



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the Inquiry into the impact of illicit drugs being traded online

Parliamentary Joint Committee on Law Enforcement

17 December 2021

Introduction

The Department of Home Affairs (the Department) thanks the Parliamentary Joint Committee on Law Enforcement (the Committee) for the opportunity to make a submission to the Committee's inquiry into the impact of illicit drugs being traded online. The Department has prepared this submission in consultation with the Australian Border Force (ABF), the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Commonwealth Department of Health.

The Australian Federal Police (AFP) and the Australian Criminal Intelligence Commission (ACIC) will provide separate submissions.

The trade of illicit drugs, precursor chemicals and drug manufacturing equipment online has significant implications for the Australian community. Transnational, serious and organised crime groups capitalise on Australia's highly lucrative illicit drug market to fund their criminal enterprises. These groups operate in a rapidly evolving technological environment, which provides them with encrypted, globally connected platforms to communicate, build networks, increase capability and trade in illegal goods and services.

The relative ease of access to these platforms and the anonymity that they provide exacerbates the illicit drug problem. Personal connection and geography are no longer impediments to participation in the illicit drug trade, whether as a purchaser or a seller. A relative novice in the drug trade can now use an internet-enabled device and a small amount of capital to purchase or sell illicit drugs in a short period of time.

The Australian Government is committed to preventing and minimising drug-related health, social, cultural and economic harms among individuals, families and communities. This commitment is outlined in the National Drug Strategy 2017-2026, which provides a national framework to guide action. The National Drug Strategy outlines a national commitment to harm minimisation through balanced adoption of effective demand, supply and harm reduction strategies.

A priority area of focus under the National Drug Strategy is addressing the availability of drugs, recognising the need to identify and respond to challenges arising from new supply modes through the internet, postal services and other emerging technologies.

This National Drug Strategy is complemented by the:

- Home Affairs Illicit Drugs Action Plan – The Action Plan outlines the Home Affairs Portfolio's current priorities and actions to combat illicit drugs. It demonstrates how the Portfolio works collaboratively to combat the illicit drug threat and draws upon lessons learned from Australia's past and current responses to drive future action.
- National Strategy to Fight Transnational Serious and Organised Crime – The Strategy provides a framework to guide national efforts to prevent and disrupt transnational serious and organised crime in all its forms, including the production and trafficking of illicit drugs.
- National Ice Action Strategy – Led by the Commonwealth Department of Health, the Strategy identifies achievable actions across a range of areas to reduce the supply and use of methamphetamine in Australia.

Within this strategic framework, the Department of Home Affairs and the ABF have responsibility for:

- controlling illicit drugs and precursor chemicals at the border
- developing overarching illicit drugs policy that responds to current and emerging threats, and
- the Commonwealth's serious drug offence framework under the *Criminal Code Act 1995*, law enforcement powers, Australia's anti-money laundering and counter-terrorism financing regime and criminal asset confiscation laws under the *Proceeds of Crime Act 2002*.

The Department's response to the online illicit drug market is complex and leverages a range of capabilities, including strong law enforcement powers, quality intelligence production, effective international cooperation, and active proceeds of crime recovery. The response is a cooperative effort between law enforcement, regulatory, intelligence and policy agencies, as well as industry, international partners and the broader community.

The online illicit drugs market

The online illicit drugs market requires two key technological enablers to function:

- Anonymous communication platforms – Provided through the darknet (which is underpinned by the Onion Router, an anonymous communications platform), encryption and other anonymising technologies.
- Anonymous digital payments systems – Illicit darknet marketplaces predominantly use cryptocurrency to facilitate the payment of goods and services, including illicit drugs, as this enables purchasers and sellers to operate with anonymity.

These technological advances have led to an increase in serious crime being committed across multiple jurisdictions using the darknet, encryption and other anonymising technology, which impacts law enforcement agencies' ability to access communications for the purposes of conducting investigations, gathering evidence, disrupting the commission of offences and gathering criminal intelligence.

As dark web sites are increasingly penetrated by law enforcement and intelligence agencies, criminals have moved towards the use of dedicated encrypted communication devices and freely available encrypted messaging applications to facilitate trade in illicit goods and services.

