



Special Commission of Inquiry into the Drug 'Ice'

ISSUES PAPER 2

JUSTICE

Special Commission of Inquiry into the Drug ‘Ice’

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Special Commission of Inquiry into the Drug ‘Ice’

Preface

ISSUES PAPERS

The Special Commission of Inquiry into the Drug “Ice” has published four Issues Papers:

- Issues Paper 1: Use, Prevalence and Policy Framework;
- Issues Paper 2: Justice;
- Issues Paper 3: Health and Community; and
- Issues Paper 4: Data, Research and Funding.

The four Issues Papers are intended to be read together.

HOW TO MAKE A SUBMISSION

The Inquiry invites written submissions from people and organisations who wish to respond to any of the questions raised in an Issues Paper, or who wish to share information, experiences or views relevant to the terms of reference.

The due date for submissions is 7 May 2019.

If you wish to make a submission, please include your name, contact details and whether you are making the submission personally or on behalf of a particular group or organisation. You may make your submission anonymously and choose not to provide any contact details. The Inquiry will still review your submission but will be unable to contact you to confirm or obtain further information.

Your submission may be made public unless you request that it not be made public or the Commissioner considers that it should not be made public for reasons of fairness or otherwise. Please note that your personal contact details will not be made public, such as your telephone number or email address. You may also request that your submission only be made public without your name or any other identifying details included.

You may provide your submission to the Inquiry by:

1. uploading it on the Inquiry’s website www.iceinquiry.nsw.gov.au
2. sending it by email to inquiry@iceinquiry.nsw.gov.au
3. sending it by post to Special Commission of Inquiry into the Drug ‘Ice’, GPO Box 5341, Sydney NSW 2001.

If you are sending your submission by email or post, please **clearly state in your submission if you do not want your submission to be made public** or want it to be made public anonymously.

Further information about making submissions to the Inquiry may be found in Practice Guideline 1, Providing Information to the Special Commission, which can be found at www.iceinquiry.nsw.gov.au

TERMINOLOGY

The Letters Patent refer to “amphetamine-type stimulants” and “crystal methamphetamine”. In this Issues Paper, the term “ATS” is used to refer to all amphetamine-type stimulants. The term “amphetamine” is used to refer to the parent compound amphetamine. The term “methamphetamine” is used to refer to all forms of methylamphetamine but not to 3,4-Methylenedioxymethamphetamine (**MDMA**), also known as “ecstasy”. The term “crystal methamphetamine” is used to refer to methamphetamine in crystalline form (also known as “ice”), unless the context otherwise specifies. The term “meth/amphetamine” refers to methamphetamine and amphetamine.

Legal framework

Australia is signatory to the three major international drug conventions:

- *Single Convention on Narcotic Drugs of 1961*;
- *Convention on Psychotropic Substances of 1971*; and
- *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988*.

The conventions prohibit the use, manufacture and distribution of narcotic and psychotropic substances for recreational purposes and limit their use to medical and scientific purposes. State parties to the conventions have an obligation to ensure that domestic law is consistent with the conventions and prohibits the manufacture, sale, distribution, transport, possession and purchase of narcotic and psychotropic substances as well as precursor chemicals used in their manufacture. The law of NSW is consistent with the international drug conventions to which Australia is signatory.

Amphetamine-type stimulants (ATS) and their precursors are listed as prohibited substances in Commonwealth and NSW legislation. The *Commonwealth Criminal Code Act 1995* (Cth) (***Criminal Code***) prohibits trafficking, selling, the commercial manufacture and possession of controlled drugs and precursor chemicals in Australia. The importation of ATS and precursors into NSW is prohibited under the *Criminal Code*.

Within NSW, the use of drugs for medicinal and scientific purposes is regulated under *Poisons and Therapeutic Goods Act 1996* (NSW) (***Poisons Act***). The main categories of illicit drug offences include the summary offences of personal use/possession, indictable offences of manufacture, supply and possession of larger quantities and “drug driving”.

With the exception of alcohol and tobacco, the use or possession of drugs for recreational purposes is a summary offence under ss 10(1) and 12(1) of the *Drug Misuse and Trafficking Act 1985* (NSW) (***DMT Act***) with a maximum penalty of \$2,200 or 2 years imprisonment. The possession of equipment for administering drugs such as needles, syringes and glass pipes, is prohibited as a summary offence under s 11 of the *DMT Act*.

The manufacture, supply and possession of larger quantities of ATS and precursors are indictable offences under ss 24, 24A, 25, 25A and 29 of the *DMT Act* with maximum penalties determined by the quantities involved.

Driving under the influence of an illicit drug is an offence under the *Road Transport Act 2013* (NSW) (***Road Transport Act***) which also provides for random roadside drug testing.

POSSESSION

The vast majority of offenders convicted of possession of amphetamines under s 10 of the *DMT Act* between July 2016 and June 2018 had prior conviction(s).¹ Approximately half of all offenders had previously been convicted for drug possession and of those persons, 1 in 5 had previously spent time in custody for the same offence. The average age of offenders convicted of possess amphetamine was relatively high, 81% were above the age of 25 and 64% were above the age of 30. The most common

¹ Judicial Commission of New South Wales, ‘Sentencing Statistics: Drug Misuse and Trafficking Act 1985 (NSW) s 10(1)’, *Judicial Information Research System* (Web page, February 2019) <<https://jirs.judcom.nsw.gov.au/senstats/viewer/senstats-new.php?offvec=6713&comp=nswlc>>.

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penalty imposed was a fine only, followed by a s 9 bond and a s 10 bond (under the *Crimes (Sentencing Procedure) Act 1999* (NSW)). A term of full-time imprisonment was imposed in 4.1% of cases.

Most offenders convicted of possession of MDMA between July 2016 and June 2018 (83%) had no prior conviction(s).² Unlike offenders convicted of possess amphetamine, 72% of offenders convicted of possess MDMA were under the age of 25 and 89% of offenders were under the age of 30. The most common penalty was a s 10 bond, followed by a fine only, followed by s 10(1)(a) dismissal. A term of full-time imprisonment was imposed in 0.3% of cases. In 2015 possession of MDMA attracted the highest rate of s 10 bonds and s 10 dismissals.³

INDICTABLE DRUG OFFENCES

The majority of offenders convicted of indictable amphetamine-related offences under the *DMT Act* between January 2008 and June 2018 received a term of full-time imprisonment. Of these offenders, most had prior convictions and more than half had convictions for prior offences of the same type.⁴

The most common penalty for offenders convicted of indictable MDMA-related offences under the *DMT Act* between January 2008 and June 2018 was a suspended sentence. Of these offenders, more than half had prior convictions and about one quarter had convictions for prior offences of the same type. The majority of offenders were aged between 18 and 25 years.⁵

DRUG DRIVING

Between July 2016 and June 2018, 13,665 people were sentenced in the NSW Local Court for an offence of 'drive with presence of prescribed illicit drug' under s 111 of the *Road Transport Act*. Of these, 11,471 people were sentenced for a first offence and 2,194 people were sentenced for a second or subsequent offence. Similarly, in 2015, the vast majority of convictions under s 111 of the *Road Transport Act* were first offences (92.4%).⁶

There is currently no data available regarding the number of drug driving convictions which involved the presence of methamphetamine and other ATS. However, the NSW Roads and Transport 'Drug Driving Trauma Trends' Report indicates that, in relation to fatal crashes between 2010/11 and 2015/16 where the driver tested positive for an illicit substance, 44% involved amphetamine or crystal methamphetamine, and 4% involved MDMA.⁷

² Judicial Commission of New South Wales, 'Sentencing Statistics: Drug Misuse and Trafficking Act 1985 (NSW) s 10(1)', *Judicial Information Research System* (Web page, February 2019) <<https://jirs.judcom.nsw.gov.au/senstats/viewer/senstats-new.php?offvec=6713&comp=nswlc>>.

³ Judicial Commission of New South Wales, *Common Offences in the New South Wales Local Courts: 2015* (Report No 46, May 2017) 13 <https://www.judcom.nsw.gov.au/wp-content/uploads/2017/07/sentencing_trends_46.pdf>.

⁴ Judicial Commission of New South Wales, 'Sentencing Statistics: Drug Misuse and Trafficking Act 1985 (NSW) s 10(1)', *Judicial Information Research System* (Web page, February 2019) <<https://jirs.judcom.nsw.gov.au/senstats/viewer/senstats-new.php?offvec=6713&comp=nswlc>>.

⁵ Judicial Commission of New South Wales, 'Sentencing Statistics: Drug Misuse and Trafficking Act 1985 (NSW) s 10(1)', *Judicial Information Research System* (Web page, February 2019) <<https://jirs.judcom.nsw.gov.au/senstats/viewer/senstats-new.php?offvec=6713&comp=nswlc>>.

