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Dear Chair *Helen*

I am pleased to provide the ACT Government's submission to the Parliamentary Joint Committee on Law Enforcement Inquiry on the challenges and opportunities for law enforcement in addressing Australia's illicit drug problem.

The submission emphasises the importance of successful collaboration between health and law enforcement to address the harms associated with illicit drugs, and highlights key examples in the ACT. It also identifies opportunities for improvement to ensure the best possible outcomes for our community.

Thank you for the opportunity to provide a submission. I look forward to the outcomes of the Inquiry.

Yours sincerely

Rachel Stephen-Smith MLA

12 December 2022

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ACT Government submission to the Parliamentary Joint Committee Inquiry into the challenges and opportunities for law enforcement in addressing Australia's illicit drug problem

Introduction

The ACT Government welcomes the opportunity to contribute to the Parliamentary Joint Committee (the Committee) Inquiry into the challenges and opportunities for law enforcement in addressing Australia's illicit drug problem (the Inquiry) and would like to thank the Committee for considering these important issues.

The ACT Government has been nation-leading in our harm minimisation approach to alcohol, tobacco and other drug (ATOD) policy. This can be seen, for example, through the *ACT Drug Strategy Action Plan 2018-2021* and the new *ACT Drug Strategy Action Plan 2022-2026*, guided by the *National Drug Strategy 2017-2026*. Our approach harm minimisation has been guided by collaboration, engagement and inclusion. The framework that has underpinned Government policy development is that drug supply is a law enforcement issue, while drug use is fundamentally a health issue, and that in most instances, contact with the criminal justice system for simple drug possession can do more harm than good.

This is exemplified by the *Drugs of Dependence (Personal Use) Amendment Act 2022* (the DoD Amendment Act), which was passed on 20 October 2022 and is set to commence on 23 October 2023. The DoD Amendment Act reduces penalties and encourage diversion from the criminal justice system for possession of small quantities of illicit drugs, including ecstasy (MDMA), cocaine, methamphetamine (ice), LSD and heroin.

The ACT Government recognises that ongoing improvements to collaboration and coordination between health, law enforcement and other related agencies are critical to ensuring the best possible outcomes for our community.

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

The ACT Government would like to bring the following key data sources to the Committee's attention:

- The National Drug Strategy Household Survey prepared by the Australian Institute of Health and Welfare;¹
- The Illicit Drug Reporting System Reports prepared by the National Drug and Alcohol Research Centre;² and
- The Ecstasy and Related Drugs Reporting System prepared by the National Drug and Alcohol Research Centre.³

¹ Australian Institute of Health and Welfare (2020) *National Drug Strategy Household Survey 2019*.

² Uporova, J., Peacock, A., & Sutherland, R. (2021). *Australian Capital Territory Drug Trends 2021: Key Findings from the Illicit Drug Reporting System (IDRS) Interviews*. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

³ Uporova, J., Peacock, A. & Sutherland, R. (2021). *Australian Capital Territory Drug Trends 2021: Key Findings from the Ecstasy and Related Drugs Reporting System (EDRS) Interviews*. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

Despite strong population growth in the ACT,⁴ illicit drug use rates have remained relatively stable. Illicit drug use rates in the ACT declined substantially between 2001 and 2007. Population level use of meth/amphetamines – according to self-reports – has continued to decline, but use of cocaine has increased.⁵

The *National Drug Strategy Household Survey 2019* (NDSHS) indicated that the ACT had the lowest rate of self-reported recent illicit drug use of any Australian jurisdiction. Methamphetamine use, in particular, is lower at a population level in the ACT than other jurisdictions.

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

The ACT Government highlights existing initiatives that are vital in helping to manage emerging trends and risks through collection and sharing of information.

The ACT Government is funding a fixed-site drug checking pilot, which commenced in July 2022. Drug checking is an important harm reduction measure for people who use drugs. The fixed-site drug checking pilot provides indicative chemical analysis of drugs to help people avoid the potentially dangerous substances in illicit drugs and provides tailored harm reduction advice to clients. The pilot also provides awareness of possible substances of concern circulating in the community, including novel psychoactive substances and adulterated drugs.