Identifying sellers and purchasers of illicit commodities has become more difficult with the rise of e-commerce services, which use automated bots to interact with customers. The intent of these applications is to ensure that only the sender and the recipient are able to access any information they exchange, presenting considerable challenges for law enforcement.

Detecting illicit drugs sales

The Home Affairs Portfolio takes an intelligence-informed and evidence-based approach to combatting the supply of illicit drugs in Australia. The Department regularly monitors e-commerce and darknet sites as an online-enabled vector for the trade of illicit drugs and other illicit commodities.

General trends identified recently include:

- an increase in the prevalence and sophistication of illicit drug marketplaces and vendor shops on the darknet, and
- the use of e-commerce platforms to purchase precursor materials and laboratory equipment, likely for the purposes of drug manufacture and distribution.

AUSTRAC, Australia's financial intelligence unit and anti-money laundering and counter-terrorism financing regulator, also has a unique insight into the movement of illicit funds in online marketplaces. AUSTRAC information indicates cryptocurrency is increasingly being used by Australians for illicit drug activity.

Under the Government's Drug and Alcohol Program, the Department of Health also funds a number of data and information services to inform the ongoing monitoring and identification of emerging substance use issues. This includes funding to the National Drug and Alcohol Centre to undertake the Drug Trends Program which is designed to assist in identifying emerging issues related to substance use.

An example of the data covered under this Program includes the Ecstasy and Related Drugs Reporting System, an illicit drug monitoring system conducted in all states and territories of Australia since 2003. The Ecstasy and Related Drugs Reporting System includes interviews with a sample of people who regularly use ecstasy and other stimulants, including information about where substances were purchased, such as online. Data under the Program is monitored by Government to support identification of emerging trends.

The Department's response

As the Commonwealth policy lead in combatting the supply of illicit drugs, the Department works closely with law enforcement, industry, intelligence, taxation and regulatory agencies, as well as international partners and intergovernmental agencies, to ensure that law enforcement's response to the online illicit drugs market remains effective.

Lifting the veil of anonymising technology

In recent years, the Department has led the development of a number of reforms in response to challenges arising from anonymising technology and online drug markets.

The *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021* enhances the ability of the AFP and ACIC to combat serious crime online. The Act addresses the challenges posed by the criminals who use the dark web, anonymising technologies and encryption to evade law enforcement. This legislation provides the AFP and ACIC new powers to collect intelligence on criminal networks, take control of online accounts and modify and delete data to frustrate offending.

For example:

- network activity warrants may be used to collect intelligence to identify individuals participating in the online illicit drug trade;
- account takeover warrants may be used to allow agencies to access accounts on an online marketplace on the dark web, or on an encrypted communications platform, belonging to a member of a transnational, serious and organised crime group to gather evidence of illicit activity and facilitate covert engagement through controlled operations; and
- data disruption warrants to be used may remove content from the dark web relating to the supply of illicit drugs and to disrupt the commission of offences.

The *Telecommunications Legislation Amendment (International Production Orders) Act 2021* reshapes Australia's international crime cooperation efforts by addressing the challenges associated with obtaining electronic data held in foreign countries.

Frequently the communications that facilitate crime, such as the trade of illicit drugs online, are made using foreign communications platforms and services, meaning evidence of those crimes is held in foreign jurisdictions.

The legislation provides the legal framework for Australian law enforcement and national security agencies to send orders directly to communications service providers in foreign jurisdictions seeking the disclosure of electronic data, bypassing traditional government-to-government processes such as mutual legal assistance.

Underpinning the legal framework is the requirement that an agreement be in place with the foreign country. The first agreement anticipated to be designated under this framework is the bilateral CLOUD Act Agreement with the United States, where many of the world's largest global communications providers and social media platforms are based. The CLOUD Act Agreement was signed on 15 December 2021 in Washington DC, and will now undergo parliamentary scrutiny processes in Australia and the United States.

