

Does the 'Two Dogs' Method of Clandestine Synthesis Use Precursors that are not Legally Regulated on the Australian East Coast?

Victor Chiruta¹ ✉ and Robert D Renshaw²

¹School of Health Sciences, University of South Australia, 101 Currie St, Adelaide, SA 5001, AU; Independent Food & Therapeutic Authority, M/134 Great Western Hwy, Blaxland, NSW 2774, AU; Science Fellow, Mind Medicine Australia, 1/10 Dorcas St, South Melbourne, VIC 3001, AU

²Independent Food & Therapeutic Authority, M/134 Great Western Hwy, Blaxland, NSW 2774, AU

✉ **Corresponding Author:** Victor Chiruta, **E-mail:** chivy011@mymail.unisa.edu.au

ARTICLE INFORMATION

Received: 15 October 2021
Accepted: 11 November 2021
Published: 28 November 2021
DOI: 10.32996/ijlps.2021.3.2.4

KEYWORDS

MDA, helional, Two Dogs, Crown Prosecutor, MMDPPA, MMDPPHA, sentencing

ABSTRACT

In the State of New South Wales (NSW), Australia, the prosecution in criminal proceedings is seeking deterrence punishment for offenders manufacturing 3,4-methylenedioxyamphetamine (MDA) from the precursor helional via the 'Two Dogs' method (TDM). The reason given by the prosecution is a presumption that the TDM does not use any unrestricted chemicals in the synthesis of MDA. A comprehensive literature search was conducted. The relevant law was searched to fact-check the assertion of the prosecution. It was found that the prosecution was incorrect. Intermediate precursors of the TDM are restricted in NSW. However, the starting precursor helional remains unscheduled in NSW, yet helional is scheduled in some other Australian States. The prosecution's position may play a significant factor in the sentencing proceedings of offenders. Therefore, as a matter of urgency, the prosecution must review and update its position and its submissions, keeping with the factual position in relation to the legal provisions of precursors used in the TDM.

1. Introduction

Clandestine laboratories in Australia have been synthesizing the drug MDA from the aromatic chemical helional via a process known as the TDM. In NSW, prosecutors have referred upon the TDM as using unrestricted precursors to manufacture the prohibited drug MDA. As such, prosecutors are relying upon offenders circumventing the law by using unrestricted chemicals to synthesis a prohibited drug, as an aggravating or other factors for deterrence in sentencing proceedings pursuant to section 21A(2) of the *Crimes (Sentencing Procedure) Act 1999 No 92* (Austl. NSW, 1999). In NSW, a Crown Prosecutor, Barrister Peter Lowe on 22 October 2021 put on public record that an offender using the TDM should be looked at as an aggravating factor, as deterrence to other prospective offenders using unrestricted precursors to manufacture MDA from helional via the TDM.

"The method of manufacture is the two-dogs method which does not rely on the use of restricted chemicals - As such it is important to record a conviction in order to deter other like-minded offenders who would use that method."

Peter Lowe, Barrister, Crown Prosecutor

It is of utmost ethical importance, significance, and relevance that submissions in court by the prosecution, on behalf of the Crown, are fact-checked for integrity, reliability, and truth. In this case, to check whether the primary precursors in the TDM are restricted or not.

2. Literature Review

The primary precursors in the TDM of helional to MDA are helional, helional oxime or aldoxime, and helional amide (Dal Cason et al., 2012). Helional oxime or aldoxime is referred to as MMDPPHA, the chemical abbreviation for 2-methyl-3-(3,4-

methylenedioxyphenyl)prop-1-ylidenehydroxylamine. The helional amide is referred to as MMDPPA, the chemical abbreviation for 2-methyl-3-(3,4-methylenedioxyphenyl)propanamide. Relevant precursor legislation for the Australian East Coast States and Territories were reviewed for NSW, Australian Capital Territory (ACT), Queensland (QLD), and Victoria (VIC). For NSW the restricted drug precursors are listed in Schedule 1 of the *Drug Misuse and Trafficking Regulation 2021* (Austl. NSW, 2021). For ACT the restricted drug precursors are listed in Schedule 1 of the *Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020* (Austl. Cth, 2020). For QLD the restricted drug precursors are listed in Schedule 6 of the *Drugs Misuse Regulation 1987* (Austl. QLD, 1987). For VIC the restricted drug precursors are listed in Schedule 1 of the *Drugs, Poisons and Controlled Substances (Precursor Chemicals) Regulations 2017* (Austl. VIC, 2017).

