



Australian Government
Department of Home Affairs

Submission by the Home Affairs Portfolio

Special Commission of Inquiry into the Drug 'Ice'

June 2019

The Home Affairs Portfolio welcomes the opportunity to make a submission to the New South Wales Special Commission of Inquiry into the Drug 'Ice'.

The Department of Home Affairs prepared this Home Affairs Portfolio submission in consultation with the Australian Border Force, the Australian Federal Police, the Australian Criminal Intelligence Commission, and the Australian Transaction Reports and Analysis Centre in response to the Issues Papers published by the Special Commission on 26 March 2019, specifically Issues Paper 2: Justice.

The Australian Transaction Reports and Analysis Centre, in consultation with the Australian Criminal Intelligence Commission and the Australian Federal Police, will provide a separate response to specific operational questions raised by the Special Commission regarding money laundering in the illicit drug market.

The Australian Criminal Intelligence Commission will also provide a separate response to information requested by the Special Commission on the wastewater collection sites used in the National Wastewater Drug Monitoring Program.

The impact of ice and harm to the Australian community

The harms from methamphetamine (ice) and other amphetamine-type stimulants either directly or indirectly impact all Australian communities, families and individuals. Illicit drug use harms the user, family and friends of the user, first responders and drives violent and volume crime. The impacts also extend beyond this immediate circle of use and response. Social harms from ice range from general health care costs, such as hospital admissions, premature morbidity, spread of disease by intravenous use and mental health implications, to road traffic accidents and deaths, and drug-fuelled crime such as assaults and property damage.

These costs are more complex and pronounced as ice use and acceptance of its risks varies across society. Some users are dependent, single drug or poly drug users, while others are functional using ice to manage work stress. Other individuals use ice socially, which risks addiction, health and social problems. Within these divisions are further differentiating factors, such as age and contact with the criminal justice system. The social permeation, impact and influence of illicit drug use is broad, diverse and enduring.

Amphetamine-type stimulants such as ice and 3,4-methylenedioxymethamphetamine (MDMA) can be lethal and their use is associated with a number of extremely serious negative health effects as well as social impacts and costs that the general community bears. Law enforcement and paramedics are at the front line of managing the personal and social costs and harms from illicit drug use, and the criminal trade that supplies the product.

Between 2018 and March 2019, the weight of amphetamine-type stimulants detected by the Australian Border Force at the Australian border was 4,258kg. Of this, ice comprised 4,178kg, with 94 per cent intended for importation to New South Wales. In 2016–17, seizures of amphetamine-type stimulants accounted for 32.9 per cent of the number of national illicit drug seizures and 27.5 per cent of the weight of illicit drugs seized nationally. Amphetamine-type stimulants (excluding MDMA) also accounted for the greatest proportion of the weight of border detections. The sixth report of the National Wastewater Drug Monitoring Program found that of the substances monitored by the program with available dose data, ice continues to be the most highly consumed illicit drug across Australia. Using data derived from the program, the Australian Criminal Intelligence Commission estimates that 9.8 tonnes of ice is consumed annually in Australia, with consumption increasing 17.2 per cent from the first to the second year of the program.

Australia has one of the highest documented rates of illicit stimulant use in the world. Reports from the United Nations Office of Drug Control and the Australian Criminal Intelligence Commission's Illicit Drug Data Reports clearly show Australia is part of international amphetamine trafficking flows, as Australia is a lucrative market. Drugs are a key commodity for serious and organised crime with an illegal sector worth an estimated cost of \$36 billion as of 2015.

National Drug Strategy

The Australian Government has publicly outlined that it is committed to continuing the policies of preventing and reducing the harms that all illicit substances have on individuals, families and communities across Australia. The national framework for alcohol, tobacco and other drugs policy, the *National Drug Strategy (2017-2026)* strikes a balanced approach to the nationally agreed goal of harm minimisation by seeking to harmonise policy and action.

