

Parliamentary Joint Committee on Law Enforcement
PO Box 6100
Parliament House
Canberra ACT 2600

**Inquiry into the challenges and opportunities for law enforcement in
addressing Australia's illicit drug problem**

Submission: QuIHN Ltd and QuIVAA Inc



To Whom it May Concern,

We are encouraged to provide a submission to the *Inquiry into the challenges and opportunities for law enforcement in addressing Australia's illicit drug problem* and recognise that this opportunity represents a step towards more informed decision-making and including voices that have been missing from these conversations for too long.

This submission has been submitted jointly by QuIHN Ltd and QuIVAA Inc.

QuIHN Ltd is a non-government organisation that works to address a range of issues relating to substance use in the community. Queensland Injectors Health Network (QuIHN) Ltd is firmly established as a state-wide service that supports and promotes the health and well-being of people who currently use illicit drugs/those who have used illicit drugs, including those associated mental health concerns, and members of the community touched or affected by illicit drugs. QuIHN has provided innovative and specialised dual diagnosis services (substance misuse and mental health comorbidity) since 2005.

QuIVAA since 1985 is the peak body representing people who use drugs in Queensland. This includes the voices of those with histories of drug use and that have accessed the myriad of services associated with drug use. QuIVAA recognises that community attitudes are changing, as growing evidence of new approaches with better outcomes exists within responses to alcohol and other drug use and related harms. It is important that our system and policy responses consider lived experience perspectives and continue to evolve alongside this shift in community expectations. The input of service users at all levels of service policy, design, and delivery are well documented as providing better health outcomes sustainably and efficiently.

We would also welcome the opportunity to provide you with a more comprehensive understanding of the issues that face people who use drugs and further expand on the challenges and opportunities in addressing Australia's illicit drug problem.

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Key Summary:

- Most people who use alcohol and other drugs do so infrequently and without problems.
- Only a small number of people who use alcohol and other drugs experience problematic use.
- Criminalisation of drugs has created unintended harm(s) to Australians and has proven largely ineffective at significantly reducing the consumption of illicit drugs and reduction in supply.
- Targeted community-level interventions and greater use of diversion to treatment that focus on supporting people with problems associated with their substance use are alternative approaches to the punitive criminal justice system by addressing issues using a health-based approach.
- The punitive approach to drug control has compounded the harm(s) to people who use drugs and has created an underground market that has funded the growth of organised crime syndicates.
- The current approach to policing illicit drugs disproportionately impacts more vulnerable populations, including Aboriginal and Torres Strait Islander peoples, young people, and women experiencing domestic violence.
- There needs to be an ideological shift in the relationship between police and people who use(d) drugs from antagonism to one of respect and cooperation.
- Improved coordination and resourcing of drug checking and prompt response networks in Australia are required that can facilitate awareness of emerging substances and effectively disseminate timely alerts.
- National expenditure on supply reduction through law enforcement far outweighs government spending on demand reduction and harm reduction and nearly two-thirds of drug policy expenditure is spent on state and federal law enforcement.
- Reducing the public order and public health harm(s) associated with illicit drug use requires courage on the part of policymakers to act in an evidence-based fashion and consider that legalisation, regulation, and taxation are evidenced-based approaches to drug law reform.

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

Illicit drug markets evolve rapidly with drug use patterns changing through a range of factors, including supply, sourcing, and the production of illicit drugs. Thus, the means through which people access illicit drugs also continue to evolve, with online sales increasingly playing a role. It is estimated that the major drug markets on the dark web are now worth some \$315 million annually. (1)

As a community, we face a range of new and emerging challenges in accessing consistent and safe supplies of illicit drugs. The synthetisation and copying of many traditional drugs blur their legal status and seek to benefit from trademarked products' reputation, this sees people who use drugs unsure as to whether the products they obtain are real. New modes of street-level drug distribution (including online markets and postal services) for purchasing and distributing illicit substances require a further level of trust from people who use drugs to access supply and without any recourse should this trust be misplaced. The implementation of real-time prescription monitoring has also restricted many individuals' ability to traditionally access the drugs they use, with many now forced to enter the illicit supply markets for the first time.

