

# Illicit drug policy: developments since the 2020 Ice inquiry report

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## Key points

- Government policy to address the use of illicit drugs is a topic of ongoing debate. The NSW Government is holding a drug summit, with 2 days in regional NSW on 1 and 4 November 2024 and 2 days in Sydney on 4 and 5 December 2024.
- The NSW Special Commission of Inquiry into the Drug Ice was established in 2018 to investigate and advise on how best to tackle use of amphetamine-type stimulants. Its report was released in January 2020 and made 109 recommendations.
- The former government's response to the inquiry supported 86 of these recommendations. The government announced a \$500 million funding package over 4 years including \$358 million for health-related programs and \$140 million to expand justice initiatives.
- Recommendations that the government rejected included decriminalising the personal use of illicit drugs, introducing pill testing, and expanding supervised drug consumption facilities.
- In February 2024 NSW Health provided an update on progress in implementing the recommendations that the government had supported.
- A new police diversion program for possessing small quantities of illicit drugs commenced in February 2024 (the Early Drug Diversion Initiative). Critics have argued that police are diverting only a small proportion of those who are eligible for the program.
- In 2023 the ACT enacted laws to decriminalise personal use of small amounts of various illicit drugs. Pill testing services have continued in the ACT, were introduced in 2024 in Queensland, and will commence in Victoria in the summer of 2024–25.
- Oregon decriminalised the personal use of illicit drugs in 2021 and British Columbia also did so in 2023. In 2024 Oregon reinstated criminal penalties while recent changes in British Columbia have restricted the public places where personal drug use is legal.
- In 2022–23 most respondents to Australia's Drug Strategy Household Survey did not support legalising the personal use of illicit drugs but most respondents did support pill testing and regulated injecting centres.

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# 1. Introduction

Government policy to address the use of illicit drugs is a topic of ongoing debate. In July 2024 the NSW Government announced that it would hold a drug summit, with 2 days in regional NSW on 1 and 4 November 2024 and 2 days in Sydney on 4 and 5 December 2024.<sup>1</sup> The key focus areas for the summit are:

- Health promotion and wellbeing
- Equity, respect and inclusion
- Safety and justice
- Keeping young people safe and supporting families
- Integrated support and social services.<sup>2</sup>

The purpose of this paper is to provide an update on key policy developments since the report of the NSW Special Commission of Inquiry into the Drug Ice in January 2020.<sup>3</sup> The paper summarises the former government's response to the inquiry recommendations and notes progress that has been made since then. Significant reforms in other states and territories are outlined and the decriminalisation of personal drug use in 3 overseas jurisdictions is also discussed.

The focus here is on policy reforms relating to a range of illicit drugs; the decriminalisation or legalisation of cannabis alone is not covered.<sup>4</sup>

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<sup>1</sup> C Minns and R Park, [\\$33.9 million for drug and alcohol support and Drug Summit date confirmed](#) [media release], NSW Government 12 July 2024; R Park, [Drug Summit co-chairs appointed, regional forums confirmed](#) [media release], NSW Government, 6 September 2024; R Park, [Drug Summit co-chairs appointed, regional forums confirmed](#) [media release], NSW Government, 6 September 2024. This was a Labor election commitment: L Cormack, [Labor wants a drugs summit. But experts say we've already had one](#), *Sydney Morning Herald*, 12 April 2023.

<sup>2</sup> NSW Health, [NSW Drug Summit 2024](#), NSW Government, n.d., accessed 3 October 2024.

<sup>3</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020. For previous Parliamentary Research Service papers relating to drug policy, see T Gotsis, C Angus and L Roth, [Illegal drug use and possession: Current policy and debates](#), Briefing Paper 4/2016, August 2016; and T Gotsis, [Drug use at music festivals](#), e-brief 03/2018, December 2018.

<sup>4</sup> For recent parliamentary inquiries in relation to cannabis, see Portfolio Committee No. 1 – Premier and Finance, [Impact of the regulatory framework for cannabis in New South Wales](#), accessed 20 August 2024; and Senate Legal and Constitutional Affairs Legislation Committee, [Legalising Cannabis Bill 2023](#), Parliament of Australia, May 2024.

## 2. Drug use in NSW

The Ice inquiry report included information about the prevalence of amphetamine-type stimulant use and harms, which was collated from a wide range of sources including self-reported surveys, and wastewater, health, and criminal justice data.<sup>5</sup> This section updates information about the prevalence of illicit drug use in NSW and presents the most recent available trends regarding health-related harms associated with illicit drug use.

### 2.1 Prevalence of use

In 2022–23, an estimated 14.7% of the NSW population aged 14 years or over reported that they had used an illicit drug in the preceding 12 months (Figure 1). The most common illicit drug used was cannabis (11%) followed by cocaine (5%) and hallucinogens such as psilocybin (2.2%). Less than 1% of the population had used amphetamine or methamphetamine in the previous 12 months, and less than 0.1% had used heroin. The only significant changes between 2019 and 2022–23 were a decrease in the proportion who had used ecstasy and an increase in the proportion who had used ketamine.

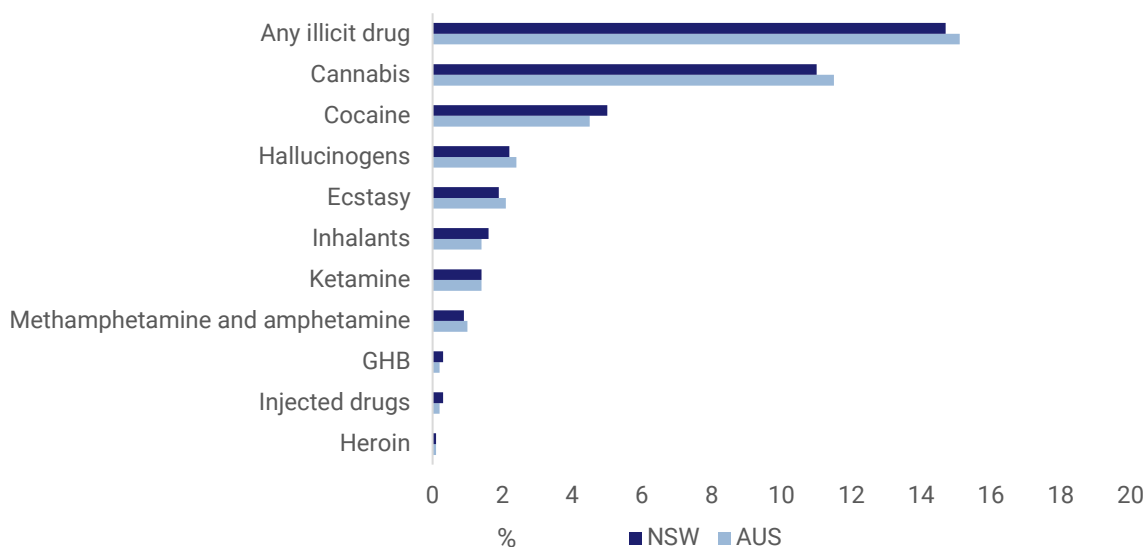
Data about the frequency of illicit drug use is not available for the NSW population, however, some frequency data is reported at the national level for certain illicit drugs. For example, in 2022–23 39% of people who had used cannabis in the previous 12 months reported that they had used it at least once a week (37% in 2019), and 23% of people who had used amphetamine or methamphetamine in the previous 12 months had used these at least once a week (no data reported for 2019).<sup>6</sup>

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<sup>5</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 1b, Ch 7.

<sup>6</sup> AIHW, [National Drug Strategy Household Survey 2022–2023](#), Table 5.33, 29 February 2024.

**Figure 1: Proportion of the population reporting that they had used illicit drugs in the previous 12 months, 2022–23, by type of drug**



Source: Australian Institute of Health and Welfare (AIHW), [National Drug Strategy Household Survey 2022–2023](#), Tables 5.6 and 9b.32, 29 February 2024.

Another source of data on illicit drug use is the National Wastewater Drug Monitoring Program. Data from December 2023 (regional and capital city sites) and February 2024 (capital city sites only) shows that in NSW cannabis was the illicit drug with the highest consumption (in terms of estimated doses per 1,000 people per day), followed by methamphetamines.<sup>7</sup> Compared to the long-term average (2016–2024), consumption of cannabis at these time points was lower in both Sydney and regional NSW. Consumption of methamphetamines was higher than the long-term average in regional NSW but not in Sydney.<sup>8</sup>

## 2.2 Trends in health-related harms

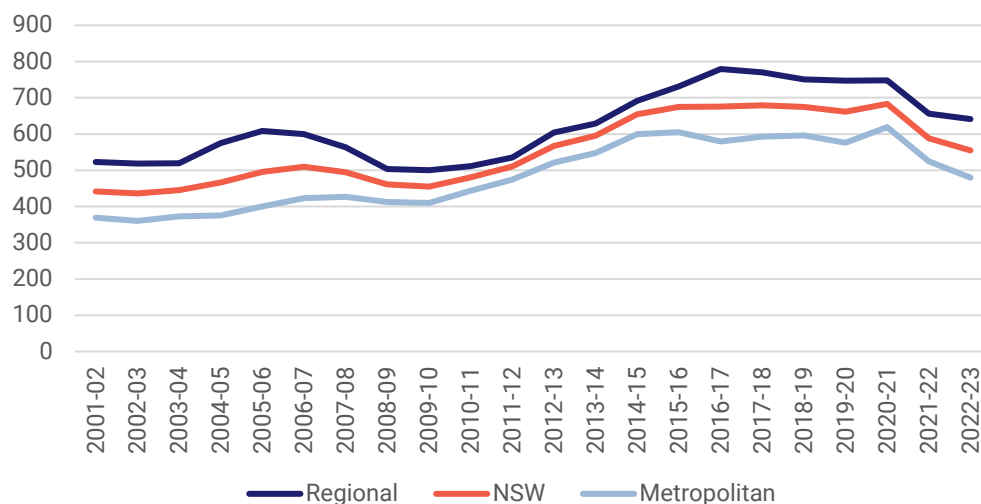
### 2.2.1 Hospital admissions

Trends in the rate (per 100,000 population) of drug-related hospitalisations in NSW are shown in Figure 2. These hospitalisations include admissions related to illicit drugs and prescription drugs that may be used for a non-medical purpose. The rate of drug-related hospitalisations in NSW has decreased since the peak in 2020–21. In 2022–23, there were 34,636 drug-related hospital admissions in NSW.<sup>9</sup>

<sup>7</sup> Australian Criminal Intelligence Commission, The University of Queensland and the University of South Australia, [National Wastewater Drug Monitoring Program](#), Report 22, 11 July 2024, 60 (Fig 39). See also [NSW–Report 22](#), 11 July 2024.

