide a regulatory framework which controls the availability of, and access to, certain substances. Within this, criminal penalties are set with reference to the risk or harm caused by a drug and the type of illegal activity undertaken (for example, possession or supply/trafficking).

Schedule 2 of the Act divides all controlled drugs into three classes, A, B and C, according to their perceived harm. Class A drugs are considered the most dangerous substances and carry the heaviest criminal penalties. In 1973, regulations under the Act also placed drugs into five Schedules which define who may possess or supply each drug legitimately (for example, in the fields of science or medicine) and under what conditions.

The Act also established the Advisory Council on the Misuse of Drugs (ACMD), an independent, non-departmental public body comprised of experts from a variety of backgrounds. According to the Act, the Advisory Council should give advice to the Government "on measures (whether or not involving alteration of the law) which in the opinion of the Council ought to be taken for preventing the misuse of such drugs or

dealing with social problems connected with their misuse." Ministers (usually the Home Secretary) are statutorily obliged to consult the Advisory Council before making decisions relating to the classification of a drug. Any proposed changes require the approval of Parliament, most usually by an Order in Council which must be passed by both Houses.

Since 1971 the Advisory Council's advice can be broadly broken down into two types:

- advice on a wide range of drug policy issues, drawing on research evidence and consultation, with the aim of improving public policy (for example, its influential reports on the Criminal Justice System and HIV/AIDS in the 1990s and more recently, the reports *Hidden Harm* in 2003 and *Pathways to Problems* in 2006); and
- advice on whether particular substances should be controlled and, if so, in which class they should be placed. Here the ACMD has advised on the classification of drugs brought under the MDA 1971 for the first time (for example, ketamine, GHB and steroids) and the reclassification of some drugs, both 'downwards' (for example, cannabis) and 'upwards' (for example, methylamphetamine).

The Advisory Council's advice on particular classifications has, for the most part, been accepted by Government and Parliament. The most obvious exception is the recent decision not to accept the ACMD's recommendation to keep cannabis in class C. The only other known example is from 1979, when the ACMD, by a very small majority, voted to recommend that cannabis be reclassified from class B to C. This advice was rejected by the Government but in doing so it also acknowledged that the ACMD was divided on the issue.

2. Criticism of the current system & the position of ecstasy

There have been a number of influential independent reviews, reports and articles which have highlighted the need to re-examine the current classification system and in particular where MDMA should fit within it:

- **Police Foundation report, *Drugs and the Law* (2000)**[1]: "We believe that the present classification of drugs in the MDA should be reviewed to take account of modern developments in medical, scientific and sociological knowledge. The main criterion should continue to be that of dangerousness but the criteria should be made clear." The report went further and examined evidence about the classification of drugs and concluded that with regard to ecstasy, following advice from the Association of Chief Police Officers amongst others, that it should be re-classified from a Class A to a Class B controlled substance.
- **The House of Commons Home Affairs Committee report (2002)**[2]: "We, therefore, conclude that the time has come to reconsider the existing classifications for the less harmful drugs and we address each in turn….and therefore recommend that ecstasy is reclassified as a Class B drug."
- **The House of Commons Science and Technology Committee report (2006)**[3]: "…we have concluded that the current classification is not fit for purpose and should be replaced."

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[1] *Drugs and The Law, Report of the Independent Inquiry into the Misuse of Drugs Act 1971*, Police Foundation, 2000.