The *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* introduces powers for law enforcement to respond to emerging technical issues, including encryption technology. During Operation IRONSIDE, the Australian Federal Police was able to utilise these powers, working closely with its international law enforcement partners, in an operation that led to over 800 charges laid against over 300 offenders, and approximately 6,000kg of drugs, 140 weapons and more than \$50 million in cash seized.

Notwithstanding these reforms, criminal networks will continue to seek out new ways to exploit technology for their own gain and the Government is committed to reforms to ensure our agencies keep pace.

The Government has commenced work on holistic reform of Australia's electronic surveillance legislation in accordance with the recommendations of the Comprehensive Review of the Legal Framework of the National Intelligence Community. To deliver this critical reform, the Department of Home Affairs has established an interagency taskforce.

The reform aims to streamline, and refocus the current framework to ensure it is fit-for-purpose and can apply to emerging technologies. It will do this by repealing and replacing the *Telecommunications (Interception and Access) Act 1979*, *Surveillance Devices Act 2004* and relevant parts of the *Australian Security Intelligence Organisation Act 1979* with a clearer, more consistent and modernised Act.

The Government will engage extensively with all relevant stakeholders, including the public, to inform the development of the reforms and ensure the new electronic surveillance legislative framework is clear, fit-for-purpose, proportionate and enduring.

Detecting criminal exploitation of cryptocurrencies

Since 2018, AUSTRAC has regulated Digital Currency Exchange providers when they engage in the exchange of digital currency for fiat currency or vice versa. The regulation of Digital Currency Exchange providers reflects the central role they play in the digital currency ecosystem.

As the gateways through which a person obtains digital currencies, Digital Currency Exchange providers have unique insights into the 'on' and 'off' ramps between digital currencies and traditional fiat currencies. As part of their anti-money laundering and counter-terrorism financing obligations, Digital Currency Exchange providers must submit suspicious matter reports to AUSTRAC if a suspicion is formed in relation to a transaction or a person.

AUSTRAC also has a small specialist capability that uses a range of tools and data to identify and analyse illicit cryptocurrency transactions. This includes specialist blockchain analysis tools, open source information and information reported to AUSTRAC by reporting entities, including Digital Currency Exchange providers.

In collaboration with industry, Government and foreign partner agencies, AUSTRAC generates financial intelligence reporting to identify financial connections and attribute blockchain transactions to real-world entities. This results in actionable financial intelligence that allows law enforcement agencies to investigate and disrupt the use of cryptocurrency to buy and sell illicit drugs.

AUSTRAC continues to work with industry and law enforcement partners to stem the potential criminal exploitation of cryptocurrencies, and is engaged with the Department of Home Affairs in relation to Australia's anti-money laundering and counter-terrorism financing policy.

Detecting the delivery of illicit drugs from online marketplaces

The ABF lead a range of initiatives to detect and disrupt the domestic manufacture and distribution of illicit substances and drug manufacturing equipment. ABF efforts encompass collaborative activities with state and territory law enforcement partners, while also undertaking key investigative activities with the AFP.

Fully established on 1 July 2021, the AFP-led High Volume Crime Taskforce Vanguard, together with the ABF and Home Affairs, is working to actively target recidivist offenders within the air and mail stream for border controlled drug investigations. Since its establishment, the Taskforce has resulted in more than 50 search warrants, 30 arrests, the seizure of more than \$3.5 million in cash and seizure of hundreds of kilograms of illicit drugs, including methamphetamine, cocaine and heroin.

The possible impact of decriminalisation

The Australian Government does not support the decriminalisation of illicit drugs.

Effective illicit drug reform that reduces harms to users and the community, and effectively combats transnational, serious and organised crime, requires all jurisdictions to work together to ensure new reforms are holistic, and support a cohesive national approach. The decriminalisation of illicit drugs for personal use, without a wider package of reforms to the Commonwealth legal framework and health system, could create legal ambiguity and uncertainty for law enforcement; cross border diversion of substances; and may be inconsistent with Australia's international obligations incurred through its ratification of international treaties.

Conclusion

Representatives from the Department of Home Affairs would be happy to elaborate on the points made in this submission.