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The National Peak Body

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Senator Helen Polley
Chair, Parliamentary Joint Committee on Law Enforcement
PO Box 6100, Parliament House
Canberra ACT 2600

13 January 2023

Dear Senator Polley

I am writing to you to provide a submission from the Australian Alcohol and other Drugs Council (AADC) to the Joint Committee on Law Enforcement's inquiry on *Australia's illicit drug problem: Challenges and opportunities for law enforcement.* AADC welcomes the opportunity to make a submission to this inquiry and highlight the challenges and opportunities in Australia's response to illicit drug use and harms.

AADC is the national peak body representing the alcohol and other drugs (AOD) sector. We work to advance health and public welfare through the lowest possible levels of AOD related harm by promoting effective, efficient and evidence-informed prevention, treatment and harm reduction policies, programs and research at the national level. AADC is a member-based organisation providing representation for more than 550 AOD specialist health services, more than 1600 specialist practitioners working in AOD services in the areas of prevention, early intervention and treatment; researchers and AOD policy specialists and people who use or have used AOD, and their families.

More than 30 countries across the world have embarked on a process of illicit drug decriminalisation and reforming policy to place increased emphasis on health-based responses to illicit drug use. Implementation models vary, however countries that have embarked on these reforms have witnessed reductions in illicit drug-related deaths, decreased blood-borne virus transmissions, reduced costs to police and overall reduced social costs related to drug use. This has occurred without significant increases in drug use.

The attached submission highlights the way in which the focus of Australia's current illicit drug policy misses opportunities to improve health outcomes and more efficiently use law enforcement resources. It illustrates that way Australia's response to illicit drugs is largely targeted towards policing individual drug use and has limited impact on the supply and availability of substances in Australia.

Simultaneously, we highlight the way the AOD treatment sector has significant lack of capacity. Up to 43% of Australians report using an illicit drug in their lifetime and the contribution of AOD use to burden of disease results in critical pressures on health and human services. Although severe harms are a minority experience (approximately 11% of all people who use drugs experience a substance use disorder), there remains a significant need for access to a broad range of demand and harm reduction

services. The current lack of system capacity results in an estimated 500,000 Australians seeking assistance for an AOD issue being unable to access treatment each year. The figure is in addition to long recognised gaps in capacity for harm reduction, prevention, community development and other service types. The lack of system capacity comes despite modelling which suggests that for every dollar invested in the AOD treatment system up to seven dollars is returned to the community.

This current inquiry is the 11th such inquiry on illicit drugs responses conducted by Commonwealth, State and Territory parliaments and statutory authorities since 2018. The findings of these inquiries are consistent and clear: illicit drug use and any associated harms are primarily a health issue and there is a need for greater balance in emphasis and funding allocation across the three pillars of the National Drug Strategy. As such, our submission focuses on the ways in which health and wellbeing outcomes for people who use drugs, their families and communities can be improved and the role that law enforcement agencies can play in supporting this outcome.

Thank you for the opportunity to contribute to this inquiry. If you require any further information, please do not hesitate to contact me directly on 0438 430 963 or via email at melanie.walker@aadc.org.au.

Yours sincerely

Melanie Walker

CEO, Australian Alcohol and other Drugs Council

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The National Peak Body

Submission to the Joint Law Enforcement Committee Inquiry into

Australia's illicit drug problem: Challenges and opportunities for law enforcement

January 2022

Executive Summary

The Australian Alcohol and other Drugs Council (AADC) is Australia's national peak body representing more than 550 services and 1,600 specialist practitioners across the alcohol and other drugs (AOD) sector, AOD researchers and policy experts, people who use or have used drugs and their families. We work to advance health and public welfare through the lowest possible levels of AOD related harm by promoting effective, efficient and evidence-informed prevention, treatment and harm reduction policies, programs and research at the national level.

Across the world, countries which have embarked on reforms decriminalising illicit drug use and emphasising health-based responses have witnesses decreased drug-related harms and deaths and declines in costs to law enforcement and criminal justice systems, all without a comparable increase in illicit drug use. These benefits are particularly realised where illicit drug decriminalisation occurs with concurrent investment in the health system.

Findings from previous inquiries across Australia reflect these international outcomes. We note that this current inquiry is the 11th such inquiry into illicit drug use and Australia's responses across Commonwealth, State and Territory parliaments since 2018.[1] The findings of these inquiries, including those conducted previously by the Joint Committee on Law Enforcement, are clear and consistent: illicit drug use and any associated harms are a health issue and there is a need for greater balance of emphasis and funding allocation across the three pillars of demand, harm and supply reduction within Australia's National Drug Strategy and illicit drug policies more broadly.

Despite these clear and consistent findings, Australia's illicit drug policy is currently weighted towards policing and supply reduction interventions, most frequently targeting individual drug use. Funding for supply reduction outweighs funding for both demand and harm reduction measures by a factor of 3 to 1. Possession-related arrests have been on a consistent upward trend since 2006, with more than 150,000 Australians arrested for a possession-related offence in 2018-19, most often for cannabis, and between 20-30% of these arrests resulting in a court appearance. At the same time, supply-related offences have remained stable at around 20,000 each year, average seizure weights are small and Australian Crime Intelligence Commission data, inquiry findings and community experience all demonstrate that despite the emphasis on supply reduction measures, illicit substances remain widely accessible.

The focus on policing and supply reduction under a broader framework of drug criminalisation comes at significant cost. Drug criminalisation incentivises the supply of more potent substances of unknown quality, such as Novel Psychoactive Substances, increasing the risks of fatal and non-fatal overdose; drives the transmission of blood borne viruses; encourages risky consumption practices out of fear of police detection, and creates barriers to AOD treatment, general health treatment, employment opportunities and social inclusion. Critically, the emphasis on supply reduction and policing as the primary response to illicit drug use comes with a concurrent lack of capacity in Australia's AOD treatment system with an estimated 500,000 Australians unable to access treatment for an AOD concern each year. This is in addition to long recognised gaps in capacity for harm reduction, prevention, community development and other service types.

A number of opportunities exist for law enforcement agencies and whole of government responses to reshape Australia's response to illicit drugs, improve health and wellbeing outcomes and more efficiently use available resources. In the context of this Inquiry's Terms of Reference, AADC provides the following recommendations:

[1] See Appendix 1 for the full list of inquiries into illicit drug use and responses.

Trends and changes relating to illicit drug markets in Australia, including the supply, trafficking, production, distribution and use of illicit drugs

Recommendation 1: Australia's policy narrative around illicit drug use

- acknowledges that dependent, problematic illicit drug use is a minority experience
- situates illicit drug use within a public health framework that recognises the social, economic, policy, legal and physical environments which elevate the risk of drug-related harms
- prioritises action to addresses the above-mentioned environmental factors

Recommendation 2: As part of a health-focused response to illicit drug use, additional funding be invested in the AOD treatment sector to meet current and future demand. As a short term response, this includes consistently applying indexation to Commonwealth AOD service funding contracts.

Recommendation 3: Australia's illicit drug response be guided by a coordinated, sector inclusive, national governance framework/structure which has remit over the full breadth of issues which shape illicit drug use and harms.

The involvement of law enforcement in harm reduction strategies and in efforts to reduce supply and demand, including the effectiveness of its involvement

Recommendation 4: Law enforcement agencies provide support for harm reduction interventions with demonstrated public health efficacy.

Recommendation 5: Law enforcement agencies reduce the use of actions which target individual drug use and more consistently use diversionary measures where minor drug offences are encountered.

Recommendation 6: Law enforcement agencies actively support and participate in state, territory and national early warning systems through sharing of intelligence and information on seized substances making this information available to government and non-government treatment and support services and where appropriate, the public through media channels. This is in addition to supporting local, event-based responses, such as mobile drug checking services at music festivals.

Recommendation 7: Naloxone and training on overdose response be provided to law enforcement officers in each state and territory as part of standard procedures and equipment.

The strengths and weaknesses of decriminalisation, including its impact on illicit drug markets and the experiences of other jurisdictions

Recommendation 8: Commonwealth legislation defining supply-related offences be amended to move away from threshold quantities of a substance being the sole criteria for a supply-related offence and instead have greater focus on the intent and context of illicit drug possession. It is also recommended that these amendments be consistently applied across jurisdictions through a national coordinating governance structure.

Recommendation 9: Diversionary measures be expanded to cover all illicit drug types in all Australian jurisdictions and legislation and policing guidelines be updated to reduce scope for law enforcement

discretion and ensure diversionary measures are consistently and evenly applied, and that options for decriminalisation of personal illicit drug possession be explored further.

1.0 About the Australian Alcohol and other Drugs Council

The Australian Alcohol and other Drugs Council (AADC) is the national peak body representing the alcohol and other drugs (AOD) sector. We work to advance health and public welfare through the lowest possible levels of AOD related harm by promoting effective, efficient and evidence-informed prevention, treatment and harm reduction policies, programs and research at the national level. AADC's founding members comprise each state and territory peak body for the AOD sector, other national peak bodies relating to the AOD sector, and professional bodies for those working in the AOD sector.

