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Parliamentary Joint Committee on Law Enforcement
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Canberra ACT 2600

13 January 2023

Submission to The Inquiry Into The Challenges And Opportunities For Law Enforcement In Addressing Australia's Illicit Drug Problem

About 360Edge

360Edge is Australia's leading specialist alcohol and other drugs consultancy. We provide a full suite of policy and practice advisory services across the spectrum of alcohol and other drug use, as well as allied areas such as mental health, justice and education, supporting governments and frontline services to improve policy and practice in line with the latest evidence.

Our four main programs are Workforce Development, Service Improvement, Program Evaluation and Health Systems Modelling. 360Edge also supports the development and implementation of workplace alcohol and other drug policy through our WorkEdge program and alcohol and other drug prevention in schools through our Schools of Substance program.

CEO, Professor Nicole Lee, is an international leader in alcohol and other drug responses, with 33 years' experience in policy and practice implementation. She is also Adjunct Professor at the National Drug Research Institute, Curtin University; Board Member and Chair of the Clinical Governance Committee of Hello Sunday Morning; and Board Member of The Loop Australia. She is a member of the Australian National Council on Alcohol and other Drugs (ANACAD) - Australia's key expert advisory council to the Australian Government on alcohol and other drugs, which provides policy advice directly to the Health Minister and his Department.

Submission overview

Thank you for the opportunity to make a submission to the Inquiry into the Challenges and Opportunities for Law Enforcement in Addressing Australia's Illicit Drug Problem. Our response is based the substantial body of evidence that has now accumulated in relation to what works to reduce harms from drugs for the community.

We stress the need for all laws, regulations and reforms to align with Australia's National Drug Strategy which takes a harm minimisation approach consisting of the three pillars of harm reduction, demand reduction and supply reduction.

Currently, and for many decades, the larger proportion of government spending on drugs has been allocated to law enforcement.¹ One study found that 66% of funding for alcohol and other drugs went to law enforcement (supply reduction) with only 2% to harm reduction activities and the remaining 32% to prevention and treatment (demand reduction) But there is no evidence that disruption to supply and other law enforcement efforts have any long term impact on use or harms in the community.

We emphasise that our current laws, and particularly the heavy policing of them:

- Increase harms
- Are expensive to administer
- Fail to reduce use
- Put a large proportion of the population at risk of contact with the criminal justice system
- Disproportionately affect disadvantaged and marginalise people in the community
- Are not supported by evidence

Some of the main outcomes of current laws and policing on drug use trends are adverse, including:

- The development and continuation of a thriving black market
- Production of new and more dangerous drugs to bypass detection
- Increasing harms as a result of the above
- Little to no sustained impact on reducing supply, use or drug related harms
- Increasing prison population

We believe there are a number of changes within law enforcement agencies that can be immediately implemented that will significantly reduce harms related to drugs for individuals and the community, and will have little impact on increasing supply or use, including:

1. **Stop heavy policing methods** including strip searches and the use of drug dogs in the community and at festivals – these methods result in primarily very occasional, non-problematic users being caught up in the criminal justice system and can be a traumatic experience for young people impacting on their long term mental health
2. **Support effective harm reduction initiatives** such as drug checking, needle and syringe programs and overdose prevention centres (medically supervised injecting centres), by ceasing the vigorous lobbying against them and by removing physical police presence from these facilities. Fear of prosecution can deter people from seeking help or accessing harm reduction services.² Reducing police presence in and around harm-reduction services can help to reduce this fear and increase the likelihood of people seeking help and accessing support services.³
3. **Support the decriminalisation of illicit drugs** – under decriminalisation, drugs are still illegal but the market is better regulated and police can better spend their budget and efforts on policing manufacturing and trafficking rather than recreational use.
4. **Taking care with language to reduce the stigma** associated with drug use because stigma impacts on treatment access and engagement. Increased access to treatment will have a much bigger impact on supply and use than law enforcement efforts at a much smaller cost.

