



22 December 2022

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

Dear Senator Polley,

Thank you for the opportunity to provide a submission to the Joint Committee on Law Enforcements' *Inquiry into the challenges and opportunities for law enforcement in addressing Australia's illicit drug problem*. The Queensland Network of Alcohol and other Drugs Agencies (QNADA) submission is attached.

QNADA represents a dynamic and broad-reaching specialist network within the non-government alcohol and other drug (NGO AOD) sector across Queensland. We have over 55 member organisations, representing the majority of specialist NGO AOD providers. This submission is made following consultation with QNADA members.

QNADA would be pleased to appear as a witness to the inquiry or discuss any aspect of this submission in more detail.

Yours sincerely

Rebecca Lang

CEO



Submission to the Inquiry into Australia's illicit drug problem: challenges and opportunities for law enforcement

December 2022

This submission has been prepared by the Queensland Network of Alcohol and Other Drug Agencies (QNADA). Its' content is informed by consultation with QNADA member organisations providing treatment and harm reduction services across Queensland, as well as a review of relevant research and reports. It considers aspects of the Committee's Terms of Reference most relevant to the work of QNADA and its members, which can be substantiated with additional evidence and research if required.

Based on the issues explored below, QNADA has identified the following areas of improvement to Australia's current approach to illicit drug law enforcement for immediate implementation:

1. The removal of criminal penalties for possession (decriminalisation) as a prudent strategy to reduce the investment required over time to process people through the criminal justice system and increase opportunities for people to access treatment when they need it.
2. A review of current approaches across law enforcement, treatment and harm reduction to ensure an appropriate balance across the three pillars of the National Drug Strategy in future investment.
3. Focused awareness-raising and training for police and other law enforcement entities on the impact of stigma and discrimination for people who use drugs.
4. The establishment of a new national governance framework to support effective coordination of the National Drug Strategic Framework, which includes representation from NGO AOD peak bodies.
5. A reinforced and sustained commitment by law enforcement agencies to support the implementation of evidence based harm reduction strategies such as drug checking services, safe injecting facilities, expanded diversion initiatives and improved access to naloxone.

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

Patterns of alcohol and other drug (AOD) use, including of unregulated (illicit) drugs, continue to shift in Australia as a result of changes in demand and supply. The most recent *National Drug Strategy Household Survey 2019*¹ is clear in demonstrating that illicit drug use is common and that the patterns of, and attitudes towards, AOD use are dynamic and evolving.

Specifically, this survey found that:

- more than two in five Australians have used an illicit drug in their lifetime, most commonly cannabis (11.6% of Australians in the last 12 months).
- rates of substance use are falling among younger generations and most Australians are giving up or reducing their alcohol intake, driven by health concerns.
- smoking rates increase with socio-economic disadvantage, but rates of illicit drug use are highest in the most advantaged areas.

¹ Australian Institute of Health and Welfare 2020. National Drug Strategy Household Survey 2019. Drug Statistics series no. 32. PHE 270. Canberra AIHW.

Global research indicates that 88-89% of people who use illicit drugs do not experience dependence or require a treatment intervention,² which means that for many people who use illicit drugs, the risk of harm to both themselves and community productivity is increased primarily as a consequence of involvement in the justice system, not the substance use itself.

As explored in detail by the recent Queensland Productivity Commission's *Inquiry into Imprisonment and Recidivism* (2019), the current approach of criminalising and prohibiting the use and supply of illicit drugs has '*proven ineffective at significantly reducing the consumption of illicit drugs and has not achieved sustained reductions in supply.*'³ Instead, criminalisation has resulted in significant costs and increased harms which:

- includes the creation of an illegal (unregulated) market, with associated high levels of violence,
- has resulted in an uncertain quality of substances, which contributes to the risk of harmful consequences (including mortality),
- detrimentally impacts treatment access, and
- has significant law enforcement costs (estimated to be approximately \$500 million in Queensland annually).⁴

The criminalisation of illicit drugs has also inhibited research that could assist in better understanding the therapeutic potential of certain substances, mitigate known risks and explore potential drawbacks. The introduction of medicinal cannabis, as well as recent research trials on psychedelic medicine clearly demonstrate the positive therapeutic effects of some currently unregulated drugs and reinforces the arbitrary nature of the distinction made between licit and illicit drugs within existing drug control conventions and legislation in Australia and internationally.