AADC is a member-based organisation and represents:

- over 550 AOD specialist health services working to prevent and reduce harms which can be associated with the use of AOD, including more than 80% of the non-government organisations that receive federal funding to deliver services and support to people using AOD
- more than 1600 specialist practitioners working in AOD services in the areas of prevention and early intervention, as well as treatment settings representing all treatment types including counselling, detoxification, residential and non-residential rehabilitation, opiate replacement therapy, and harm reduction and prevention services
- researchers and policy specialists dedicated to building the evidence-base to support robust, high impact practice and programs
- people who use or have used AOD, and their families.

The current membership of AADC is:

Alcohol, Tobacco and Other Drug Association ACT (ATODA)	Alcohol, Tobacco and Other Drugs Council Tasmania (ATDC)	Association of Alcohol and Other Drug Agencies NT (AADNT)
Australasian Therapeutic Communities Association (ATCA)	Australian Injecting and Illicit Drug Users League (AIVL)	Drug and Alcohol Nurses Australasia (DANA)
Family Drug Support	National Indigenous Drug and Alcohol Committee (NIDAC)	Network of Alcohol and Other Drug Agencies (NADA)
Queensland Network of Alcohol and Other Drug Agencies (QNADA)	South Australian Network of Drug and Alcohol Services (SANDAS)	The Australasian Professional Society on Alcohol and other Drugs (APSAD)
Victorian Alcohol and Drug Association Inc (VAADA)	Western Australian Network of Alcohol and other Drug Agencies (WANADA)	Drug Policy Modelling Program* **AADC associate member*

In making this submission, AADC acknowledges additional submissions provided to the Committee by a number of its member organisations, including the Australian Injecting and Illicit Drug Users League (AIVL) - and other AOD sector groups such as Students for Sensible Drug Policy (SSDP) - that provide additional context on specific issues and elements, aligned to the principles and recommendations outlined herein.

2.0 Australia's Illicit Drug Response

Before examining the role and opportunities for law enforcement in relation to illicit drug use, demand and harm reduction, it is critical to review the foundations of Australia's drug control response as this guides the function of law enforcement in the context of illicit drug use. The National Drug Strategy 2017-2026 and *Criminal Code Act 1995* are two of these foundational elements. What emerges from analysis is a need to balance the three pillars of the National Drug Strategy and reframe the narrative of Australia's policy response, and ensure legislation is consistent and reflects the experience of using drugs in Australia.

2.1 Policy: Balancing the pillars and reframing the narrative

The policy narrative and broader discourse on illicit drug use in Australia drives an over emphasis on policing and supply reduction responses, which undermines a balanced approach to harm minimisation.

Australia's National Drug Strategy 2017-2026 seeks to reduce illicit drug related harm through "the balanced adoption of effective demand, supply and harm reduction strategies".[2] The balance between the pillars of demand, supply and harm reduction, underneath an overarching framework of harm minimisation, has been a feature of national drug policy since 1985.[3] Yet, in practice, there is little balance in funding and emphasis across these three pillars. Best available data demonstrates that supply reduction measures are funded at a factor of almost 3:1 compared with demand and harm reduction measures. Of the $1.7 billion of funding directed to illicit drug responses in 2009-10, for example, an estimated $1.068 billion was provided for supply reduction measures while only $0.39 billion was provided for demand and harm reduction action.[4]

This current inquiry is the 11th such inquiry conducted by Commonwealth, State and Territory parliaments and statutory authorities exploring illicit drug use and responses since 2018.[5] The findings of these inquiries, for the most part, consistently find that there is an overemphasis on policing and supply reduction responses and underemphasis on health-based and demand reduction responses. The findings of the Joint Committee on Law Enforcement in its inquiry into methamphetamine summarise the themes found in other jurisdictional inquiries:

> 5.71 Evidence in this report demonstrates the benefits of prioritising demand and harm reduction policies over law enforcement policies when it comes to assisting people to reduce or cease their illicit drug use.
>
> 5.72 Allocating funding in a way that prioritises law enforcement strategies above demand and harm reduction policies runs the risk of undermining the success of Australia's [National Drug Strategy]. Therefore, the committee is of the view that the Commonwealth, state and territory governments must continue to re-balance funding across all three pillars of the [National Drug Strategy].[6]

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[2] Department of Health. (2017:p1). *National Drug Strategy 2017-2026.* Canberra: Commonwealth of Australia.

[3] McCreadie, R. (1995). Law Enforcement and the National Drug Strategy. In P. Dillon (Ed.) *The National Drug Strategy: The First 10 Years and Beyond. (NDARC Monograph No.27).* Hobart: National Drug and Alcohol Research Centre.

[4] Ritter, A., McLeod, R., & Shanahan, M. (2013). *Monograph No. 24: Government drug policy expenditure in Australia – 2009/10*. DPMP Monograph Series. Sydney: National Drug and Alcohol Research Centre

[5] See Appendix 1 for the full list of inquiries into illicit drug use and responses.

[6] Parliamentary Joint Committee on Law Enforcement. (2018). *Inquiry into crystal methamphetamine (ice): Final Report*. Canberra: Commonwealth of Australia.

This emphasis on supply reduction measures comes at the expense of broader health responses that deliver effective and sustainable health and wellbeing outcomes, of which AOD treatment and harm reduction services are significant contributors.

More than 43% of Australians report using an illicit drug in their lifetime, with an estimated 11% of people who use drugs experiencing a substance use disorder.[7] More broadly, harms related AOD use impact individuals, families and communities across the country. Social and economic costs, including contribution of AOD to burden of disease, result in significant pressures on health and human services. The *New Horizons* report finds that approximately 200,000 Australians receive treatment for an AOD concern each year, yet there is an unmet treatment demand of up to 500,000 people.[8] In practical terms, this means that the lack of capacity in the AOD service system results in up to half a million Australians each year who are seeking treatment and support to address AOD related harms being unable to access needed services. This is in addition to long recognised gaps in capacity for harm reduction, prevention, community development and other service types.

The unmet demand for AOD services is likely to be exacerbated in an environment where indexation on Commonwealth government funding contracts has not been applied consistently for the better part of a decade. This has resulted in continued, real cuts to service capacity with significant impacts on the sustainability of the AOD sector workforce.

The lack of capacity within the AOD sector has flow on effects for law enforcement and the justice system more broadly. For example, where drug treatment is required as part of bail conditions but waiting lists for treatment services are up to 12 months, this results in people spending extended periods on remand and in custodial settings, the costs of which are borne by the justice system.[9] Likewise, options available to support diversionary initiatives are currently limited by a lack of capacity in the AOD sector.

Economic modelling illustrates a clear case for investment in health-based responses to illicit drug use, with for example, anywhere between $5.40-7 returned for every $1 invested in the treatment sector and $27 returned for every $1 invested into harm reduction programs, such as needle and syringe programs.[10] [11] [12]

To our knowledge, no similar cost-benefit modelling exists in relation supply reduction measures. However there are consistent findings that law enforcement and drug seizures have little impact on illicit drug use or supply. Previous inquiries lead by the Joint Committee on Law Enforcement have found an increase in the frequency and volume of illicit drug seizures over the past decade.[13] Yet, the NSW Special Commission inquiry into methamphetamine is most clear about the impact of this law enforcement activity:

> Approximately $7.3 billion worth of crystal methamphetamine is consumed per year in Australia. Despite their dedicated efforts, federal and state law enforcement bodies have

[7] United Nations Office on Drugs and Crime. (2017). *World Drug Report 2017*. Vienna, Austria: United Nations

[8] Ritter, A., Berends, L., Chalmers, J., Hull, P., Lancaster, K. & Gomez, M. (2014). *New Horizons: The review of alcohol and other drug treatment services in Australia.* Sydney, NSW: Drug Modelling Program, National Drug and Alcohol Research Centre, UNSW.

[9] Koob, S. (2021, April 11). "'Terrible heartache': Soaring wait times for drug and alcohol treatment during pandemic", *The Age.* Accessed 9 December at https://www.theage.com.au/national/victoria/terrible-heartache-soaring-wait-times-for-drug-and-alcohol-treatment-during-pandemic-20210409-p57hu3.html

[10] Voce, A. & Sullivan, T. (2022). *What are the monetary returns of investing in programs that reduce demand for illicit drugs? Trends & issues in crime and criminal justice no. 657.* Canberra: Australian Institute of Criminology.

[11] Ritter, A et al. (2014). *New Horizons: The review of alcohol and other drug treatment services in Australia.* Sydney, NSW: Drug Modelling Program, National Drug and Alcohol Research Centre, UNSW.

[12] National Centre in HIV Epidemiology and Clinical Research. (2009). Return on investment 2: Evaluating the cost effectiveness of needle and syringe programs in Australia. Canberra: Department of Health and Ageing.

[13] Parliamentary Joint Committee on Law Enforcement. (2021). *Public communications campaigns targeting drug and substance abuse.* Canberra: Commonwealth of Australia.