<sup>8</sup> Australian Criminal Intelligence Commission, The University of Queensland and the University of South Australia, [National Wastewater Drug Monitoring Program](#), longitudinal data figures by state and territory and drug type, [NSW–Report 22](#), 11 July 2024.

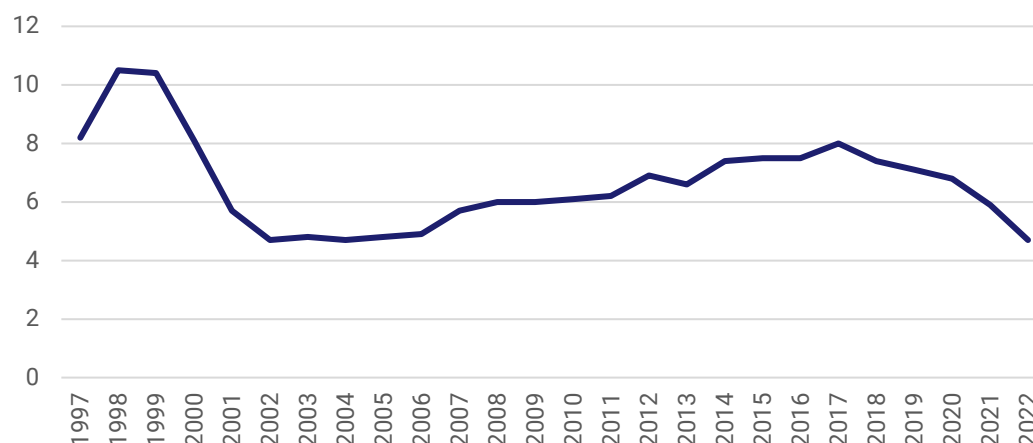
<sup>9</sup> HealthStats NSW, [Drug Related Hospitalisations](#), accessed 29 August 2024.

**Figure 2: Rate per 100,000 population of drug-related hospitalisations in NSW**

Source: HealthStats NSW, [Drug Related Hospitalisations](#), accessed 29 August 2024.

### 2.2.2 Overdose deaths

Trends in the rate of drug-induced deaths among NSW residents (per 100,000 population) are shown in Figure 3.<sup>10</sup> Drug-induced deaths are overdose deaths directly attributed to drug use (both illicit drugs and prescription drugs), whether unintentional or intentional. The rate of drug-induced deaths has fallen since 2017. In 2022, there were 386 drug-induced deaths among NSW residents.

**Figure 3: Rate per 100,000 population of drug-induced deaths among NSW residents**

Source: HealthStats NSW, [Drug-induced and drug-related deaths](#), accessed 30 August 2024.

<sup>10</sup> HealthStats NSW, [Drug-induced deaths](#), accessed 30 August 2024. For other data sources on overdose deaths, see A Chrzanowska, N Man, R Sutherland, L Degenhardt, A Peacock, [Trends in overdose and other drug-induced deaths in Australia, 2003-2022](#), UNSW, 2024; and Pennington Institute, [Australia's Annual Overdose Report](#), August 2024, p121-124.

## 3. Drug policy in NSW

The Ice inquiry report presented a history of drug policy in NSW including the 1999 drug summit and the reforms that followed.<sup>11</sup> These included the establishment of Community Drug Action Teams, the Medically Supervised Injecting Centre in Kings Cross, the Cannabis Cautioning Scheme, and the Magistrates Early Referral into Treatment (MERIT) program. The Ice inquiry report also provided an overview of current policy and had separate chapters examining different policy areas in detail.<sup>12</sup> This section presents a summary and update of current policy.

### 3.1 Overall strategy and funding

The *National Drug Strategy 2017–2026* outlines a commitment to harm minimisation through the balanced adoption of 3 overarching strategies: demand reduction, supply reduction and harm reduction.<sup>13</sup> The national strategy has several sub-strategies including the *National Ice Action Strategy*.<sup>14</sup> While the NSW Government is part of the governance arrangements for the implementation of the *National Drug Strategy* through its involvement in relevant ministerial and senior officer forums,<sup>15</sup> it does not have an alcohol and drug strategy to support implementation of the national strategy in NSW.<sup>16</sup>

A 2024 report from the Drug Policy Monitoring Program estimated that in 2021–22 all Australian governments spent a total of \$5.45 billion to address the problem of illicit drugs.<sup>17</sup> The authors categorised the expenditure into 4 policy domains: prevention (6.7%), treatment (37.4%), harm reduction (1.6%), and law enforcement (64.3%). Separate estimates of expenditure for each of the states and territories were not provided.

### 3.2 Education and health responses

#### 3.2.1 Prevention

The NSW Government has several prevention initiatives including:

- Drug education in schools
- Online information and resources provided by NSW Health, and information and support provided by the Alcohol and Drug Information Service

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<sup>11</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 1b, Ch 2.

<sup>12</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 1b, Ch 4, Vol 2, and Vol 3. See also T Gotsis, C Angus and L Roth, [Illegal drug use and possession: Current policy and debates](#), NSW Parliamentary Research Service, 4/2016, August 2016.

<sup>13</sup> Australian Government, [National Drug Strategy 2017-2026](#), 2017, p1.

<sup>14</sup> Australian Government, [National Ice Action Strategy](#), 2015.

<sup>15</sup> Australian Government, [National Drug Strategy 2017-2026](#), 2017, p36.

<sup>16</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 1b, p82.

<sup>17</sup> A Ritter et al, [The Australian 'drug budget': Government drug policy expenditure 2021/22](#), DPMP Monograph No. 36, Social Policy Research Centre, UNSW, 2024.

- Community Drug Action Teams (which were formed in 2000).<sup>18</sup>

### 3.2.2 Treatment

NSW Health funds a range of alcohol and other drug treatment services that are delivered by local health districts and non-government organisations.<sup>19</sup> These services include counselling, withdrawal management, assertive outreach, opioid agonist treatment, residential rehabilitation, and drug and alcohol consultation liaison in targeted hospitals.<sup>20</sup>

In 2021–22, the budget for drug and alcohol services in NSW was \$330 million.<sup>21</sup> In 2022–23, 478 publicly funded treatment agencies in NSW provided services to 27,874 clients (30,814 clients in 2018–19).<sup>22</sup> Alcohol was the principal drug of concern for nearly half (44%) of all clients, followed by amphetamines (23%), cannabis (15%) and heroin (7%). Agencies located in major cities provided more than two-thirds (69%) of treatment episodes.

### 3.2.3 Harm reduction

Various initiatives have been implemented with the objective of reducing virus transmission from drug use and preventing opioid overdoses. Key initiatives are:<sup>23</sup>

- The Needle and Syringe Program (NSP), which provides people who inject drugs with sterile injecting equipment and safe means of disposal. As of 2019, there were 1,092 NSP distribution sites across NSW.<sup>24</sup>
- The Medically Supervised Injecting Centre (MSIC), which supervises drug injecting, provides access to emergency medical care, and referrals to relevant services.<sup>25</sup> There is one MSIC, in Kings Cross. In April 2024, a drug checking (also known as pill testing) research project commenced at the MSIC.<sup>26</sup>
- The Take Home Naloxone (THN) program, which is funded by the Australian Government, provides free access to opioid antagonist medicine for the reversal of opioid overdose to people who are likely to need it.<sup>27</sup>

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<sup>18</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p406. See also NSW Government, [Drug education, Alcohol Drug Information Service \(ADIS\) NSW; About CDAT](#), accessed 9 August 2024.

<sup>19</sup> NSW Health, [Alcohol and other drugs – Programs](#), accessed 30 July 2024.

<sup>20</sup> NSW Health, [Alcohol and other drugs – Programs](#), accessed 30 July 2024.

<sup>21</sup> NSW Health, [About the Centre for Alcohol and Other Drugs](#), accessed 9 August 2024.

<sup>22</sup> AIHW, [Alcohol and other drug treatment services in Australia annual report](#), Australian Government, June 2024.

<sup>23</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p589.

<sup>24</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p592. See also NSW Health, [NSW Needle and Syringe Program \(NSP\) outlets](#), accessed 9 August 2024.

<sup>25</sup> Uniting, [Uniting Medically Supervised Injecting Centre](#), accessed 30 July 2024.

<sup>26</sup> Uniting, [Drug checking research project commences at Uniting's Medically Supervised Injecting Centre \(MSIC\)](#) [media release], 8 April 2024.

<sup>27</sup> NSW Health, [Take home naloxone program](#), accessed 21 August 2024.

### 3.3 Criminal justice responses

#### 3.3.1 Criminal laws

The [Drug Misuse and Trafficking Act 1985 \(NSW\)](#) prohibits the manufacture, supply, possession and use of prohibited drugs outlined in Schedule 1 of the Act. The offences of possessing or using a prohibited drug have a maximum penalty of 20 penalty units (\$2,200) or 2 years imprisonment, or both (sections 10, 12, 21). A person who possesses a 'traffickable quantity' of a prohibited drug is deemed to have the drug for the purpose of supply unless they prove otherwise (s 29). The offence of supply has a much higher maximum penalty of 2,000 penalty units (\$220,000) and/or 15 years imprisonment, if dealt with on indictment (ss 25, 32).

#### 3.3.2 Police diversion programs for personal use

The [Young Offenders Act 1997 \(NSW\)](#) established alternative processes to court proceedings for persons under the age of 18 who commit certain offences including minor drug offences. These processes include warnings, cautions and youth justice conferences.<sup>28</sup>

The Cannabis Cautioning Scheme (which commenced in 2000) allows police to issue cautions to adults for minor cannabis offences.<sup>29</sup> People who receive a caution can receive a telehealth session. The scheme operates under police guidelines rather than being governed by legislation.<sup>30</sup>

In 2019, in response to a recommendation from an expert panel report on drug use at music festivals, the NSW Government introduced a trial scheme allowing police to issue on-the-spot fines for low-level drug possession at music festivals.<sup>31</sup>

In February 2024, in response to the Ice inquiry report, the NSW Government established the Early Drug Diversion Initiative, a police diversion program for a range of prohibited drugs. This is discussed further in section 4.3.2.