¹ Ritter, A., McLeod, R., & Shanahan, M. (2013). Monograph No. 24: Government drug policy expenditure in Australia – 2009/10. DPMP Monograph Series. Sydney: National Drug and Alcohol Research Centre

² Fry, C., Fox, S., and Rumbold, G. Establishing safe injecting rooms in Australia: attitudes of injecting drug users. Aust N Z J Public Health. 1999;23(5):501-4

³ Spooner, C., McPherson, M., and Hall, W. The role of police in preventing and minimising illicit drug use and its harms. National Drug Law Enforcement Research Fund; 2004

We know for every \$1 spent on treatment the community saves \$7, but for every \$1 spent on law enforcement it costs the community \$1.32.⁴

5. **Broadening use and eligibility for police and court diversion programs** for drug-related offences, including expansion to all drugs in all jurisdictions and removing any limits to the number of times a person can participate. The NSW Drug Court has had a measurable impact on people charged with drug offences. Recidivism over a 5-10 year period was reduced by around 17% in a recent analysis of the program.⁵ A USA-based study of drug courts found that people engaged in drug courts were 12% less likely to experience recidivism compared with people who did not engage in the program.⁶
6. **Carrying naloxone.** In some jurisdictions, including WA, police have been trained to deliver naloxone to people experiencing overdose to prevent fatalities. Where this has been piloted, police have been positive about the program and have reduced negative attitudes towards people who use drugs⁷

TOR1: Trends and changes relating to illicit drug markets in Australia, including the supply, trafficking, production, distribution and use of illicit drugs

Our current prohibition-oriented laws increase harm, are expensive to administer, fail to reduce use and put a large proportion of the population at risk of contact with the criminal justice system. They disproportionately affect the more disadvantaged in the community, including Aboriginal and Torres Strait Islander People.

Some of the main impacts of current policies on trends include:

- A thriving black market
- Production of new and more dangerous drugs to bypass detection
- Increasing harms as a result of the above
- Little to no impact on reducing supply, use or drug related harms

The 2019 Queensland Productivity Commission's Inquiry into Imprisonment and Recidivism,⁸ noted that the current approach of criminalisation and prohibition:

'has proven ineffective at significantly reducing the consumption of illicit drugs and has not achieved sustained reductions in supply'

⁴ Alison Ritter et al., "New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia," in Final Report (Sydney: University of New South Wales, 2014).

⁵ Weatherburn, D., Yeong, S., Poynton, S., Jones, N., and Farrell, M. Long-term effect of the NSW Drug Court on recidivism (Crim and Justice Bulletin No. 232). Sydney: NSW Bureau of Crime Statistics and Research. 2020.

⁶ Mitchell, O., Wilson, D., Eggers, A., and MacKenzie, D. Drug courts' effects on criminal offending for juveniles and adults. Campbell Systematic Reviews 2012;4

⁷ Hillen, P., Speakman, E., Dougall, N., Heyman, I., Murray, J., Jamieson, M., Aston, E., and McAuley, A. Naloxone in Police Scotland: Pilot Evaluation. Edinburgh: Edinburgh Napier University; 2022

⁸ Queensland Productivity Commission (2019) Inquiry into Imprisonment and Recidivism Final Report.

It has resulted in an increase in harms and costs to the community through a thriving black market with high levels of violence; drugs of unknown quality that have increased the dangers of drug use; increased stigma which has become a barrier for treatment access; and comes at huge financial cost.

The National Drug Household Survey shows a fairly stable use of drugs over the past 30 years or more, with some relatively minor shifts in drug preference and demographics. For example, for some drugs there has been an increase in the proportion of the population who have used them and others a small decrease; there has been a reduction in teenagers and young people using illicit drugs.

The survey shows that recent use of illicit drugs has not changed over (at least) the last 20 years. In 2001 use of any illicit drug was recorded at 16.7% of the general population and in the most recent survey in 2019 recent use was recorded at 16.4% of the general population. Lifetime use of any illicit drug has increased slightly from 37.7% to 43.2% of the population.