⁶ Judicial Commission of New South Wales, *Common Offences in the New South Wales Local Courts: 2015* (Report No 46, May 2017) 16-17 <https://www.judcom.nsw.gov.au/wp-content/uploads/2017/07/sentencing_trends_46.pdf>.

⁷ Note that many of the fatal crashes involved more than one illicit drug. Amphetamine or crystal methamphetamine alone accounted for 31%, cannabis alone accounted for 53%, and amphetamine or crystal methamphetamine and cannabis together accounted for 12%. See Transport for NSW Centre for Road Safety, New South Wales Government, *Drug driving trauma trends* (Report, February 2017) 10.

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TRENDS

In 2017, of the total number of people charged by the NSW Police Force (**NSW Police**) for the offences of use/possess amphetamines and dealing/trafficking amphetamines, 75% were charged for use/possession and 25% were charged for the more serious offences of dealing/trafficking.⁸ Between January 2014 and December 2018:

- in relation to amphetamines, the rate of recorded incidents of dealing/trafficking remained stable, while the rate of use/possession saw a compound increase of 33%.⁹
- in relation to MDMA, the rate of recorded incidents of dealing/trafficking remained stable, while the rate of use/possession saw a compound increase of 44.7%.¹⁰

Between 2007/08 and 2016/17 the number of national illicit drug arrests rose from 78,675 to 154,650 (96.6%). In the same period, national ATS related arrests rose from 16,047 to 47,531 (196.2%). In 2016/17, proportionally, ATS arrests made up 30.7% of all national illicit drug arrests, an increase from 20.4% in 2007/08.¹¹ This correlated with an increase in the number of illicit drug offences, including charges for possession and use. The number of defendants finalised¹² for illicit drug offences increased from 59,341 in 2014/15 to 65,002 in 2016/17, though decreased to 63,508 in 2017/18. Out of these cases the majority of the defendants in each of these years were charged with principal offences of use or possession (58.2% in 2017/18).¹³

As noted earlier, offences relating to use or possession of MDMA mainly affect younger people. This is noteworthy given that, as was observed by the *2014 Victorian Parliamentary Inquiry into the supply and use of methamphetamine in Victoria* (**2014 Victorian Parliamentary Report into Methamphetamine**) one of the significant harms caused by illicit drugs in Australia is that convictions for criminal offences have long-term effects on people’s travel and employment prospects.¹⁴

NSW also has laws relating to employee drug testing,¹⁵ and provisions relating to alcohol and drug treatment.¹⁶

⁸ New South Wales Bureau of Crime Statistics and Research, ‘A statistical snapshot of crime and justice in New South Wales’, *NSW Crime Tool* (Web page) <<http://crimetool.bocsar.nsw.gov.au/bocsar/>>.

⁹ New South Wales Bureau of Crime Statistics and Research, ‘A statistical snapshot of crime and justice in New South Wales’, *NSW Crime Tool* (Web page) <<http://crimetool.bocsar.nsw.gov.au/bocsar/>>.

¹⁰ New South Wales Bureau of Crime Statistics and Research, ‘A statistical snapshot of crime and justice in New South Wales’, *NSW Crime Tool* (Web page) <<http://crimetool.bocsar.nsw.gov.au/bocsar/>>.

¹¹ Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2016-2017* (Report, 2018) 133-134; Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2007-2008* (Report, 2009) 110-111 <https://www.acic.gov.au/sites/default/files/iddr_2016-17_050718.pdf?v=1536906944>.

¹² A finalised defendant is a person or organisation for whom all charges in a case have been formally dealt with.

¹³ Australian Bureau of Statistics, Commonwealth, ‘Criminal Courts Australia 2017-18: Defendants Finalised’, *Downloads* (Web page, 28 February 2019) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4513.02017-18>>.

¹⁴ Law Reform, Drugs and Crime Prevention Committee, Victorian Parliament, *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria* (Final Report, September 2014) vol 1, 25-26 <https://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_01_with_addendums.pdf>.

¹⁵ See, e.g., *Work Health and Safety Act 2011* (NSW) s 28.

¹⁶ See, e.g., *Drug and Alcohol Treatment Act 2007* (NSW); *Drug Court Act 1998* (NSW) pt 2A; *Crimes (Administration of Sentences) Act 1999* (NSW) pt 4A; *Private Health Facilities Act 2007* (NSW); *Private Health Facilities Regulation 2017* (NSW) regs 4(i), (l), (p), (q).

DECRIMINALISATION OF PROHIBITED DRUG OFFENCES IN NSW

While primarily based on a legal model of prohibition, NSW has elements of decriminalisation either by law or practice. Decriminalisation maintains the distinction between legal and illegal drugs and the criminal offence of possession and use. However, the law may introduce a range of civil and administrative measures to deal with the offence or police may adopt a discretionary practice in which criminal penalties are not imposed in certain circumstances.

Decriminalisation is to be distinguished from legalisation, which removes the distinction between legal and illegal drugs and offences are replaced by the regulatory models of prescription, pharmacy or licensed sales or unlicensed sales where use and possession are not prohibited in any manner.

Examples of decriminalisation by law in NSW include:

- The introduction in NSW on 25 January 2019 of penalty notices for drug possession. The use and possession of a ‘small quantity’ of a prohibited drug (except cannabis) are offences for which a penalty notice of \$400 may be issued in lieu of criminal proceedings under the *Criminal Procedure Act 1986*.¹⁷
- The *Young Offenders Act 1997* (NSW) (*Young Offenders Act*) enables children aged over 10 and under 18 years of age who are charged with use or possession of small quantities of prohibited drugs to be dealt with by way of warnings, cautions and youth justice conferences instead of court proceedings.¹⁸
- Section 36N of the *DMT Act* exempts a person possessing and using a small quantity of a prohibited drug at the Medically Supervised Injecting Centre from criminal liability.¹⁹

The NSW Cannabis Cautioning Scheme is an example of decriminalisation by practice. A police officer may exercise discretion to caution rather than arrest and charge a person in possession of up to 15 grams of cannabis. Police guidelines provide that to qualify for the caution, the person must first admit to the offence, have no prior criminal history relating to drugs, sexual assault or violence, have not received more than two previous cautions, and must satisfy the police officer that the drug is for personal use.

The Commonwealth Joint Parliamentary Committee on Law Enforcement’s *Inquiry into crystal methamphetamine (ice)* examined decriminalisation in some detail, comparing the approach with legalisation, and examining the Portuguese approach whereby personal use and possession of drugs are subject to civil and administrative penalties instead of criminal sanctions. Though no recommendations were made regarding decriminalisation, the Committee argued that “the current approach in Australia is not working” and noted that when former law enforcement officials and agencies themselves are saying “Australia cannot arrest its way out of the methamphetamine problem” such a view must be taken seriously.”²⁰

The 2018 Victorian Parliamentary Law Reform, Road and Community Safety Committee’s *Inquiry into drug law reform* also looked at decriminalisation in detail, recommending that the Victorian Government treat offences of personal use and possession for all illicit substances as a health issue rather than a

¹⁷ *Criminal Procedure Act 1986* (NSW) ss 333-338; *Criminal Procedure Regulation 2017* (NSW) sch 4, amended by the *Criminal Procedure Amendment (Penalty Notices for Drug Possession) Regulation 2019* (NSW).

¹⁸ *Young Offenders Act 1997* (NSW) ss 8(2A), 8(3), 13.

¹⁹ *Drug Misuse and Trafficking Regulation 2011* (NSW) cl 22.

²⁰ Commonwealth Parliamentary Joint Committee on Law Enforcement, *Inquiry into crystal methamphetamine (ice)* (Final Report, 2018) 158 <https://www.aph.gov.au/~media/Committees/le_ctte/Crystalmethamphetamine45/Final_Report/report.pdf?la=en>.

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criminal justice issue.²¹ This Inquiry also suggested exploration of the Portuguese model of reform, with the replacement of the current Victoria Police discretionary drug diversion processes by codification, review of threshold amounts for drug quantities in order to properly distinguish between drug traffickers and those who possess for personal use only, and education and awareness programs to communicate with the public about the need to treat drug use as a health issue.²²

Legalisation has been most commonly applied to cannabis, an area of AOD policy which has seen significant reform in recent years in many jurisdictions.