#### 3.3.3 Data on prosecutions and diversions for personal use

In 2023, 18,214 adults were proceeded against to court for incidents of using and/or possessing illicit drugs, while 3,309 adults received police diversion (Figure 4).<sup>32</sup> Cannabis was the most common drug in relation to both court proceedings and police diversion; the second most common drug for court proceedings was amphetamines and for police diversion it was ecstasy. In the same year, 401 people under the age of 18 were proceeded against to court for using and/or possessing illicit drugs, while 922 young people received police diversion.

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<sup>28</sup> See D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p357.

<sup>29</sup> See D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p322.

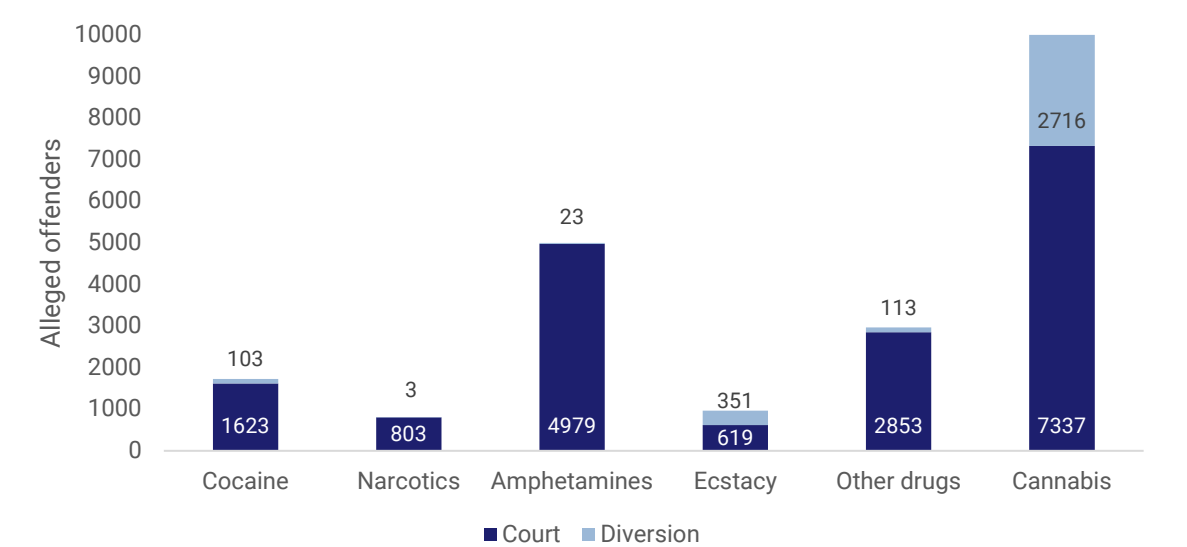
<sup>30</sup> NSW Police, [Cannabis Cautioning Scheme Guidelines for Police](#), April 2024.

<sup>31</sup> See D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p325.

<sup>32</sup> NSW Bureau of Crime Statistics and Research, [Drug offences](#), 2024, accessed 2 September 2024. Police diversion includes: Criminal Infringement Notice, Youth Justice Conference, Caution Young Offender Act, Cannabis Caution and Warning Young Offenders Act.

There were 9,076 proven court appearances for adults and young people in 2023 where the principal offence was use/possess illicit drugs. The most common penalty was a fine (58%), followed by an unsupervised community sentence (21%), ‘other penalty’ (16%), and supervised community sentence (4%). Less than 1% of court appearances for this principal offence resulted in a custodial penalty.

**Figure 4: Number of alleged adult offenders proceeded against for incidents of using and/or possessing illicit drugs by the NSW Police Force, by mode of proceeding, 2023**



Source: NSW Bureau of Crime Statistics and Research, [Drug offences](#), 2024, Table 3, accessed 4 September 2024. Note: ‘Other drug’ refers to any drug other than cocaine, narcotics, ecstasy, amphetamines and cannabis, such as pharmaceutical drugs, GBH, hallucinogens like LSD, steroids, sedative, synthetics drugs, other drug and missing/unknown drug type.

**3.3.4 Court diversion programs for offenders with drug problems**

There are various court-initiated diversion programs for adults and young people who commit a wide range of criminal offences, including 2 that are focused on people with alcohol and/or drug problems.

The Magistrates Early Referral into Treatment (MERIT) program (established in 2000) is a voluntary pre-plea program for adults in the Local Court.<sup>33</sup> The program provides a range of alcohol and other drug treatment services for 12 weeks while court matters are adjourned. In 2023, the program was available in 62 of the 137 Local Courts in NSW.

The Drug Court (established in February 1999) is a program for adult drug-dependent offenders who would otherwise be sentenced to imprisonment.<sup>34</sup> The court supervises the intensive community-based rehabilitation of offenders for a period of 12 months. The Drug Court is available at 4 locations: Parramatta, Toronto, Sydney CBD, and, most recently, Dubbo.

<sup>33</sup> Local Court NSW, [The Magistrates Early Referral into Treatment \(MERIT\) Program](#), accessed 30 July 2024.

<sup>34</sup> Drug Court of NSW, [About us](#), accessed 30 July 2024.

## 4. The Ice inquiry recommendations and recent NSW reforms

### 4.1 Ice inquiry

In November 2018 the NSW Government appointed Professor Dan Howard SC to conduct a Special Commission of Inquiry into the Drug Ice. The Premier, Gladys Berejiklian, said 'Ice is a destructive drug that is ruining too many lives across NSW, especially in our regional centres.'<sup>35</sup> The report of the inquiry was published in January 2020 and made 109 recommendations for reform across a range of areas.<sup>36</sup> The Commissioner concluded:

It is clear that our current drug policies are inadequate to meet the profound harms that crystal methamphetamine and other [amphetamines] pose to the health and fabric of our society. Our policies are tired, lacking in imagination and out of step with best practice worldwide; they are simply not working, and the resources allocated to harm reduction and treatment are insufficient.<sup>37</sup>

The Commissioner believed it was necessary to adopt a 'paradigm shift' in drug policy including decriminalising the personal use and possession of illicit drugs:

It is imperative that we continue to target the supply of illicit drugs and punish supply, manufacture and other serious drug-related and drug-fuelled crimes with the force of the criminal law. However, the evidence...demonstrates that a different and more nuanced response than criminal prosecution is called for in relation to the offences of use, and possession for personal use, of [amphetamines] and other illicit drugs. A determined whole-of government approach to effective public health messaging, improved harm reduction measures, education, research and properly resourced treatment pathways will achieve far better outcomes for people who use and possess these drugs, and for society as a whole.<sup>38</sup>

### 4.2 NSW Government's response

#### 4.2.1 Interim response

The NSW Government's February 2020 interim response to the Ice inquiry said that it would 'carefully consider the Inquiry's findings and recommendations and will prepare a final response.'<sup>39</sup> However, in this interim response it also rejected several recommendations including:

- Amending the *Drug Misuse and Trafficking Act 1985* to provide for supervised drug consumption services to be provided based on local need (Rec 51)
- Establishing a state-wide clinically supervised substance testing, education and information service, with branches at appropriate fixed-site locations (Rec 53)

<sup>35</sup> G Berejiklian, [Special Commission of Inquiry into ice](#) [media release], NSW Government, 12 November 2018.

<sup>36</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020.

<sup>37</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, px.

<sup>38</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, pviii-ix and Rec 11.

<sup>39</sup> NSW Government, [Interim NSW Government response to the Special Commission of Inquiry into the Drug "Ice"](#), February 2020.

- NSW Police cease using drug detection dogs at music festivals (Rec 80)
- Piloting and evaluating a needle and syringe program in one or more custodial facilities (Rec 97).<sup>40</sup>

#### 4.2.2 Final response

The NSW Government's September 2022 response to the Ice inquiry supported 86 of the 109 recommendations.<sup>41</sup> The government announced a \$500 million funding package over 4 years. This included \$358 million for health-related programs:

- \$163.8 million to increase and enhance access to evidence-based treatment, support and early intervention services, especially in rural and regional areas;
- \$96.2 million to provide more integrated and coordinated approaches to care;
- \$11.7 million to enhance digital capability and virtual healthcare;
- \$66 million to expand the alcohol and other drug workforce;
- \$20.2 million to improve the use of data and evidence to inform system priorities, management, monitoring and evaluation.<sup>42</sup>

The package also provided \$140 million to expand justice initiatives including:

...the Magistrates Early Referral into Treatment (MERIT) program (\$35.1 million), Circle Sentencing (\$4.2 million), Justice Reinvestment (\$9.8 million), the Youth Koori Court (\$5.8 million), and the Drug Court (\$82 million).<sup>43</sup>

The government rejected the inquiry's recommendation (Rec 11) to implement a model for the decriminalisation of the personal use and possession of illicit drugs that included the removal of criminal offences relating to personal use and possession, referral to a voluntary health intervention, and no sanctions for non-compliance.<sup>44</sup> However, the government supported an alternative recommendation (Rec 12) – which the report described as a 'less effective option' – to establish a police diversion scheme for personal use and possession.<sup>45</sup>

Other recommendations that the government did not support included:

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<sup>40</sup> NSW Government, [Interim NSW Government response to the Special Commission of Inquiry into the Drug "Ice"](#), February 2020.

<sup>41</sup> NSW Government, [The NSW Government's response to the Special Commission of Inquiry into the Drug 'ice'](#), September 2022, p8-9.

<sup>42</sup> NSW Government, [The NSW Government's response to the Special Commission of Inquiry into the Drug 'ice'](#), September 2022, p1-2. See also NSW Government, [Landmark investment into alcohol and other drug services as part of the response to the Ice Inquiry](#) [media release], 21 September 2022.

<sup>43</sup> NSW Government, [The NSW Government's response to the Special Commission of Inquiry into the Drug 'ice'](#), September 2022, p1-2. See also NSW Government, [Landmark investment into alcohol and other drug services as part of the response to the Ice Inquiry](#) [media release], 21 September 2022.

<sup>44</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p337; NSW Government, [The NSW Government's response to the Special Commission of Inquiry into the Drug 'ice'](#), September 2022.

<sup>45</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p337; NSW Government, [The NSW Government's response to the Special Commission of Inquiry into the Drug 'ice'](#), September 2022.