Historically, the operational work of the Australian Federal Police has aligned to core goals of supply reduction in the National Drug Strategy. However, harm minimisation policing options at state and territory level, such as diversion and possession offence notices, are often useful in managing demand and reducing ongoing harm for the individual user and the community. These strategies help distinguish between those who become victims of drug use and those that profit and intend to cause harm. Harm minimisation and lowering demand plays a key role in combatting transnational, serious and organised crime as illicit drug trading is profit and demand driven. Law enforcement agencies require a diverse toolkit to respond to the use, manufacture, importation and trading of illicit drugs, given the complexity of drug use, its harms and the degree and type of criminality involved.

The National Drug Strategy identifies 'national direction, jurisdictional implementation' as one of four strategic principles, which underpins the framework. This principle recognises that the approach of jurisdictions should reflect local circumstances, but that coordination and collaboration with the Australian Government and other jurisdictions is key to developing a national approach that benefits all jurisdictions.

The National Drug Strategy encourages innovation and leadership in the development of new approaches within the framework of harm minimisation. Innovative policy responses to reduce the harms of illicit substances are ideally unified and co-ordinated, and cognisant of the broader consequences in the Australian Federation – for instance, there is a strong intersection between Commonwealth and State laws.

National Ice Action Strategy

The Australian Government has taken a lead in driving a national approach to combatting Australia's problem with the drug 'ice'. The *National Ice Action Strategy 2015*, agreed by the Council of Australian Governments, recognises that ice use in Australia requires all governments and the community to work together to tackle this destructive drug. The National Ice Action Strategy identifies achievable actions across a range of areas to reduce the supply and use of ice in Australia, and provides a mechanism to report on actions by governments, service providers and communities.

Through the National Ice Action Strategy, the Home Affairs Portfolio continues to progress a number of justice and law enforcement initiatives including:

- improving and harmonising controls on precursor chemicals and equipment, including through the development of an electronic end user declaration system
- hardening Australia's border environments against transnational, serious and organised crime who seek to import illicit commodities into Australia
- strengthening the broader response of Australian law enforcement in tackling transnational, serious and organised crime groups through the provision of intelligence to state and territory law enforcement via the Australian Gangs Intelligence Coordinated Centre and the National Anti-Gangs Squad, and
- strengthening cooperation between the Australian Federal Police and international law enforcement partners to intervene to successfully seize large quantities of illicit drugs prior to reaching Australia.

Operationally, the Australian Federal Police has developed and used existing joint arrangements to address illicit drug trades with strong results.

Historically, the Australian Federal Police has worked cooperatively on the Joint Organised Crime Group, alongside New South Wales Police, the New South Wales Crime Commission, the Australian Border Force and the Australian Criminal Intelligence Commission. The JOCG ceased operation in 2018 after 21 years. In the last four years of operation, the Joint Organised Crime Group delivered the following outcomes:

- 60 people arrested, and charged with 114 offences
- 95 warrants executed,
- Approximately five tonnes of drug seized, including 2,400kg of methamphetamine and 1,031 litres of liquid methamphetamine.

The success of the Joint Organised Crime Group was due to the co-location of resources from the contributing agencies, with each agency bringing its own strengths and niche capability to investigate organised crime syndicates.

The National Anti-Gangs Squad is a current operational multi-agency vehicle that detects, deters and disrupts the activities of outlaw motorcycle gangs and creates a hostile environment for these groups in Australia and offshore. Outlaw motorcycle gangs play a key role in importing and distributing illicit drugs, including ice. By focusing on outlaw motorcycle gangs, the Australian Federal Police and partners can tackle both illicit drugs and illicit money flows.

Taskforce Vitreos, a multi-agency group established under the Australian Criminal Intelligence Commission, coordinates action across jurisdictions into high-risk illicit drugs using approaches, such as 'weeks of action' into particular importation methods or illicit drug precursors.