> been unable to reduce the supply and production of ATS [amphetamine-type substances] in NSW. It is clear from evidence before the Inquiry that ATS remain readily available in NSW and supply continues to meet demand (Vol.1, Paragraph 21)[14]

This finding is matched by consumer experiences in drug markets across Australia, where illicit drugs of all types are largely rated as easy or very easy to obtain and there is little fluctuation in price.[15] [16] Similarly, the Australian Crime Intelligence Commission finds that illicit substance seizures remove only a fraction of the supply from the market, as low as 21% in the case of heroin .[17] Further, when examining the average quantities seized by state and territory law enforcement agencies, these are typically of a smaller scale and suggest that large scale interceptions of illicit substances are rare and most offences are related to personal possession or small scale supply (see Table 1).

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	National
Amphetamines									
Seizures	377	12,237	442	9,919	997	743	2,044	9,386	36,145
Total quantity seized (g)	2,843	418,529	4,815	134,743	223,792	7,722	331,617	322,482	1,446,543
Average seizure (g)	8	34	11	14	224	10	162	34	40
Cannabis									
Seizures	648	16,844	1,937	16,860	111	1,799	3,389	14,166	55,754
Total quantity seized (g)	342,580	1,971,586	71,323	1,090,071	223,673	220,887	3,047,774	369,341	7,337,235
Average seizure (g)	529	117	37	65	2,015	123	899	26	132
Heroin									
Seizures	33	1,072	2	194	19	13	254	326	1,913
Total quantity seized (g)	53	7,630	7	8,436	15,383	99	17,543	13,642	62,793
Average seizure (g)	2	7	4	43	810	8	69	42	33

Table 1: Amphetamine, cannabis and heroin seizures and average weights, 2018-2019, by jurisdiction.
Note: 2018-2019 data used to avoid COVID-19 and border closures as a confounding factor[18]

The emphasis on law enforcement and supply reduction in Australian illicit drug policy also comes in the context of a low level of problematic drug use globally and widespread recent and lifetime use in Australia. Estimates suggest that only 11% of people who use drugs experience a substance use disorder.[19] In 2019, 9 million Australians reported using an illicit drug at least once in their lifetime and 3.4 million reported use in the last 12 months – figures similar to previous surveys.[20]

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[14] Howard, D. (2018). *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants – Volume 1*. Sydney: State of NSW.

[15] Sutherland, R., Uporova, J., King, C., Jones, F., Karlsson, A., Gibbs, D., Price, O., Bruno, R., Dietze, P., Lenton, S., Salom, C., Daly, C., Thomas, N., Juckel, J., Agramunt, S., Wilson, Y.,Que Noy, W., Wilson, J., Degenhardt, L., Farrell, M. & Peacock, A. (2022). *Australian Drug Trends 2022: Key Findings from the National Illicit Drug Reporting System (IDRS) Interviews*. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

[16] Sutherland, R., Karlsson, A., King, C., Jones, F., Uporova, J., Price, O., Gibbs, D., Bruno, R., Dietze, P., Lenton, S., Salom, C., Grigg, J., Wilson, Y., Wilson, J., Daly, C., Thomas, N., Juckel, J., Degenhardt, L., Farrell, M. & Peacock, A. (2022). *Australian Drug Trends 2022: Key Findings from the National Ecstasy and Related Drugs Reporting System (EDRS) Interviews.* Sydney: National Drug and Alcohol Research Centre, UNSW Sydney

[17] Australian Criminal Intelligence Commission (ACIC). (2020). *Illicit Drug Data Report 2018–19*. Canberra: ACIC.

[18] *ibid*

[19] United Nations Office on Drugs and Crime. (2017). *World Drug Report 2017*. Vienna, Austria: United Nations

[20] Australian Institute of Health and Welfare. (2020). *National Drug Strategy Household Survey 2019*. *Drug Statistics series no. 32. PHE 270.* Canberra: AIHW

Prioritisation of law enforcement responses exacerbates the harms associated with illicit drug use by increasing the risk of fatal and non-fatal overdose and blood borne viruses transmission; reinforces stigma and discrimination, which creates barriers to accessing support and limits social and employment participation; and incentivises the production and supply of more potent substances. These harms are explored in further detail in Section 4.

In this context, AADC calls for the reframing of the Australian illicit drug policy narrative and a restructuring emphasis and funding for illicit drug responses. A critical element of this is nationally consistent responses which seek to ensure that health and wellbeing outcomes for people who use drugs are not dependent on geography. As such, AADC recommends the re-establishment of a national governance framework/structure for illicit drug responses which brings together Australian, State and Territory governments, representatives of key AOD sector stakeholders and those with relevant personal experience and which prioritises health and wellbeing outcomes and seeks to balance funding across the pillars of demand, harm and supply reduction.

Recommendation: AADC recommends that Australia's policy narrative around illicit drug use

- **acknowledges that dependent, problematic illicit drug use is a minority experience**
- **situates illicit drug use within a public health framework that recognises the social, economic, policy, legal and physical environments which elevate the risk of drug-related harms, and**
- **prioritises action to addresses the above-mentioned environmental factors**

Recommendation: As part of a health-focused response to illicit drug use, additional funding be invested in the AOD treatment sector to meet current and future demand. As a short term response, this includes consistently applying indexation to Commonwealth AOD service funding contracts.

Recommendation: Australia's illicit drug response be guided by a coordinated, sector inclusive, national governance framework/structure which has remit over the full breadth of issues which shape illicit drug use and harms.

2.2 Legislation: Aligning laws with lived experience and context

Australia is a signatory party to the three key conventions which establish the global framework of drug control. These conventions, particularly the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, define the specific substances for control and establish the basis of Australia's drug control legislation. It is important to note that criminal responses to low level illicit drug possession are not an explicit part of these conventions. This has resulted in more than 30 countries worldwide decriminalising or legalising personal use of a range of substances, with many of these countries moving beyond the de jure or de facto decriminalisation frameworks currently in operation within some Australian jurisdictions.

While Commonwealth legislation is largely focused on controlled substances coming into Australia, the *Criminal Code Act 1995* also creates laws regarding the supply of illicit drugs within Australia. Alongside this, state and territory legislation define offences related to possession and supply, with most defining specific quantities of substances at which supply-related offences apply. Table 2 defines these threshold amounts across jurisdictions. This table highlights the significant variation that exists across jurisdictions, with Commonwealth legislation typically having the lowest threshold for supply-related offences.

Drug Type	Commonwealth	ACT	NSW	NT	SA	TAS	VIC	WA
Amphetamine / Methamphetamine	2	6	3	2	2	25	3	2
Cannabis	250	300	300	50	250	1000	250	100
Heroin	2	5	3	2	2	25	3g	2
Cocaine	2	6	3	2	2	25	3	2
Ketamine	3	6	7.5	0.002	6	Any amount	3	Not specified
MDMA	0.5	10	3	0.5	2	10	3	2

Table 2: Threshold quantities at which supply-related offences apply. All quantities are in grams.
**Note: Queensland does not apply threshold quantities to distinguish between personal possession and possession for supply*

These threshold amounts, particularly those at the lower end of the scale, do not adequately reflect the reality of personal drug use and the quantities typically used. Research by Hughes, Ritter, Cowdery and Phillips contrasts the amount of a substance typically used within a single session and the thresholds for supply.[21] These are highlighted in the case of heroin in Table 3. Although median amounts used and purchased fall below the threshold amounts, in cases of heavier or dependent use, or where someone seeks to reduce the possibilities of police interaction, these quantities exceed the thresholds. This places people who engage in heavier use or who have a substance use disorder at higher risk of more significant offences and penalties as there is little nuance in legislation to distinguish across different types of people who use drugs as threshold quantities do not reflect the lived experience of using drugs or purchasing patterns. The inconsistencies between jurisdictions have particular relevance within the ACT, which is subject to both Commonwealth and territory legislation. Law enforcement officers within ACT have discretion to apply either Commonwealth or territory legislation, placing people who use drugs at increased risk of attracting a higher penalty.