In 2012 four American states allowed for-profit companies to produce and sell cannabis to people aged over 21 (Alaska, Colorado, Oregon and Washington). This number has grown over the years and now stands at ten plus Washington DC,²³ despite it being illegal under federal law. Each state has taken a different approach to this. For example, Colorado and Washington have taken steps to regulate and legitimise the production, distribution and use of cannabis and its derivatives.²⁴

In 2013 Uruguay became the first country to legalise the production, sale and consumption of cannabis. Residents aged over 18 are able to register with the government to either grow at home, join a collective or purchase cannabis produced by state-licensed companies from pharmacies.²⁵

In 2018 Canada legalised and regulated recreational cannabis. Subject to provincial or territorial restrictions, adults over 18 are allowed to legally possess and share up to 30 grams of legal cannabis, grow from licensed seeds up to 4 cannabis plants per residence for personal use, and make cannabis products. Strict safety and quality regulations were introduced to accompany these measures, including the introduction of industry-wide standards, as were public education efforts to raise awareness about safety measures and potential health risks. Criminal penalties were retained for those acting outside of the legal framework, such as organised crime.²⁶

The prevailing view appears to be that the legalisation of illicit drugs, including cannabis, constitutes a breach of the conventions that govern Australia’s domestic legislation concerning illicit drugs, as would a ‘legal’ or regulated market for recreational or non-medical use of drugs.²⁷

Submissions – Decriminalisation and legalisation

Submissions are sought from interested individuals and government and non-government organisations on decriminalisation of use and possession of ATS for personal use. The following issues are of particular relevance to the Inquiry:

²¹ Law Reform, Road and Community Safety Committee, Parliament of Victoria, *Inquiry into drug law reform* (Final Report, March 2018) 172-193 <https://www.parliament.vic.gov.au/file_uploads/LRRCSC_58-03_Full_Report_Text_WEB_XQB31XDL.pdf>.

²² Law Reform, Road and Community Safety Committee, Parliament of Victoria, *Inquiry into drug law reform* (Final Report, March 2018) 175-179 <https://www.parliament.vic.gov.au/file_uploads/LRRCSC_58-03_Full_Report_Text_WEB_XQB31XDL.pdf>.

²³ Spetz, Joanne, Susan A. Chapman, Timothy Bates, Matthew Jura, and Laura A. Schmidt. ‘Social and Political Factors Associated With State-Level Legalization of Cannabis in the United States.’ *Contemporary Drug Problems* (2019) <<https://doi.org/10.1177/0091450919827605>>.

²⁴ Bryce Pardo, ‘Cannabis policy and reform in the Americas: A comparative analysis of Colorado, Washington and Uruguay’ (2014) 25 (4) *International Journal of Drug Policy* 727.

²⁵ Beau Kilmer and Rosalie Pacula, ‘Greening the black market: understanding and learning from the diversification of cannabis supply laws’ (2017) 112(7) *Addiction* 1128.

²⁶ Department of Justice, Government of Canada, ‘Cannabis Legalization and Regulation’, *Criminal Justice* (Web page, 17 October 2018) <<https://www.justice.gc.ca/eng/cj-jp/cannabis/>>.

²⁷ Law Reform, Road and Community Safety Committee, Parliament of Victoria, *Inquiry into drug law reform* (Report, March 2018) 47 <https://www.parliament.vic.gov.au/images/stories/committees/lrrcsc/Drugs_/Report/LRRCSC_58-03_Full_Report_Text.pdf>.

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- 2.1.1 What data is collected regarding the number of penalty notices issued and the type and quantity of drugs to which they relate?
- 2.1.2 What impact, if any, has or will the introduction of penalty notices for the use and possession of ATS have on the volume of prosecutions for these offences and the prevalence of ATS use?
- 2.1.3 What impact, if any, has or will the introduction of penalty notices for the use and possession of ATS have on the engagement of consumers with health and social services?
- 2.1.4 Will the introduction of penalty notices for the use and possession of ATS reduce the harms associated with criminal prohibition of use and possession?
- 2.1.5 Should people issued penalty notices for use or possession of ATS be required to engage in counselling and/or education programs in relation to drug use?
- 2.1.6 Has the NSW Police issued guidelines for exercising the discretion to issue penalty notices for the use and possession of prohibited drugs? What monitoring system is in place to ensure that the guidelines are being fairly, consistently and appropriately applied?
- 2.1.7 Are the decriminalisation strategies used in NSW consistent with Commonwealth law and international conventions to which Australia is a signatory?
- 2.1.8 Have the decriminalisation strategies used in NSW increased or decreased ATS use and its harms? How is this measured? Can the effectiveness of such strategies be improved? If so, how?
- 2.1.9 What does the evidence about dealing with ATS use and possession in other decriminalised systems (such as that in Portugal) demonstrate about the positive and negative consequences of decriminalisation?
- 2.1.10 Should NSW consider the legalisation and/or the regulation and control of the supply of ATS?
- 2.1.11 To what extent would further decriminalisation of use and possession in NSW, or legalisation of ATS, be inconsistent with Commonwealth and international law, if at all?
- 2.1.12 What other innovative strategies should the Inquiry consider in relation to decriminalisation of ATS?

Substance testing and other innovative measures to reduce harm

Drug policy in NSW and nationally is informed by the objective of harm minimisation, which has three strategic elements: the “three pillars” of supply reduction, demand reduction and harm reduction.

The two main harm reduction strategies in NSW enabled by legislation are:

- The medically supervised injecting centre (**MSIC**) that has been operating in Kings Cross since 2001; and
- Needle and syringe programs (**NSPs**) which operate under a national system.

Currently, only one MSIC is permitted to operate in NSW²⁸ despite evaluations demonstrating its effectiveness as a harm reduction initiative.²⁹ Since 2001, the MSIC has managed over 7,438 overdose events with no deaths.³⁰ People who inject ATS can use the Sydney MSIC, however pregnant women, and those who smoke crystal methamphetamine are outside the scope of its services. The Sydney MSIC is strongly supported by the community.³¹

NSPs are recognised as the most effective harm reduction measure for people who use crystal methamphetamine.³² Primary NSPs provide an opportunity to engage with injecting drug users about their health, and provide education and referral to AOD services when needed.³³ Some of the risks faced by people injecting methamphetamine are reduced by NSPs and they have successfully reduced the transmission of blood-borne viruses such as hepatitis C and HIV.³⁴

In 2015-16, Australia’s network of NSP services was comprised of 102 primary, 786 secondary and 2,321 pharmacy NSPs, supplemented by 300 syringe dispensing machines.³⁵ Secondary NSPs are often unstaffed and clients do not have access to education, counselling or referral to other welfare services.³⁶

²⁸ *Drug Misuse and Trafficking Act 1985* (NSW) s 36A(1) <<https://www.legislation.nsw.gov.au/#/view/act/1985/226/part2a/div1/sec36a>>.

²⁹ See for example, KPMG, *Further Evaluation of the Medically Supervised Injecting Centre during its extended trial period 2007-2011* (Report, September 2010) <<https://www.health.nsw.gov.au/aod/resources/Documents/msic-kpmg.pdf>>; Saha International Limited, *Economic Evaluation of the Medically Supervised Injection Centre at Kings Cross (MSIC)* (Final report, August 2008) <https://uniting.org/_data/assets/pdf_file/0008/136439/MSIC-Final-Report-26-9-08-Saha.pdf>.

³⁰ KPMG, *Further Evaluation of the Medically Supervised Injecting Centre during its extended trial period 2007-2011* (Report, September 2010), 10 <<https://www.health.nsw.gov.au/aod/resources/Documents/msic-kpmg.pdf>>; State Coroner’s Court of New South Wales, *Inquest into the death of DB, JD, DC, RG, AH & AB*, (Findings, March 2019) 22 <<http://www.coroners.justice.nsw.gov.au/Documents/Opiate%20findings%20-%20final.pdf>>.

³¹ KPMG, *Further Evaluation of the Medically Supervised Injecting Centre during its extended trial period 2007-2011* (Final report, September 2010) 4 <<https://www.health.nsw.gov.au/aod/resources/Documents/msic-kpmg.pdf>>.

³² Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria* (Final Report, September 2014) vol 2, 605 <https://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_02.pdf>.

³³ Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria* (Final Report, September 2014) vol 2, 605 <https://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_02.pdf>.

³⁴ Commonwealth Parliamentary Joint Committee on Law Enforcement, *Inquiry into crystal methamphetamine (ice)* (Final report, 2018) 92 <https://www.aph.gov.au/~media/Committees/le_ctte/Crystalmethamphetamine45/Final_Report/report.pdf?la=en>.

³⁵ Commonwealth Parliamentary Joint Committee on Law Enforcement, *Inquiry into crystal methamphetamine (ice)* (Final report, 2018) 88 <https://www.aph.gov.au/~media/Committees/le_ctte/Crystalmethamphetamine45/Final_Report/report.pdf?la=en>.