The National Ice Action Strategy represents a commitment by the Australian Government, State and Territory governments, and the community to prevent people from using ice and reducing the harms caused to users and the community. The Australian Government continues to commit funding to enable all governments and the community to work together to tackle destructive drug use in Australia. Through its \$337 million drug package announced in the 2019-20 budget, the Australian Government is helping to prevent and minimise the harmful effects of ice and other drugs. The package will increase access to services outside metropolitan areas and fund local family drug support services.

Illicit drug reform within Australia's federated system

Effective illicit drug reform that reduces harms to users and the community, and effectively combats transnational, serious and organised crime, requires all jurisdictions to work together to ensure new reforms are holistic, and support a cohesive national approach.

The decriminalisation or legalisation of amphetamine-type stimulants for personal use, without a wider package of reforms to the Commonwealth legal framework and health system, would create legal ambiguity and uncertainty for all law enforcement, cross-border diversion of substances, and may drive demand in the illicit drug market.

In the event of a state or territory legalising any substances prohibited under Commonwealth legislation, law enforcement officers, particularly police officers occupying the office of constable, may have limited discretion when considering Commonwealth offences, which may carry higher penalties and less access to diversionary options than presently exist under New South Wales law.

As it stands, any proposal to decriminalise or legalise amphetamine-type stimulants use, possession, import, manufacture or distribution within Australia would be inconsistent with current Commonwealth law, specifically the *Criminal Code Act 1995*, *Criminal Code Regulations 2019*, and the *Customs (Prohibited Imports) Regulations 1956*.

Legislative responses to the criminalisation of illicit drugs also fulfils Australia's obligations incurred through its ratification of international treaties. Australia is a signatory to three major United Nations international drug control conventions, which advocate the control and prohibition of illicit substances. These are the *Single Convention on Narcotic Drugs 1961*, the *Convention on Psychotropic Substances 1971* and the *Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*. Should a State or Territory government decriminalise or legalise amphetamine-type stimulants, Australia would be non-compliant with its international obligations.

The most effective approach to reduce harms to users and the community is for a coordinated response to ensure responses to illicit drugs are holistic, co-ordinated and aligned to a unified national approach.

Decriminalisation of amphetamine-type stimulants as a broad category is problematic

The Issues Papers do not adequately define amphetamine-type stimulants in their consideration of decriminalisation and legalisation as potential reforms to the New South Wales legal framework. Using the terminology of 'amphetamine-type stimulants', 'ice', or 'meth/amphetamine' to refer to all amphetamine-type stimulants may be appropriate for the purposes of the inquiry. However, regulation of illicit and licit substances requires precise classification of the relevant substances.

Any recommendations the Special Commission makes in its final report should be precise in reference to the relevant substances given the broad range of illicit and harmful substances. This is necessary for consistency with illicit drug offences across all Australian jurisdictions and in Commonwealth legislation. Legislation defines illicit drugs and their analogues with precision by their correct chemical/scientific name to remove doubt as to which substances are captured by the provisions. The term amphetamine-type stimulants lacks precision, is used in reporting solely for administrative convenience in collating statistics, and encompasses different substances that have widely varying harms to users. Each individual substance therefore needs to be specified when considering the Special Commission's recommendations.

Impact of decriminalisation or legalisation

Legal ambiguity

Decriminalisation or legalisation of amphetamine-type stimulants by New South Wales would create legal ambiguity between the New South Wales legal framework, Commonwealth legislation, and legal frameworks in other jurisdictions. Piecemeal decriminalisation, without corresponding changes to Commonwealth legislation, may lead to perverse legal outcomes. As noted, not only would transnational, serious and organised crime groups seek to exploit and to capitalise on any ambiguity or gaps in legislative frameworks. Legislative and regulatory arbitrage is a practice whereby criminals capitalize on loopholes in regulatory systems in order to facilitate criminal activities. For example, while possession of certain substances could be legal in New South Wales, it would still be an offence to import the substance into the country and an offence to possess the substance under Commonwealth law. It would also remain an offence under Commonwealth law to manufacture illicit substances within Australia, even for a 'licit' market. Transnational, serious and organised crime groups would capitalise on legal inconsistencies to challenge the investigation and prosecution of the criminal law.