[2] *The Government's Drugs Policy: Is It Working? Third Report of Session 2001-02,* House of Commons Home Affairs Committee, 2002

[3] *Drug Classification: making a hash of it? Fifth Report of Session 2005-06*, House of Commons Science and Technology Committee, 2006

- **RSA Commission report (2007)**[4]: "The law embodies classifications and a system of classification that is crude and ineffective"…"The procedures for classifying drugs are slow and far from transparent"…."The current classification is vulnerable to political and media pressure."
- **An article in *The Lancet* by Professors Nutt, Blakemore *et al* (2007)**[5]: "the methodology and processes underlying classification systems are generally neither specified nor transparent, which reduces confidence in their accuracy and undermines health education messages." In their assessment review of the harms associated with a range of drugs, it is noticeable that ecstasy came third from bottom in the overall ranking, well below other Class A drugs.
- **The Academy of Medical Sciences report: *Brain Science, addiction and drugs* (2008)**[6] recommended new indices of harm that should inform the classification of drugs and the ACMD should have continued, informed dialogue between policy makers and the public to maintain trust and ensure credible regulation.

The Government has in the recent past also agreed that a review of the current classification system was necessary. On 19 January 2006, following his statement on the classification of cannabis, the then Home Secretary, Charles Clarke, said:

> "The more that I have considered these matters, the more concerned I have become about the limitations of our current system. […] I will in the next few weeks publish a consultation paper with suggestions for a review of the drug classification system, on the basis of which I will make proposals in due course".[7]

This announcement was welcomed by the ACMD which said: "[the Advisory Council] believes that there is scope to explore how effectively the current system is operating; and to examine whether there are any opportunities to improve it. As with any system, regular review clarifies and confirms its fitness for purpose".[8] There was also support from many NGOs and members of both opposition parties. However, soon after this announcement Charles Clarke was replaced as Home Secretary and in October 2006 the Government indicated it no longer believed a review was necessary.[9]
More recently, deliberative consultation with the public in 2007 found the majority view was that the current classification system is "confused, inconsistent and arbitrary"[10] and responses to the 2008 drug strategy consultation demonstrate that, outside of Government at least, there is an appetite for a review of the classification system:

> "In particular, respondents feel that the classification in general may warrant a complete review and overhaul. There is a feeling that the system is open

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[4] *Drugs – Facing Facts*, RSA Commission on Illegal Drugs, Communities and Public Policy, 2007.
[5] *Development of a rational scale to assess the harm of drugs of potential misuse*, Nutt, D., King, A., Saulsbury, W., and Blakemore, C., The Lancet, 2007.
[6] *Brain Science, Addiction and Drugs*, The Academy of Medical Sciences, 2008.
[7] Hansard, 19 January 2006: column 984.
[8] *Drug Classification: Making a Hash of it?' Response of the Advisory Council on the Misuse of Drugs (ACMD) to the House of Commons Science and Technology Committee's report*, October 2006.
[9] *The Government reply to the fifth report from the House of Commons Science and Technology Committee Session 2005-06, 'Drug Classification: making a hash of it?*, October 2006.
[10] *Brain Science, Addiction and Drugs*, The Academy of Medical Sciences, 2008.

to misinterpretation and does not make it clear what exactly is illegal and what is supposedly unsafe. There is a strong call for a clearer system to take its place, and one which focuses on risk and harm caused by drugs".[11]

More recently there have been further calls for a review from various individuals and organisations since the Government announced it would reclassify cannabis back to B.

3. The issues behind the classification system

There are at least three fundamental and confounding issues with the current system which ought to be considered and clarified:

(a) The purpose and impact of classification.

The purpose of the classification system needs to be clarified, and the way in which it has the desired impact needs to be better conceptualised and demonstrated. Confidence in the system is at risk from false expectations of the benefits any changes in classification will bring.

It is important to be clear about the purpose of the classification system in order to consider whether or not it is fit for purpose. When it was created in 1971, it provided a simple framework for setting the severity of criminal penalties. However, more recently the classification system has come to be seen as having a wider role than this, with other functions proposed or assumed. For example:

- to prioritise public policy and resources, particularly for drug law enforcement. The Government has said "the classification system acts not only as a guide to police, but also informs other law enforcement agencies…in the setting of their priorities in tune with the Government's assessment and expectations".[12]
- to educate or 'send a signal' to young people and deter them from using more harmful drugs. A Home Office press release asserted that reclassifying cannabis upwards will be "sending a strong message that the drug is harmful and should not be taken".[13]
- to deter producers and suppliers from producing/supplying drugs. The Government "believes that the illegality of certain drugs, and by association their classification, will impact on drug use choices, by informing the decisions of dealers and users".[14]