³⁶ Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria* (Final Report, September 2014) vol 2, 608 <https://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_02.pdf>.

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There are gaps in service provision to priority populations with a prevalence of ATS use, such as people in custody.

There are currently calls from some parts of the community to introduce a regime of substance testing in NSW, which typically involves both toxicological analysis of substances intended to be ingested, and a brief educational intervention by a medical practitioner.³⁷ The practice of substance testing is widespread internationally.³⁸ In 2017 the European Monitoring Centre for Drugs and Drug Addiction provided a report on substance testing, which reported that the evidence concerning the efficacy of substance testing as a harm reduction tool was inconclusive. However, it was also reported that there was no evidence that substance testing encourages drug use.³⁹ Other research exploring the behavioural impact of a drug testing pilot in the UK confirmed positive results as a result of the intervention and a 95% reduction in festival hospital admissions compared to the previous year.⁴⁰ A pilot study of substance testing was trialled in the ACT in 2018. Testing found a range of chemical substances, including a substance that had caused multiple deaths overseas.⁴¹ A second trial will occur in April 2019.

There have also been calls to introduce other innovative initiatives designed to reduce harm. For example, Western Australia's *Methamphetamine Action Plan Taskforce* recommended the establishment of an alternative crisis intervention response to provide a short term place for methamphetamine users when they are in crisis that will keep them, their families and the community safe.⁴² This Taskforce recognised that existing intervention options available when a person who uses drugs is in crisis, such as police detention or admission to an emergency department or psychiatric facility, are not always appropriate. Preliminary submissions received by this Inquiry have similarly raised the need for new models, such as Triage Rooms, which divert drug users away from hospital emergency departments and provide more tailored support for the person under the influence of drugs and a safer environment for other patients and staff.⁴³

Submissions – The current legal framework and options for change

Submissions are sought from interested individuals and government and non-government organisations on the legal framework surrounding ATS, the adequacy of the existing legal framework and options to strengthen the legal framework. The following issues are of particular relevance to the Inquiry:

2.2.1 Should prohibited drugs be categorised and penalised according to levels of harm, rather than by quantity? If so, how would harm be quantified? Is there any evidence available from other

³⁷ See Australian Medical Association (NSW), Submission No 88 to *Special Commission of Inquiry into the Drug 'Ice'* (4 February 2019) 3; Harm Reduction Australia, Submission No 12 to *Special Commission of Inquiry into the Drug 'Ice'* (11 January 2019) 1; Australasian College of Emergency Medicine, Submission No 55 to *Special Commission of Inquiry into the Drug 'Ice'* (30 January 2019) 2.

³⁸ Tom Gotsis, 'Drug use at music festivals' (e-brief Issue 3/2018, Parliamentary Research Service, Parliament of NSW, December 2018) 10 <<https://www.parliament.nsw.gov.au/researchpapers/Pages/Drug-use-at-music-festivals.aspx>>.

³⁹ Tibor Brunt, European Monitoring Centre for Drugs and Drug Addiction, 'Drug checking as a harm reduction tool for recreational drug users: opportunities and challenges' (Report, 2017) 12 <http://www.emcdda.europa.eu/system/files/attachments/6339/EuropeanResponsesGuide2017_BackgroundPaper-Drug-checking-harm-reduction_0.pdf>.

⁴⁰ Fiona Measham, 'Drug safety testing, disposals and dealing in an English field: Exploring the operational and behavioural outcomes of the UK's first onsite "drug checking" service' (2018) *International Journal of Drug Policy* <<https://doi.org/10.1016/j.drugpo.2018.11.001>>.

⁴¹ Safety Testing Advisory Service At Festivals and Events (STA-SAFE) Consortium, *Report on the ACT GTM Pill Testing Pilot: a Harm Reduction Service* (Report, 2018) 29 <<https://www.harmreductionaustralia.org.au/wp-content/uploads/2018/06/Pill-Testing-Pilot-ACT-June-2018-Final-Report.pdf>>; Tom Gotsis, 'Drug use at music festivals' (e-brief Issue 3/2018, Parliamentary Research Service, Parliament of NSW, December 2018) 12 <<https://www.parliament.nsw.gov.au/researchpapers/Pages/Drug-use-at-music-festivals.aspx>>.

⁴² Government of Western Australia, *Methamphetamine Action Plan Taskforce* (Final Report, November 2018) 22, 170 <<https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/MAPTTaskforce/Documents/MAPTTaskforceFinalReport.pdf>>.

⁴³ Harm Reduction Australia, Submission 12 to *Special Commission of Inquiry into the Drug 'Ice'* (11 January 2019).

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jurisdictions such as New Zealand or Canada indicating different outcomes from the justice system resulting from their classification of prohibited drugs by harm rather than quantity?

- 2.2.2 How are the threshold quantities of ATS in Schedule 1 of the *DMT Act*, and associated penalties determined? What is the evidence base for the categorisation and quantification of substances in Schedule 1 of the *DMT Act*?
- 2.2.3 How and to what extent does the criminal prohibition of ATS promote or frustrate the National Drug Strategy?
- 2.2.4 Do the international conventions and Commonwealth law constrain law reform in NSW, particularly proposals to decriminalise or legalise drug use and possession?
- 2.2.5 Are the laws relating to clandestine lab contaminations in residential and commercial properties, and drug testing in the workplace adequate?
- 2.2.6 What are the gaps in current ATS-related crime and justice data, and how could we better collect data on the manufacture, supply and use of ATS in NSW?
- 2.2.7 Is the response of NSW to drug driving (ATS) adequate? How can it be improved?
- 2.2.8 What data is collected to measure the extent of drug driving (ATS) and the harm caused by drug driving (ATS)?
- 2.2.9 Are there other innovative approaches to law enforcement strategies to reduce drug driving (ATS) that should be considered?

Impacts on the criminal justice system

Apart from statistical data relating to the number of charges and convictions relating to ATS offences under the *DMT Act* and offences such as drug driving there does not appear to be a way to properly capture the true impact of ATS on the criminal justice system. References to ATS are made in some published judgments however this generally relies upon the discretion of judicial officers and is not done consistently. This leaves an incomplete picture of the role ATS plays in a large number of offences such as homicides, violence against the person (including domestic violence offences) and sexual offences. This is particularly concerning in circumstances where the majority of societal costs attributed to ATS use are said to be related to crime (including police, courts, prisons and victims' costs).⁴⁴

An example of how data from the criminal justice system can be used is found in a study of the rates, characteristics and circumstances of methamphetamine-related deaths in Australia.⁴⁵ Researchers extracted data from the National Coronial Information System (NCIS) in order to analyse the prevalence of methamphetamine-related deaths in Australia. Their analysis demonstrated that the total number of methamphetamine-related deaths across Australia in the period 2009 to 2015 was 1,694. During that period, methamphetamine death rates doubled, with 1.5% of the total deaths over that period involving a homicide.⁴⁶ Without the information placed within the NCIS this research would not have been possible.

Submissions – Impacts of ATS on the criminal justice system

Submissions are sought from interested individuals and government and non-government organisations on the impact of ATS on the criminal justice system. The following issues are of particular relevance to the Inquiry:

- 2.3.1 What is the impact of ATS use on the criminal justice system including the impact on the courts and practitioners? How is the impact measured? Is this measurement supported by data?
- 2.3.2 What can be done to improve the way that the impact of ATS on the criminal justice system is recorded?

⁴⁴ National Drug Research Institute, Curtin University, *The Social Costs of Methamphetamine* (Report, July 2016) <<http://ndri.curtin.edu.au/ndri/media/documents/publications/T246.pdf>>.

⁴⁵ Shane Darke, Kaye S and Duflou J, 'Rates, characteristics and circumstances of methamphetamine-related death in Australia: a national 7-year study' (2017) 112(12) *Society for the Study of Addiction* 2191.

⁴⁶ Shane Darke, Kaye S and Duflou J, 'Rates, characteristics and circumstances of methamphetamine-related death in Australia: a national 7-year study' (2017) 112(12) *Society for the Study of Addiction* 2191, 2193, 2195, 2199.

Justice strategies

LAW ENFORCEMENT STRATEGIES IN NSW

NSW Police are responsible for enforcing laws prohibiting the possession, manufacture and trafficking of ATS and precursors in NSW. The Drug and Firearms Squad of NSW Police lead, manage and conduct investigations into the networks involved in the supply, distribution and production of illicit drugs and firearms. The Drug and Firearms Squad provides support to other NSW Police commands and units in their response to serious drug and firearms crime. Specific activities of NSW Police include:

- high visibility local and front-line policing to deter public dealing, possession and use;
- specialised taskforces and squads;
- surveillance and intelligence gathering, including in cooperation with other jurisdictions;
- seizures of ATS, precursors, and proceeds of crime;
- detection and closure of clandestine laboratories;
- roadside drug testing;
- drug detection dogs;
- prosecution of drug offences and drug related-crime;
- diversionary measures such as the Cannabis Caution Scheme, the Magistrates Early Referral Into Treatment Scheme (**MERIT**), *Young Offenders Act*, the Drug Court and the issue of penalty notices for drug possession;
- public awareness campaigns, and community engagement.