- Removing the prohibition in the *Drug Misuse and Trafficking Act 1985* on possession of ice pipes (Rec 50)
- The NSW Police Commissioner issuing a guideline to limit the use of strip searches to detect possession of illicit drugs to certain circumstances (Rec 82)
- Making the provision of drug treatment services and programs in custody the principal responsibility of Justice Health (Rec 96).<sup>46</sup>

### 4.3 Progress since the inquiry

#### 4.3.1 NSW Health update in February 2024

NSW Health reported on progress in implementing the health-related recommendations as at 19 February 2024 (Table 1).<sup>47</sup> There do not appear to be any more recent progress updates. In addition, it appears that the government has not provided an update on the inquiry's recommendation (Rec 5) to develop and implement, as a matter of priority, a whole-of-government alcohol and other drug (AOD) policy.

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<sup>46</sup> NSW Government, [The NSW Government's response to the Special Commission of Inquiry into the Drug 'ice'](#), September 2022.

<sup>47</sup> NSW Health, [Special commission of inquiry into the drug 'ice' \(Ice inquiry\)](#), accessed 29 July 2024.

**Table 1: Summary of NSW Health update regarding implementation of the recommendations from the Ice inquiry**

| Area                                                                                           | Initiatives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Evidence based treatment and integrated care: NGO service funding                              | New funding for 35 NGO AOD treatment and support services.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Evidence based treatment and integrated care: local health district/speciality health services | Commissioned 19 new and 23 expanded NSW Health AOD services. Many of these new service models have a focus on integrated care and complex case management.                                                                                                                                                                                                                                                                                                                                                                                     |
| Diversion programs                                                                             | <p>A major expansion of the MERIT program enhancing existing services, establishing new services as well as increasing beds in residential rehabilitation and withdrawal management.</p> <p>The NSW Drug Court has expanded with a new court established in Dubbo in 2023, and a two-stage process to expand operations at Sydney Drug Court in 2023-24.</p> <p>The Department of Communities and Justice, NSW Police, NSW Health, and Revenue NSW have agreed to commence the Early Drug Diversion Initiative (EDDI) on 29 February 2024.</p> |
| Workforce development                                                                          | Gains have been made towards growing and developing the workforce, including development of an AOD workforce strategy.                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Aboriginal engagement                                                                          | An Aboriginal Strategic Collaboration Group has been established to help create culturally safe programs and services. NSW Health is also strengthening partnerships to ensure wide consultation with Aboriginal networks on key priorities.                                                                                                                                                                                                                                                                                                   |
| Better use of data and evidence                                                                | Research and evaluation capacity has been expanded with 6 new grants awarded to NGOs, including 5 in regional areas. Funding has also been provided for research capacity building in local health districts.                                                                                                                                                                                                                                                                                                                                  |
| Prevention and education                                                                       | NSW Health and the Department of Education are revising the Principles for Drug Education in Schools. Funding has been allocated for the expansion of Preventure, a primary and early secondary program designed to delay initiation into drug use.                                                                                                                                                                                                                                                                                            |

Source: NSW Health, [Special commission of inquiry into the drug 'Ice' \(Ice inquiry\)](#), accessed 29 July 2024.

#### 4.3.2 Early Drug Diversion Initiative

The Ice inquiry recommended introducing a legislated police diversion scheme for use and possession of illicit drugs with these elements (Rec 12):

- Mandatory referral by police of people detected in possession of a prohibited drug to an appropriately tailored health, social or education intervention
- That a person may be diverted a maximum of 3 times
- Threshold quantities that do not unduly limit access to diversion

- No requirement to admit guilt.<sup>48</sup>

In October 2023, the government announced a police diversion program for the personal use of a range of illicit drugs which would commence in 2024.<sup>49</sup> Legislative amendments to facilitate the scheme were passed in October 2023 but the scheme is mainly set out in policy rather than legislation.<sup>50</sup> The scheme, known as the Early Drug Diversion Initiative (EDDI), commenced on 29 February 2024.<sup>51</sup> The scheme involves police discretion rather than mandatory police referral.

Under the EDDI, police may issue a person with an on-the-spot fine of \$400 for a first or second low-level drug offence. The person can then either pay the fine or participate in the drug health intervention, which is a free 1-hour telehealth consultation with a health professional. The EDDI only applies to 'small quantities' of illicit drugs as specified in Schedule 1 of the *Drug Misuse and Trafficking Act 1985*: for example, up to 1 gram of methylamphetamines like ice or speed. The EDDI does not apply to people with more than one type of drug. The EDDI also does not apply to cannabis; the Cannabis Cautioning Scheme continues to operate and has been updated to align with the EDDI.<sup>52</sup>

From 29 February 2024 to 11 August 2024, police diverted 436 people into the EDDI.<sup>53</sup> In the same period 6,332 people were charged with low level drug possession and not diverted.<sup>54</sup> Of those who were diverted to the EDDI, 46 people had completed a health intervention, while 157 people had paid the fine.<sup>55</sup> It has been argued that the low number of people diverted is a sign that the EDDI is not working as intended.<sup>56</sup> The Police Minister, Yasmin Catley, has been reported as saying that the scheme was still in the early stages and that the government would continue to monitor its implementation, including with a 12-month review.<sup>57</sup>

#### 4.4 Private members bill on pill testing

In November 2023 Greens MLC Cate Faehrmann introduced the [Pill Testing Trial Bill 2023](#) into parliament. The object of the Bill was 'to provide for the trial of pill testing services for the purposes of

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<sup>48</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Rec 12.

<sup>49</sup> R Park, Y Catley, M Daley, [Police given power to issue on-the-spot fines with health intervention for small quantity drug possession](#) [media release], NSW Government, 10 October 2023.

<sup>50</sup> [Justice Legislation Amendment \(Miscellaneous\) Act 2023](#).

<sup>51</sup> NSW Government, [Early Drug Diversion Initiative](#), accessed 25 July 2024.

<sup>52</sup> NSW Police, [Cannabis Cautioning Scheme Guidelines for Police](#), April 2024. There has been an increase of the maximum cannabis threshold eligible for a caution from a half-small (15 g) to a small (30 g) quantity and there is no longer a requirement for the individual to admit the offence.

<sup>53</sup> Minister for Police and Counter-terrorism, [Response to question on notice regarding the Early Drug Diversion Initiative](#), NSW Parliament, Question 2649, 30 August 2024.

<sup>54</sup> Minister for Police and Counter-terrorism, [Response to question on notice regarding the Early Drug Diversion Initiative](#), NSW Parliament, Question 2649, 30 August 2024.

<sup>55</sup> Minister for Finance, [Response to question on notice regarding the Early Drug Diversion Initiative Referrals](#), NSW Parliament, Question 2650, 30 August 2024; Minister for Health, [Response to question on notice regarding the Early Drug Diversion Initiative](#), NSW Parliament, Question 2187, 14 June 2024; and Minister for Health [Response to question on notice regarding Early Drug Diversion Initiative Professional Appointments](#), NSW Parliament, Question 2651, 30 August 2024.

<sup>56</sup> A Schultz, ['Early warning sign' as police shun drug diversion scheme](#), *Sydney Morning Herald*, 23 June 2024; M Maddison, [Postcode lottery: Where police have shunned state's new drug laws](#), *Sydney Morning Herald*, 15 September 2024.

<sup>57</sup> M Maddison, [Postcode lottery: Where police have shunned state's new drug laws](#), *Sydney Morning Herald*, 15 September 2024.

drug harm reduction in accordance with a licensing scheme to be administered by the Secretary of the Ministry of Health'. The Bill was negatived at the second reading stage in August 2024 with the government and opposition both voting against it.<sup>58</sup> The government said, 'the upcoming drug summit offers an appropriate and timely forum to discuss policies like this one in depth.'<sup>59</sup>

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<sup>58</sup> [Pill Testing Trial Bill 2023](#), Hansard, 7 August 2024.

<sup>59</sup> C Houssos, [Pill Testing Trial Bill 2023](#), Hansard, 7 August 2024.

## 5. Recent reforms in other states and territories

Other state and territory governments have made a range of drug policy announcements in recent years. Many of these have involved an expansion of treatment services and other programs.<sup>60</sup> This section focuses on 3 key reforms that are likely to be of most interest to NSW policy makers: decriminalising the personal use of illicit drugs, pill testing services, and supervised injecting centres. As noted earlier, the 2020 Ice inquiry report made recommendations in these 3 areas which were rejected by the NSW Government at the time.

### 5.1 Decriminalising personal use

The Ice inquiry report noted that each state and territory 'has decriminalised simple possession for cannabis to some degree, and most states and territories have decriminalised simple possession of other illicit drugs.'<sup>61</sup> The term 'decriminalised' was used in a broad sense to refer to the removal of the offences from the criminal law, or the non-enforcement of these offences by police.<sup>62</sup> With decriminalisation, there may still be administrative sanctions such as fines. In recent years, the ACT and Queensland have enacted reforms in relation to decriminalisation.

#### 5.1.1 ACT

The ACT has had a non-legislated police diversion scheme for various illicit drugs since 2001.<sup>63</sup> In June 2022 the ACT Government announced that it would decriminalise the possession of small amounts of some illicit drugs.<sup>64</sup> The Minister for Health said 'we know from research and evidence around the world that criminalising drug users does not reduce drug use and that treating drug addiction as a health issue improves outcomes for everyone in the community.'<sup>65</sup> The government supported the Drugs of Dependence (Personal Use) Amendment Bill 2021 that had been introduced as a private members bill.<sup>66</sup> The amended bill was passed in October 2022 and the laws commenced in October 2023.<sup>67</sup>

Under the new laws the maximum penalty for possessing small amounts of certain illicit drugs was reduced from 50 penalty units or imprisonment for 2 years to 1 penalty unit (\$160). The police may

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<sup>60</sup> See for example S Fentiman, [Further support for drug and alcohol treatment unveiled on World Mental Health Day](#) [media release], Queensland Government, 10 October 2023.

<sup>61</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p302. See also K O'Reilly, A Ritter, [Non-criminal responses to drug use and personal possession in Australia](#), UNSW Social Policy Research Centre, DPMP Bulletin No. 31, June 2024.

<sup>62</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p286-287.

<sup>63</sup> See C Hughes et al, [Evaluation of Australian Capital Territory Drug Diversion Programs](#), National Drug and Alcohol Research Centre, DPMP Monograph 25, 2014.

<sup>64</sup> R Stephen-Smith, [ACT to decriminalise small amounts of illicit drugs](#) [media release], ACT Government, 9 June 2022.

<sup>65</sup> R Stephen-Smith, [ACT to decriminalise small amounts of illicit drugs](#) [media release], ACT Government, 9 June 2022.

<sup>66</sup> [Drugs of Dependence \(Personal Use\) Amendment Bill 2021](#).