State	Current traffickable threshold (g)	Median maximum quantity (g) (typical day)	Maximum quantity heroin used (g) (typical session)	Maximum quantity heroin purchased (g)
NSW	3	0.4	3	3.5
VIC	3	0.6	2	3.5
SA	2	0.3	1.5	1
TAS	25	0.6	1.5	1
WA	2	0.3	1	1

Table 3: Heroin traffickable threshold quantities and usage and purchasing patterns, by jurisdiction.
Note: not all jurisdictions included in the study.[22] [23]

Given the variation of personal use that occurs among people who use drugs and the factors driving this, it is recommended that supply-related laws move away from prescribed threshold amounts as the sole criteria for a supply offence and instead focus on the context and intent of possession as the criteria for personal use or possession supply. This is the current legislative environment in Queensland. This will help ensure that that individual people who use drugs are not criminalised further through the application of more severe penalties where the quantity of a substance they possess exceeds an arbitrary threshold. Secondly, by establishing intent and context of drug use as part of illicit drug legislation, rather than threshold quantities, drug diversion provisions can be more readily applied by law enforcement. As noted in Section 2 at Table 1, average drug seizure

[21] Hughes, C., Ritter, A., Cowdrey, N., & Phillips, N. (2014). *Australian threshold quantities for 'drug trafficking': Are they placing drug users at risk of unjustified sanction?. Trends & issues in crime and criminal justice no. 467*. Canberra: Australian Institute of Criminology.
[22] *ibid*
[23] Sutherland, R., Uporova, J., King, C., Jones, F., Karlsson, A., Gibbs, D., Price, O., Bruno, R., Dietze, P., Lenton, S., Salom, C., Daly, C., Thomas, N., Juckel, J., Agramunt, S., Wilson, Y.,Que Noy, W., Wilson, J., Degenhardt, L., Farrell, M. & Peacock, A. (2022). *Australian Drug Trends 2022: Key Findings from the National Illicit Drug Reporting System (IDRS) Interviews*. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

quantities are typically of smaller scale and it can be assumed that some portion of these seizures will be related to personal possession which exceeds current threshold quantities. Introducing a great focus on intent and context of possession would also enable wider use of diversionary measures and support more efficient use of law enforcement and judicial resources in preventing and addressing the most serious supply offences.

Recommendation: AADC recommends that Commonwealth legislation defining supply-related offences be amended to move away from threshold quantities of a substance being the sole criteria for a supply-related offence and instead have greater focus on the intent and context of illicit drug possession. It is also recommended that these amendments be consistently applied across jurisdictions through a national coordinating governance structure.

3.0 Illicit drug use, legal and law enforcement landscape in Australia

3.1 Illicit drug use in Australia

More than nine million Australians (43%) report at least one experience of illicit drug use during their lifetimes, and more than three million (16%) report use in the last 12 months.[24] Of people who reported recent drug use, cannabis was most commonly used, followed by cocaine, ecstasy and non-medical use of painkillers and opioids. Alcohol, however, remains the most widely used drug in Australia with around 35% of people drinking weekly. The Australian Institute of Health and Welfare (AIHW) also finds that people living in higher socio-economic areas had higher rates of recent illicit drug use.[25] Table 4 outlines lifetime and recent illicit drug use in Australia and recent use estimates globally. It highlights that while recent illicit drug use in Australia is typically higher than global estimates, it is comparable to estimates in other high-income regions.

	Australia[26]		**Global[27]**	**Western & Central Europe[22]**	**North America[22]**
	Lifetime use	Recent use	Recent use	Recent use	Recent use
Cannabis	36%	11%	4%	8%	17%*
Ecstasy	12%	3%	0.4%	0.9%	0.9%
Opiates	6%	1%	0.4%	0.5%	0.7%
Cocaine	11%	4%	0.4%	1.4%	2%
Amphetamines	5.8%	1.3%	0.6%	0.7%	4%

Table 4: Estimates of lifetimes and recent illicit drug use – Australia and International

**Note: Cannabis has been legalised for sale in Canada and 21 states within the US*

Australians are also increasingly accepting of a public health response to drug use and want to see reforms to illicit drug laws. AIHW found support for a more balanced funding approach across the three pillars of Australian illicit drug policy and views that education, treatment and law enforcement actions should receive roughly equal amounts of funding.[28] AIHW also found a decreasing level of support for criminalising

[24] Australian Institute of Health and Welfare. (2020). *National Drug Strategy Household Survey 2019*. *Drug Statistics series no. 32. PHE 270.* Canberra: AIHW

[25] *ibid*

[26] Australian Institute of Health and Welfare. (2020). *National Drug Strategy Household Survey 2019*. *Drug Statistics series no. 32. PHE 270.* Canberra: AIHW

[27] United Nations Office of Drugs and Crime. (2020). *Prevalence of drug use – global and regional estimates: 2020.* Accessed 15 December at https://dataunodc.un.org/dp-drug-use-prevalence-regional

[28] *ibid*

cannabis possession (26% in 2016 and 22% in 2020), increasing support for cannabis legalisation, increasing support for diversionary responses to drug possession and increasing support for drug checking services.[29] These findings illustrate that the current context of illicit drugs in Australia is one where more than 40% of the population has used an illicit drug at some point in their lives and attitudes are increasingly supportive of reforms which position illicit drug use as a health rather than a criminal issue. As such, it is key that legislative and policy settings respond to community views and reflect evidence-informed levels of risk and harm.

3.2 Illicit drug offences and use of diversionary provisions

The Australian Crime Intelligence Commission (ACIC) reports that in 2018-19, 153,777 arrests were made for drug-related offences. However, the overwhelming majority (90%) of these arrests were related to personal use possession.[30] Additionally, possession-related arrests have grown year on year since 2006 while at the same time, supply-related arrests have remained comparatively stable (See Figure 1). Table 5 breaks down possession-related arrests by drug type and highlights that the majority of arrests are related to cannabis.

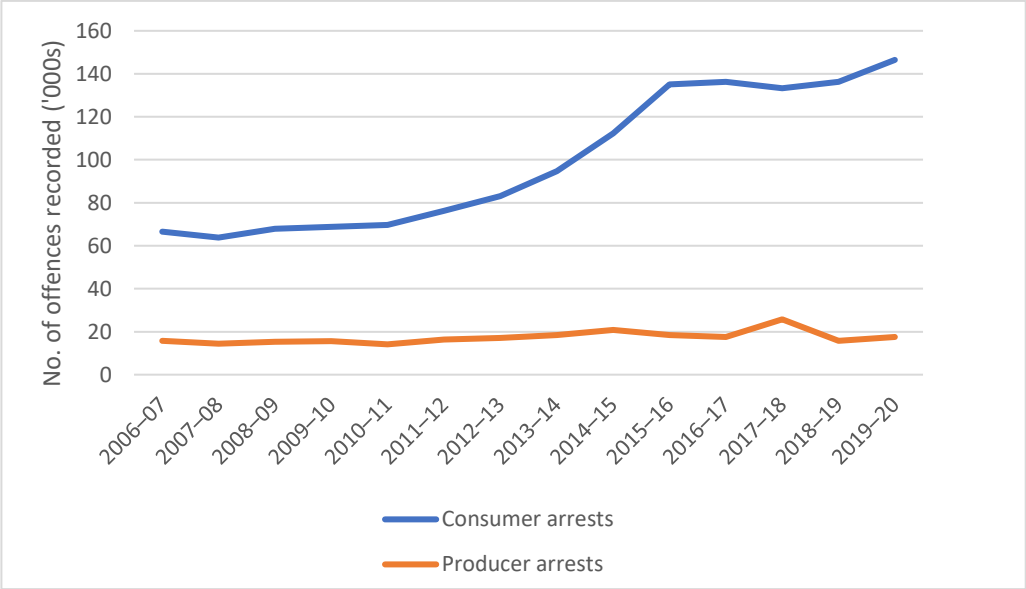

Figure 1 Recorded consumer and producer-related offences, all drug types – 2006-2020[31]

Drug type	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19	2019-2020
Amphetamines	9,501	12,590	16,595	19,945	27,502	40,527	40,837	40,144	41,055	43,428
Cannabis	50,845	52,413	53,829	59,994	66,309	72,198	70,747	66,296	64,848	69,406
Heroin/opiates	1,706	1,800	1,678	2,067	2,427	2,487	2,458	2,699	2,631	2,968
Cocaine	575	714	899	1,005	1,542	1,906	2,546	3,343	3,811	4,043

Table 5: Possession-related arrests, by drug type – 2010-2020[32]

[29] Australian Institute of Health and Welfare. (2020). *National Drug Strategy Household Survey 2019*. *Drug Statistics series no. 32. PHE 270.* Canberra: AIHW

[30] Australian Criminal Intelligence Commission (ACIC). (2020). *Illicit Drug Data Report 2018–19*. Canberra: ACIC.

[31] Australian Institute of Health and Welfare. (2022). *Alcohol, Tobacco and Other Drugs in Australia 2022 – Impacts. Supplementary Data Tables.* Accessed 19 December 2022 at https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/data-tables

[32] *Ibid*

Data between 2010-2020 illustrates that between 20-30% of arrests for illicit drug possession result in a court appearance and a guilty plea or guilting finding is almost always the outcome (see Figure 2). A non-custodial sentence is most commonly applied.[33]

However, it is important to note that although the proportion of arrests to court appearances is decreasing, the actual numbers of both are rising consistently. This clearly demonstrates that supply reduction and law enforcement efforts are currently primarily directed towards individual illicit drug use rather than producers, while at the same time having little effect on the availability of illicit substances in Australia.