Reductions in supply through law enforcement activities tend to be short-lived and may perversely increase the risk of harm by diverting buyers to more potent (i.e., 'riskier') substances, such as fentanyl and its analogues. (2)

In the absence of established early warning systems or wide spread drug-checking services available in Australia, it is difficult to be certain whether recent detections of fentanyl (via seizures and coronial investigations) are part of an increasing trend. (3) It is also difficult to detect potentially fatal substances, such as Carfentanil. (4)

There is an immediate need for better coordination and resourcing of drug checking and prompt response networks in Australia that can facilitate awareness of emerging substances and effectively disseminate timely alerts, advisories, notifications, and health promotion messaging based on local, national, and international data sources. Messaging for such must be designed, developed, and distributed with input from people who use drugs and key stakeholders to ensure relevance, utility, and reach.

The legislative and regulative policy arena has historically been slow to shift in response to changes relating to illicit drug markets. Demonstrated, once again, through an urgent need to address the reform lag in relation to the shift from illicit to licit therapeutic cannabis use.

Australia significantly lags many other countries in terms of drug policy and policy reform, particularly as it relates to cannabis use. Approximately 600,000 Australians now use medicinal cannabis. (5) Many of the existing legal and regulatory frameworks are inconsistent with clinical practice. Drug driving laws across Australian jurisdictions are currently penalising and criminalising people for using prescribed cannabis as they still are testing for presence rather than impairment.

The therapeutic uses of drugs such as cannabis, psychedelics, and MDMA are increasingly being recognised both in Australia and overseas, however, these drugs remain criminalised and, given the experience with medicinal cannabis, it is again unlikely that policy reform will keep pace with clinical and therapeutic advancements. With those who are most in need missing the opportunity for better life outcomes.

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

New Psychoactive Substances (NPS) may account for a smaller proportion of the total amount of seized drugs in Australia. However, they present unique and significant scientific challenges to testing and subsequent identification of new compounds, challenging policy arena responses. In Australia the criminalisation and limitation of access to prescribed medications may contribute to the emergence of novel substances in the illicit drugs markets. Risk associated with the use of any NPS is increased by the users' unfamiliarity with the effects of the substance, and these risks are magnified further when NPS are taken unknowingly (such as when they are used to adulterate a more familiar substance, or when they are misrepresented and sold as a more familiar substance). NPS also challenge health and harm reduction professionals to respond to unknown short- and long-term risks and effects (e.g., signs and symptoms of overdose, treatment modalities, and development of harm reduction interventions).

Changes in access to medications can have unintended consequences, such as increasing harms to people who are not able to access adequate medical supports. Examples of increasing harms subsequent to upregulation can be evidenced in the November 2022 series of emergency department admissions associated with 'poppy-seed tea'. (6) It is thought a possibility that the use of poppy-seeds increased following rescheduling of codeine in 2018. (7) Another example of unintended consequences can be seen in the real time prescription monitoring (RTPM) in Victoria (Safescript) and Queensland (QScript) and refusal of access to medications patients had been prescribed unproblematically for many prior years. (8) Some

patients had been prescribed benzodiazepines for extended periods of time and were not offered support with what should be considered to be a dangerous withdrawal, while other patients indicated that the experience of being refused medication was likely to result in limiting access to further care. (9) RTPM have been associated with unintended consequences, including transition from pharmaceutical opioid use to illicit opioid use, hence elevated risk of overdose and transmission of blood-borne viruses. (10,11)

Another area of concern includes black market use of anxiolytics such as Xanax [™] (alprazolam). Community intelligence indicates that the prevalence and circulation of counterfeit Xanax [™] tablets have become more common across Australia. These counterfeits typically may contain no alprazolam and instead may contain novel benzodiazepines that are more potent and may also contain risky adulterants, including fentanyl analogues. (12) Further evidence of adulteration of black-market drugs can be seen in recent wastewater analysis at music festivals whereby substances such as etizolam (a novel benzodiazepine commonly found in counterfeit alprazolam) and n-ethylpentylone and nor fentanyl (highly toxic substances) have been detected. (13)

The emergence and the use of NPS has been associated with the reduction in supply of better-known illicit substances, such as MDMA and ketamine. (14–18) For example, international law enforcement activities successfully reduced availability of safrole (a precursor for manufacturing MDMA) between 2007 and 2009, however this created a market opportunity for manufacturers and traffickers of novel psychostimulants and entactogens. (14–18) The presence of substituted cathinone's, such as mephedrone (aka., 'meow-meow') and MPDV (aka., 'bath-salts') and the NBOMe series of drugs all subsequently appeared on the black market following global shortages of MDMA. (14–18)

Law enforcement plays a significant role in the restriction of drug supply and the restriction of certain drug supply and precursors has had the unintentional consequences of contributing to the rise of NPS. A review of the German legislative experience and evidence in relation to NPS and legal controls across the European Union (EU), the United Kingdom (UK), and Australia concluded that it was advisable to employ a broad spectrum of harm reduction methods, including the establishment of legal drug checking services, and to adopt a decriminalising stance. (19)

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.

