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## Drug driven psychoses and legal responsibility or insanity in six Western Pacific nations

Graham Mellso<sup>a,\*</sup>, W.K. Choi<sup>b</sup>, Susanna Every-Palmer<sup>c</sup>, Bob Green<sup>d</sup>, Ed Heffernan<sup>d</sup>, Margarita Kachaeva<sup>e</sup>, Akihiro Shiina<sup>f</sup>, Xiaoping Wang<sup>g</sup>

<sup>a</sup> University of Auckland, New Zealand

<sup>b</sup> Castle Peak Hospital, Hong Kong

<sup>c</sup> Central Regional Forensic Services, Wellington, New Zealand

<sup>d</sup> Queensland Forensic Mental Health Services, Australia

<sup>e</sup> Serbsky National Research Centre for Social & Forensic Psychiatry, Moscow, Russian Federation

<sup>f</sup> Chiba University Hospital, Japan

<sup>g</sup> Mental health Institute of the second Xiangya Hospital, Central South University, China

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## ABSTRACT

Prompted by four questions, forensic mental health clinicians from Russia, China, Japan, Hong Kong, Australia and New Zealand provided information on both the legislative basis and current practice concerning the relationship between legal insanity, intoxication and drug induced psychosis in their six Pacific Rim Countries which account for nearly 20% of the world's population.

Details of the survey for each contributing nation are provided. While there are significant variations in practice that have been shaped by regional legal, clinical and cultural influences there is considerable similarity in the legislation underpinning how these issues are considered. Consequently there remain similar challenges for each nation. In none of the legislative bases was the issue of drug induced psychosis specifically addressed.

The authors conclude that evolving pharmaco-neuropsychiatric knowledge, societal values and patterns of substance misuse require nations to consider developments in scientific and clinical knowledge to support their interpretations of the relationship between altered mental states as a result of substance use and the legal construct of insanity.

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## 1. Introduction

The determination of criminal responsibility in persons alleged to have committed a serious crime is governed by legislative frameworks in most countries. While the relevant legislations have evolved separately over time they share significant similarities in this area as recently reported for a number of countries which border on the Pacific Ocean (Every-Palmer et al., 2014). Determination of Not Guilty on the Grounds of Insanity (NGRI) can be predominantly driven by specific legislation or by common law, informed by extant pragmatic conventions of psychiatric interpretation. Whether or not courts have a legislative basis for determining that a person is NGRI (usually meaning psychotic) as a result of a “(internal)” Disease of the Mind” or from the “(external)” use of drugs, particularly illicit drugs, is a matter increasingly requiring clarification. This is substantially because drug use as a contributor to psychosis is, at least in some countries, becoming an increasingly common reason for presentation to mental health services (Degenhardt & Hall, 2012; Ridley & Coleman, 2015).

\* Corresponding author at: Waikato Clinical Campus, Peter Rothwell Academic Centre, Private Bag 3200, Hamilton 3240, New Zealand. Tel. + 64 7 839 8750; fax: + 64 7 839 8712.

E-mail address: [graham.mellso@waikatodhb.health.nz](mailto:graham.mellso@waikatodhb.health.nz) (G. Mellso).

The technique of determining, describing, and comparing professional views of psychiatrists in different countries has been used to demonstrate commonalities and differences on major issues such as psychiatric classifications by the WHO (Mellso, Janca, Leon-Andrade, et al., 2011; Reed, Correia, Esparza, Saxena, & Maj, 2011), and by the present authors in relation to forensic mental health around the Pacific Rim.

In view of the above, this paper has aimed to report both the legislative basis and current practice on the relationship between legal insanity and drug induced psychosis in six Pacific Rim Countries which account for nearly 20% of the world's population.

## 2. Method

Experts identified by Board Members of the Pacific Rim College of Psychiatrists as suitable representatives of forensic psychiatry in their countries (Russia, China, Japan, Hong Kong, Australia, and New Zealand) were asked by the first author (GM) to respond to the four questions noted below.

For each country:

1. Does the legislative basis for court decisions concerning those considered to be psychotic at the time of committing a crime specifically

refer to drug induced mental disorders? Please amplify your response.

2. Does your country allow drug induced psychosis as a reason for an NGRI decision?
3. In your jurisdiction can intoxication be raised as a defence or mitigation against the more serious crimes?
4. Are there legal precedents in your country for court decisions on the guilt or otherwise of those considered to be suffering from drug induced psychosis at the time of committing an offence?

The responses were summarised to form the body of this paper. Each author has been responsible for providing the information pertaining to their particular country and for checking the accuracy of that once it was amalgamated into this paper.

### 3. Results

In Japan under Article 39 of the Penal Code, an insane act is not punishable, and an act of diminished responsibility leads to the punishment being reduced. There is no clear definition of insanity in Japanese legislation. The Supreme Court (1931) defined insanity as a state in which the ability to recognize the difference between good and evil or to control oneself based on that recognition is lacking due to mental disorders. Diminished responsibility is a state in which those abilities are strongly impaired, as recognized in a verdict (A Judgement Document by Supreme Court. Pronounced in December 3rd 1931; in Japanese). In this context 'mental disorders' have been interpreted as any of the mental disorders listed in the F code of the International Classification of Diseases 10th edition (WHO, 1992). There is no official commitment to exclude any particular syndromes from this list. Consequently, drug-induced psychoses may theoretically qualify for an insanity defence or diminished responsibility.