<sup>67</sup> [Drugs of Dependence \(Personal Use\) Amendment Act 2022](#); and R Stephen-Smith, [Drug law reform changes commence tomorrow](#) [media release], ACT Government, 27 October 2023.

give the person the option of attending a 1-hour health session or paying a \$100 fine.<sup>68</sup> Police 'retain the power to summons or arrest an individual to appear before a court, particularly when other offences are involved.'<sup>69</sup> Examples of illicit drugs and the small quantities that are covered include amphetamines (1.5g), cocaine (1.5g), and heroin (1g). The maximum penalties for possessing larger amounts are a fine of \$8,000 or imprisonment for up to 6 months (reduced from 2 years).<sup>70</sup>

A media article reported data on the operation of the laws in the first 3 months. It noted that police had caught 70 people with small amounts of illicit drugs and 67 of them chose to undertake a drug diversion program instead of paying the fine (but 13 of these were non-compliant with the program).<sup>71</sup> No data was reported on the number of people charged for possessing small amounts of drugs. There is a requirement for the laws to be reviewed after 2 years of operation.<sup>72</sup>

### 5.1.2 Queensland

The Police Drug Diversion program for the possession of small amounts of cannabis has operated since 2001.<sup>73</sup> In 2023, the government introduced laws to expand the program to the possession of small amounts of other illicit drugs for personal use.<sup>74</sup> The Minister for Police said that 'this will bring Queensland in line with all other jurisdictions across the nation.'<sup>75</sup> The expanded program began on 3 May 2024.<sup>76</sup> It comprises 3 tiers of drug diversion that the police can offer to a person for their first, second, and third minor drugs offence:

1. First eligible minor drugs offence – Drug Diversion Warning
2. Second eligible minor drugs offence – Initial Drug Diversion Assessment Program
3. Third eligible minor drugs offence – Subsequent Drug Diversion Assessment Program.<sup>77</sup>

Examples of illicit drugs that are covered by the diversion scheme include amphetamines (1g), cocaine (1g), and heroin (1g).<sup>78</sup> A person who has been offered a police drug diversion can decline the offer and have the matter heard in court instead. The maximum penalty in the Magistrate's Court for possessing small amounts of illicit drugs remains the same: a fine of 100 penalty units (\$16,130) and/or imprisonment for 3 years.<sup>79</sup>

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<sup>68</sup> ACT Government, [Drug law reform](#), accessed 5 August 2024.

<sup>69</sup> ACT Government, [Drug law reform](#), accessed 5 August 2024.

<sup>70</sup> ACT Government, [Drug law reform](#), accessed 5 August 2024.

<sup>71</sup> L Bladen, [The number of people caught under new drug decriminalisation laws](#), *The Canberra Times*, 24 January 2024.

<sup>72</sup> [Drugs of Dependence \(Personal Use\) Amendment Act 2022](#), s 205B.

<sup>73</sup> See A Freiberg et al, [Queensland Drug and Specialist Courts Review](#), Queensland Courts, November 2016, Appendix F, p11.

<sup>74</sup> [Police Powers and Responsibilities and other Legislation Amendment Bill 2023](#); [Police Powers and Responsibilities and Other Legislation Amendment Act \(No. 2\) 2023](#).

<sup>75</sup> M Ryan, [New approach to save lives](#) [media release], Queensland Government, 20 April 2023.

<sup>76</sup> Queensland Police, [Police Drug Diversion Program](#), accessed 9 August 2024.

<sup>77</sup> Queensland Police, [Police Drug Diversion Program](#), accessed 9 August 2024; [Police Powers and Responsibilities Act 2000](#), s 378A – 379AB.

<sup>78</sup> [Police Powers and Responsibilities Act 2000](#), s 378B, [Police Powers and Responsibilities Regulation 2012](#), cl 20H, Sch 1B, [Drug Misuse Regulation 1987](#), Sch 1, Sch 2.

<sup>79</sup> [Drug Misuse Act 1986](#), ss 9, 13, 126.

It was estimated that more than 17,000 minor drug offenders would be eligible for diversion in the first year.<sup>80</sup> As at 30 September 2024, no data had been reported on the scheme's operation.

## 5.2 Pill testing services

Pill testing, also known as drug checking or substance testing, refers to public facing testing in which the service is provided directly to a person who is intending to consume a substance. The Ice inquiry provided an overview of the types of testing and models that have been used in Australia and some overseas jurisdictions up until 2019. It also examined the benefits and concerns raised about the use of drug checking services.<sup>81</sup> This section includes some of the history of pill testing that was covered by the report of the Ice inquiry as it informs developments that have happened since that time.

### 5.2.1 Australian Capital Territory (ACT)

The first Australian pill testing trial was conducted in the ACT at a music festival in 2018. The trial was considered a success and a second trial was held in 2019.<sup>82</sup> An independent evaluation of the 2019 trial found that the service had been implemented as planned, was well received by patrons and stakeholders, and had a positive impact on the knowledge, attitudes and behaviours of patrons.<sup>83</sup> In terms of behavioural change, the report commented:

...Patrons' self-reported changes in intention to use drugs were mixed. When a patron was told that their drug was not what they expected it to be, they were less likely to take that drug. When a patron was told that their drug was what they expected it to be, they were more likely to take that drug. Importantly, follow-up data suggests that most of those whose drug was identified to be what they expected still took the drug, but reported using harm reduction knowledge to reduce their risks of harm.<sup>84</sup>

The evaluation was supportive of further pill testing trials in Australia and other harm reduction information for people who use illicit drugs.<sup>85</sup> It also informed the ACT Government's Festival Pill Testing Policy published in September 2020.<sup>86</sup>

In July 2022 the ACT Government launched the first fixed-site drug checking and health service in Australia. Initially established as a 6-month pilot, the service provided chemical analysis of drugs and pills as well as access to drop-in nurse consultations offering general health, sexual health and mental health advice.<sup>87</sup> An independent evaluation of the service conducted in 2023 endorsed the

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<sup>80</sup> M Ryan, *Police Powers and Responsibilities And Other Legislation Amendment Bill*, Hansard, 21 February 2023.

<sup>81</sup> D Howard, *Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, NSW Government, January 2020, vol 2, p623-654.

<sup>82</sup> M Fitzharris, *Australia's first pill-testing trial a success* [media release], ACT Government, 30 April 2018; A Barr and M Fitzharris, *Australia's second pill-testing trial to take place in Canberra* [media release], ACT Government, 19 February 2019. See also: Makkai, T et al., *Report on Canberra GTM Harm Reduction Service*, Harm Reduction Australia, 2018 and Vumbaca, G et al., *Report on the 2nd Canberra GTM Pill Testing Service*, Harm Reduction Australia, 2019.

<sup>83</sup> A Olsen et al, *ACT pill testing trial: program evaluation*, Australian National University, December 2019, p1.

<sup>84</sup> A Olsen et al, *ACT pill testing trial: program evaluation*, Australian National University, December 2019, p2.

<sup>85</sup> A Olsen et al, *ACT pill testing trial: program evaluation*, Australian National University, December 2019, p1-2, 44

<sup>86</sup> ACT Health, *The festivals pill testing policy: a guide for event organisers to implement harm minimisation*, ACT Government, 2020.

<sup>87</sup> R Stephen-Smith, *Australia's first fixed-site health and drug checking service opens* [media release], ACT Government, 19 July 2022.

drug checking and health facility and supported the continuation of the service for the duration of the pilot program with some recommendations for improvements.<sup>88</sup>

The operator of the service has reported on the first 2 years of operation.<sup>89</sup> In that time, more than 2,900 samples were taken and more than 4,000 health and alcohol and other drug interventions provided. Around 1 in 10 of the samples provided for testing were discarded following the results received. The service also released 20 community notices on its website and via social media, with details of dangerous drugs that were detected from the samples. In August 2024 the ACT Minister for Population Health, Emma Davidson, said that the fixed-site service 'was providing the community with important information about drugs to inform their choices and helps to reduce drug-related harm.'<sup>90</sup> It has since been funded by the ACT Government until 2027.<sup>91</sup>

### 5.2.2 Queensland

In February 2023 the Palaszczuk Government announced that it would allow the introduction of mobile or fixed pill testing services in Queensland for the first time, and \$1 million over 2 years was committed to fund their delivery and evaluation.<sup>92</sup>

The first event-based pill testing services were held at 2 music festivals in March-April 2024 and May 2024. These trials were both considered to be a success,<sup>93</sup> and the Queensland Government has since announced a confidential and free-pill testing service would be available at Schoolies on the Gold Coast in 2024.<sup>94</sup>

The first permanent pill-testing fixed-drug service opened in Bowen Hills, Brisbane in April 2024 providing voluntary, and confidential pill testing services each Friday.<sup>95</sup> A second service opened in July 2024 at Burleigh on the Gold Coast.<sup>96</sup> At a Budget estimates hearing in July 2024, the Minister for Health said that both services had seen positive results. In the first month of operation at Bowen Hills, the Minister reported that 'more than half of the people who visited the site chose to discard their drugs onsite, and a further 16 per cent reported they were going to discard the substances themselves.'<sup>97</sup>

Queensland Health has developed a document of requirements for drug checking services that applies to all service providers. This includes the requirement for approval under the relevant

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<sup>88</sup> A Olsen et al, [CanTEST Health and Drug Checking Service program evaluation: final report](#), ANU, UNSW, NDARC, University of Tasmania, April 2023.

<sup>89</sup> CanTEST Health and Drug Checking Service, [CanTEST health and drug checking service 2022-2024: the first two years](#), 2024

<sup>90</sup> E Davidson, [Two years of CanTEST drug checking service](#) [media release], ACT Government, 20 August 2024..

<sup>91</sup> A Barr and E Davidson, [CanTEST drug checking service extended](#) [media release], ACT Government, 19 June 2024

<sup>92</sup> S Fentiman, [Pill testing results show service's importance to health and safety](#) [media release], Queensland Government, 3 April 2024.

<sup>93</sup> S Fentiman, [Pill testing results show service's importance to health and safety](#) [media release], Queensland Government, 3 April 2024. Health, Environment and Agriculture Committee, [Transcript – Public Estimates Hearing held on 25 July 2024](#), p 30.

<sup>94</sup> S Fentiman, [Pill-testing expands to cover Schoolies on the Gold Coast](#) [media release], Queensland Government, 25 July 2024.

<sup>95</sup> S Miles and S Fentiman, [Queensland's first permanent pill-testing location opens](#) [media release], Queensland Government, 20 April 2024.