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

As explored in detail by the Queensland Productivity Commission in its 2019 inquiry, there is significant and compelling evidence to show that the current approach is flawed. Research demonstrates that past attempts to prohibit, criminalise and over regulate substances has resulted in a range of adverse consequences and increased harm for individuals and the community.

In short, the current law enforcement response is *driving* emerging trends and risks in the illicit drug market and creating new sources of threat. For example:

- the sustained focus on policing illicit drugs by law enforcement agencies has resulted in continued growth in the market of higher-harm, as well as novel psychoactive substances. This harm has been exacerbated by focused border policing to detect importations and

² United Nations Office on Drugs and Crime. World Drug Report 2017. accessed March 1, 2019 https://www.unodc.org/wdr2017/field/Booklet_2_HEALTH.pdf

³ Queensland Productivity Commission (2019) Inquiry into Imprisonment and Recidivism Final Report [Imprisonment-Volume-1-final-report.pdf \(treasury.qld.gov.au\)](https://www.treasury.qld.gov.au/inquiry-into-imprisonment-and-recidivism-final-report.pdf)

⁴ Queensland Productivity Commission (2019) Inquiry into Imprisonment and Recidivism Final Report [Imprisonment-Volume-1-final-report.pdf \(treasury.qld.gov.au\)](https://www.treasury.qld.gov.au/inquiry-into-imprisonment-and-recidivism-final-report.pdf)

increased drug testing regimes (such as in workplaces and by corrections staff), as people attempt to circumvent existing controls.

- the tightening of supply of tobacco, and increased costs, has resulted in the emergence of an illicit tobacco market which is proving to be highly profitable for organised crime entities.
- increased restrictions on the prescribing of certain pharmaceutical substances (such as codeine, opioids and benzodiazepines) has resulted in shifting patterns in use and has not substantively reduced demand for these substances. These restrictions have also resulted in increased growth in the unregulated market, (as can be seen by recent border seizures of fentanyl).

Terms of Reference 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.

While the current approach to drug policy has been in place for many decades in Australia, it has proven largely ineffective at significantly reducing the consumption of illicit drugs and has not achieved a sustained reduction in supply. In Australia, ecstasy, cocaine, methamphetamine and opioids are significantly more expensive than in other countries, however this does not appear to have strongly deterred Australian users—illicit drug use in Australia is relatively common. Analysis of drug trend data also shows that large seizures that seek to disrupt unregulated drug markets have a limited impact on actual use. For example participants in the Ecstasy and Related Drugs Reporting System and the Illicit Drug Reporting System have consistently reported that the availability of illicit drugs is stable, and most substances are easily accessible.⁵

Because of the profitability of the unregulated market, actions taken by law enforcement agencies to detect and respond to the supply and trafficking of illicit drugs tend to have minimal or temporary impacts. Involved entities and networks have made, and will continue to make, adjustments to circumvent any enforcement action taken which can often increase, not reduce, associated harms. For example focused enforcement on the trafficking of illicit drugs has resulted in a shift to more concentrated, and higher potency substances (such as amphetamines to crystal methamphetamine, or heroin to fentanyl) because they are harder to detect, and easier to traffic.

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

There is an increased call for a prioritisation of a health focused responses to illicit drug use in Australia which minimises the involvement of law enforcement and reduces existing regulatory controls. The National Drug Strategy Household Survey shows that more Australians are supportive of legalising cannabis use than are against it, most support the introduction of drug checking services and there has been a decline in support for policies aimed at reducing problems associated with excessive alcohol use (such as reduced trading hours)⁶.