It is noteworthy that methamphetamine has been the dominant illicit drug used in Japan since at least the middle of the 20th Century. In the late 1940s and early 1950s for example, there were thought to be around 550,000 Japanese methamphetamine users, of whom some 55,000 developed methamphetamine psychosis (WHO, 1997). In 2012 it was reported that 63.3% of the patients with mental and behavioural disorders due to psychoactive substance use had used methamphetamine.

Although methamphetamine and other drug-induced psychoses can hypothetically inform an insanity defence, it is extremely rare for a court to acquit a defendant with drug-induced psychosis on account of insanity (Aoki, 1996). There may be two reasons for this. First, under the Japanese legal system, public prosecutors can elect whether they prosecute the suspect or not, regardless of the type of crime. Overall, public prosecutors determine the criminal responsibility of the suspects in most cases, tending not to prosecute suspects who appear severely impaired due to mental illness. In 2013, 579 suspects were not prosecuted because the prosecutor deemed them to be insane. On the other hand in 2013, there were only six cases in which an insanity defence was approved by the district court. (White Paper on Crime 2014. Ministry of Justice, in Japanese).

Secondly, the link between methamphetamine use and organised crime in Japan may also be a factor. The Ministry of Justice reported that 56% of approximately 11,000 cases of violation of the Stimulants Control Act in 2013 involved known members of antisocial organizations (White Paper on Crime 2014. Ministry of Justice, 2014). This has engendered negative public opinion against drug – and particularly methamphetamine-users which may be influencing the judgement of the courts.

Historically there have been cases in which full responsibility was ascribed to defendants with drug-induced psychoses and verdicts in which it was not (Nakatani, Kojimoto, Matsubara, & Takayanagi, 2010).

When the Court determines criminal responsibility it considers several factors including personality, criminal history, behaviours around the crime, motives and nature of the crime, the amplitude of psychotic

symptoms, and so forth. A 1980 verdict stated that acquittal on account of insanity should only apply if the defendant was entirely dominated by the psychotic symptoms at the time of the offence (Ogata A. Yakubutsu hanzaiisha no sekinin noryoku – Tokyo kosai heisei 20 nen 3 gatu 10 niti hanketu wo sozai to site. [Criminal responsibility of illegal drug users – considering a verdict in Tokyo High Court on March 10th 2008.] Meiji Gakuin Daigaku hogaku kenkyu. 88, 165–182, 2010. in Japanese).

While the courts have traditionally allowed alcohol intoxication as a partial defence in some instances this is now extremely rare.

Japanese patients with drug-induced psychoses are subject to the Medical Treatment and Supervision 2005 Act. Under this Act, a person who commits a serious criminal offence in a state of insanity or with diminished responsibility is treated and supervised within a judicial administrative framework (Shiina, Iyo, Hirata, & Igarashi, 2015). Mentally disordered offenders with less serious offences are treated under the Mental Health and Welfare (MHW) Act. Both the MTS act and MHW act contain no specific provisions for patients with drug-induced mental disorders. In Japan, there are no special therapeutic schemes legally authorized for such patients.

It has been noted that the pattern of drug use in Mainland China has historically been quite different from that in Western countries (Hao et al., 1997). Following the implementation of the "anti-drug campaign" in 2005, opiate drug use decreased significantly; however, the use of amphetamine type stimulants and ketamine has been on a steady upward trajectory in China (and other Asian countries) over recent years, with the prevalence of amphetamine use amongst drug users rising from 6.7% in 2005 to 34.4% in 2012 (Du et al., 2015). The concomitant psychiatric sequelae have increased demands on mental health services necessitating the creation of specialised psychiatric wards for patients with drug induced mental disorders (Zhang, Xu, et al., 2014).

The relevant legislation for considering the criminal responsibility of those who offend while suffering drug induced psychoses is found in Act 18 of the Chinese Criminal Code 1997. This sets out the general principles relevant to the concept of NGRI as follows:

1. A mentally ill person who causes dangerous consequences at the time when he is unable to recognize or unable to control his own conduct is not to bear criminal responsibility after being established through accreditation of legal procedures; but his family or guardian shall be ordered to subject him to strict surveillance and arrange for his medical treatment. When necessary, he will be given compulsory medical treatment by the government.
2. A person whose mental illness is of an intermittent nature shall bear criminal responsibility if they commit a crime during a period of mental normality.
3. A mentally ill person who commits a crime at a time when they have not yet completely lost their ability to recognize or control their own conduct shall bear criminal responsibility but they may be given a lesser or a mitigated punishment.
4. An intoxicated person who commits a crime shall bear criminal responsibility.

While the Code is clear that intoxication can not constitute a defence, (Wang, Livingston, Brink, & Murphy, 2006) there is no specific reference to drug induced mental disorders. Consequently, there has been a diversity of opinion and practice within China. While the Ministry of Justice enacted assessment guidelines for criminal responsibility in 2011, this has not resulted in consistency of practice (Zhang, Xu, et al., 2014; Zhang, Zhao, et al., 2014). The inconsistency persists even where the guidelines have advised psychiatrists to distinguish between intentional (voluntary) drug use and unintentional (involuntary) intoxication.

Arrested persons who are suffering a suspected drug induced psychosis are usually assessed in a psychiatric facility or a prison hospital, as is any other person recognised to be seriously mentally ill (Wang et al., 2006).

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