Drug checking provides an additional source of information on community drug use to complement existing programs that test substances seized by police and, in some jurisdictions, samples from emergency department presentations. Information about the substances found at drug checking can be disseminated to people who use drugs, health professionals, first responders and police. Where necessary, public health alerts can be issued regarding particularly high-risk substances to communicate the risks to the public.

The ACT Government extends an invitation to the Joint Committee to tour the drug-checking pilot.

The Commonwealth Government is funding and leading the development of a national Prompt Response Network (PRN) for illicit drugs. The ACT Government acknowledges and supports this national approach which will improve information sharing across jurisdictions. The PRN will provide more opportunities to share the information from drug checking, toxicological and forensic drug testing nationally, and will contribute to information about drug trends across jurisdictions and a national early warning system regarding emerging drugs.

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

The ACT Government has no comment on this point.

⁴ Chief Minister, Treasury and Economic Development Directorate (2022). ACT Government Budget Outlook 2022-23.

⁵ Australian Institute of Health and Welfare (2020) National Drug Strategy Household Survey 2019.

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

As noted above, the national and ACT approach to drugs is harm minimisation. Law enforcement is a key element of this approach, across the three pillars of harm reduction, supply reduction and demand reduction. Successful examples of collaboration between health and law enforcement agencies on harm minimisation initiatives in the ACT include:

- The fixed-site drug checking pilot;
- The Drug and Alcohol Sentencing List (DASL);
- Drug diversion programs;
- Investigation of clandestine drug manufacture; and
- Support for criminal prosecution related to drug supply.

Drug checking

The ACT Health Directorate (ACTHD) worked closely with the Australian Federal Police (ACT Policing) during the development of the ACT fixed-site drug checking pilot and the two festival-based pill testing trials held in the ACT in 2018 and 2019. ACTHD shares information with ACT Policing on the substances found at the fixed-site drug checking pilot and any public health alerts that may be issued about substances found at the service.

ACT Policing has publicly supported a harm minimisation approach to drug use by individuals in the ACT and issued guidance for its members in relation to engagement with the fixed-site drug checking service. The support of police is crucial to the success of drug checking services, particularly in ensuring that people feel that they can use the service without being targeted by police for drug possession. The operational requirements of ACT Policing were considered when designing the service model to enable police support of the fixed-site pilot and festival-based trials.

Drug and Alcohol Sentencing List

In 2016, the ACT Government committed to establish a Drug and Alcohol Sentencing List (DASL) and associated support programs in the Parliamentary Agreement for the 9th Legislative Assembly. Similar programs exist in other Australian jurisdictions.

To implement DASL, funding was allocated in the 2018-19 Budget and amendments were made to the *Crimes (Sentencing) Act 2005* in 2019 to allow the ACT Supreme Court to make drug and alcohol treatment orders that fully suspend a sentence of imprisonment where certain conditions are met.

The DASL commenced operation on 3 December 2019 and provides an alternative to imprisonment, offering an effective and evidence-based therapeutic approach to reduce harms for individuals and more effectively protect the community.

By promoting the reintegration of eligible offenders into the community and taking a holistic approach to addressing the key risk factors related to offending, the DASL aims to reduce recidivism, and plays an important part of the ACT Government's strategy to reducing recidivism in the ACT by 25 per cent by 2025.

An independent process and outcome evaluation conducted by the Australian National University indicated that the DASL is reducing the reoffending of participants and has saved up to \$14 million due to avoided prison time.⁶

One component of a successful drug court is a dedicated multidisciplinary team of drug court professionals and ongoing judicial interaction with each drug court participant. The DASL Treatment Order Team (TOT) includes the DASL judge, representatives/case managers from ACT Corrective Services, Canberra Health Services, the Director of Public Prosecutions (DPP), Legal Aid ACT and ACT Policing. Each week, the TOT meets to discuss the status of active cases. Check-in hearings in the ACT Supreme Court are held with the judge: weekly for participants in Phase 1, every two weeks for participants in Phase 2 and every 4 weeks for participants in Phase 3.