⁵ Juckel, J., Thomas, N., Daly, C., Maravilla, J., & Salom, C. (2022). Queensland Drug Trends 2022: Key Findings from the Illicit Drug Reporting System (IDRS) Interviews. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

⁶ See more [here](#)

Not only are community attitudes changing, so is the evidence of what works in responding to AOD use and related harms. It is important that our legislative, policy and law enforcement responses continue to evolve alongside this shift in community expectations and the growing evidence base. This includes substantial research which shows that health responses to illicit drug use and possession avoid the adverse social consequences of contact with the justice system and provide a more efficient and cost-effective opportunity to identify the people most in need of treatment.

Indeed, for people who require treatment, research shows that for every dollar invested in AOD treatment and harm reduction services, there is a seven dollar return.⁷

The current approach to responding to AOD related harms in Australia is underpinned by successive iterations of the National Drug Strategic Framework, which has consistently emphasised the importance of health and law enforcement partnerships. Although this approach is founded on the principles of harm minimisation across the three pillars of demand, harm and supply reduction, funding and resourcing is disproportionately allocated to law enforcement responses that focus on supply reduction. As a result, AOD treatment and harm reduction services are significantly underfunded, which has been compounded by a lack of appropriate consumer price indexation for services over the last decade.

Investment is heavily weighted towards law enforcement, making up between 61.3 to 69.8% of the Australian drug budget, while health (treatment and harm reduction) investments range between 19.9 to 23.3% and 1.8 to 3.1% respectively.⁸

Importantly, while most people who use AOD never require treatment or support, for those that do, services are not always available, accessible, or acceptable. This is problematic as ensuring timely access to treatment works for both individuals and the broader community. It can help to reduce a persons' experiences of substance related harm, reduce AOD use and improve a person's capacity to manage their health and wellbeing. It also helps to reduce current demand and resourcing pressures across other agencies and sectors, such as the criminal justice system.

In addition, a disproportionate focus on supply reduction approaches also impacts the engagement with, and uptake of, new harm reduction initiatives even where there is clear evidence to support the approach, such as:

- the implementation of drug checking services to provide credible information to people who use drugs to reduce the risks associated with drug use, and
- the expansion of needle and syringe programs (including within correctional centres) and safe injecting facilities.

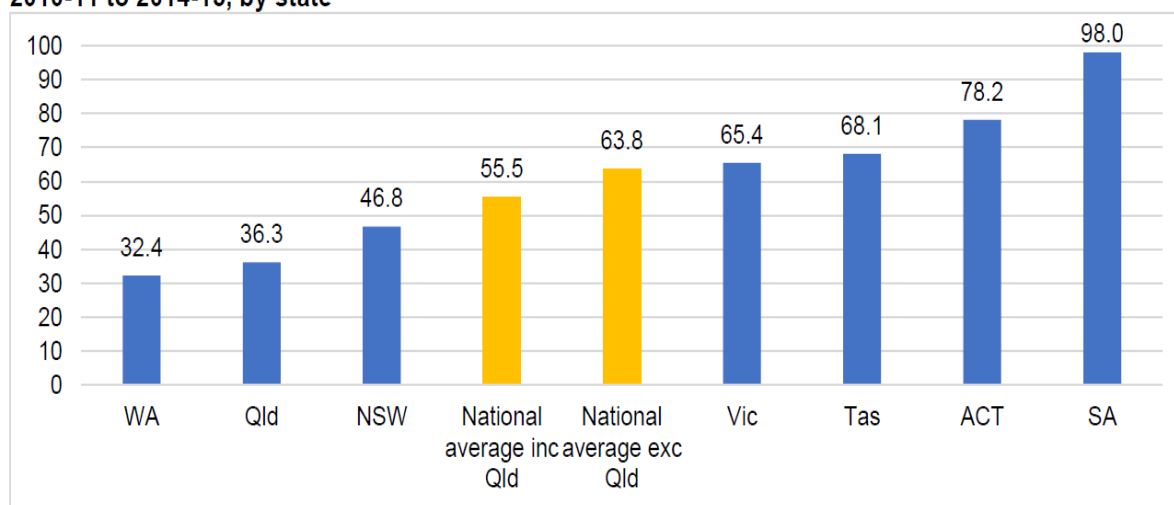
⁷ Alison Ritter et al., "New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia," in *Final Report* (Sydney: University of New South Wales, 2014).