If the classification system is required to adopt these diverse roles, a review is desirable to clarify how the classification system is expected to fulfil them, and whether the evidence shows it has been, or can be, effective in doing so. It may be appropriate to classify drugs in different ways for different purposes for instance using levels of social harm when considering social or criminal policy, and health harm when considering health policy. Any system must of course also consider unintended consequences.

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[11] *Drugs: Our Community, Your Say. A Report on the 2008 Drug Strategy Consultation. Views on Reclassifying Cannabis to a Class B Drug*. Ipsos Mori, 2008.

[12] *The Government reply to the fifth report from the House of Commons Science and Technology Committee Session 2005-06, 'Drug Classification: making a hash of it?'*, October 2006.

[13] Home Office press release, 7 May 2008.

[14] *The Government reply to the fifth report from the House of Commons Science and Technology Committee Session 2005-06, 'Drug Classification: making a hash of it?'*, October 2006.

Policing

Currently, reclassification does not mean that policing resources, powers or policy must necessarily change – unlike sentencing, the two are not inextricably linked and the 2005 Serious Organised Crime and Police Act (SOCPA) has eroded any specific differences between classes relating to police powers of arrest. Under SOCPA, powers of arrest exist for any drug offence but arrest must be shown to be 'necessary'. The presumption has been against arrest for simple adult possession of cannabis as a class C drug but for other drugs any 'presumption' for or against arrest has not been formally articulated. It is not clear how or whether a change in drug classification would make an arrest more or less 'necessary'. Indeed, the fact that classification does not determine policing policy is illustrated by the fact that cannabis has been treated differently to other drugs in the same class: we have special ACPO guidance for cannabis and a specific form of disposal with cannabis warnings.

With further reference to the cannabis debate, the Home Secretary announced that the Government's decision to reclassify to class B took into account "the needs and consequences for policing policy" and the need for "a strengthened enforcement approach".[15] However, any new policy for 'tougher' enforcement could have been developed without the need to reclassify. A move from class C to class B does not, in itself, mean that the police will have additional powers to tackle traffickers, dealers or cultivators, or that the police must stop using cannabis warnings and start arresting everyone caught in possession (the police themselves do not want this[16]). Reclassification is likely to have even less of an effect on the policing of younger people caught in possession, as cannabis warnings have never applied to under 18s. Cannabis policing policy is currently being redrafted by the Association of Chief Police Officers (ACPO) on the request of the Home Secretary following her decision to reclassify, but this is not a legal requirement of reclassification. As classification gives no indication of the level of policing required it is not yet clear how a "strengthened enforcement approach" will manifest itself.

Sending messages and deterring use

In terms of 'sending a signal' to young people, the evidence suggests classification is a very ineffective vehicle for doing this. For instance, the view that downgrading cannabis from B to C sent out the 'wrong message' is not supported by drug use prevalence statistics - the number of young people using cannabis in the UK has continued to decline. Furthermore, according to a major government survey the number of secondary school children who think it is 'ok' to try cannabis has almost halved since reclassification from B to C.[17] A wide range of international evidence indicates that changes in drug laws do not have a direct effect on prevalence.[18] The ACMD has also advised that "criminal justice measures – irrespective of classification – will have only a limited effect on usage" and instead it has pressed for a public health approach to any strategy aimed at minimising drug use.[19] The use of the classification system to send messages was strongly criticised by the House of Commons Science and Technology

[15] Hansard, 7 May 2008: columns 705 and 706.

[16] "*Should the decision be taken to reclassify cannabis to a class B, ACPO believes the service should retain this flexibility in dealing with instances of possession on the street, including the discretion to issue warnings in appropriate circumstances*." Association of Chief Police Officers press release, 5 February 2008.