3. Methodology

Relevant Australian East Coast State and Territory legislation was checked to contain the TDM precursors helional, MMDPPA, and MMDPPA as pertinent and up-to-date information.

4. Results

Table 1. The restriction of primary precursors used in the TDM of helional to MDA in Australian East Coast States and Territories

State or Territory	Legislation	Schedule	Effective date	Months prior to public record submission	Restricted precursor
VIC	<i>Drugs, Poisons and Controlled Substances (Precursor Chemicals) Regulations 2017</i> ²	Schedule 1 precursor	21/07/2017	51	Helional MMDPPA
QLD	<i>Drugs Misuse Regulation 1987</i> ³	Schedule 6 controlled substance	02/11/2018	36	Helional
NSW	<i>Drug Misuse and Trafficking Regulation 2021</i> ⁴	Schedule 1 precursor	27/08/2021	2	MMDPPA MMDPPA
ACT	<i>Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020</i> ⁵	Schedule 1	n/a	n/a	Unregulated

5. Discussion

It is curious to see that as a totality along the Australian East Coast, all three primary precursors used in the TDM of synthesizing MDA from helional are, in fact, restricted. To recall, the Crown Prosecutor said, “the two-dogs method which does not rely on the use of restricted chemicals”. In NSW, the TDM relies on MMDPPA and MMDPPA, which are restricted chemicals. However, in NSW the starting precursor helional is unrestricted, although helional is restricted in QLD and VIC.

In all three states, other aromatic precursors that can be used as starting material to synthesis MDA are restricted. These include piperonal, safrole, and piperonyl methyl ketone (Cooper, 2019). It would only be reasonable to assume that if NSW wanted to restrict access to synthesizing MDA from helional via the TDM method, that helional would be scheduled, not just MMDPPA and MMDPPA. A further search into the legislation recommendations reveals why. The department of FASS recommended a legislative change to NSW to schedule MMDPPA and MMDPPA, but not helional. In the recommendations for legislative change in NSW to precursors that can be used to manufacture prohibited drugs, the Forensic and Analytical Science Service (FASS) of NSW advise that MMDPPA and MMDPPA are perfumery chemicals that have legitimate uses but can also be used for illicit drug synthesis (NSW, 2021). FASS has made an error in scientific judgment. MMDPPA and MMDPPA are not perfumery chemicals (Kovacs & Kirby, 2013). The chemicals are sold online for legitimate purposes but are limited to the purposes of intermediate reagents and analytical chemistry. Helional is the perfumery chemical, especially being an aromatic aldehyde. In fact, helional is approved by the Australian medical regulatory body, the Therapeutic Goods Administration, as a fragrance for use in registered medicine (Cth, 2020).

“The Proposed Regulation adds the following precursors to Schedule 1.

1. 2-Methyl-3-(3,4-methylenedioxyphenyl)propanamide (helional amide)
2. 2-Methyl-3-(3,4-methylenedioxyphenyl)prop-1-ylidenehydroxylamine (helional aldoxime)

² *Drugs, Poisons, and Controlled Substances (Precursor Chemicals) Regulations 2017*, (VIC) (Austl) § Schedule 1 - Precursor chemicals and quantities (2017).

³ *Drugs Misuse Regulation 1987*, (QLD) (Austl) § Schedule 6 Controlled substances (1987).

⁴ *Drug Misuse and Trafficking Regulation 2021*, (NSW) (Austl) § Schedule 1 Precursors—s 5 and the Act, s 24A (2021).