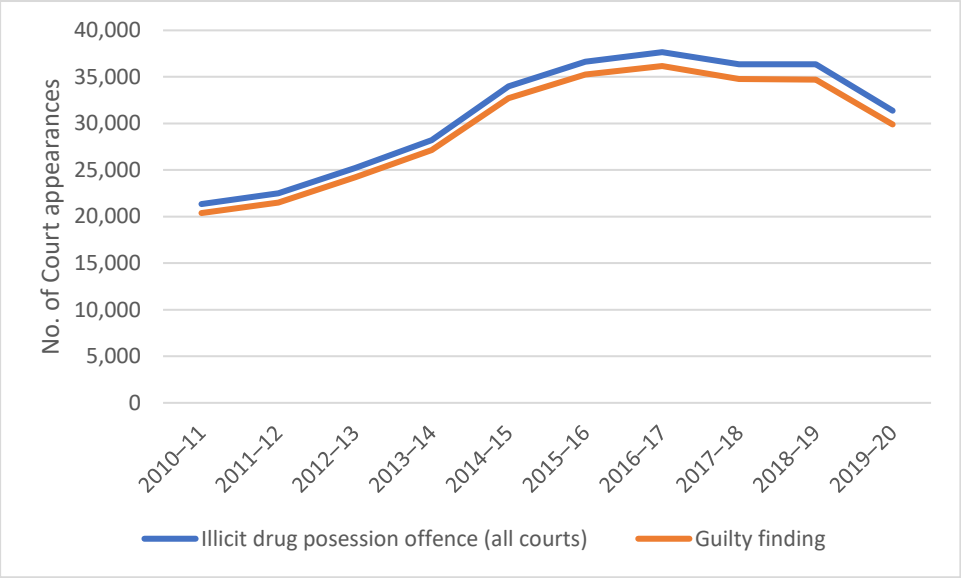

Figure 2: Illicit drug possession-related court appearances and outcomes, national – 2010-2020[34]

In terms of responses to illicit drug possession and use, most Australian jurisdictions have provisions for some form of diversion away from the criminal justice system, most commonly for personal possession of cannabis, however provisions exist for diversion in the case of other drug types. Diversion responses include police cautioning in the case of cannabis possession, police diversion to mandatory drug counselling, police diversion for young people (10-18 years) for possession of any substance and court diversion into drug treatment.[35] The table below lists the provisions across each state and territory.

	Police diversion for cannabis use/ possession	Police diversion for other illicit drug use/possession	Police/court diversion for young offenders	Court diversion for minor or drug-related offences	Other non-AOD specific programs
ACT	✓	✓	✓	✓	✓
NSW	✓		✓	✓	
NT	✓*	✓	✓✓	✓	
QLD	✓		✓	✓✓	
SA	✓*	✓	✓	✓	✓✓

[33] Hughes, C., Seear, K., Ritter, A. & Mazerolle, L. (2019). *Monograph No. 27: Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion. DPMP Monograph Series*. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney

[34] Australian Bureau of Statistics. (2021). *45130DO001_201920 Criminal Courts, Australia, 2019–20.* Accessed 19 December 2022 at https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/2019-20#data-downloads

[35] Hughes, C., Seear, K., Ritter, A. & Mazerolle, L. (2019). *Monograph No. 27: Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion. DPMP Monograph Series*. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

TAS	✓	✓	✓	✓	
VIC	✓	✓	✓✓✓✓	✓	✓✓✓✓
WA	✓	✓	✓	✓	✓✓✓

Table 5: Summary of drug offences diversion provisions across each state and territory[36]

Evaluations of diversion programs have demonstrated efficacy in reducing costs to the justice system, reducing re-offending and improving health and wellbeing outcomes for people who use drugs.[37] Yet the use of these diversion provisions varies significantly across Australia, with latest data suggesting their use is as low as in 32% of possession-related arrests in Western Australia and as high as 98% of possession-related arrests in South Australia. Nationally, the average is 55%.[38] There have also been noted discrepancies across population groups, with a Victorian inquiry into the use of cannabis finding that Aboriginal and Torres Strait Islander people were less likely to receive a caution, more likely to be required to attend court proceedings for the offence and more likely to receive a punitive sentence.[39]

Victorian parliamentary inquiries into drug law reform and cannabis use heard a range of evidence regarding the use of diversionary provisions, giving some insight into why such variation in their use exists across Australia. These include:

- strict eligibility criteria, including a limit on the number of diversionary responses someone can receive. In Victoria, for example, this is limited to two while in South Australia, this is limited to two diversions in a four-year period. These caps leave people who use drugs vulnerable to criminal penalties even when a personal possession offence occurs in the future.
- Significant police discretion, resulting in cautions being unequally used between precincts and resulting in a 'postcode' effect where diversionary measures are used more frequently in high socio-economic areas and criminal responses used more frequently in low socio-economic areas. This is particularly notable given AIHW estimates suggesting that illicit drug use is more prevalent within higher socio-economic areas.
- high administrative burden on police, acting as a disincentive to the use of diversion provisions[40] [41]

Some jurisdictions, such as ACT, are moving towards decriminalisation and diversion initiatives that cover all drug types and whose models are applied in more uniform and systematic ways by the use of threshold weights to define when a diversion provision is used. AADC supports a health response to drug use which keeps those with simple personal possession and use-related offences out of the criminal justice system, with the ultimate view to decriminalise possession and personal use. Acknowledging that this is primarily an issue for state and territory law enforcement agencies, there is a role within a national governance framework to drive coordination and consistent, even application of diversionary measures.

[36] Adapted from Hughes, C. et al. (2019). *Monograph No. 27: Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion. DPMP Monograph Series*. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney. See for full description of each program.

[37] *ibid*

[38] Hughes, C. et al (2019). *Monograph No. 27: Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion. DPMP Monograph Series*. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

[39] Legislative Council Legal and Social Issues Committee. (2021). *Inquiry into the use of cannabis*. Melbourne: Parliament of Victoria.

[40] *ibid*

[41] Law Reform, Road and Community Safety Committee. (2018). *Inquiry into drug law reform.* Melbourne: Parliament of Victoria.

Recommendation: AADC recommends that diversionary measures be expanded to cover all illicit drug types in all Australian jurisdictions and legislation and policing guidelines be updated to reduce scope for law enforcement discretion and ensure diversionary measures are consistently and evenly applied, and that options for decriminalisation of personal illicit drug possession be explored further.

4.0 Outcomes of Illicit Drug Criminalisation

Drug criminalisation has been demonstrated to elevate the risk of harms related to drug use, create barriers to support when it is needed and, as noted in Section 2, have little effect on the price or availability of illicit substances. As such, governments world-wide, including within Australia, are increasingly exploring a range of responses which move away from a strict prohibitionist model.[42]

4.1 Emergence of new substances and quality of supply

The harms which criminalisation of illicit drugs, and associated law enforcement, contribute to include harms to health, increases in the risk of overdose, creation of barriers to support and limitations to employment opportunities. In relation to the substances available in the market, law enforcement and heavy criminal penalties act as market regulators. This incentivises the production of more potent substances as the risks associated with production and detection are significant.[43] Smaller quantities are obviously easier to conceal. Additionally, as law enforcement is the only regulatory mechanism for the market, there are few means to monitor quality or safety of the products that become available. This is illustrated by the emergence of Novel Psychoactive Substances (NPS) in Australia and across the globe. NPS have emerged to mimic the effects of other illicit substances yet have different chemical components which allowed them to evade existing drug control laws.[44] As governments worldwide have introduced controls to ban or limit access to NPS, this has encouraged continual adaptations to circumvent legislation and law enforcement.[45] This continued adaption to evade drug controls has resulted in what the United Nations Office of Drugs and Crime (UNODC) describes as "significant risk to public health and a challenge to drug policy" as "purity and composition of products containing NPS are often not known, which places users at high risk as evidenced by hospital emergency admissions and deaths associated with NPS, often including cases of poly-substance use".[46]

A review of control models across Europe found that although there had been some success in decreasing consumption, it also led to the production of more toxic substances which may have contributed to increases in acute poisoning and fatal overdoses.[47] In an Australian context, results from the recently established CanTEST health and drug checking service in ACT highlight the way in which new NPS are being sold as other substances. Recent samples of what was thought to be

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[42] Eastwood, N., Fox, E. & Rosmarin, A. (2016). *A Quiet Revolution: Drug Decriminalisation Across the Globe.* London: Release UK.

[43] Queensland Productivity Commission. (2019). Inquiry into Imprisonment and Recidivism: Final Report. Brisbane: Queensland Productivity Commission.

[44] Neicun, J., Roman-Urrestarazu, A., & Czabanowska, K. (2022). "Legal responses to novel psychoactive substances implemented by ten European countries: an analysis from legal epidemiology". *Emerging trends in drugs, addictions, and health,* Vol.2.

[45] Peacock, A., Bruno, R., Gisev, N., Degenhardt, L., Hall, W., Sedefov, R., ... & Griffiths, P. (2019). New psychoactive substances: challenges for drug surveillance, control, and public health responses. The Lancet, 394(10209), 1668-1684.