The NSW Crime Commission (**NSWCC**) investigates organised and other serious crime with NSW Police and gathers criminal intelligence in NSW to conduct local operations. The NSWCC also prosecutes the recovery of proceeds of crime in NSW under the *Confiscation of Proceeds of Crime Act 1989* (NSW) (**Proceeds Confiscation Act**) and *Criminal Assets Recovery Act 1990* (NSW) (**Criminal Assets Recovery Act**). The *Criminal Assets Recovery Act* provides an unexplained wealth regime that targets organised crime by securing assets that cannot be recovered through conviction-based legislative means. Proceeds of crime are dealt with in more detail in Issues Paper 4: Data, Research and Funding.

The Commonwealth agencies operating in NSW to prevent and disrupt the importation of ATS and precursors into the country are the Australian Federal Police (**AFP**), Australian Border Force (**ABF**), Australian Criminal Intelligence Commission (**ACIC**), Australian Institute of Criminology (**AIC**), Australian Transaction Reports and Analysis Centre (**AUSTRAC**) and Department of Immigration and Border Protection (**DIBP**).

Profits from the illicit drug market and other criminal enterprises are often subject to sophisticated money laundering strategies to conceal the illicit sources of the funds. Estimates indicate that the amount of money laundered globally annually could comprise 2-5% of global gross domestic product (GDP), (USD \$800 billion to USD \$2 trillion).⁴⁷ The covert nature of the illicit drug market makes it difficult to

⁴⁷ United Nations Office on Drugs and Crime, 'Money-Laundering and Globalization', *Money-Laundering* (Web page, 2019) <<https://www.unodc.org/unodc/en/money-laundering/globalization.html>>; Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria* (Final Report, September 2014) vol 2, 407.

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accurately assess both the volume of drugs in the community and the volume of funds generated within that market. According to the National Wastewater Drug Monitoring Program Report 2018, conservative consumption estimates suggest that Australians spent over \$9.3 billion on methamphetamine, cocaine, MDMA and heroin between August 2017 and August 2018. Of this, 78% of this was said to be spent on methamphetamine alone.⁴⁸

AUSTRAC is the primary Australian agency responsible for financial intelligence and undertakes its functions pursuant to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (*AML/CTF Act*). AUSTRAC oversees compliance with statutory reporting requirements and generates and shares intelligence with international and domestic partners, including law enforcement agencies and industry entities, with a view to disrupting the activities and financing of organised criminal networks. AUSTRAC also assists in the prosecution of terrorism financing, tax evasion and organised crime.⁴⁹ In obtaining intelligence, the *AML/CTF Act* requires financial service providers such as banks to provide reports to AUSTRAC regarding suspicious matters,⁵⁰ threshold transactions⁵¹ (being transfers of not less than \$10,000 of physical currency) and international funds transfer instructions.⁵²

Commonwealth, state and territory police forces work collaboratively to target the importation, manufacturing and trafficking of illicit drugs, through national initiatives for collaboration, intelligence gathering and joint operations. These include:

- the Serious Organised Crime Coordination Committee, which developed the National Law Enforcement Methamphetamine Strategy;
- the Joint Organised Crime Group, consisting of NSW Police, NSWCC, AFP and ACIC;
- the Australian Gangs Intelligence Coordination Centre and the National Anti-Gangs Squad, which aim to develop and maintain the national and transnational intelligence on criminal gangs impacting Australia and coordinate the sharing of gang intelligence between jurisdictions;
- the National Criminal Target List, a national listing of known organised crime groups operating in Australia with input from Commonwealth, state and territory agencies;
- Vestigo Taskforce, which targets transnational serious organised crime activities that impact on Australia and international partners, including the importation of methamphetamine, and coordinates the work of Commonwealth, state, territory and international partners.

Submissions – Law enforcement strategies

Submissions are sought from interested individuals and government and non-government organisations on the impact ATS have on law enforcement strategies, the adequacy of existing law enforcement strategies aimed at addressing ATS and options to strengthen law enforcement strategies. The following issues are of particular relevance to the Inquiry:

2.4.1 How effective are current law enforcement strategies at reducing the supply and demand of ATS (including the confiscation of proceeds of crime and unexplained wealth)? How is the

⁴⁸ Australian Criminal Intelligence Commission, *National Wastewater Drug Monitoring Program – Report 6* (Report, December 2018) 9 <https://www.acic.gov.au/sites/default/files/2019/02/ww6_300119.pdf?v=1549244188>.

⁴⁹ AUSTRAC, Commonwealth, *Annual report 2017-18* (Report, 2018) <http://www.austrac.gov.au/sites/default/files/AUSTRAC_annual_report_2017-18.pdf>; Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria* (Final Report, September 2014) vol 2, 412-413.

⁵⁰ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) pt 3 div 2.

⁵¹ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) pt 3 div 3.

⁵² *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) pt 3 div 4.

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effectiveness of these strategies measured? Is the measure of effectiveness supported by evidence?

- 2.4.2 Is the NSW Police recording how often it is using diversionary schemes such as fine-only penalty provisions for possession of ATS? What training is provided to members of the NSW Police in relation to the use of diversionary schemes?
- 2.4.3 Are current or developing law enforcement information sources such as the National Criminal Intelligence System (NCIS) and End User Declaration (EUD) system for monitoring pseudoephedrine sales adequate in scope and implementation?
- 2.4.4 Do law enforcement agencies and other stakeholders in the criminal justice system support harm reduction strategies such as substance testing and the expansion of the MSIC (Discussed in more detail in Issues Paper 3: Health)?
- 2.4.5 Do NSW Police have adequate access to tools and resources such as Mobile Roadside Drug Testing and drug detection dogs in order to deal with ATS? Are additional tools and resources required?
- 2.4.6 What resources, strategies and training do the NSW Police have to respond to ATS affected individuals, including those demonstrating mental health comorbidities? Could these be improved?
- 2.4.7 How effective is collaboration between law enforcement agencies and other front-line sectors, such as paramedicine and mental health to deal with ATS-affected individuals. For example, is the MOU between NSW Police and NSW Ambulance an effective measure for dealing with ATS-affected individuals.⁵³

DIVERSIONARY PROGRAMS

Diversionary programs divert certain offenders from the criminal justice system with the intention of preventing future offending by addressing their drug and alcohol issues. A range of diversionary programs currently operate in NSW and include:

- Adult Drug Court in conjunction with the Compulsory Drug Treatment Correctional Centre: for drug dependent offenders over the age of 18 years who live in Auburn, Bankstown, Baulkham Hills, Blacktown, Campbelltown, Cessnock, Fairfield, Hawkesbury, Holroyd, Lake Macquarie, Liverpool, Maitland, Newcastle, Parramatta, Penrith or Port Stephens. Offenders must plead guilty to access the scheme.
- Cannabis Cautioning Scheme: formal cautioning of adult offenders for minor cannabis offences, at the discretion of police. A person can only be cautioned twice and not if they have prior convictions for drug offences or offences of violence or sexual assault.
- Circle Sentencing Program: operating in the local courts in Bourke, Dubbo, Kempsey, Mount Druitt, Nambucca Valley, Nowra, Lismore and Walgett, this is an alternate form of sentencing for Aboriginal adult offenders who plead guilty.
- MERIT Program: MERIT is available in many Local Courts in NSW. It provides the opportunity for adult defendants with substance abuse problems to work on a voluntary basis, towards rehabilitation as part of the bail process. Defendants are case-managed throughout the program

⁵³ See for example, NSW Ministry of Health, *NSW Health - NSW Police Force Memorandum of Understanding 2018 – Incorporating provisions of the Mental Health Act 2007 (NSW) No 8 and the Mental Health Forensic Provisions Act 1990 (NSW)* (Report, March 2018) <<https://www.health.nsw.gov.au/mentalhealth/resources/Publications/mou-health-police-2018.pdf>>.

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and the Magistrate receives regular reports on the participant. The final hearing and sentence generally coincide with the completion of the MERIT Program. Magistrates are then able to consider the defendant's progress in treatment as part of final sentencing.