⁸ Alison Ritter, Ross McLeod, and Marian Shanahan, "Monograph No. 24: Government Drug Policy Expenditure in Australia - 2009/10," in DPMP Monograph Series (Sydney: National Drug and Alcohol Research Centre, 2013).

There has also been an apparent regression in the ability of law enforcement agencies to sustain their commitment to supporting existing harm reduction initiatives, most notably those that seek to divert people away from the justice system.

For example, recent analysis of the first twenty years of diversion conducted by the Drug Policy Modelling Program (DPMP) found inter-jurisdictional learning had reduced over time and alarmingly that Queensland provides the lowest rate of diversion per 100,000 people in the nation.⁹ The rate is so low that it noticeably shifts the national proportion of people with a principal offence of use/possession given a police drug diversion, as shown in the figure below:

Proportion of offenders with a principal offence of use/possession given a police drug diversion, 2010-11 to 2014-15, by state ³



Specifically, this report found that ‘*Queensland accounted for the largest increase in people detected for use/possession in Australia and the highest rates of offenders being sentenced to prison for use/possession alone*’.

The DPMP went on to note that such a finding reflects the longer term upward trend in Queensland, as evidenced by a recent analysis by the Queensland Sentencing Advisory Council that showed the number of people sentenced for possessing dangerous drug offences as their most serious offence more than doubled between 2005-06 to 2015-16.¹⁰

More recent data shows that this trend is continuing, with 33 704 people charged in Queensland for drug possession offences in 2020-21,¹¹ compared with just 7 098 people referred to treatment through the police drug diversion program.¹²

This is despite a stated commitment by law enforcement at both a state and national level to support drug diversion initiatives. In Queensland there has been limited actual change to the drug diversion

⁹ Caitlin Hughes et al., "Monograph 27: Criminal Justice Responses Relating to Personal Use and Possession of Illicit Drugs: The Reach of Australian Drug Diversion Programs and Barriers and Facilitators to Expansion," *Drug Policy Modelling Program* (2019).

¹⁰ Queensland Sentencing Advisory Council (2017) Sentencing Spotlight on...possession of dangerous drugs [Sentencing Spotlight on possession of dangerous drugs \(sentencingcouncil.qld.gov.au\)](https://www.sentencingcouncil.qld.gov.au/publications/sentencing-spotlight-on-possession-of-dangerous-drugs)

¹¹ Australian Institute of Health and Welfare (2022) Alcohol and other drug treatment services in Australia annual report [Alcohol and other drug treatment services in Australia annual report, Diversion programs in Australia Data - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/reports-and-publications/alcohol-and-other-drug-treatment-services-in-australia)

¹² Queensland Government Statistician's Office (2022) Crime Report, 2020-21 <https://www.qgso.qld.gov.au/issues/7856/crime-report-qld-2020-21.pdf>

program since it was established over twenty years ago, despite multiple reports that have called for continued expansion, including through the:

- introduction of cautioning for minor drug offences,
- broadening of the Police Drug Diversion Program eligibility criteria to substances other than cannabis,
- removal of the current requirement to admit to an offence, either in an electronically recorded interview or by pleading guilty in court before being allowed to participate in drug diversion,
- expansion of the number of times that a person can participate in drug diversion, and
- reconsideration of the purpose, delivery and type of health or educational interventions provided to people diverted from the criminal justice system.