[17] The numbers agreeing they think it is 'ok' to try cannabis 'to see what it's like' went from 17% of all pupils in 2003 to 9% in 2006. *Smoking, drinking and drug use among young people in England in 2006*, The Information Centre for Health and Social Care, 2007.

[18] *An analysis of UK Drug Policy*, Peter Reuter and Alex Stevens, UK Drug Policy Commission, 2007.

[19] *Cannabis: classification and public health*, Advisory Council on the Misuse of Drugs, 2008.

Select Committee which found no persuasive evidence of a deterrent effect from classification.[20]

The evidence suggests there are more effective ways of communicating to young people and reducing drug use.

Sentencing

Even as a framework for sentencing the role of drug classification is arguably not as clear as it could be. The only legal consequence of reclassifying a drug is to change the *maximum* penalties available to sentencers, and since maximum penalties are only rarely given, the impact of classification relies on sentencing guidelines recognising the difference between class A, B and C offences. Furthermore, the maximum sentence for dealing/trafficking has been the same for both class B and C drugs since 2004 (14 years in prison and an unlimited fine), eroding what was once a key distinction between these classes.

The Sentencing Advisory Panel, which advises the Sentencing Guidelines Council (SGC), is currently at an early stage of drafting a consultation paper on the sentencing of drug offences (expected to be published towards the end of 2008). This may lead the SGC to issue new guidance to sentencers about drug offences. Although such guidance is likely to utilise the ABC classification framework, this is not a formal requirement. It also raises questions about the relationship between the ACMD and the SGC and how information and advice is developed and shared.

(b) How decisions about drug classifications are made.

The status of the drug classification as a 'hierarchy of harm' has been questioned. A number of commentators and expert bodies have suggested greater clarity and transparency as to how assessments are made and the criteria used.

The ACMD's assessment of harm

In advising the government on the classification of a substance, the ACMD is required, under the terms of the Misuse of Drugs Act, to consider only its harmfulness to individuals and society.[21] This is, of course, in line with the original intention of the classification system as a hierarchy based on harm. The MDA 1971 does not specify how the Advisory Council should assess harm, nor does it set any specific criteria. However, the ACMD has sought to improve the way it assesses the harmfulness of drugs, paralleling to some extent steps across the European Union.[22]

The ACMD considers scientific evidence on medical and social harms and risks. In recent years the ACMD has used a 'risk assessment matrix' as a 'partially objective' scoring system to assist with evaluating the harms associated with different drugs, as outlined below:[23]

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[20] *Drug Classification: making a hash of it? Fifth Report of Session 2005-06*, House of Commons Science and Technology Committee, 2006.

[21] *Cannabis: classification and public health*, Advisory Council on the Misuse of Drugs, 2008.

[22] The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has sought to achieve a more systematic and rigorous risk-assessment approach across the EU and has assessed a range of new or emerging synthetic drugs within a framework adopted in 1997. See *Guidelines for the risk assessment of new synthetic drugs*, EMCDDA, 1999.

[23] *The Government reply to the fifth report from the House of Commons Science and Technology Committee Session 2005-06, 'Drug Classification: making a hash of it?'*, October 2006.

Category	Parameter
Physical Harms	Acute
	Chronic
	Parenteral (e.g. intravenous)
Dependence	Intensity of pleasure
	Psychological dependence
	Physical dependence
Social Harms	Intoxication
	Other social harms
	Healthcare costs

However, this matrix and the accompanying scoring system are only used as a guide for the decision-making process and only then on an ad hoc basis. Furthermore it still presents a number of issues which need to be considered further:

- The matrix does not specify how each harm should be measured or weighted.
- The evidence reviewed will change over time and will depend on the availability of reliable and meaningful data.
- A particular challenge comes in assessing the wider 'social harms', which are not further defined in the matrix, where data may be much less rigorous and often conjectural.
- Currently there is no stand-alone description of what level of risk makes a drug class A or B or C. Therefore it is not clear, and open to question, what 'level' of risk or harm is required to distinguish the classes.