<sup>96</sup> S Fentiman, [Pill-testing expands to cover Schoolies on the Gold Coast](#) [media release], Queensland Government, 25 July 2024.

<sup>97</sup> Health, Environment and Agriculture Committee, [Transcript – Public Estimates Hearing held on 25 July 2024](#), p30.

legislation and engagement with key Queensland agencies.<sup>98</sup> The University of Queensland's Institute for Social Science Research will be evaluating the services and developing a state-wide monitoring framework for drug checking.<sup>99</sup>

### 5.2.3 Victoria

In June 2024, the Victorian Government announced that it would introduce a pill testing trial beginning in the 2024–25 summer.<sup>100</sup> The trial will run for up to 18 months and include mobile and fixed site services. The mobile service during summer will be provided at up to 10 music festivals and events during the trial.<sup>101</sup> A fixed site will open in mid-2025 and be located in an inner Melbourne area that is close to nightlife and transport and will be run by a community or tertiary health provider. This is an implementation trial to test different models of delivery that will eventually be put into place permanently. In September 2024, the Victorian Government introduced the Drugs, Poisons and Controlled Substances Amendment (Pill Testing) Bill 2024 to enable the drug checking services to be established. It is anticipated that the new legislation will commence in November 2024.<sup>102</sup>

## 5.3 Supervised injecting centres

The Ice inquiry report noted that Australia had 2 supervised injecting centres: one in Sydney and one in Melbourne.<sup>103</sup> Since that time there has also been consideration of a supervised injecting centre in the ACT.

### 5.3.1 Victoria

In 2018, the Victorian Government established a 5-year trial of a medically supervised injecting centre in North Richmond, Melbourne. A 2023 review of the trial estimated that the centre had prevented up to 63 deaths and recommended that it become an ongoing service with an expanded model of care.<sup>104</sup> The government supported the recommendations and legislation was passed in May 2023 to allow the centre to operate on an ongoing basis.<sup>105</sup>

In 2024 the government decided not to proceed with a trial of a second supervised injecting service in the City of Melbourne.<sup>106</sup> The government said that it had 'been unable to identify a suitable site that

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<sup>98</sup> Queensland Health, [Requirements for drug checking services in Queensland](#), September 2023.

<sup>99</sup> S Miles and S Fentiman, [Queensland's first permanent pill-testing location opens](#) [media release], Queensland Government, 20 April 2024.

<sup>100</sup> J Allan, [Pill testing trial to keep people safe and save lives](#) [media release], Victorian Government, 25 June 2024, see also B Kolovos, [Victoria's pill testing service to become permanent after 18-month trial](#), *The Guardian*, 25 June 2024.

<sup>101</sup> J Allan, [Pill testing trial to keep people safe and save lives](#) [media release], Victorian Government, 25 June 2024.

<sup>102</sup> [Drugs, Poisons and Controlled Substances Amendment \(Pill Testing\) Bill 2024](#).

<sup>103</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p605.

<sup>104</sup> Medically Supervised Injecting Room Review Panel, [Review of the Medically Supervised Injecting Room Final Report: Key findings and recommendations](#), Victorian Government, February 2023.

<sup>105</sup> J Allan, [Strengthening MSIR To Keep Saving Lives](#) [media release], Victoria Government, 6 March 2023. See also [Drugs, Poisons and Controlled Substances Amendment \(Medically Supervised Injecting Centre\) Act 2023](#).

<sup>106</sup> Victorian Government, [Victorian Government Response to the Proposed Medically Supervised Injecting Service trial consultation: City of Melbourne](#), 2023.

balances the needs of people who use illicit drugs with the needs of the broader CBD community.<sup>107</sup> Instead, the government announced it would establish a new Community Health Hub.

### 5.3.2 ACT

In 2021, a study commissioned by the ACT Government concluded that it was feasible to establish a supervised injecting facility in the ACT.<sup>108</sup> Since then, the government has not announced the establishment of a facility. In June 2024, the Minister for Population Health, Emma Davidson, said that the government was seeking to progress this commitment but there 'is more work to be done to understand exactly what is needed for the ACT'.<sup>109</sup> The Minister said that the ACT Health Directorate would be reviewing drug harm reduction measures including looking at such a facility. The review would commence in July 2024 and would be completed by December 2024.<sup>110</sup>

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<sup>107</sup> J Allan, [Statewide Action Plan To Save Lives And Reduce Drug Harm](#) [media release], Victorian Government, 23 April 2024. See also R Eddie, K Rooney and C Waters, [Melbourne will not get a second injecting room while Allan is premier](#), *The Age*, 23 April 2024.

<sup>108</sup> A Kirwan et al Kirwan, [Final Report of the ACT Medically Supervised Injecting Facility Feasibility Study](#), Burnet Institute & Canberra Alliance for Harm Minimisation and Advocacy, 2020.

<sup>109</sup> E Davidson, [Drugs—Drugs of Dependence \(Personal Cannabis Use\) Amendment Act](#), *Hansard*, 27 June 2024. See also L Bladen, [ACT takes steps on safe injecting room](#), *The Canberra Times*, 8 July 2024.

<sup>110</sup> E Davidson, [Drugs—Drugs of Dependence \(Personal Cannabis Use\) Amendment Act](#), *Hansard*, 27 June 2024. See also L Bladen, [ACT takes steps on safe injecting room](#), *The Canberra Times*, 8 July 2024.

## 6. Decriminalisation in other countries

The Ice inquiry report noted that many countries had decriminalised illicit drug possession and use in some form.<sup>111</sup> Portugal was the main country that the report discussed.<sup>112</sup> In recent years, 2 North American jurisdictions have also decriminalised the personal use of various illicit drugs: Oregon in the United States, and British Columbia in Canada. This section provides a brief update on Portugal and presents case studies of decriminalisation in Oregon and British Columbia.<sup>113</sup>

### 6.1 Portugal

#### 6.1.1 Overview

The Ice inquiry report referred to the Portuguese model as ‘decriminalisation with targeted diversion to health/social services.’<sup>114</sup> It explained that Portugal decriminalised drug use in 2001 as part of a broader drug strategy that included an extension of the healthcare services network and the needle and syringe exchange program and provided a significant increase in government spending to support the scheme. Portugal removed simple possession offences from the criminal law and classified them as administrative violations to be dealt with by the Commission for Dissuasion of Drug Addicts. The report of the Ice inquiry noted peer-reviewed studies published in 2010 and 2015 showing that the Portuguese model had several positive outcomes such as increased uptake of treatment, and a reduction in opiate-related deaths and social costs.<sup>115</sup>

#### 6.1.2 Recent commentary

There have been few studies published in English on the Portuguese model since 2020. One study that used the Portuguese model as a case study of a successful policy innovation considered that it was an original innovation that was internationally recognised as a great success.<sup>116</sup>

In 2008 a ruling from the Supreme Court re-established the crime of drug use when the quantity exceeded the average individual use for a period of 10 days. A review of the history of the Portuguese model noted that following this ruling there had been ‘a sharp increase of criminal sanctions targeted at drug users.’<sup>117</sup> The review also critiqued the Portuguese model stating that it ‘has not proven

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<sup>111</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p319-320..

<sup>112</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p328-239.

<sup>113</sup> International developments in relation to pill testing were outside the scope of this paper. For a recent review of the evidence, see N Maghsoudi, J Tanguay, K Scarfone, I Rammohan, C Ziegler, D Werb, Al Scheim, [Drug checking services for people who use drugs: a systematic review](#), *Addiction*, 2022, 117(3), p532-544.

<sup>114</sup> D Howard, [Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants](#), NSW Government, January 2020, Vol 2, p328.

<sup>115</sup> See C Hughes and A Stevens, [What can we learn from the Portuguese Decriminalization of Illicit Drugs?](#), 2010, *British Journal of Criminology*, 50, p 999, 1017; and R Gonçalves, A Lourenço and S Nogueira da Silva, [A social cost perspective in the wake of the Portuguese strategy for a fight against drugs](#), *International Journal of Drug Policy*, 2015, 26(2), p 199, 207.

<sup>116</sup> C Moury and M Escada, [Understanding successful policy innovation: the case of Portuguese drug policy](#), *Addiction*, 2023, 118(5), p967-978.

<sup>117</sup> X Rêgo, M Oliveira, C Lameira et al. [20 years of Portuguese drug policy - developments, challenges and the quest for human rights](#) *Substance Abuse Treatment, Prevention, and Policy*, 2021, 16:59, p2.

influential enough to emancipate drug use from the stigma that associates it with either crime or pathology, where it is kept captive.’<sup>118</sup>

A media article from July 2023 suggested that drug use problems had increased in recent years.<sup>119</sup> The article referred to an increase in visible drug use, a 12-year high in overdose rates, and ‘year-long waits for treatment even as the number of people seeking help has fallen dramatically.’ The article noted that João Goulão, the head of Portugal’s national institute on drug use and the architect of decriminalisation, had told the media in December 2022 that ‘what we have today no longer serves as an example to anyone.’<sup>120</sup> He blamed a decrease in funding, with the article noting:

After years of economic crisis, Portugal decentralized its drug oversight operation in 2012. A funding drop from 76 million euros (\$82.7 million) to 16 million euros (\$17.4 million) forced Portugal’s main institution to outsource work previously done by the state to nonprofit groups, including the street teams that engage with people who use drugs.<sup>121</sup>

## 6.2 Oregon

### 6.2.1 Reforms

Oregon was the first US state to decriminalise low-level drug possession for a range of illicit drugs.<sup>122</sup> The *Drug Addiction Treatment and Recovery Act* or ‘Measure 110’ was passed by a referendum in November 2020.<sup>123</sup> A catalyst to the measure was the drug addiction and overdose crisis in the state, and across North America.<sup>124</sup> The Act sought to take a public health-based approach to dealing with drug addiction.

The Act removed criminal penalties for low-level drug possession, which were now to be treated as a ‘Class E violation’, punishable by a fine of up to \$100. A Class E violation could get dismissed if the person obtained a health assessment within 45 days. There were no penalties if the person failed to pay the fine or appear in court.<sup>125</sup> The Act also established a grant scheme with funding of \$100

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<sup>118</sup> X Rêgo, M Oliveira, C Lameira et al. [20 years of Portuguese drug policy - developments, challenges and the quest for human rights](#) *Substance Abuse Treatment, Prevention, and Policy*, 2021, 16:59, p2.

<sup>119</sup> A Faiola and C Martins, [Once hailed for decriminalizing drugs, Portugal is now having doubts](#), *The Washington Post*, 7 July 2023.