Uncertainty for law enforcement and at the Australian border

Commonwealth border controls are most effective when there is corresponding State and Territory legislation that ensures a prescribed prohibited or regulated good can be intercepted at the border under Commonwealth legislation. Where there is inconsistency between Commonwealth, and State and Territory legislation, particularly in the case of illicit substances, concerns arise as to the potential infiltration by transnational, serious and organised crime to compromise the integrity of border controls.

Differences in the New South Wales legal framework would create uncertainty for law enforcement at the border and across Australia. Goods entering Australia do not always come directly into the state of consumption. Even if New South Wales were to legalise amphetamine-type stimulants, the Australian Border Force would, under Commonwealth law, determine that amphetamine-type stimulants are a border controlled substance and prohibited import, and these illicit drugs would be seized.

Growth in transnational, serious and organised crime

Given Australia's illicit drug market is highly lucrative to transnational, serious and organised crime groups, legalisation would provide new markets and could increase demand for relevant substances. These groups already capitalise on growing demand for a variety of illicit substances by importing, cultivating, manufacturing and trafficking several drug types.

Transnational, serious and organised crime groups, including outlaw motorcycle gangs, are deeply entrenched in the importation, manufacture and distribution of ice in Australia, with two-thirds of targets on the National Criminal Target List reportedly involved in the sale and distribution of ice and its precursors. If Commonwealth legislation controlling amphetamine-type stimulants and its precursors remains inconsistent with decriminalisation or legalisation initiatives by jurisdictions, groups with established supply chains will likely benefit from these legislative gaps.

There are also practical considerations for the legalisation of amphetamine-type stimulants and its impact on transnational, serious and organised crime. For example, the cost of 'licit' amphetamine-type stimulants for consumers would likely be higher than the cost of illicit amphetamine-type stimulants due to the likelihood of regulatory costs and taxation imposed on a 'licit' market. The legalisation of amphetamine-type stimulants is unlikely to reduce its profitability for transnational, serious and organised crime groups or eliminate their involvement.

The legalisation of cannabis in the United States of America illustrates the practical challenges with managing a regulated market in competition with an illicit 'black' market. In American states that have legalised recreational cannabis, legislators have maintained a reasonably high floor price on legally available cannabis through taxation to finance regulatory frameworks and discourage adolescent consumption. However, this has required legislators to balance the price of legally available cannabis with the price of illicit cannabis sold on the black market. Cannabis produced by transnational, serious and organised crime groups is not subject to regulatory costs, taxation, pharmaceutical grade production techniques or appropriate labour conditions in production.

There is a risk that illicit amphetamine-type stimulants would remain cheaper than a legalised product, while simultaneously increasing the user base to the benefit and profit of transnational, serious and organised crime groups.

Cross-border diversion of amphetamine-type stimulants

Decriminalisation or legalisation of amphetamine-type stimulants for personal use may have significant, unintended impacts on jurisdictions outside of New South Wales. For example, this may include the cross-border diversion of amphetamine-type stimulants from New South Wales to other jurisdictions, and the potential for 'drug tourism', both of which may increase the supply of illicit drugs in other jurisdictions.

The legalisation of recreational cannabis in certain American states illustrates the issues caused by discrepancies between federal and state drug laws, and provides a pertinent example for Australia. There is a growing need in the United States of America to address prospects for cannabis diversion and the cross-border transfer of cannabis away from states where it is legal and into those where it is not. The emergence of these issues as problems is largely to do with the piecemeal manner in which law reforms occur on an individual state basis, without coordination and collaboration between governments.

If New South Wales were to decriminalise or legalise the possession of amphetamine-type stimulants for personal use, neighbouring jurisdictions would likely experience similar issues to counterparts in the United States of America.

Conclusion

Representatives from the Home Affairs portfolio would be happy to elaborate on the points made in this submission through attendance at future hearings held by the Special Commission.