⁵ *Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020* (F2020L01003), (Cth) (Austl) § Schedule 1 (2020)

...
The Forensic and Analytical Science Service (FASS) advises that these substances are used to make, variously, 3,4-Methylenedioxyamphetamine (MDA), 3,4-Methylenedioxymethamphetamine (MDMA, commonly referred to as 'ecstasy'), methamphetamine (commonly referred to as 'ice'), and fentanyl.
FASS advises that the Items 1 and 2 above have legitimate uses as a perfume agent, but may also be used to make MDA."

FASS, NSW (NSW, 2021)

6. Conclusion

This research becomes highly significant and relevant when applied to offenders being sentenced in proceedings on misrepresented facts. A thoroughly researched and objective legal position is required from the prosecution, especially as precedence of future cases could become reliant on incorrect and partial facts. A means to bypass this confusion would be for NSW to schedule helional as a restricted precursor and be in continuity with helional scheduling in VIC and QLD as it has been for the last four and three years respectively. Concerning the possibility of NSW scheduling helional as a schedule 1 precursor, this legislative amendment would contribute to coherence within Australian State legislation and remove any confusion of offenders employing the TDM in sentencing and other proceedings.

Funding: This research and the APC were funded by the Independent Food & Therapeutic Authority (IFTA), <https://www.ifta.org.au/>.

Acknowledgments: The authors would like to thank Barrister for opening an inquiry into incorrect representations made by the Crown and potentially correcting future offenders on being sentenced on in factual and misrepresented Crown knowledge and submissions. Victor Chiruta would also like to thank Robert Renshaw for his assistance as a disability scribe and for his research.

Conflicts of Interest: Both authors are members of IFTA and represent specialist legal compliance within Australia.

References

- [1] *Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020* (F2020L01003), (Cth) (Austl) § Schedule 1 (2020). http://www5.austlii.edu.au/au/legis/cth/num_reg/ccaclaad2020202001003773/sch1.html
- [2] *Crimes (Sentencing Procedure) Act 1999* No 92, (NSW) (Austl) § 21A Aggravating, mitigating and other factors in sentencing (1999). <https://legislation.nsw.gov.au/view/html/inforce/current/act-1999-092#sec.21A>
- [3] *Drug Misuse and Trafficking Regulation 2021*, (NSW) (Austl) § Schedule 1 Precursors—s 5 and the Act, s 24A (2021). <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2021-0479#sch.1>
- [4] *Drugs Misuse Regulation 1987*, (QLD) (Austl) § Schedule 6 Controlled substances (1987). <https://www.legislation.qld.gov.au/view/html/inforce/current/sl-1987-dmr#sch.6>
- [5] *Drugs, Poisons, and Controlled Substances (Precursor Chemicals) Regulations 2017* (SR NO 76 of 2017), (VIC) (Austl) § Schedule 1 - Precursor chemicals and quantities (2017). http://classic.austlii.edu.au/au/legis/vic/num_reg/dpacscr2017n76o2017800/sch1.html
- [6] Cooper, K. (2019). *Impurity Analysis of MDA Synthesized from Unrestricted Compounds*. The University of Technology Sydney. <https://opus.lib.uts.edu.au/bitstream/10453/136093/1/02whole.pdf>
- [7] *Therapeutic Goods (Permissible Ingredients) Determination (No. 4) 2020*, (2020). <https://www.legislation.gov.au/Details/F2020L00666>
- [8] Dal Cason, T. A., Corbett, C. A., Poole, P. K., de Haseth, J. A., & Gouldthorpe, D. K. (2012). Unusual clandestine laboratory synthesis of 3,4-methylenedioxyamphetamine (MDA). *Forensic Sci Int*, 223(1-3), 279-291. <https://doi.org/10.1016/j.forsciint.2012.10.002>
- [9] Kovacs, E. J., & Kirby, D. A. (2013). Manufacture of 3,4-methylenedioxyamphetamine from helional using Beckmann and Hofmann Rearrangements. *JCLICA*, 23(1), 5-14.
- [10] NSW. (2021). *Drug Misuse and Trafficking Regulation 2021 Regulatory Impact Statement*. NSW Government. <https://www.justice.nsw.gov.au/justicepolicy/Documents/drug-misuse-and-trafficking-regulation-2021/regulatory-impact-statement.pdf>