In addition, this survey also shows that the vast majority of people who use illicit drugs use occasionally and for a short period in their life. The peak use period is young adulthood, when people are in their 20s. This is also consistent with global trends that shows close to 90% of people who use illicit drugs are not dependent or require treatment.⁹

What this demonstrates is that a substantial proportion of the population have used illicit drugs and are at risk if coming in contact with law enforcement even though most are not dependent, nor do they experience problems with their use, nor cause any problems for others in the general community as a result of their use. Our current drug laws expose a large proportion of Australians to a key drug related harm which is having a criminal record.

TOR 2: Emerging trends and risks, such as new psychoactive substances, adulterated drugs and other new sources of threat

New psychoactive substances have rapidly emerged on the global drug market and present with unique risks due to our limited knowledge of their health and societal harms.¹⁰ In Australia, up to 200 new psychoactive substances were reported up to December 2021. The emergence of these new drugs is a direct result of attempts by manufacturers and dealers to get around bans on more common drugs.

In addition, tightening restrictions on the supply of tobacco under public health measures without the wider availability of a safer alternative of nicotine vaping products has resulted in an illicit tobacco black market.

It is a pattern seen time and time again. If we severely restrict products that people want to use, two things happen: An illicit black market takes off and people will switch to more easily accessible but more dangerous drugs. Further restrictions merely exacerbate these patterns and the problem of increasing harms. We need to cease doubling down on ineffective strategies that cause more problems.

⁹ United Nations Office on Drugs and Crime. World Drug Report 2017. accessed March 1, 2019 [unodc.org/wdr2017/field/Booklet_2_HEALTH.pdf](https://www.unodc.org/wdr2017/field/Booklet_2_HEALTH.pdf)

¹⁰ UNODC Early Warning Advisory on New Psychoactive Substances. What are NPS? 2002 [<https://www.unodc.org/LSS/Page/NPS.>]

TOR 3: Law enforcement's ability to detect and respond to the trafficking of precursor chemicals and illicit drugs, including the adequacy of screening techniques and the impact of seizures on illicit drug availability and use

It's a fair assumption that, in the end, law enforcement agencies want the same things as health agencies: To reduce the harms and problems associated with illicit drug use. But as a result of the current laws, and specifically the heavy policing of these laws, we have paradoxically seen an increase in harms and problems and no demonstrable impact on supply or use.

A report by the Australian Criminal Intelligence Commission on methamphetamine trends found that major seizures (of around 1000kg) were followed by a reduction in wastewater detection of the drug of less than 30%, lasting no more than 4 months.¹¹ Minor seizures of 400kg or less had virtually no impact on wastewater detection.

TOR 4: The involvement of law enforcement in harm reduction strategies and in efforts to reduce supply and demand, including the effectiveness of its involvement

Australia's overarching harm-minimisation approach to drug policy is undermined by the criminalisation of people who use drugs

The biggest impact law enforcement can have on reducing harm is to:

1. **Stop heavy policing methods** including strip searches and the use of drug dogs in the community and at festivals – these methods results in mostly very occasional, non problematic users being caught up in the criminal justice system and can be a traumatic experience for young people impacting on their long term mental health
2. **Support harm reduction initiatives** such as drug checking, needle and syringe programs and overdose prevention centres (medically supervised injecting centres), by ceasing the vigorous lobbying against them and by removing physical police presence from these facilities. Fear of prosecution can deter people from seeking help or accessing harm reduction services.¹² Reducing police presence in and around harm-reduction services can help to reduce this fear and increase the likelihood of people seeking help and accessing support services.¹³
3. **Support the decriminalisation of illicit drugs** – under decriminalisation drugs are still illegal but police can better spend their budget and efforts on policing manufacturing and trafficking rather than recreational use.
4. **Taking care with language to reduce the stigma** associated with drug use because stigma impacts on treatment access and engagement. Increased access to treatment will have a much bigger impact on supply and use than law enforcement efforts at a much smaller cost.