[46] United Nations Office of Drugs and Crime. (2022). *Early Warning Advisory on New Psychoactive Substances.* Accessed 5 December 2022 at https://www.unodc.org/LSS/Page/NPS

[47] Neicun, J., Roman-Urrestarazu, A., & Czabanowska, K. (2022). "Legal responses to novel psychoactive substances implemented by ten European countries: an analysis from legal epidemiology". *Emerging trends in drugs, addictions, and health,* Vol.2.

ketamine were found to contain 2'-fluoro-2-oxo-PCE (2F-NENDCK), an unknown research chemical whose effects and risks to users have yet to be established.[48] This demonstrates the way in which drug criminalisation promotes the emergence of substances of unknown potency and effect and the heightened risk this creates for people who consume them. The Global Commission on Drug Policy illustrates similar dynamics of drug criminalisation and emergence of new substances in relation to methamphetamine, fentanyl and high potency cannabinoids (Figure 3).[49]

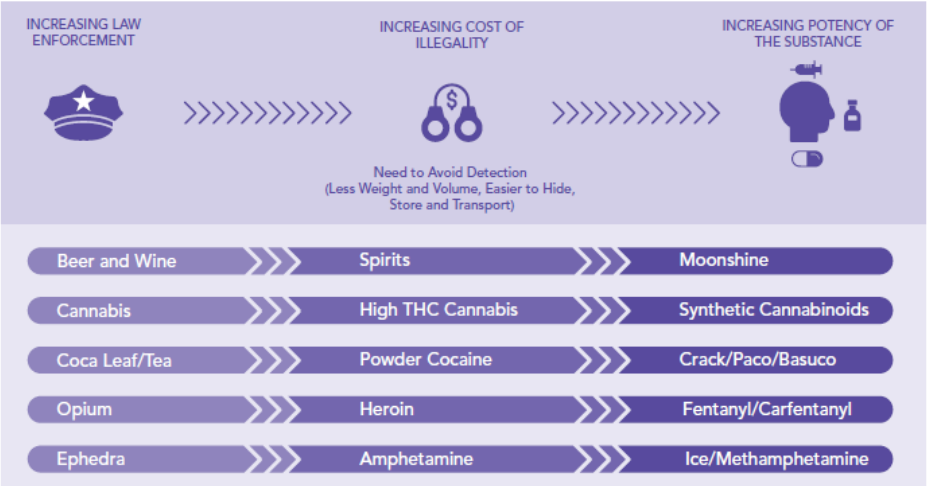

Figure 3: Relationship between prohibition, law enforcement and substance potency

4.2 Stigma, discrimination and a riskier consumption environment

In addition to the potency and quality of substances, the environment and context in which these substances are consumed also play a significant role in illicit drug-related harms. In the context of injecting drug use and blood borne viruses such as hepatitis C, both the World Health Organisation's *Global Health Sector Strategies on, respectively, HIV, viral hepatitis and sexually transmitted infections for the period 2022-2030* and Australia's *Fifth National Hepatitis C Strategy 2018-2022* acknowledge the relationship between criminalisation of drug use, law enforcement and transmission of hepatitis C, with the WHO strategy stating that:

> "Countries should be supported to review and reform, as needed, restrictive legal and policy frameworks, including laws and practices that create barriers or reinforce stigma and discrimination, such as […] laws related to criminalising drug use" (Action 26)[50]

Australia currently has an estimated 115,000 people living with hepatitis C[51], the majority of whom acquired the virus in the context of injecting drug use. Although the introduction of new treatments for hepatitis C, and harm reduction programs such as needle and syringe programs and opioid replacement therapies have helped the prevalence of hepatitis C in Australia decline, the criminalised nature of injecting drug use, high prevalence and lack of sterile injecting equipment in custodial settings and the associated stigma and discrimination towards people who inject drugs

[48] CanTEST Health and Drug Checking Service. (2022). Service Summary Month 2. Access 5 December 2022 at https://directionshealth.com/cantest/

[49] Global Commission on Drug Policy. (2018). *Regulation: The responsible control of drugs.* Switzerland: Global Commission on Drug Policy.

[50] World Health Organisation. (2022). *Global health sector strategies on, respectively, HIV, viral hepatitis and sexually transmitted infections for the period 2022-2030.* Geneva: World Health Organisation

[51] Hepatitis Australia. (2022). Hepatitis C. Accessed 13 December at https://www.hepatitisaustralia.com/pages/category/hepatitis-c

continue to act as barriers to achieving effective elimination.[52] [53] This stigma and discrimination drives barriers in both accessing general health care and receiving a quality standard of care, as well as creating barriers to accessing AOD services.[54] This is in addition to the impact that being a person who uses drugs, having sought treatment for an illicit drug issue or having a criminal conviction related to illicit drugs has on employment prospects and family relationships more generally.[55]

In an interview with the NSW Users and AIDS Association, "Katrina" describes the experience of living in a rural area as a person who injects drugs, the impacts of being a "criminalised" person and her ability to access health care:

> "The community health centre in my town has squeezed all the health services into one building. The methadone clinic, counsellors, doctors, pathology, pharmacy and dentist all share one waiting room. […] To protect my kids from that sort of shame I made sure I never had to go to the methadone clinic. Instead, I just bought illicit methadone from a dealer. I never went onto the Opioid Treatment Program (OTP) because I was worried other parents would see me at the clinic and they would get their kids to say awful things to my kids, such as "Your mum is a junkie".
>
> […]
>
> I already feel completely unwelcome in my new community. People know who I am and see me as "Another one of them junkies". But I'm not a "junkie". I am not a stereotype. I am a person who is dependent on drugs, and I take responsibility for my use and never hurt other people. I don't want my community to find out I have hep C because I really don't want to deal with any more stigma."[56]

The Victorian Parliamentary Law Reform, Road and Community Safety Committee noted the role that illicit drug laws play in creating these stigmatising attitudes:

> "At a structural level, [illicit drug] laws and policies that instil these negative community attitudes can be used as a deterrent strategy, in that they send a message about what is deemed acceptable or tolerable behaviour from a societal perspective."[57]

As "Katrina's" story illustrates and research finds, the negative associations between illicit drug laws and drug use establish an environment where discrimination against people who use drugs is acceptable, creating a real-world experience of lower quality health care or avoidance of health care all together, as well as effects on employment prospects. It is important to note the role of law enforcement agencies and media more generally in perpetuating stereotypes and the type of negative associations which drive stigma towards people who use drugs.

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[52] Global Commission on Drug Policy. (2013). *The Negative Impact Of The War On Drugs On Public Health: The Hidden Hepatitis C Epidemic.* Geneva: Global Commission on Drug Policy.

[53] Howard, D. (2018). *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants: Volume 2*. Sydney: State of NSW

[54] Farrugia, A., Fraser, S., Edwards, M., Madden, A. & Hocking, S. (2019). *Lived experiences of stigma and discrimination among people accessing South Western Sydney Local Health District Drug Health Services.* Melbourne: The Australian Research Centre in Sex, Health and Society, La Trobe University.

[55] Lancaster, K, Seear, K. & Ritter, A. (2017). Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use. Brisbane: Queensland Mental Health Commission.

[56] NSW Users and AIDS Association (NUAA). (2022). "Why aren't people in rural areas getting new 'game-changing' hep C treatments? Katrina's story", *Users News.* Accessed 6 December 2022 at https://www.usersnews.com.au/home/why-arent-people-in-rural-areas-getting-the-new-game-changing-hep-c-treatments

[57] Law Reform, Road and Community Safety Committee. (2018). *Inquiry into drug law reform.* Melbourne: Parliament of Victoria.

These include practices such as:

- media reporting and law enforcement promotion on high profile 'drug busts', which as noted are the minority of interceptions and do not have a significant impact on availability of supply
- framing methamphetamine use as the most pressing issue in drug policy through reporting on programs such as waste water analysis, despite lifetime and recent use declining since its peak in 2001
- the use of stigmatising language and terms in reporting in relation to illicit substances and their use, such as 'plague', 'scourge' or 'invasion'. [58]

These examples all contribute to an attitudinal environment which has real, negative outcomes for people who use drugs. In effect, criminalising drug use and focusing on policing of individual people who use drugs exacerbates the harms associated with using drugs, far outside any harms that may arise from the substance itself.

Drug criminalisation and law enforcement also increase the risk of drug overdose. This is exemplified in relation to the consumption of illicit substances at large events. Following the overdose deaths of six young people at music festivals in NSW between 2017 and 2019, the NSW Deputy Coroner found that there was a link between policing practices, such as the use of drug detection dogs, and harmful consumption of substances such as 'panic ingestion' (the practice of consuming all substances at once when police or drug detection dogs are sighted) and 'preloading' (the practice of consuming all substances prior to arrival at an event), and that this consumption practice led to the deaths of the six young people. As part of the inquiry's recommendations, the NSW Deputy Coroner recommended the cessation of drug detection dogs at music festivals, limited use of strip searches in relation to drug possession and that operational policing guidelines be amended to reframe the role of law enforcement as "one of support and protection for otherwise law-abiding festival goers".[59] A University of NSW study also found that police presence and fear of police interaction was the most common barrier for help seeking by music festival patrons when drug overdose occurs.[60] Similar outcomes were found in relation to other substance types, such as heroin, and help seeking behaviour.[61] This again highlights the way a criminalised legal environment and fear of law enforcement exacerbate the risks of drug consumption.