- Youth Koori Courts: the Youth Koori Court commenced in Parramatta in 2015. To participate, offenders must be aged 10 to 17, an Aboriginal or Torres Strait Islander person and have pleaded guilty or been found guilty of a criminal offence. Participants have up to 12 months to complete the program and their performance is taken into account during the sentencing process. The NSW Government 2018-19 budget included \$2.7 million to fund the expansion of the court from Parramatta to the Surry Hills Children's Court. The Government has indicated that it will consider further expansion following an evaluation.⁵⁴
- The *Young Offenders Act* provides four ways of responding to an offence. Police can give warnings for the least serious offences. Cautions (by NSW Police) and Youth Justice Conferences (administered by Juvenile Justice, Department of Justice) are available for certain more serious offences. Court remains the option for the most serious offences. The child must admit the offence for a caution or conference.⁵⁵

While not strictly a diversionary program, as referred to earlier, in January 2019 the *Criminal Procedure Regulation 2017* (NSW) was amended to enable the issuing of penalty notices under s 333 of the *Criminal Procedure Act 1986* (NSW) for the offence of possession of a small quantity of a prohibited drug (excluding possession of cannabis leaf). In the case of possession of MDMA, the quantity cannot exceed 0.25 grams when in capsule form or 0.75 grams in any other form. For any other drug except for cannabis leaf, the amount possessed must not exceed the small quantity specified for that drug in Schedule 1 of the *DMT Act*.

In this context, it is also relevant to note that the *Fines Act 1996* (NSW) (***Fines Act***) provides for the making of work and development orders.⁵⁶ These orders allow people in specified categories the chance to “work off” fines by engaging in education, mental health treatment, or voluntary work with charities. This ‘Work and Development Orders program’ (**WDO Program**) was developed to address the significant burden fine debt places on vulnerable people in the community and, in 2011, the *Fines Amendment (Work and Development Orders) Bill* amended the Act to extend the program to cover those suffering from serious addictions to drugs, alcohol or volatile substances. If such addiction is a person's only ground for eligibility for the scheme, the person must undertake either drug and alcohol treatment or counselling as their work and development order activity.⁵⁷

In 2012, the Youth Drug and Alcohol Court was closed. Other diversionary programs which have closed include Court Referral of Eligible Defendants into Treatment (CREDIT) in 2017 and Forum Sentencing.⁵⁸

Early intervention programs such as Youth on Track are covered in Issues Paper 3: Health and Community.

⁵⁴ New South Wales Government, ‘NSW Budget: Youth Koori Court expands to Surry Hills’ (Media release, 31 May 2018) <<https://www.justice.nsw.gov.au/Documents/Media%20Releases/2018/youth-koori-court-expands-surry-hills.pdf>>; See also New South Wales Government, ‘Response of the NSW Government to the Portfolio Committee No. 2 (Health and Community Services) Report 49 into the provision of drug rehabilitation services in regional, rural and remote New South Wales’ (17 January 2019) 9 <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2466/Government%20response.pdf>>.

⁵⁵ A number of offences under the *Drug Misuse and Trafficking Act 1985* (NSW) are not covered by the *Young Offenders Act 1997* (NSW). See *Young Offenders Act 1997* (NSW), ss 8(2)(e1), 8(2)(f), 8(2A), 8(3).

⁵⁶ *Fines Act 1996* (NSW) ss 99A-99K.

⁵⁷ New South Wales, *Parliamentary Debates*, Legislative Assembly, 3 August 2011, 7 (Greg Smith).

⁵⁸ Forum sentencing was repealed by the *Criminal Procedure Amendment (Intervention Programs) Regulation 2018* (NSW).

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Extensive research has been conducted into diversionary programs including:

- The 2018 NSW Parliamentary Inquiry into the Provision of Drug Rehabilitation Services in Regional, Rural and Remote NSW recommended that the NSW Government conduct a review of the Drug Court and MERIT, including the feasibility of establishing them in regional areas, and pilot a Drug Court in Dubbo in parallel with an increase in rehabilitation services for the area.⁵⁹ The NSW Government has agreed to consider these recommendations.⁶⁰
- The NSW Legislative Assembly (Law and Safety Committee) conducted an inquiry into the adequacy of youth diversionary services in NSW. The report was tabled in September 2018 and the NSW Government response was due 20 March 2019.⁶¹
- In 2015, the National Ice Taskforce (NIT) recommended that Australian governments review their programs to determine best practice to improve and expand existing programs, and for a 'Swift and Certain Sanctions' program modelled on the successful Hawaiian program 'HOPE' to be trialled in at least one Australian jurisdiction. The COMMIT program for adult offenders on suspended sentences in the Northern Territory is based on the Swift and Certain Sanctions model.⁶² The Swift and Certain Sanctions program was trialled in Hawaii in recognition that those who breach probation often face inconsistent sanctions after long delays. The program involves probationers who fail drug tests being given swift punishment (in Hawaii, usually short jail terms issued within 72 hours). The program was also intended to reduce the use of mandatory treatment to free up space for people volunteering to attend. Trial results led to a significant reduction in positive drug tests and the program has been rolled out in 21 states in the USA.⁶³
- The National Ice Action Strategy (NIAS) recommended a national review of drug diversionary programs available in states and territories to inform best practice approaches and options for improvement and expansion as a priority.⁶⁴ The 2017 Commonwealth Joint Parliamentary Committee on Law Enforcement's *Inquiry into crystal methamphetamine (Ice)* heard evidence that the Western Australian Police had undertaken a national review of police drug diversionary programs subsequent to the NIAS and that the outcomes of that review were to be provided to the National Drug Strategy Committee for consideration.⁶⁵ The Joint Parliamentary Committee recommended that following the national review of drug diversionary programs required by the NIAS, states and territories commit to improving, expanding, or, where no drug diversionary

⁵⁹ Portfolio Committee No. 2 – Health and Community Services, NSW Legislative Council, *Provision of drug rehabilitation services in regional, rural and remote New South Wales* (Report, 6 August 2018) ix
<<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2466/Final%20report%20-%20Drug%20rehabilitation%20services%20-%206%20Aug%202018.pdf>>.

⁶⁰ New South Wales Government, 'Response of the NSW Government to the Portfolio Committee No. 2 (Health and Community Services) Report 49 into the provision of drug rehabilitation services in regional, rural and remote New South Wales' (17 January 2019) 6
<<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2466/Government%20response.pdf>>.

⁶¹ Law and Safety Committee, Legislative Assembly of NSW, *Inquiry into the Adequacy of Youth Diversionary Services in New South Wales* (Report No 2/56, September 2018)
<<https://www.parliament.nsw.gov.au/ladocs/inquiries/2464/Report%20Adequacy%20of%20Youth%20Diversionary%20Programs%20in%20NSW.PDF>>.

⁶² Department of the Attorney-General and Justice, Northern Territory Government, *The COMMIT Program Overview* (Report)
<https://justice.nt.gov.au/__data/assets/pdf_file/0003/458760/commit-overview.pdf>.

⁶³ Commonwealth, *Final Report of the National Ice Taskforce* (Final Report, 2015) 145-147
<https://www.pmc.gov.au/sites/default/files/publications/national_ice_taskforce_final_report.pdf>.

⁶⁴ Council of Australian Governments, *National Ice Action Strategy* (2015) 25
<<https://www.coag.gov.au/sites/default/files/communique/2015%20National%20Ice%20Action%20Strategy.pdf>>.

⁶⁵ Commonwealth Parliamentary Joint Committee on Law Enforcement, *Inquiry into crystal methamphetamine (ice)* (First Report, September 2017) 109-110
<https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/First_report>.

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program currently exists, implementing such programs.⁶⁶ At this stage of this Inquiry, it is unclear whether NSW has undertaken a similar review to that done by Western Australia, or what the results of the Western Australian review were. To assist in tracking the progress of the national review, the Joint Parliamentary Committee recommended that all progress reports and the mid-point reviews provided to the Ministerial Drug and Alcohol Forum and Council of Australian Governments on the implementation of the National Drug Strategy 2017-2026 (NDS) and NIAS be made publicly available.⁶⁷ At this stage of the Inquiry, it is unclear whether these reviews have not occurred, or whether they have occurred but not been made public.