¹¹ https://www.acic.gov.au/sites/default/files/2020-09/methylamphetamine_supply_reduction-measures_of_effectiveness_949_kb.pdf

¹² Fry, C., Fox, S., and Rumbold, G. Establishing safe injecting rooms in Australia: attitudes of injecting drug users. Aust N Z J Public Health. 1999;23(5):501-4

¹³ Spooner, C., McPherson, M., and Hall, W. The role of police in preventing and minimising illicit drug use and its harms. National Drug Law Enforcement Research Fund; 2004

We know for every \$1 spent on treatment the community saves \$7, but for every \$1 spent on law enforcement it costs the community \$1.32.¹⁴

5. **Broadening use and eligibility for police and court diversion programs** for drug-related offences, including expansion to all drugs in all jurisdictions and removing any limits to the number of times a person can participate. The NSW Drug Court has had a measurable impact on people charged with drug offences. Recidivism over a 5-10 year period was reduced by around 17% in a recent analysis of the program.¹⁵ A USA-based study of drug courts found that people engaged in drug courts were 12% less likely to experience recidivism compared with people who did not engage in the program.¹⁶
6. **Carrying naloxone.** In some jurisdictions, including WA, police have been trained to deliver naloxone to people experiencing overdose to prevent fatalities. In 2021, Police Scotland piloted a program for officers to carry and administer naloxone as a first-aid response to overdose. Officers were initially reluctant about the pilot but by the end of training, the response was significantly positive. Not only was there high uptake in naloxone packs by officers, but there was a change in attitude towards people who use drugs.¹⁷

TOR 5: The strengths and weaknesses of decriminalisation, including its impact on illicit drug markets and the experiences of other jurisdictions

A large proportion of the work of the justice system (police, courts and prisons) is spent on drug-related offences. Mick Palmer, former AFP Commissioner, noted:

*“drug law enforcement has had little impact on the Australian drug market”.*¹⁸

There are no clear benefits to the community from criminalisation of use and possession of illicit drugs. Some of the major harms from using illicit drugs are because of their current legal status. Having a criminal record for possessing drugs that are for personal use is a significant harm that can negatively impact a person’s future, including careers and travel. There is evidence that criminalisation of drugs increases stigma and stigma reduces willingness to access treatment.

Decriminalisation reduces the involvement of the justice system for the 80-90% of people who use illicit drugs that are not dependent and do not need treatment, and for those who do enables the community to support and encourage use of treatment services. It decreases harm by taking the response to illicit drugs out of the criminal justice system and placing it in the health system where people can receive harm reduction information, support or treatment.

¹⁴ Alison Ritter et al., "New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia," in Final Report (Sydney: University of New South Wales, 2014).

¹⁵ Weatherburn, D., Yeong, S., Poynton, S., Jones, N., and Farrell, M. Long-term effect of the NSW Drug Court on recidivism (Crim and Justice Bulletin No. 232). Sydney: NSW Bureau of Crime Statistics and Research. 2020.

¹⁶ Mitchell, O., Wilson, D., Eggers, A., and MacKenzie, D. Drug courts’ effects on criminal offending for juveniles and adults. Campbell Systematic Reviews 2012;4

¹⁷ Hillen, P., Speakman, E., Dougall, N., Heyman, I., Murray, J., Jamieson, M., Aston, E., and McAuley, A. Naloxone in Police Scotland: Pilot Evaluation. Edinburgh: Edinburgh Napier University; 2022

¹⁸ Palmer, M 'After 33 years, I can no longer ignore the evidence on drugs' *Sydney Morning Herald* 7 June 2012 smh.com.au/politics/federal/after-33-years-i-can-no-longer-ignore-the-evidence-on-drugs-20120606-1zwpr.html

Under decriminalisation illicit drugs remain illegal, but people do not receive a criminal record. Drug trends data from NT, SA, and ACT shows no impact of decriminalisation on the prevalence of cannabis use in the community, which has been in place in these three States/Territories for more than 25 years. It is a low-risk strategy with significant potential benefits to the community.