National expenditure on supply reduction through law enforcement far outweighs government spending on demand reduction and harm reduction and nearly two-thirds of drug policy expenditure is spent on state and federal law enforcement. (20,21) Australian drug policy costs between \$1.03 and \$1.07 billion annually (including police services, judicial resources, legal expenses, corrective services, Australian Federal Police, Australian Customs, and Border Force). (21)

Despite significant cost, the Federal and state/territory jurisdictions continue to pursue a dominant strategy based on a policy of criminalising (prohibiting) the use and supply of illicit drugs. (22) While this policy of criminalisation has been in place for many decades, it has proven ineffective at significantly reducing the consumption of illicit drugs and has not achieved sustained reductions in supply. (22) There is limited high-quality scientific evidence that can be used to demonstrate the impact of the supply reduction law-enforcement efforts. (21,23)

There is no strong evidence that supply reduction has any significant or lasting effect on the availability or purity of illicit drugs, or that it discourages people from using illicit drugs, or that it reduces the incidence or prevalence of drug related harm(s) at a community level. Criminalisation has created significant costs and unintended harms. (22) For example, it has assisted in creating an illegal market worth at least \$1.6 billion, made the quality of supply uncertain (resulting in increased morbidity and mortality), and impeded treatment of harmful and problematic use. (22) Drug offences have contributed notably to the growth in imprisonment in Australian jurisdictions. (22) Supply reduction measures have in fact seen the rise of synthetic substitutes and the proliferation of adulterated substances claiming to be like traditional illicit drugs. These 'well intended' policies may have unfortunately contributed to creating more harms to individuals and communities than the drugs would have caused themselves.

The monumental costs of supply reduction and spending on law enforcement are out-of-sync with tax-payers priorities for drug policy spending. (24) The National Drug Strategy Household Survey consistently demonstrates that peoples' priorities for expenditure are for education (i.e., harm reduction) and treatment (i.e., demand reduction) and least for law enforcement (i.e., supply reduction). (24)

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

Whilst there will always be examples of law enforcement going beyond and actively assisting in harm reduction programs and strategies, most interactions between law enforcement and harm reduction measures exacerbate the harms surrounding illicit drug use. With regular reports of stop and search policing of areas surrounding harm reduction facilities, including Needle and Syringe Programs, Supervised Injecting Sites and Opioid Treatment Clinics. These targeted interactions place further barriers to people who use drugs being able to access the services they may need. The stop and search policies and drug detection dogs that are still used around festival access points have directly resulted in overdoses for example “panic consumption” and unsafe drug taking practices. (30) When police attend a reported overdose alongside paramedics and subsequent charges are laid this creates another barrier to effective harm reduction measures, with people who use drugs less likely to seek emergency support when it is needed most.

Activity undertaken by law enforcement exists in the pillar of supply reduction, with the aim of reducing the availability of illicit drugs and thereby increasing price and reducing demand. (25) Therefore the relative sensitivity and responsiveness of people who use illicit drugs is key to understanding effectiveness of law enforcement efforts to reduce the supply of illicit drugs. (25) However, the evidence on supply reduction strategies shows unclear results and unintended consequences. (21,23) For example, research on market level policing demonstrated evidence was insufficient to establish any association between the law enforcement strategy(s) and a subsequent reduction in the size of localised drug markets. (21,23) The evidence on the unintended consequences of supply reduction is much stronger. Research shows that supply reduction strategies risk moving crime to other places and times (geographical and temporal placement), negative impacts on local patterns of drug purchase and use, increasing unsafe injecting practices, and decreasing demand for treatment. (26–29) Other examples of the unintended consequences of street-level policing, despite only small benefits, can be seen in deaths at music festivals. (30–32) Heavy policing has been associated with encouraging riskier drug consumption among festival-goers and heavy police presence around medical facilities has been implicated in festival deaths. (30–32)

When assessing the benefit of any supply reduction strategy, the potential outcomes and hidden harms that can result must be considered carefully. Many supply reduction interventions are of limited or unknown benefit, however law enforcement activities have been shown to result in unintended and negative consequences for both individuals who use drugs and the wider community. (23,25) More research is required which is able to consider the

relative benefit of supply reduction strategies when weighted against the financial and non-financial costs. (25)