- The 2014 Victorian Parliamentary Report into Methamphetamine, resulted in recommendations to expand a Court Integrated Services Program, expand the operation of the Drug Court in Victoria, and investigate how concepts of justice reinvestment could best be utilised in drug-related diversion and treatment programs.⁶⁸
- The 2018 Victorian Parliamentary Law Reform, Road and Community Safety Committee’s *Inquiry into drug law reform* resulted in a recommendation to remove the discretion involved in current Victoria Police drug diversion processes by codifying them.⁶⁹
- The Final Report of the Government of Western Australia’s *Methamphetamine Action Plan Taskforce* identified general community support for diversion programs, but also noted that implementation and effectiveness varies across different models. The Taskforce noted that a holistic approach was required to support the range of complex issues which an individual may be facing, such as the Court Integrated Services Program (CISP) introduced in Victoria in 2006. The Taskforce made the recommendation that the Department of Justice and other relevant agencies introduce integrated approaches to the assessment and treatment of alleged offenders that provide a holistic, case-managed approach to treatment and support.⁷⁰

Submissions – Diversionary programs

Submissions are sought from interested individuals and government and non-government organisations on the adequacy of existing diversionary programs in NSW and options to strengthen NSW’s response to ATS through diversionary programs. The following issues are of particular relevance to the Inquiry:

- 2.4.8 Are existing diversionary programs achieving positive outcomes for ATS users/ATS related offending?
- 2.4.9 Which diversionary programs have proven to be the most effective in NSW and in other jurisdictions?
- 2.4.10 Are there sufficient diversionary programs available for adults and children/young people?
- 2.4.11 What are the barriers to accessing diversionary programs?

⁶⁶ Commonwealth Parliamentary Joint Committee on Law Enforcement, *Inquiry into crystal methamphetamine (ice)* (First Report, September 2017) 110 <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/First_report>.

⁶⁷ Commonwealth Parliamentary Joint Committee on Law Enforcement, *Inquiry into crystal methamphetamine (ice)* (First Report, September 2017) xi <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/First_report>.

⁶⁸ Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria* (Final Report, September 2014) vol 2, 486 <https://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_02.pdf>.

⁶⁹ Law Reform, Road and Community Safety Committee, Parliament of Victoria, *Inquiry into drug law reform* (Final Report, March 2018) 161-167 <https://www.parliament.vic.gov.au/file_uploads/LRRCSC_58-03_Full_Report_Text_WEB_XQB31XDL.pdf>.

⁷⁰ Government of Western Australia, *Methamphetamine Action Plan Taskforce* (Final Report, November 2018) 199-205 <<https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/MAPTTaskforce/Documents/MAPTTaskforceFinalReport.pdf>>.

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- 2.4.12 What data is collected to inform the development and evaluation of such diversionary programs? Is such data as may be collected adequate for its purpose?
- 2.4.13 Do ATS dependent offenders and/or ATS related offending pose particular problems for diversionary programs?
- 2.4.14 Which areas of NSW would benefit from new/additional diversionary programs?
- 2.4.15 What type of diversionary programs should be considered for (re)implementation in NSW?
- 2.4.16 Should consideration be given to programs designed for specific sub-populations of ATS related offenders, such as indigenous offenders and/or offenders with mental health needs?
- 2.4.17 Is there any evidence to suggest that work and development orders under s 99B of the *Fines Act* have utility in aiding harm reduction for drug addicted individuals?

JUSTICE REINVESTMENT

Justice reinvestment is a place-based initiative that involves all levels of government and the local community in a genuine partnership with the aim of improving public safety, reducing criminal justice spending and reinvesting savings in strategies that can reduce crime and strengthen communities.⁷¹

The Maranguka Justice Reinvestment Project (**Maranguka Project**) in Bourke commenced in 2012, as the first major pilot site to develop and implement a community-led place-based model of justice reinvestment. The project is being designed and delivered using a collective impact approach involving more than 20 organisations working together to make the community safer and reduce offending.⁷²

A recent impact assessment of the Maranguka Project found that between 2016 and 2017, it had contributed to:

- a 23% reduction in police recorded incidence of domestic violence and comparable drops in rates of re-offending;
- a 31% increase in year 12 student retention rates and a 38% reduction in charges across the top five juvenile offence categories; and
- a 14% reduction in bail breaches and a 42% reduction in days spent in custody.⁷³

Submissions – Justice reinvestment

Submissions are sought from interested individuals and government and non-government organisations on the potential for innovative justice strategies such as Justice Reinvestment to improve responses to ATS. The following issues are of relevance to the Inquiry:

- 2.4.18 Is there evidence to suggest that Justice Reinvestment would be an effective strategy for addressing drug use, in particular ATS?
- 2.4.19 Is there evidence to suggest that other innovative justice strategies (including collective-impact, place-based approaches) would be effective at addressing ATS use and/or harms?

⁷¹ 'What is justice reinvestment?', *Just Reinvest NSW* (Web page) <<http://www.justreinvest.org.au/what-is-justice-reinvestment/>>.

⁷² 'Justice reinvestment in Bourke', *Just Reinvest NSW* (Web page) <<http://www.justreinvest.org.au/justice-reinvestment-in-bourke>>.

⁷³ KPMG, *Maranguka Justice Reinvestment Project: Impact assessment* (Report, 27 November 2018), 6 <<http://www.justreinvest.org.au/wp-content/uploads/2018/11/Maranguka-Justice-Reinvestment-Project-KPMG-Impact-Assessment-FINAL-REPORT.pdf>>.

ATS use and custody

CUSTODIAL TREATMENT

People in custody have high levels of drug use, and their offending is often related to their drug use. The NDS identifies people in contact with the criminal justice system as a priority population,⁷⁴ ATS and other drug use in custodial settings has been a focus of a number of prior inquiries and other government actions. The NIAS notes that drug and alcohol treatment programs are delivered in prisons and the corrections system.⁷⁵

In 2015, 67% of prison entrants reported using an illicit drug in the previous 12 months with half of all prison entrants reportedly using methamphetamine.⁷⁶ These figures may not reflect the actual prevalence of ATS use in custody, as there appears to be significant under-reporting of drug use by this population group.⁷⁷

Young people in custody have extremely complex needs (high levels of alcohol and drug use, significant social disadvantage, mental health issues, past trauma, cognitive impairment, poor literacy etc).⁷⁸ This makes service provision and their engagement in treatment difficult.

Given the high rates of drug use amongst prisoners, custody offers a unique opportunity to identify and treat health problems, including drug dependency.

A range of interventions exist in NSW to prevent illicit substances entering correctional centres, detect substances and drug use by inmates, provide treatment services and support for inmates and reduce harm. These include:

- Surveillance and detection - intelligence based detection strategies such as monitoring of phone calls and mail; searches of people and property, near and within correctional centres (including with drug detection dogs); and random and targeted drug testing of inmates (urinalysis).
- Risk assessment and management of drug/alcohol intoxication and withdrawal on entry into centres (provided by the Justice Health and Forensic Mental Health Network within publicly run centres and private contracted providers in privately run centres).
- Primary and specialist health services (including provision of medication).

⁷⁴ Commonwealth, *National Drug Strategy: 2017-2026* (2017) 2 <<https://www.hcasa.asn.au/documents/555-national-drug-strategy-2017-2026/file>>.

⁷⁵ Council of Australian Governments, *National Ice Action Strategy* (2015) 13 <<https://www.coag.gov.au/sites/default/files/communique/2015%20National%20Ice%20Action%20Strategy.pdf>>.

⁷⁶ Commonwealth, *National Drug Strategy: 2017-2026* (2017) 28 <<https://www.hcasa.asn.au/documents/555-national-drug-strategy-2017-2026/file>> citing Australian Institute of Health and Welfare, Australian Government, *The health of Australia's prisoners 2015* (Report, 2015) 96-97 <<https://www.aihw.gov.au/getmedia/9c42d6f3-2631-4452-b0df-9067fd71e33a/aihw-phe-207.pdf.aspx?inline=true>>. See also Justice Health & Forensic Mental Health Network, NSW Health, *Network Patient Health Survey 2015*, ch 5 <https://www.justicehealth.nsw.gov.au/publications/2015_NHPS_FINALREPORT.pdf>.

⁷⁷ Australian Institute of Criminology, *Drug Use Monitoring in Australia: 2015 and 2016 report on drug use among police detainees* (Statistical Report, 2018) 80 <<https://aic.gov.au/publications/sr/sr4>>.

⁷⁸ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *Young People in Custody Health Survey* (Full Report, November 2017) 93-96 <<https://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>>.

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- Provision of therapeutic programs (such as EQUIPS Addiction, Intensive Drug and Alcohol Treatment Program)⁷⁹ and support groups (such as Narcotics Anonymous) as well as psychological and pastoral support.
- Harm reduction strategies such as health promotion initiatives and provision of condoms and approved disinfectant.
- Preparation and support for post-release – new case management units have been established in prisons.
- The Compulsory Drug Treatment Correctional Centre at Parklea which houses participants who have been sentenced to a compulsory drug treatment order by the NSW Drug Court in Parramatta. The centre utilises a multidisciplinary team to treat, rehabilitate, and reintegrate male participants whose repeat offending has stemmed from severe drug addiction.⁸⁰

There is evidence from overseas that needle exchange programs in prisons reduce harms.⁸¹ However, there are no such programs in Australia.