The evaluation found that the ACT DASL TOT has developed an effective and collaborative working relationship and that the DASL judge engages regularly and respectfully with all participants, contributing to the positive preliminary results of the drug court in reducing drug related harms.

Police diversion

The ACT currently has one of the highest proportions of diversion of people from the criminal justice system for drug possession offences in Australia. The ACT's police drug diversion programs, including the Illicit Drug Diversion program, have recently been reviewed. The review found that these programs are generally being delivered in accordance with best practice standards. The programs deliver suitable early interventions for eligible participants and are characterised by consistently high rates of completion.

Investigation of Clandestine drug manufacture

The ACTHD works closely with ACT Policing in the identification and disruption of drug supply through clandestine drug manufacture. The ACTHD routinely supports the investigation and prosecution of individuals involved in manufacture, effectively intervening in drug supply at its source.

Support for criminal prosecution relating to drug supply

The ACTHD works closely with ACT Policing and the DPP, by providing accredited scientific analytical capability to support criminal prosecution of individuals or groups involved in the supply and distribution of drugs. This activity effectively reduces community drug harms through primary supply reduction.

Further opportunities

Notwithstanding these successes, there are further opportunities for both law enforcement and health to build on these initiatives to better support people who use drugs, many of whom are some of the most vulnerable people in our community, as well as their families, friends and carers.

There remains significant stigma and fear of prosecution associated with illicit drug use, which deters people from seeking the help they need. Ongoing criminalisation of drug possession and use

⁶ Rossner, M. et al (2022) ACT Drug and Alcohol Sentencing List: Process and Outcome Evaluation Final Report. https://www.courts.act.gov.au/__data/assets/pdf_file/0003/2054640/ACT-Drug-and-Alcohol-Sentencing-List_Final-Report.pdf

exacerbates stigma and shapes community and law enforcement attitudes to people who use drugs. Initiatives such as the DoD Amendment Act are intended to disconnect law enforcement activities around supply reduction from health activities targeting harm reduction, reduce this stigma and foster help-seeking. Drug treatment in turn reduces demand for illicit drugs.

Negative or misleading media commentary about illicit drug use is a key driver of stigma and has been prevalent during consideration of the DoD Amendment Act from a range of sources including some law enforcement agencies. This is an ongoing concern, for example in relation to media release headlines on illicit drug wastewater data. Fear and stigma can negatively affect help-seeking behaviours, including seeking emergency assistance in the case of overdose and ATOD treatment more broadly.⁷

Factual and balanced commentary on illicit drug use is considered best practice and would better support a harm minimisation approach and contribute to more people seeking help for drug use issues.⁸

The national Take Home Naloxone program funded by the Commonwealth Government is providing new opportunities to expand access to the opioid overdose reversal medication naloxone, including among law enforcement agencies in some jurisdictions. Naloxone can be administered by a nasal spray to people experiencing opioid overdose with minimal adverse effects. Police who witness opioid overdose or are the first emergency responders to arrive can administer naloxone, which can be a life-saving intervention. However, naloxone is not currently carried by police in most Australian jurisdictions.

From July 2021, the Western Australia Police Force took part in a 12-month trial from July 2021 in which over 300 police officers from Perth and Bunbury received training and carried naloxone. Preliminary findings from an evaluation of the trial indicate that the program “was well received by officers, improved their capacity to manage overdoses, and contributed to saving lives”.⁹

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

Decriminalisation aligns with the strategies outlined under the National Drug Strategy's pillar of harm reduction. Diversion away from the criminal-justice system is a recognised approach to drug policy under the National Drug Strategy, and Commonwealth law allows for states and territories to make laws in relation to drug possession offences. Diversion away from the criminal justice system for personal-use drug possession offences is supported by the ACT Drug Strategy Action Plan, the National Drug Strategy, the World Health Organization and the United Nations.

Drug decriminalisation is not a new approach. The Simple Cannabis Offence Notice was originally introduced in the ACT in the early 1990s and diversion to assessment, education and treatment has been facilitated under the ACT Illicit Drug Diversion Program since 2001. The *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (ACT) removed penalties for small quantity cannabis possession and cultivation for adults in the ACT.

⁷ Everymind (2019). Mindframe for Alcohol and Other Drugs. Newcastle, Australia.