4.3 International reforms and reducing harms

More than 30 countries across the world have undertaken some form of decriminalisation or regulation of drugs, beginning as early as 1976 in the Netherlands through to most recently in 2022 in Thailand. There is no single model of illicit drug decriminalisation, with responses ranging from legalisation and market regulation to de jure (by law) or de facto (by practice) decriminalisation. Additionally, decriminalisation may apply only to cannabis or all substances. Table 2 outlines the difference between de jure and de facto models of decriminalisation.

[58] See example Heslehurst, B. & Baker, J. (2022, December 12). "Revealed: The trends behind Queensland's rising meth problem damaging our streets", *The Courier Mail.* Accessed 20 December 2022 at https://www.couriermail.com.au/questnews/revealed-the-trends-behind-queenslands-rising-meth-problem-damaging-our-streets/news-story/7fd3cbe91f739ae5ccac4060d96b2551

[59] Grahame, H. (2019). *Inquest into the death of six patrons of NSW music festivals*. Sydney: State Coroner's Court of NSW.

[60] Page, R., Healey, A., Siefried, K. J., Harrod, M. E., Franklin, E., Peacock, A., Barratt, M. J., & Brett, J. (2022). Barriers to help-seeking among music festival attendees in New South Wales, Australia. Drug and Alcohol Review, 41(6), 1322–1330.

[61] *ibid*

De jure decriminalisation models can include:	De facto decriminalisation models can include:
removing criminal penalties	non-enforcement of the law (through police discretion or police or prosecutorial guidelines)
replacing criminal penalties with civil penalties (such as a fine) and criminal penalties may be applied if a person fails to comply with the civil penalty	referral of offenders to education/treatment instead of court (eligibility tends to be subject to criteria: such as that this be a first/second offence and criminal penalties may be enforced for non-compliance)
replacing criminal penalties with administrative penalties (such as a ban on attending a designated site)	

Table 2: De jure and de facto models of illicit drug decriminalisation[62]

A consistent finding from countries where penalties have been removed for illicit drug possession is that illicit drug use has not significantly increased. The Victorian Law Reform, Road and Community Safety Committee explored this in its inquiry into illicit drug law reform, hearing evidence from Dr Caitlyn Hughes at the National Drug and Alcohol Research Centre (NDARC) that there is no significant difference in the prevalence of drug use between countries which have decriminalised illicit drug use and countries which have not.[63] This finding is consistent even within Portugal, often considered to have both the least restrictive illicit drug laws and the best practice model of decriminalisation.[64] Transform, a UK-based drug policy research organisation, put this into the context of illicit drug use being an expression of market factors, with legal structures having little impact:

> "Changes in the consumption of a given drug are influenced by far more than just legal status and enforcement practices. Drug use is more likely to rise and fall in line with broader cultural, social or economic trends; the number of users arrested or trafficking organisations destroyed, and the severity and certainty of punishment, seemingly make little difference."[65]

Alongside this finding, where an effective model of decriminalisation has been implemented, countries have seen reductions in illicit drug-related deaths, decreased blood-borne virus transmissions, decreased cost to police resources and overall reduced social costs related to drug use.[66] [67] A critical aspect of these successful models is that they are not stand alone and concurrent investment in health and social services is required for a decriminalisation model to be effective.

In its inquiry into methamphetamine use, the Joint Law Enforcement Committee noted the benefits that decriminalisation can provide, particularly in the context of Portugal. While not providing a conclusive endorsement of a similar model in Australia and reflecting on a number of barriers for implementation domestically, the Committee noted that:

> "6.97. What is clear to the committee is that the current approach in Australia is not working. Methamphetamine abuse can have devastating effects on individuals, their

[62] Hughes, C., Ritter, A., Chalmers, J., Lancaster, K., Barratt, M. & Moxham-Hall, V. (2016). Decriminalisation of drug use and possession in Australia – A briefing note. Sydney: Drug Policy Modelling Program, NDARC, UNSW Australia.

[63] Law Reform, Road and Community Safety Committee. (2018). *Inquiry into drug law reform.* Melbourne: Parliament of Victoria.

[64] Slade, H. (2016). *Decriminalisation in Portugal: Setting the Record Straight.* Bristol, UK: Transform UK.

[65] Murkin, G. (2016). Will drug use rise? Exploring a key concern about decriminalising or regulating drugs. Bristol, UK: Transform UK

[66] Talking Drugs. (2022). *Drug decriminalisation across the world.* Accessed 20 December 2022 at https://www.talkingdrugs.org/drug-decriminalisation

[67] Slade, H. (2016). *Decriminalisation in Portugal: Setting the Record Straight.* Bristol, UK: Transform UK.

families and communities, and has broader social and economic impacts. When former law enforcement officers and law enforcement agencies themselves are saying that Australia cannot arrest its way out of the methamphetamine problem, that view must be taken seriously."[68]

5.0 Redesigning the relationship between law enforcement and harm reduction in an Australian context

As noted, AADC supports a broader rebalancing of emphasis and funding for the three pillars of Australia's illicit drug policy where health and wellbeing outcomes for people who use drugs and their families are prioritised, with a concurrent emphasis on keeping people who use drugs out of the criminal justice system and funding demand and harm reduction measures at a level that meets current and future demand. Within this balanced framework, there are a number of ways in which law enforcement agencies can support better health and wellbeing outcomes for people who use drugs, their families and communities. These responses not only support a reduction in harm for people who use drugs, but move responses for illicit drug use more firmly into a health context to be managed by health stakeholders, leaving more capacity for law enforcement agencies to focus on higher level supply reduction actions and other community safety priorities.

5.1 Support harm reduction programs with demonstrated public health efficacy

Harm reduction action is a central pillar of Australia's illicit drug response. During the 1980s, Australia was widely seen as a progressive leader in reducing harms and prioritising public health in relation with the introduction of needle and syringe programs in response to increasing HIV infections. This response has been widely credited with limiting HIV transmissions among people who inject drugs and the overall prevalence of HIV in the community.[69]

There are a range of harm reduction programs which have demonstrated public health efficacy currently in operation internationally. Services and programs such as drug consumption rooms, drug checking services and needle and syringe programs in prison are all well evidenced and available internationally yet in an Australian context, where they are available, these are limited in both geography and scope. Law enforcement agencies and our member organisations are key stakeholders in the operation of these harm reduction initiatives. However recent proposals for a second supervising injecting centre in Melbourne, provision of sterile injecting equipment in the ACT prison, and calls for wider availability of drug checking services, have all been opposed by state policing organisations and associations, custodial system unions as well as, in some cases, state

[68] Parliamentary Joint Law Enforcement Committee. (2018). Inquiry into crystal methamphetamine (ice) - Final Report. Canberra: Commonwealth of Australia.

[69] Watson, L., Delhomme, F., Mackie, B. (2022). Needle and Syringe Programs in NSW: Opportunities for Innovation. Sydney: ACON

governments. [70] [71] [72] [73] Opposition to these programs means opportunities to reduce harm are missed, putting lives at risk and using law enforcement capacity to respond issues, such as overdose, which could be better managed by health services. This results in long term impacts on health and social systems as well as additional demands on policing and justice system capacity.

Recommendation: AADC recommends that law enforcement agencies provide support for harm reduction interventions with demonstrated public health efficacy.

5.2 Reduce use of actions which target individual people who use drugs

As noted in Section 3, 90% of illicit drug offences in 2018-19 were related to personal use possession and the average seizure weight is small. Given the widespread use of illicit drugs across Australia, significant harms to individuals can be reduced by directing policing resources away from actions which primarily impact individual people who use drugs. This includes the use of drug detection dogs and similar actions targeting supply interruption at large public events and the more widespread and consistent use of diversionary measures where possession is encountered. These actions not only reduce harms and reduce frequency of interaction with the justice system, but also enable a redirection of policing resources towards larger scale supply reduction action or other public safety priorities.

Recommendation: AADC recommends law enforcement agencies reduce the use of actions which target individual drug use and more consistently use diversionary measures where minor drug offences are encountered.

5.3 Participate in emerging drugs of concern early warning networks

Early warning networks that identify and communicate information about emerging drugs of concern in local drug markets are in operation in various forms across Australia, as well as the national Prompt Response Network led by the National Centre for Clinical Research on Emerging Drugs (NCCRED). These communications may be in the form of clinical alerts to be used by clinicians or drug alerts which communicate information about potentially risky batches of illicit substances to individual people who use drugs, enabling them to make informed consumption decisions.