Submissions – ATS use and custody

Submissions are sought from interested individuals and government and non-government organisations on the prevalence of ATS use within the custodial setting, the adequacy of current responses to ATS use within the custodial setting and options to strengthen such responses. The following issues are of particular relevance to the Inquiry:

- 2.5.1 What is the nature and prevalence of ATS use in custody?
- 2.5.2 What are the strategies for preventing entry of ATS into correctional centres and how effective are those strategies? How can they be improved?
- 2.5.3 Is the data used to record the nature and prevalence of ATS use in the custodial environment adequate?
- 2.5.4 What access do people in custody have to withdrawal/detoxification services within custody? Is such access as is provided adequate and appropriate? Does access to such programs differ between government run facilities and private facilities?
- 2.5.5 What access do people in custody have to primary and specialist health care to address ATS use and its impacts, including those with mental health and/or other complex needs? Is such access as is provided adequate and appropriate? How can this be improved?
- 2.5.6 What access do people in correctional centres have to:
 - a. programs to assist with preparation for post-release;
 - b. services for health promotion and harm reduction strategies in custody; and

⁷⁹ See the Corrective Services, NSW Government *Compendium of Offender Behaviour Change Programs in New South Wales* (June 2016) <<https://www.correctiveservices.justice.nsw.gov.au/Documents/programs/CSNSW%20Compendium%20of%20Offender%20Behaviour%20Change%20Program.pdf>>.

⁸⁰ Justice, NSW Government 'Compulsory Drug Treatment Correctional Centre' (Web page) <<https://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/custodial-corrections/table-of-correctional-centres/compulsory-drug-treatment-centre.aspx>>.

⁸¹ See Government of Western Australia, *Methamphetamine Action Plan Taskforce* (Final Report, November 2018) 214-216 <<https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/MAPTTaskforce/Documents/MAPTTaskforceFinalReport.pdf>>.

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- c. services which are aimed at preventing drug use within the custodial environment.
- 2.5.7 How effective are these programs? How can they be improved?
- 2.5.8 Is there any data measuring the effectiveness of the Compulsory Drug Treatment Correctional Centre in dealing with ATS in custody?
- 2.5.9 Are existing harm minimisation strategies implemented within correctional centres achieving positive outcomes?
- 2.5.10 Is there evidence to suggest additional harm minimisation strategies should be trialled/implemented?
- 2.5.11 Is there a plan to trial a needle exchange system in any correctional centre in NSW? If not, why not?

POST-CUSTODIAL SUPPORT AND COMMUNITY BASED SENTENCES

ATS users serving community-based sentences and those exiting correctional centres face many barriers to successful reintegration into the community.⁸² In the period immediately following their release, former inmates face a high risk of death from drug overdose.⁸³ Some inmates are released from prison unexpectedly, including directly from court without their property and/or medication,⁸⁴ which can have serious adverse impacts on post-release planning. Addressing drug-related risks and harms may not be a high priority for inmates on release when compared to other more basic issues, such as obtaining housing and employment, and reconnecting with family/community. Further, former inmates may encounter barriers to treatment, including exclusion from treatment services due to their criminal history.⁸⁵ The NDS identifies people in contact with the criminal justice system as a priority population.

Within NSW, the supervision conditions of a person subject to an intensive corrections order, community corrections order, custodial release order or parole order may include participation in alcohol and other drug (AOD) programs, treatment, intervention or related activity. There is also a range of initiatives to help offenders successfully reintegrate into the community and desist from offending behaviour, including transitional and residential facilities.

Some of the following initiatives are specific to people the subject of community-based orders, some to parolees and some to both groups:

- Balund-a (Tabulum) – a residential diversionary program for males over 18 when revocation of parole or a community-based order is considered or when factors emerge in the course of supervision and are assessed as requiring intensive residential supervision.
- Bolwara Transitional Centre at Emu Plains – for Indigenous women with histories of AOD use preparing for release from custody.

⁸² Commonwealth, *Final Report of the National Ice Taskforce* (Final Report, 2015) 136 <https://www.pmc.gov.au/sites/default/files/publications/national_ice_taskforce_final_report.pdf>.

⁸³ See for example, Victorian Ombudsman, *Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system* (Report, September 2017) 5 <<https://www.ombudsman.vic.gov.au/getattachment/ff920955-c8aa-488d-a1a0-83a57897ecae/publications/parliamentary-reports/enquiry-into-provision-of-alcohol-and-drug-rehab.aspx>>.

⁸⁴ Network of alcohol & other drugs agencies, 'From prison to treatment' *Complex Needs Capable: A practice resource for drug and alcohol services* (Web page, 2013) <<https://www.complexneedscapable.org.au/prison-treatment.html>>.

⁸⁵ AOD treatment facilities determine their own inclusion/exclusion criteria for participants. See, for example, Dubbo Regional Council, Submission No 34 to *Special Commission of Inquiry into the Drug 'Ice'* (25 January 2019) 3, which states that the Lives Lived Well treatment centre in Orange excludes people transitioning out of prison.

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- Parramatta Transitional Centre - for women with longer sentences preparing for release.
- Miruma – a residential diversionary program in Cessnock for women with mental health and AOD issues who are experiencing difficulties adjusting to lawful community life.
- Nunyara Community Offender Support Program Centre, Malabar – provides emergency short term accommodation for men leaving custody.⁸⁶

Post-release services for people with AOD issues include:

- The Justice Health & Forensic Mental Health Network Connections Program, which is a program for people leaving adult correctional centres that provides pre-release case planning and four weeks of post-release support, including linking people with appropriate health and social services.⁸⁷
- The Transitional AOD Service, run by the Community Restorative Centres, which is a pre-release and outreach AOD service to support people exiting from NSW correctional centres who have complex needs and/or cognitive impairment. It is funded by Central and Eastern Sydney Primary Health Network, Western Sydney Primary Health Network and the NSW Ministry of Health (NSW Health).⁸⁸

Non-government organisations are also active in providing support through initiatives such as mentoring programs (e.g. Women's Justice Network) and post-release assistance and support programs (e.g. the Samaritans' Recovery Point in Newcastle; and the Miranda Project run by the Community Restorative Centre for women attending court, on community orders or exiting prison). People exiting custody or offenders living in the community under supervision may also access (or attempt to access) mainstream services.

Submissions – Post-custodial support and community based sentences

Submissions are sought from interested individuals and government and non-government organisations on the adequacy of existing measures in NSW to support ATS users who are serving sentences in the community and those who have recently left custody, as well as on options to strengthen those support mechanisms within NSW. The following issues are of particular relevance to the Inquiry:

- 2.5.12 What services are available to people in custody with a history of ATS use to prepare for life outside of custody? Are those services adequate? How accessible are they? Are they adequately resourced? What services and/or resources are available to provide ongoing support in the community to those people? Are there opportunities to enhance those services?
- 2.5.13 What barriers to successful reintegration into the community are faced by ATS users leaving custody (including exclusion from community-based treatment services)?
- 2.5.14 How does Corrective Services NSW identify and address ATS use by offenders serving community supervision orders?

⁸⁶ The NSW Government closed Community Offender Support Program Centres in Cooma, Kempsey, Wollongong, Tomago, Penrith and Windsor in 2013. Corrective Services, New South Wales Government, 'New community support to reduce reoffending' (Media Release, 9 August 2013) <<https://www.justice.nsw.gov.au/Documents/Media%20Releases/2013/MRCSNSW-09082013-community-support-reduce-reoffending.pdf>>.

⁸⁷ In 2017-18 the Justice Health & Forensic Mental Health Network assessed and supported 738 patients with drug and alcohol problems following their release from custody, through the Connections Program. NSW Health, *Annual Report 2017-18* (Report, October 2018) 183 <<https://www.health.nsw.gov.au/annualreport/Publications/annual-report-2018.pdf>>.

⁸⁸ Community Restorative Centre, 'Alcohol & Other Drugs Transitional Support – Sydney', *Alcohol & Other Drugs* (Web page, 2018) <<https://www.crcnsw.org.au/services/alcohol-and-other-drugs-support/>>.

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- 2.5.15 Do different cohorts of ATS users leaving custody (e.g. people caring for children, people living in regional, rural or remote areas, children and young people, Indigenous people) face particular challenges? What is being done to address those challenges?
- 2.5.16 Is collaboration/coordination between Justice Health and Local Health Districts effective to provide continuity of care/support for people with AOD issues leaving custody? How could this be improved?