⁸ Everymind (2019). Mindframe for Alcohol and Other Drugs. Newcastle, Australia.

⁹ <https://az659834.vo.msecnd.net/eventsairaeuprod/production-ashm-public/a80fc441eb634ac285aba3e80b156243>.

The ACT has a strong track record in diversion. In 2021-22, there were 115 ACT Policing referrals to the Illicit Drug Diversion Program for assessment, education, and referral to treatment. This included 21 referrals of under-18s. Around 10 people have been incarcerated each year for a primary offence of drug possession in the ACT according to publicly available data. Most people who are taken to court for drug possession offences plead guilty. The most common sanctions are fines and non-custodial sentences such as Good Behaviour Orders.

Many people who use drugs experience significant levels of disadvantage, including social, economic and health disadvantage. Drug decriminalisation is likely to be particularly beneficial to population groups that include Aboriginal and Torres Strait Islander peoples, people who are unemployed, homeless or at risk of homelessness, and people with a mental illness or disability. Young adults, who are the group most likely to use 'party' drugs, as well as older, more disadvantaged injecting drug users, are also groups expected to benefit from decriminalisation measures.

In addition to reducing stigma and fear for people who use drugs about using health services, decriminalisation simplifies administration of minor drug offences. Decriminalisation reduces the time and resources used by police and courts, allowing an increased focus on supply reduction. Decriminalisation supports human rights and reflects modern community standards, expert opinions, and global trends in drug policy.

An ACT Government 'YourSay Survey' conducted in 2021 indicates that Canberrans support drug decriminalisation and only one in ten people support imprisonment for drug possession offences. Referral to assessment/education/ treatment is preferred by the ACT community to fines-based responses. Nationally in 2019, the most common action supported for people in possession of selected drugs was 'referral to treatment or an education program' except for cannabis where a 'caution/warning' was the most common action supported.¹⁰ Additionally, in response to a question in the 2019 the National Drug Strategy Household Survey about how to spend a theoretical \$100 to reduce illicit drug use, respondents allocated more money to education than law enforcement (\$36.00 compared with \$34.80).¹¹

Decriminalisation and diversion from the criminal justice system have beneficial long-term impacts on life prospects for people who use drugs, particularly young people. Police referrals to the health system offer the opportunity to increase assessments for illicit drug use problems, provide relevant education, and increase referrals to treatment services for more intensive support.

Amendments to penalties for drug offences are a matter of considerable media and public interest and can also be considered to have a symbolic value in how the community perceives police and the operation of the criminal justice system.

Reducing penalties for illicit drug possession is unlikely to affect deterrence of drug use, as theories of criminal deterrence indicate that deterrence is more strongly related to the certainty of a penalty than to the severity of a penalty. Many factors influence drug use including the availability of drugs, their price, the perceived likelihood of getting caught, knowledge of the health risks and the reputation of specific drugs, and more general 'trends' or 'fashions' in drug use and youth culture. As noted above, diversion options for possession offences have been available in the ACT for many years and data show that drug use has trended downwards over that time.

¹⁰ Australian Institute of Health and Welfare (2020) National Drug Strategy Household Survey 2019.

¹¹ Australian Institute of Health and Welfare (2020) National Drug Strategy Household Survey 2019.

Publicly available data indicate that the introduction of the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (ACT) did not increase cannabis usage in the ACT. Wastewater testing indicated there was no change in cannabis use rates in February 2020 in the ACT after adult penalties for small quantity cannabis possession were completely lifted at the end of January 2020.¹² There was also no change in cannabis-related emergency department presentations in the year following the cannabis amendments.

Experience in the ACT has shown that law enforcement support of decriminalisation measures is critical for their success, especially at the implementation stage. This includes collaboration to develop public communications to explain the measures. We also recognise that maintaining police discretion allows officers to respond to the circumstances of specific situations, having a range of options available including fines, diversion or cautions as appropriate. The ACT Government looks forward to continuing to work with law enforcement agencies on decriminalisation measures to achieve the best outcomes for our community.