[70] Elliot, T. (2022, August 25). "Police union won't back proposed CBD drug injecting room", *3AW.* Accessed 6 December at https://www.3aw.com.au/police-union-wont-back-proposed-cbd-drug-injecting-room/

[71] The Feed. (2019, November 12). "NSW Police Commissioner rejects pill testing despite coroner's recommendation", *The Feed*. Accessed 6 December at https://www.sbs.com.au/news/the-feed/article/nsw-police-commissioner-rejects-pill-testing-despite-coroners-recommendation/v8l70xgxt

[72] Preiss, B. & Carey, A. (2019, January 21). "Government digs in on opposition to pill testing trial", *The Age.* Access 6 December at https://www.theage.com.au/politics/victoria/government-digs-in-on-opposition-to-pill-testing-trial-20190121-p50sqc.html

[73] Burdon, D. (2018, April 24). "Calls for ACT to again lead prison syringe program debate reignited after AMA urges such initiatives nationally", *The Canberra Times.* Accessed 6 December at https://www.canberratimes.com.au/story/6038056/calls-for-act-to-again-lead-prison-syringe-program-debate-reignited-after-ama-urges-such-initiatives-nationally/

The United Nations Office of Drugs and Crime (UNODC), a range of state and territory parliamentary inquiries, task force reports and coronial inquests all call for the establishment of a coordinated, early warning system to respond to the growing number of emerging drugs of concern.[74] [75] [76] [77]

The gaps in early warning responses and the ability of Australia's illicit drug response to reduce harms are highlighted within South Australia's current early warning network and in relation to the recent seizure of fentanyl in Victoria. In South Australia, the South Australian Drug Early Warning System (SADEWS) is currently in operation as an informal interagency network, which features the involvement of South Australia Police, emergency department clinicians, ambulance services and forensic and clinical testing services.[78] As part of this network, South Australia Police provide traffickable drug seizures to Forensic Science SA for testing. However, although the results of this testing are made available to the Department of Health and network members, information is not shared with the AOD treatment sector or with the general public. Similarly in Victoria, in February 2022, Australian Federal Police seized 11kg of fentanyl from a container arriving in Melbourne.[79] Yet this information was not communicated publicly until August 2022, six months after the seizure was made. Given that only a fraction of the illicit substances coming into Australia are ever intercepted, the absence of communication about this seizure significantly impacts the ability of key stakeholders and people who use drugs to prepare and mitigate foreseeable harms. Both the Victorian example and limits to the operation of SADEWS increase the risks of illicit drug-harm in the community.

To support effective coordination and reduction of harm across Australia, it is key that law enforcement agencies consistently and actively support and participate in state, territory and national early warning networks and systems through sharing of intelligence and information about substances seized, such as is currently happening in the SADEWS network in South Australia, and that this information be shared publicly as appropriate so key stakeholders in the non-government treatment sector and people who use drugs can take active steps to reduce the possibility of harm. This is in addition to law enforcement agencies supporting the operation of local, event-based responses, such as mobile drug checking services used at music events like Groove in the Moo in 2018 and 2019 in Canberra.

Recommendation: AADC recommends that law enforcement agencies actively support and participate in state, territory and national early warning systems through sharing of intelligence and information on seized substances making this information available to government and non-government treatment and support services and where appropriate, the public through media channels. This is in addition to supporting local, event-based responses, such as mobile drug checking services at music festivals.

[74] United Nations Office of Drugs and Crime. (2021). *UNODC Strategy 2021-2025.* Vienna: UNODC.

[75] Law Reform, Road and Community Safety Committee. (2018). *Inquiry into drug law reform.* Melbourne: Parliament of Victoria.

[76] Government of Western Australia. (2018). *Methamphetamine Action Plan Taskforce Final Report.* Perth: State of Western Australia.

[77] Grahame, H. (2019). *Inquest into the death of six patrons of NSW music festivals*. Sydney: State Coroner's Court of NSW.

[78] Camilleri, A., Alfred, S., Gerber, C., Lymb, S., Painter, B., Rathjen, A., & Stockham, P. (2021). Delivering harm reduction to the community and frontline medical practitioners through the South Australian Drug Early Warning System (SADEWS). *Forensic Science, Medicine, and Pathology*, *17*(3), 388–394.

[79] Bucci, N. & APP. (2022, August 22). "Fentanyl seizure: experts warn potent drug could rapidly emerge as a problem in Australia", *The Guardian Online.* Accessed 19 December 2022 at https://www.theguardian.com/australia-news/2022/aug/22/fentanyl-seizure-experts-warn-potent-drug-could-rapidly-emerge-as-a-problem-in-australia

5.4 Carrying opioid overdose reversal treatment as standard equipment

Naloxone, an opioid overdose reversal medication, has widespread effectiveness in managing opioid overdose outside of clinical settings and when used by non-clinical people such as friends, family members or any trained person who may witness an overdose. The effectiveness and ease of use prompted the national roll out of the Take Home Naloxone program, enabling any person to access Naloxone from a pharmacy for free. A pilot program in NSW, SA and WA from 2019-2021 found that take home naloxone saved up to three lives per day.[80]

Yet despite the ease of use and often first responder role which law enforcement officers play, Western Australia is currently the only jurisdiction trialling the carrying of Naloxone as part of standard police officer equipment.[81] A call by the NSW Deputy State Coroner for police in that state to carry Naloxone was rejected by the NSW Police Commissioner, citing a need for officers to maintain situational awareness.[82] The inclusion of Naloxone as standard equipment carried by law enforcement officers is increasing globally, with around 2,300 agencies across 42 states in the US carrying the treatment, and pilot programs beginning in Scotland and Wales.[83] [84] An evaluation over a five year period of use by police officers in New York State found that officers had responded to more than 9,000 overdose reversal events.[85] This highlights the key role which law enforcement officers play in reducing harms and responding to overdose, and the simple and effective way in which overdose can be managed by carrying Naloxone as standard equipment.

Recommendation: AADC recommends that Naloxone and training on overdose response be provided to law enforcement officers in each state and territory as part of standard procedures and equipment.

[80] Salom, Caroline L, Maravilla, Joemer C, Thomas, Natalie, Juckel, Jennifer, Daly, Catherine, Peacock, Amy and Gisev, Natasa (2021). *Evaluation of the Pharmaceutical Benefits Scheme Subsidised Take Home Naloxone Pilot.* Institute for Social Science Research, The University of Queensland, Brisbane Australia.

[81] Dornin, T. (2021, July 1). "WA police to carry overdose treatment drug treatment", *7 News.com.au.* Access 13 December 2022 at https://7news.com.au/news/crime/wa-police-to-carry-overdose-treatment-drug-c-3273651

[82] Thompson, A. (2019). "'It will take courage': Coroner urges summit on drug decriminalisation", *The Sydney Morning Herald.* Accessed 13 December 2022 at https://www.smh.com.au/national/nsw/coroner-recommends-nsw-government-stage-discussion-on-drug-decriminalisation-20190301-p51138.html

[83] Pourtaher, E., Payne, E. R., Fera, N., Rowe, K., Leung, S. Y. J., Stancliff, S., ... & Dailey, M. W. (2022). Naloxone administration by law enforcement officers in New York State (2015–2020). Harm reduction journal, 19(1), 1-12.

[84] Busby, M. (2021, February 23). "Police should carry drugs overdose antidote, says senior officer", *The Guardian.* Accessed 13 December 2022 at https://www.theguardian.com/uk-news/2021/feb/22/police-should-carry-drugs-overdose-antidote-naloxone-says-senior-officer

[85] Pourtaher, E., Payne, E. R., Fera, N., Rowe, K., Leung, S. Y. J., Stancliff, S., ... & Dailey, M. W. (2022). Naloxone administration by law enforcement officers in New York State (2015–2020). Harm reduction journal, 19(1), 1-12.

Appendix 1 – Commonwealth, state and territory parliamentary and statutory authority inquiries exploring illicit drug use and responses since 2018

Inquiry	Lead Body
Public communications campaigns targeting drug and substance abuse (Commonwealth Parliament, 2021)	Parliamentary Joint Committee on Law Enforcement
Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021 (Australian Capital Territory Parliament, 2021)	Select Committee on the Drugs of Dependence (Personal Use) Amendment Bill 2021
Inquiry into the impact of illicit drugs being traded online (Commonwealth Parliament, 2021, lapsed)	Parliamentary Joint Committee on Law Enforcement
Inquiry into the use of cannabis in Victoria (Victorian Parliament, 2021)	Legal and Social Issues Committee
Special Commission of Inquiry into the Drug 'ice' (New South Wales Parliament; 2020)	Special Commission under Department of Premier and Cabinet
Inquiry into Imprisonment and Recidivism (Queensland Productivity Commission, 2019)	Queensland Productivity Commission
Inquiry into a Northern Territory Harm Reduction Strategy for Addictive Behaviours (Northern Territory Parliament; 2019)	Select Committee on a Northern Territory Harm Reduction Strategy for Reducing Addictive Behaviours
Select Committee into Alternate Approaches to Reducing Illicit Drug Use and its Effects on the Community (Western Australian Parliament, 2019)	Select Committee
Inquiry into crystal methamphetamine (ice) (Commonwealth Parliament, 2018)	Parliamentary Joint Committee on Law Enforcement
Inquiry into Drug Law Reform (Victorian Parliament, 2018)	Law Reform, Road and Community Safety Committee