<sup>120</sup> A Faiola, C Martins, [Once hailed for decriminalizing drugs, Portugal is now having doubts](#), *The Washington Post*, 7 July 2023. See also O Balch, [‘It beats getting stoned on the street’: how Portugal decriminalised drugs – as seen from the ‘shoot-up centre’](#), *The Guardian*, 26 January 2024.

<sup>121</sup> A Faiola, C Martins, [Once hailed for decriminalizing drugs, Portugal is now having doubts](#), *The Washington Post*, 7 July 2023. See also O Balch, [‘It beats getting stoned on the street’: how Portugal decriminalised drugs – as seen from the ‘shoot-up centre’](#), *The Guardian*, 26 January 2024.

<sup>122</sup> Secretary of State Audits Division, [Oregon Too Early to Tell: The Challenging Implementation of Measure 110 Has Increased Risks, but the Effectiveness of the Program Has Yet to Be Determined](#), January 2023, p 11.

<sup>123</sup> Oregon Health Authority, [Drug Addiction Treatment and Recovery Act \(Measure 110\)](#), n.d., accessed 26 June 2024.

<sup>124</sup> Oregon Health Authority, [Drug Addiction Treatment and Recovery Act \(Measure 110\)](#), n.d., accessed 26 June 2024. See also L Terry, [Addiction to drugs, alcohol deepens in Oregon, report shows](#), *Oregon Capital Chronicle*, 7 February 2022. For further reading on the opioid crisis in the US, see R Brown, A Morgan, [The opioid epidemic in North America: Implications for Australia](#), Australian Institute of Criminology, *Trends and Issues in Criminal Justice*, No. 578, July 2019.

<sup>125</sup> Oregon Judicial Department, [Measure 110: Class E Violations Through 31 July 2024](#), accessed 3 September 2024.

million per annum to expand access to free assessment, treatment, and recovery services for drug addiction.<sup>126</sup> An Oversight and Accountability Council was established to approve these grants.

The new laws came into effect on 1 February 2021.

### 6.2.2 Implementation

Between February 2021 and 31 July 2024, there were 9,735 class E violations issued for low-level drug possession.<sup>127</sup> Only 7% (687) of cases were dismissed in court, of which only 76 had a health assessment verification filed.

In 2021 the Oregon Health Authority distributed an initial \$37 million in grants. However, there was a long delay in approving the remaining grants: \$264 million was approved for spending from July to December 2023. It is expected that another \$150 million would be awarded by June 2025.<sup>128</sup>

Service providers reported a significant increase in the number of clients accessing all types of services between July 2022 and December 2023, including for screening (an increase of 228%), substance use disorder treatment (205%), and peer support services (256%).<sup>129</sup>

### 6.2.3 Recent reversal of reforms

As drug use became more visible and overdose deaths continued to rise, decriminalisation came under heavy criticism.<sup>130</sup> In September 2023 the state legislature formed a committee to develop solutions to the drug addiction crisis.<sup>131</sup> The committee proposed, and in April 2024 legislators passed, a package of reforms including reinstating criminal penalties for low-level drug possession and providing additional funds for treatment.<sup>132</sup>

While criminal penalties were restored, the laws encouraged counties to establish 'deflection programs' to assist people to access treatment.<sup>133</sup> Persons suspected of possessing illicit drugs may be referred to a local deflection program which, if completed, leads to no criminal charges being filed. The new laws commenced on 1 September 2024.<sup>134</sup>

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<sup>126</sup> Secretary of State Audit's Division, *Oregon Health Authority & Oversight and Accountability Council Funding and Delivery of Measure 110 Substance Use Disorder Services Shows Progress, but Significant Risks Remain*, December 2023, p2.

<sup>127</sup> Oregon Judicial Department, *Measure 110: Class E Violations Through 31 July 2024*, n.d., accessed 3 September 2024.

<sup>128</sup> Secretary of State Audit's Division, *Oregon Health Authority & Oversight and Accountability Council Funding and Delivery of Measure 110 Substance Use Disorder Services Shows Progress, but Significant Risks Remain*, December 2023, p2.

<sup>129</sup> Oregon Health Authority, *Measure 110: A Public Health-Based Approach to Addiction and Overdose: Data Report*, n.d., accessed 12 September 2024.

<sup>130</sup> See E Tammy Kin, *A drug-decriminalization fight erupts in Oregon*, *The New Yorker*, 15 January 2024; and D Anguiano, *Oregon undoes groundbreaking drug decriminalization law*, *The Guardian*, 3 March 2024; C Clarke and P Hosier, *Oregon's drug decriminalisation experiment is being rolled back after three years of rising drug use*, *ABC*, 28 May 2024.

<sup>131</sup> L Terry, *Legislature forms committee to address Oregon's addiction epidemic*, *Oregon Capital Chronicle*, 29 September 2023.

<sup>132</sup> Oregon State Health Authority, *HB 4002 & HB 5204, Relating to Opioid Addiction in Oregon*, Fact Sheet, updated 10 March 2024. See also C Clarke and P Hosier, *Oregon's drug decriminalisation experiment is being rolled back after three years of rising drug use*, *ABC*, 28 May 2024.

<sup>133</sup> Oregon State Health Authority, *HB 4002 & HB 5204, Relating to Opioid Addiction in Oregon*, Fact Sheet, updated 10 March 2024.

<sup>134</sup> D Ramirez-Simon and agencies, *Oregon: drug possession to be a crime again as decriminalization law expires*, *The Guardian*, 1 September 2024.

Supporters of decriminalisation argued that Measure 110 was not given enough time to see the intended effects.<sup>135</sup> They noted that Portugal's success in reducing drug-related deaths was not achieved quickly. In addition, they pointed to implementation problems in Oregon including failures to fund new treatment services for 18 months.

#### 6.2.4 Evaluation

An audit report on the effectiveness of Measure 110 is due by the end of 2024.<sup>136</sup> Research on the impact of decriminalisation on overdose deaths have come to different conclusions. One study found that Measure 110 was associated with a 23% increase in 'unintentional drug overdose deaths' during 2021,<sup>137</sup> while another concluded that it was not associated with changes in drug overdose deaths in the first year.<sup>138</sup>

### 6.3 British Columbia

#### 6.3.1 Reforms

In May 2022, Health Canada granted British Columbia a 3-year exemption under the federal *Controlled Drugs and Substances Act* to decriminalise the personal use of illicit drugs.<sup>139</sup> Like Oregon, the catalyst to this reform was a drug addiction and overdose crisis in the province, and across North America.<sup>140</sup> The exemption request was part of a public health approach to drug use which included investments in programs and services related to safer supply, acute case management, treatment, and harm reduction.<sup>141</sup>

Under the exemption, adults are not to be arrested or charged for possessing small amounts of certain illicit drugs for personal use.<sup>142</sup> Instead, they are to be offered health information and referred to treatment and support services if requested. The exemption applies to the possession of a total of 2.5 grams or less of opioids, cocaine, methamphetamine, and MDMA. The exemption was not to apply in certain public places such as schools. The exemption came into force on 31 January 2023.

#### 6.3.2 Implementation

A May 2024 report noted that in the first year of decriminalisation there was a 76% decrease in the number of drug possession offences from the previous 4-year average.<sup>143</sup> The report also mentioned

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<sup>135</sup> C Paun, A Hernández-Morales, [Why Portland failed where Portugal succeeded in decriminalizing drugs](#), *Politico*, 28 March 2024.

<sup>136</sup> Secretary of State Audit's Division, [Oregon Health Authority & Oversight and Accountability Council Funding and Delivery of Measure 110 Substance Use Disorder Services Shows Progress, but Significant Risks Remain](#), December 2023, p11.

<sup>137</sup> N Spencer, [Does drug decriminalization increase unintentional drug overdose deaths?: Early evidence from Oregon Measure 110](#), *Journal of Health Economics*, 2023, 91, 102798.

<sup>138</sup> S Joshi, BD Rivera, M Cerdá et al. [One-Year Association of Drug Possession Law Change With Fatal Drug Overdose in Oregon and Washington](#), *JAMA Psychiatry*, 2023, 80(12), pp1277–1283.

<sup>139</sup> B.C. Government, [B.C. receives exemption to decriminalize possession of some illegal drugs for personal use](#) [media release], B.C. Government, 31 May 2022.

<sup>140</sup> B.C. Centre for Disease Control, [Decriminalization in B.C.](#), accessed 11 September 2024.

<sup>141</sup> Government of Canada, [Letter of Requirements](#), May 2022, accessed 11 September 2024.

<sup>142</sup> B.C. Government, [Decriminalizing people who use drugs in B.C.](#), accessed 11 September 2024.

<sup>143</sup> B.C. Ministry of Mental Health and Addictions, [Decriminalization: Data Report to Health Canada, February 2023- January 2024](#), May 2024.

that the 'majority of [health] service utilization indicators are stable or continue to increase since decriminalization.'<sup>144</sup>

### 6.3.3 Recent tightening of scope

In September 2023, the exemption was amended to prohibit possession of illicit drugs in areas designed primarily for youth including outdoor playgrounds.<sup>145</sup> Concerns about the increased public drug use led to another more significant amendment in May 2024, which greatly reduced the public spaces where the exemption applied.<sup>146</sup> The public spaces where it now applies are places where unhoused individuals are legally sheltering, overdose prevention, drug checking and supervised consumption sites, and places that provide out-patient addiction services.

### 6.3.4 Evaluation

The Canadian Research Initiative in Substance Misuse is conducting an evaluation of the decriminalisation policy over 5 years.<sup>147</sup> The evaluation has several study streams including the impacts of decriminalisation on people who use drugs, on the criminal justice system, on the general public, on health services, and economic impacts.

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<sup>144</sup> B.C. Ministry of Mental Health and Addictions, [Decriminalization: Data Report to Health Canada, February 2023- January 2024](#), May 2024, p7.

<sup>145</sup> Health Canada, [Statement from the Minister of Mental Health and Addictions and Associate Minister of Health](#), [media release], 14 September 2023.

<sup>146</sup> Health Canada, [Personal possession of small amounts of certain illegal drugs in British Columbia](#), [media release], 7 May 2024.

<sup>147</sup> Canadian Institutes of Health Research, [Evaluation of the British Columbia Exemption to Allow for Personal Possession of Small Amounts of Illegal Drugs: Semi-annual Meeting - What we heard report](#), 23 November 2023.