6. Other related matters

National policy coordination and information sharing

The ACT Government recognises that greater national collaboration is key to improve health and law enforcement outcomes. The Ministerial Drug and Alcohol Forum (MDAF) established in 2016 was disbanded as part of the National Cabinet reform process. The MDAF provided an important national cross-portfolio forum for health and law enforcement officials and Ministers to coordinate across jurisdictions. The Forum had previously undertaken oversight of the National Ice Strategy and development and approval of the National Drug Strategy.

Establishment of a similar cross-jurisdictional multi-agency forums should be considered as part of the Committee's deliberations to ensure greater policy coordination and knowledge sharing. To be effective the forum would need to be at Ministerial or senior officials level across both health and law enforcement agencies. This would ensure greater alignment of approaches in recognition of the shared policy responsibilities states and territories and the Commonwealth share across the health and criminal justice system.

Commonwealth trafficking thresholds

This Inquiry also presents an opportunity to review the Commonwealth illicit drug trafficking thresholds set out in the *Criminal Code Regulations 2019* (Cth). The ACT Government strongly advocates for increasing many of these thresholds.

The Commonwealth thresholds correspond to the current ACT trafficking thresholds for most drugs, as set out in the *Criminal Code Regulation 2005* (ACT). However, the Commonwealth thresholds correspond to previous, lower, ACT trafficking thresholds for five of the most commonly used drugs, MDMA ('ecstasy'), cannabis, cocaine, methylamphetamine and heroin. This is because the ACT significantly raised its trafficking thresholds for these drugs in 2014 to better reflect evidence of purchasing patterns for personal use in the ACT so that drug users buying drugs in bulk for personal use, for example over a week, were not inadvertently classed as drug traffickers. It also considers the

¹² Australian Criminal Intelligence Commission (2020) 'National Wastewater Drug Monitoring Program Report 10'.

differences between pure weight for an illicit drug, and mixed weight, acknowledging individuals rarely, if ever, purchase pure drugs for personal use. The ACT Government received expert advice from the National Drug and Alcohol Research Centre to inform the regulatory changes.

This evidence shows that the Commonwealth trafficking thresholds may reflect amounts that a person is likely to have in their possession for personal use, rather than for supply to others. The small quantities set out in the DoD Amendment Act cover most people who use these drugs for 1-2 sessions or 1-2 days of use in most cases, allowing for the fact that use patterns vary significantly between individuals. As part of development of Government amendments to the DoD Amendment Act, ACTHD considered drug user self-reported consumption patterns recorded in the ACT, national Illicit Drug Reporting System annual reports and the corresponding Ecstasy and Related Drugs Reporting System reports, and other scientific evidence on drug dose amounts.

We note that other Australian jurisdictions also have trafficking thresholds that exceed the Commonwealth ones in many cases, including NSW, Victoria and Tasmania.¹³

Trafficking thresholds set too low risk over-criminalisation of some of the most vulnerable people in our community. This is because a person in possession of a trafficable quantity of an illicit substance is obliged to rebut a presumption that they intended to sell that substance.¹⁴ This in turn increases stigma, which negatively affects health outcomes.

Greater consistency in trafficking thresholds between the Commonwealth and the ACT would also increase legal clarity for police, people who use drugs and other stakeholders. This is particularly important given ACT Policing is the community policing arm of the Australian Federal Police, and Commonwealth law also applies in the ACT. This has been a key concern raised as part of consultation on the DoD Amendment Act.

From a scientific standpoint, trafficking thresholds in drug legislation at both state and federal level appear arbitrary and inconsistent in some cases. For example, fentanyl and carfentanil in Commonwealth legislation have the same trafficking threshold despite carfentanil being approximately 100 times more potent than fentanyl.

A review of the Commonwealth trafficking thresholds is essential and would help to fully support a robust three pillar approach and more effectively support drug harm minimisation.

¹³ *Drug Misuse and Trafficking Act 1985 (NSW)*, Schedule 1; *Drugs, Poisons and Controlled Substances Act 1981 (Vic)*, Schedule 11; *Misuse of Drugs Act 2001 (Tas)*, Schedule 1.

¹⁴ *Criminal Code 1995 (Cth)*, section 302.5