Drug offences have contributed notably to the growth in Australian prison populations. For example, between 2012 and 2018, drug offences contributed to 32 percent of the increase in Queensland's sentenced prison population and women on drug offences make up 22 percent of the Queensland female prison population (15 percent for males). (22) Additionally, the current approach to policing illicit drugs disproportionately impacts more vulnerable populations, including Aboriginal and Torres Strait Islander peoples, young people, and women experiencing domestic violence. Evidence from around the world consistently demonstrates that the criminalisation of drug use and the incarceration of people who use drugs does not deter drug use and does not make the community safer. (33) Some of the harms caused by the criminalisation remain less immediate and more hidden. For example, mandatory drug testing in workplaces and roadside settings may result in the loss of a driver's license. The loss of a driver's licence can have catastrophic consequences for individuals and is of questionable benefit when testing is focused on use and not any level of impairment. It must be remembered that these tests are not based on impairment but on the presence of a substance, often up to 2 weeks. Likewise, police corruption is also a serious risk in drug law enforcement and harms arising from such corruption include erosion of the public confidence and the integrity of police themselves (34).

The current evidence on policing suggests that more proactive community-wide interventions, supported by strong community-level partnerships, are required in addressing drug related harms. Education and active participation in harm reduction must be at the forefront of these efforts. Initiatives in North America have used police diversion and community-based, trauma-informed systems of care in order to improve public safety and public order. (35) Law enforcement personnel have also successfully participated in overdose reversal when attending overdoses. (36) Another key role law enforcement can play in harm reduction, and currently does to a limited extent, is participation in early warning systems. Law enforcement agencies often have the earliest intelligence around adulterated and potentially fatal drugs in the supply chains and have the resources to disseminate information to people who use drugs when such substances enter the markets.

Law enforcement has played a crucial role in hampering access to evidence-based harm reduction measures, and it has been shown to result in unintended and negative consequences. Conversely, evidence demonstrates that proactive and community-wide interventions, where law enforcement services foster community partnership approaches are more effective. (21,23) Law enforcement agencies can be of benefit to the community when

they actively participate in discussions that are focused on finding trauma informed solutions and reducing harm(s). Great advances in harm reduction could be achieved without legislative change through greater collaboration and a shift away from ineffective and at times counterproductive strategies (such as ineffective street-level policing (e.g., stop and search operations targeting people who police suspect to be drug users, or aggressive over-policing of festival spaces)).

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

The efficacy of drug prohibition has long been questioned. Inquiries have repeatedly questioned the norm of prohibition and supported decriminalising possession, including the Senate Select Committee on Drug Trafficking and Drug Abuse, the Senate Standing Committee on Social Welfare, the New South Wales Joint Parliamentary Committee upon Drugs, and the South Australian Royal Commission into the Non-Medical Use of Drugs. (22) A recent Inquiry into Prisons and Recidivism by the Queensland Productivity Commission (QPC) also called for drug-law reform and set out a blueprint for its consideration. (22) However, the policy of criminalisation continues despite the weak evidence base and continued unintended consequences and negative harms. Between 2019 and 2020, approximately 88% of arrests for illicit drugs in Australia were for the users of drugs (including around 91% of cannabis arrests). (37) Such arrests are now at record levels having increased 96% over the previous decade. (37) Since 2012, drug offences have also made the largest contribution (32 percent) to the increase in Queensland's sentenced prison population, with the number of people imprisoned primarily for drug offences growing by 125 percent over the same period. (22) This is despite evidence from around the world that consistently demonstrates that the criminalisation of drug use and the incarceration of people who use drugs does not deter drug use and does not improve community safety. (33) These impacts also disproportionately affects Aboriginal and Torres Strait Islander peoples who are much more likely to be subjected to search and arrest, and more likely to be convicted if charged, and more likely to be incarcerated if convicted, than non-Indigenous Australians. (38)

The United Nations Office of Drugs and Crime estimates that globally, around 90% of people who use illicit drugs do not experience dependence or require a treatment intervention. (1) Australian data indicates that fewer than three out of every ten people diverted or charged with cannabis offences meets the criteria for dependence. (39) This indicates that the risk of harm is increased by involvement of people who use drugs in the criminal justice system. (40) For every one dollar invested in alcohol and other drug treatment and harm reduction services,

it has been estimated that there is a return of seven dollars. (41) The ability to access the right treatment, at the right time is paramount, where people would benefit from accessing a treatment intervention. (40) Evidence informed treatment and harm reduction services demonstrably reduce drug harm(s), improve health status, and improve psychological wellbeing and participation in the community. (41) Recalibration of systems towards health-based responses for people who use illicit drugs represents an opportunity to make substantial budget savings while improving the health and wellbeing of Australian communities.