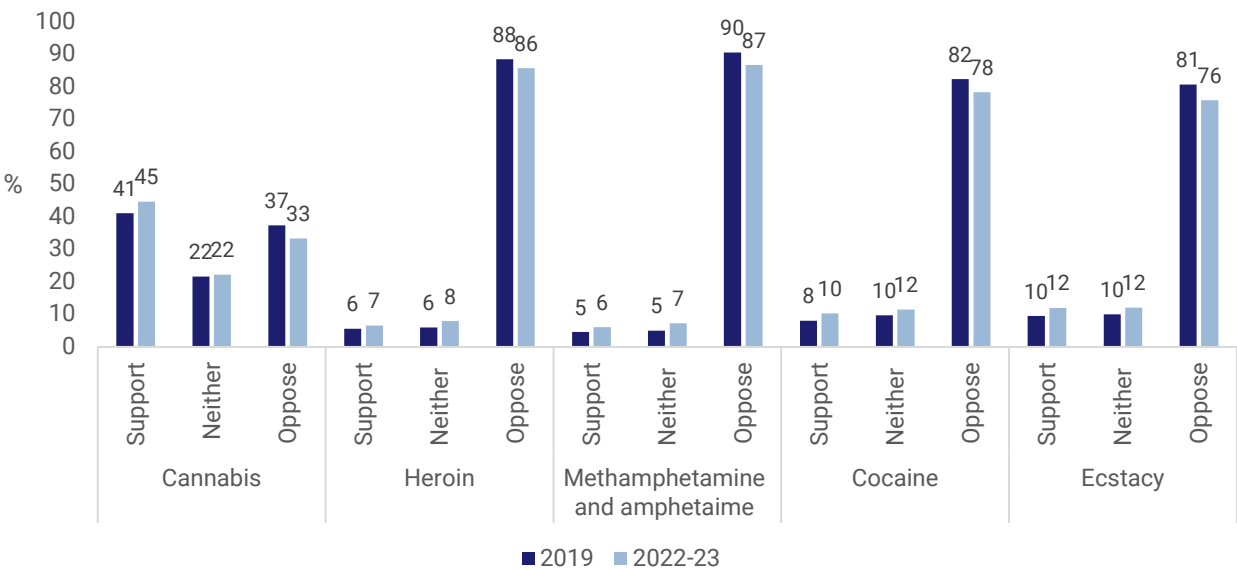
# 7. Public opinion on drug policy

Information on public opinion relating to illicit drugs is available from the National Drug Strategy Household Survey (NDSHS). The most recent NDSHS was conducted in 2022–23 and involved more than 21,000 participants across Australia.<sup>148</sup> This section presents NSW and national data from the NDSHS on a range of policy topics such as decriminalising personal use, pill testing, and regulated injecting centres (noting that only national rather than state data is available for certain topics).

## 7.1 Decriminalising personal use

A relatively low proportion of survey participants in Australia supported legalising the personal use of certain illicit drugs other than cannabis (Figure 5). There was a slight increase in support for legalising the personal use of these drugs from 2019 to 2023.

**Figure 5: Support or strong support, opposition or strong opposition, to legalising select illicit drugs in 2019 and 2022–2023, Australia**

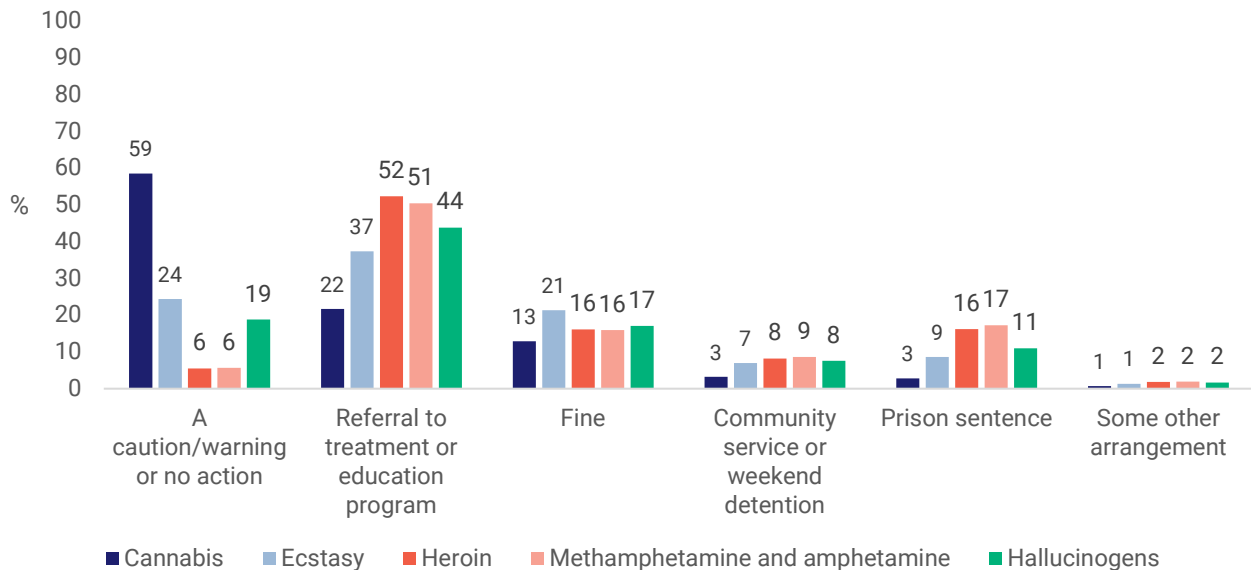


Source: AIHW, [National Drug Strategy Household Survey 2022–2023](#), Perceptions and policy support, Supplementary data tables, February 2024, Table 11.26.

Figure 6 shows the proportion of survey participants in Australia who chose that a particular action should be taken against people found in possession of select illicit drugs for personal use (they could only choose 1 response). The most common action chosen in relation to cannabis was ‘caution/warning or no action’, whereas the most common action chosen in relation to other drugs such as methamphetamines was ‘referral to treatment or education program’.

<sup>148</sup> AIHW, [National Drug Strategy Household Survey 2022–2023](#), 29 February 2024, accessed 20 August 2024. The age of the participants was 14 years and over.

**Figure 6: Reported choice of action against people found to possess select illicit drugs for personal use in Australia, 2022–2023**

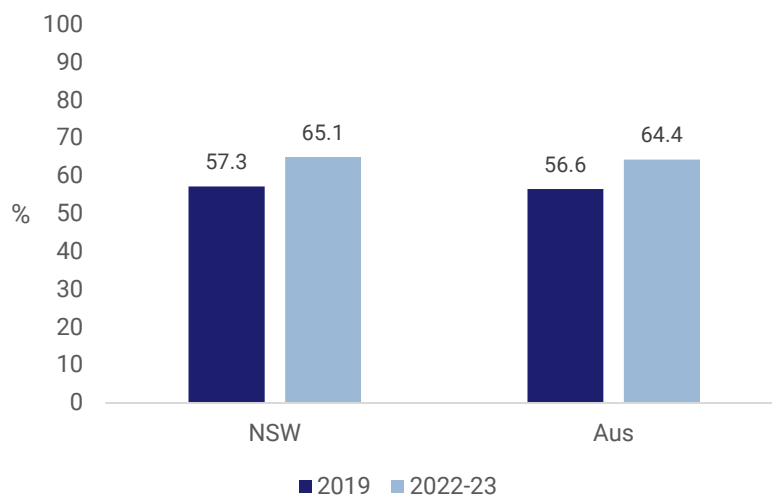


Source: AIHW, [National Drug Strategy Household Survey 2022–2023](#), Perceptions and policy support, Supplementary data tables, February 2024, Table 11.32.

## 7.2 Pill testing

In NSW the proportion of survey participants who supported or strongly supported pill testing increased from 57.3% in 2019 to 65.1% in 2022–23 (Figure 7).

**Figure 7: Support or strong support for pill testing, 2019 and 2022–2023, NSW and Australia**

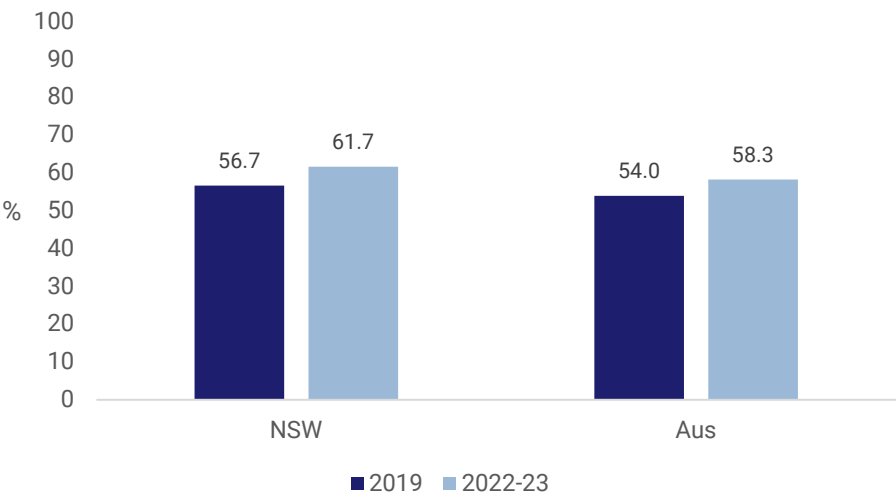


Source: AIHW, [National Drug Strategy Household Survey 2022–2023](#), Perceptions and policy support, Supplementary data tables, February 2024, Table 9b.54.

7.3 Regulated injecting rooms

In NSW the proportion of survey participants who supported or strongly supported regulated injecting rooms increased from 56.7% in 2019 to 61.7% in 2022–2023 (Figure 8).

Figure 8: Support or strong support for regulated injecting rooms, 2019 and 2022–2023, NSW and Australia



Source: AIHW, [National Drug Strategy Household Survey 2022-2023](#), Perceptions and policy support, Supplementary data tables, February 2024, Table 9b.55.

7.4 Budget distribution to reduce illicit drug use

Survey participants were also asked for their preferred distribution of a hypothetical \$100 to reduce illicit drug use. In 2022–2023, the average preferred distribution across Australia was:

- \$36.5 on education (up from \$36 in 2019)
- \$32 on treatment (up from \$29.2 in 2019)
- \$31.5 on law enforcement (down from \$34.8 in 2019).<sup>149</sup>

<sup>149</sup> Australian Institute of Health and Welfare, [National Drug Strategy Household Survey 2022-2023](#), Perceptions and policy support, Supplementary data tables, February 2024, Table 11.33.

**Illicit drug policy: developments since  
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