The National Drug Strategy Household Survey 2019 found that a large majority of Australians support either a caution/warning or no action; or referral to treatment or education, for people found in possession of cannabis (78%), MDMA (58%), heroin (55%), methamphetamine (52.9%) and hallucinogens (59%).¹⁹ Support for punitive responses to the possession/use of illicit drugs has continued to decline over the last 20 years.²⁰

The most well-known decriminalisation model is in Portugal. More than 20 years ago they removed criminal penalties for a range of illicit drugs if the amount was less than the equivalent of a 10-day supply. Drugs remained illegal, but they were considered an administrative offence rather than a criminal one. They replaced criminal sanctions with what is essentially diversion from the criminal justice system to health-oriented boards made up of an allied health professional, psychiatrist and lawyer who decided whether to impose a fine or other sanction or to refer to treatment if required. At the same time they put more resources into treatment services.

Prior to these new laws Portugal had the highest rate of HIV among people who injected drugs, and among the highest rates of overdose deaths and problem drug use in Europe. Since the laws were enacted, Portugal has seen increased rates of uptake of treatment,²¹ reduction in the incidence of HIV among people who use drugs from 52% to 6%, reduction in drug related deaths by over 80%, a reduction in early uptake of drugs by teenagers, reduction in drug related deaths, and a reduction in criminal justice time and costs related to drug offences, with incarceration rates decreasing by over 40%.²² Rates of drug use for all illicit drugs, except cannabis, fell below pre-decriminalisation levels.²³

Criminalisation of illicit drug use has significant adverse impacts on the spread of blood borne viruses like HIV and Hepatitis C. Countries with strict enforcement of drug policies have increasing rates of HIV prevalence, while those more focused on harm reduction and treatment experience declining rates of HIV.²⁴

TOR 6: Other related matters

Language and stigma

Some of the language used by police actively perpetuates stigma and discrimination towards people who use drugs. This is most obvious in the media. Media reporting on illicit drugs is heavily focused on 'crime and deviance' language, which maintains a moralistic view about drug use.²⁵

It is essential that police begin to move toward actions and language that reduces rather than increases stigma. There is a mistaken view that taking a 'hard line' on drugs and 'talking tough' on drugs will positively impact supply and use. The evidence is that it doesn't. It simply increases stigma.

¹⁹ AIHW. National Drug Strategy Household Survey 2019. 2020.

²⁰ AIHW. National Drug Strategy Household Survey 2019. 2020.

²¹ web.archive.org/web/20150426030351/http://www.beckleyfoundation.org/bib/doc/bf/2007_Caitlin_211672_1.pdf

²² drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach_0.pdf

²³ drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach_0.pdf

²⁴ Global Commission on Drug Policy. The War on Drugs and HIV/AIDS. 2012

²⁵ Hughes, C.E., Lancaster, K. & Spicer, B. How do Australian news media depict illicit drug issues? An analysis of print media reporting across and between illicit drugs, 2003 – 2008.



Increasing stigma does nothing to improve law enforcement efforts and marginalises those most vulnerable in society.

It is vital that as our knowledge changes, police update their ideas, methods and philosophies to align better with the evidence. Society is generally becoming much more aware of unconscious bias and how it can impact disadvantaged people in the community. Law enforcement agencies also need to review their actions to ensure they reduce discrimination not increase it.

School based drug education

With a greater acknowledgement of alcohol and drug use as a health rather than justice issue, there is no place for police giving health advice as part of school based drug education. If schools wish them to provide information within their expertise of the current laws and potential *legal* consequences of those laws, this should be undertaken in a factual, non sensationalised and non stigmatising way. Health related information about drugs should be left to evidence based school based drug education programs. Misinformation and sensationalised information does not assist with reducing young people's interest in drugs.

Thank you for the opportunity to provide feedback on this topic that cross sectors and impacts people right across the community.

360Edge are specialists in evaluating alcohol and other drug service outcomes and can be called upon to provide further advice if required.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nicole Lee'.

Professor Nicole Lee

Founder and CEO