The removal of criminal penalties for possession of illicit drugs is a reasonable and prudent system recalibration on economic, ethical, individual, and population health terms. (40) Decriminalisation has been supported by a majority of the Australian public since at least 2013. (32) There has also been a growing worldwide movement towards evidence-based policies that embrace decriminalisation and recognise the harms of over-incarceration. Internationally, there are 21 countries which have decriminalised drug use/ possession. (43–46) Portugal's model is perhaps the most well-known and frequently cited example, which decriminalised the personal possession of all drugs in 2001. Subsequent research has shown that decriminalisation in Portugal has not led to an increase in the use of drugs but has led to consistent reductions in drug-related mortality and incarcerations, and to significant reductions in injected-related HIV diagnoses. (47) The Portugal model was accompanied by reduced expenditure on policing (supply reduction) and a rebalancing of equivalent investment in increased funding directed towards drug treatment, social welfare, and health services (demand and harm reduction). (48) Similar impacts have been recognised with decriminalisation of heroin use in Switzerland. (49) When coupled with health programs to decrease drug related harm(s), such as overdose, decriminalisation typically reduces harm(s).

Australia currently has a mixture of de jure and de facto decriminalisation schemes for use and possession of illicit drugs, however, in most jurisdictions drug use and possession of only minor quantities (as determined by threshold quantities) is a criminal offence that can be sanctioned with up to two years of prison. (32) The exception to this will be the ACT, where legislation to decriminalise possession of small quantities of illicit drugs was passed earlier this year. Existing evidence indicates that decriminalisation does not lead to increases in usage; for example, cannabis use did not increase in the ACT when minor cannabis offences were decriminalised in 1992, nor did it when decriminalisation occurred in South Australia and Western Australia. (50,51)

Decriminalisation may provide an opportunity to shift the logic of policing away from viewing people who use illicit drugs as 'criminals' or 'offenders' to being citizens with human rights and dignity. In this new logic paradigm, this provides an opportunity for police to become potential

allies and partners and opens the scope for police officers to become first responders to social or health issues rather than a criminal issue. These are the kinds of measures which have been mandated in the ACT to enable the police to support the intent and spirit of the recently passed Bill decriminalising possession of small quantities of illicit drugs.

Decriminalisation provides an opportunity to revisit several measures that are consistently out of step with evidence and a sound understanding of the drug market. This includes threshold quantities for possession and supply of drugs, which are commonly set too low in most jurisdictions and lead to personal users facing sentencing and conviction as traffickers. (52,53). The Queensland Productivity Commission makes a compelling economic argument for decriminalisation of low harm drugs within their *Inquiry into Imprisonment and Recidivism* (2020) finding that illicit drugs policy has failed to reduce supply or harm.

It is important to understand the origins of the status quo, and to consider alternatives which would be more likely to reduce drug related harm(s). We support the position of other submissions from like-minded agencies and organisations such as the Australian Injecting and Illicit Drug Users League (AIVL), the NSW Users and AIDS Association (NUAA), and the Queensland Network of Alcohol and Other Drug Agencies (QNADA).

Reducing the public order and public health harm(s) associated with illicit drug use requires courage on the part of policymakers to act in an evidence-based fashion. Decriminalisation is not a simple, unified model, rather there are meaningful differences in policies and options available as part of a non-criminal response. (44)

What is clear from the evidence is that drug policy based on criminalisation has been a systematic failure and has created significantly more harm to those who choose to use drugs. The first step away from this is to see the decriminalisation of what we now call illicit drugs and the associated shift in societal attitudes away from the stigmatised view portrayed under previous policies towards an acceptance and understanding that drug use is a health issue and that human rights extend beyond the legality of substances. These changes, whilst monumental in magnitude, are not unachievable with multiple examples of widespread change in societal understanding evidenced in the last century. This step of decriminalisation is only the first in addressing the issues created by policy approaches based on criminalisation and will not unwind the complex challenges associated with the shadow economy of illicit drugs. Only under a legalised policy environment will people who choose to use drugs be able to access regulated supplies more safely without the significant risks of negative consequences and adverse harms.

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