Some of these issues were explored by the Academy of Medical Sciences (2008) which described and recommended a more detailed matrix of harm which also indicated the type of measurement and source of information that should be used.[24]

<u>The government's assessment of other 'knowledge inputs'</u>
At present, the Advisory Council is just that – advisory – and the final decision on the classification of a drug is essentially a political one which rests with ministers and parliament. Although the classification system is ostensibly a hierarchy of harm, it is curious that in addition to the ACMD's advice the government considers a range of other 'knowledge inputs' which have no clear reference to harm before making its decision. These might include public consultations to assess "core social values and consensus", lessons from international comparisons and considerations within the political context.[25]

In her statement to the House of Commons announcing the reclassification of cannabis back to class B, the Home Secretary said: "my decision takes into account issues such as public perception" and cited a public survey which showed that 58% of the general public thought cannabis should be a higher grade than class C.[26] However, public opinion is difficult to measure, it can change over time and according to events. Survey answers will depend also on the methodologies and types of questions used. For instance, other questions in the same public survey showed there was little desire to increase penalties for possession, highlighting inconsistencies in responses or at least a lack of understanding regarding the impact of reclassification.[27]

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[24] *Brain Science, Addiction and Drugs*, The Academy of Medical Sciences, 2008.
[25] *The Government reply to the fifth report from the House of Commons Science and Technology Committee Session 2005-06, 'Drug Classification: making a hash of it?'*, October 2006.
[26] Hansard, 7 May 2008: column 705.
[27] *Cannabis: classification and public health*, Advisory Council on the Misuse of Drugs, 2008.

No matter where "true" public opinion lies, it raises questions about what factors should be considered when deciding upon drug classifications. If factors other than measures of drug harm are used, the credibility of the system as a hierarchy of harm is clearly undermined. Since the Advisory Council judged that the harmfulness of cannabis most closely equates with other class C substances and yet cannabis will be reclassified to B, the usefulness of the system as an indication of drug harms has now been questioned.

The hierarchy of harm model is also undermined by the fact that many drugs appear to be in a certain class simply because that is the class they have always been in[28], and by the number of perceived anomalies concerning the classification of individual drugs identified by some experts.[29]

While it might be desirable for classification decisions to be based purely on independent and expert scientific advice regarding the levels of harm caused by drugs, it is also apparent that wider drug policy decisions ought to embrace other considerations. A thorough impact assessment which considers both intended and unintended consequences of policy changes linked to classification, with an understanding of associated costs (economic and social), is a case in point. However it is not at all clear that such a process has been undertaken for any controlled drug to date (although an estimated reduction in the demands on policing resources informed the decision to downgrade cannabis to class C). Indeed, the Government has been criticised for failing to evaluate the impact of policy changes in this area thus missing opportunities to gather data which would improve future policy making.[30]

(c) Increased politicisation of drug classification.
Because there is a lack of clarity over why and how society should place drugs into the ABC categories, the classification process and system has become highly politicised and risks becoming discredited.

Between 2000 and 2007, five Home Secretaries have one way or another sought to address the drug classification debate in relation to cannabis. The cannabis debate has become very heated and politicised, and the government's decision to go against the ACMD's advice with respect to classification has demonstrated that political dimensions can take precedent over an independent and scientific analysis of drug harms.

Some may argue that ultimately it has to be politicians who make decisions about drug classification but this ignores the fact that, in a number of other areas of public policy making, Government and parliament have devolved responsibility to properly constituted and, where appropriate, publicly accountable bodies. The time is now opportune to review the process as a whole, and especially the role of politicians. There are likely to be options worthy of full exploration which might place decision-making outside of the direct influence of Government ministers, into a more objective and scientific environment – perhaps an 'executive' as opposed to an 'advisory' Council. This paper does not make a serious attempt to consider the options, but comparisons can readily be drawn with decisions made in other areas of policy, for example on interest rates (the Bank of England Monetary Policy Committee), background checks for people working with vulnerable groups (the Independent Safeguarding Authority), the availability of

[28] *Drug Classification: making a hash of it? Fifth Report of Session 2005-06*, House of Commons Science and Technology Committee, 2006.
[29] *Development of a rational scale to assess the harm of drugs of potential misuse*, Nutt, D., King, A., Saulsbury, W., and Blakemore, C., The Lancet, 2007.
[30] *Drug Classification: making a hash of it? Fifth Report of Session 2005-06*, House of Commons Science and Technology Committee, 2006.

medicines within the NHS (NICE) and the plans for a new body to oversee strategic national infrastructure decisions such as nuclear power plant and airport planning decsions.

The wider role of an expert body

As already noted the ACMD's remit goes far beyond narrow classification issue. The MDA 1971 states that the Council should give ministers advice on measures which ought to be taken:

- for restricting the availability of drugs;
- for enabling people who are affected by the misuse of such drugs to obtain proper advice, treatment rehabilitation and after-care services;
- for promoting co-operation between services which have a part to play in dealing with social problems connected with the misuse of such drugs;
- for educating the public (and in particular the young) in the dangers of misusing such drugs, and for giving publicity to those dangers; and
- for promoting research and information about dealing with problems associated with drug misuse.

A review which considers the possibility of a new and enhanced role for an expert body with respect to decision-making on drug classifications might also consider its role in some other limited areas of drug policy. For instance, under the new (2008) UK drug strategy, *Drugs: protecting families and communities*, the Home Office is committed to developing a cross-Government research plan. The UKDPC has argued that an independent body is best placed to do this, particularly in the area of coordination of research and providing regular independent evaluations of the drug strategy, something done in other countries.[31]

We understand that the ACMD will, as a non-departmental public body (NDPB), be subject to an independent review which is expected to commence in mid-2008 and be completed by the end of that calendar year. This also coincides with the appointment of a new Chair of the Council from November 2008. We believe that this is a unique opportunity to consider the wider role of the ACMD and to explore options for furthering an evidence-based approach to drug policy development.

4. Conclusion

Many of the shortcomings of the current system have been thrown into relief by the long-running debate surrounding the classification of cannabis. It has demonstrated the increasing politicisation of the issue and the uncertainty and confusion over why and how society should place drugs into the ABC categories. As Professor Blakemore asked the Science and Technology Committee in 2006: "If it took so much effort to consider one particular drug and whether it should be placed on one side or other of a boundary, does it not imply that the entire mechanism for classifying requires a new look?" Following the government's announcement about cannabis, others have also raised the need for a review of the classification system. The UKDPC does not want to second-guess the Council's final conclusions about ecstasy. However, were it to recommend a lower classification then it is not unreasonable to anticipate a political response similar to that with cannabis.

Apart from the Independent Police Foundation report of 2000, there has not been a systematic review of the drug classification system since the Misuse of Drugs Act was passed in 1971. There is a need for a thorough independent review of the system, as the

[31] *A response to Drugs: Our Community Your Say Consultation Paper,* UK Drug Policy Commission, 2007.

Government promised to do in 2006, to clarify the purpose of classifications and to consider options which can bring enhanced independent scientific analysis to the core of future classification decisions.

There is a need for an independent review, with a strong consultative element, which asks how decisions about the classification of drugs are best made and for what purpose. Given that the role of the ACMD will be a major element of such a review, the opportunity might be taken to link this to the planned review of the ACMD in 2008. This might then consider whether the role and legislative status of the ACMD should be changed or enhanced in areas other than drug classification, particularly with respect to the coordination and management of research and information relating to drug policy, and independent evaluation of the drug strategy.