A lack of responsivity to emerging evidence for harm reduction strategies is not isolated to law enforcement entities alone. These issues are exacerbated by a lack of national coordination and limited governance mechanisms to reinforce existing health and law enforcement partnerships.

The dissolution of the Council of Australian Governments has impacted alcohol and other drugs governance, as the Ministerial Drug and Alcohol Forum (MDAF) was one of the committee's disbanded. This has had the immediate effect of disrupting efforts to implement the *National Framework for Alcohol, Tobacco and other Drugs Treatment 2019-29* and the *National Quality Framework for Drug and Alcohol Treatment*, which was being led by the Commonwealth Department of Health and included representation from each of the States and Territories, as well as two representatives from peak bodies for the non-government AOD sector, reporting through to the MDAF.

QNADA, in collaboration with our colleagues in the State and Territory AOD Peaks Network and the Australian Alcohol and other Drugs Council (AADC), have developed a consensus position on a new draft national governance framework, which has been provided to all State and Territory Health Ministers, as well as the Federal Minister for Health. This proposed governance framework is inspired by the new arrangements for *Closing the Gap* and is intended to provide an effective and efficient structure to coordinate the response to AOD issues across state, territory and federal governments. A key task of the framework, and associated governance bodies, would be to oversee the implementation of the National Drug Strategy and sub-strategies and to guide the future development of national alcohol and other drug strategies.

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

While we know that treatment works for people experiencing problems with their use, and harm reduction strategies are essential to supporting safer use for others, in practice our policy, legislative and law enforcement responses across the broader service system tend to be targeted towards addressing the harms experienced by a relatively small, but highly visible, part of the community. This results in a focus on more punitive, crisis oriented responses, which have limited benefits over the longer-term, fail to achieve the desired, deterrent effect and are not aligned with broader community expectations.

As discussed previously, the Queensland Productivity Commission presented a compelling business case for decriminalisation in its 2019 inquiry which found that:¹³

- illicit drugs policy has failed to reduce supply or harm and was found to be a key contributor to rising imprisonment rates.
- current illicit drug policy results in significant unintended harms, through supporting a large unregulated market and incentivising the introduction of more harmful drugs.
- evidence suggests that legalising 'lower harm' drugs and decriminalising other drugs is likely to provide net benefits to Queensland of at least \$2.8 billion (within four years) and is unlikely to increase drug use.
- targeted community-level interventions and greater use of diversionary approaches are alternative approaches to a justice response (and are significantly less expensive).

We note that almost four years since the Queensland Productivity Commission's Final Report was released, considered community planning and discussion has not occurred in relation to the proposed shift to decriminalisation, we are yet to see any substantive changes to existing drug diversion programs and yet another Inquiry has been established to establish the case for change in the same areas of concern; despite the business case for a new approach being compelling and clear.

As outlined in more detail in QNADA's [Decriminalisation Position Paper](#) the removal of criminal penalties for possession (decriminalisation) is a prudent, economically beneficial strategy that increases opportunities for people to access treatment when they need it; while correspondingly reducing unnecessary contact with the justice system and the likelihood of future harm.

Experiences of other jurisdictions show that decriminalisation, and indeed the legalisation of some substances, does not substantively increase use or drug related harms.

Terms of Reference 6: Other related matters.

According to the World Health Organisation, illicit drug dependence is one of the most stigmatised health conditions globally. The Queensland Mental Health Commission explored issues pertaining to the stigma and discrimination faced by people who use drugs in their report *Changing attitudes, Changing lives* (2018).¹⁴ This report found that experiences of stigma and discrimination were common among people with a lived experience of problematic AOD use and that this created barriers to seeking help, compounded social disadvantage, led to social isolation, and detrimentally affected a persons' mental and physical health.

As outlined in a review completed by the DPMP to inform the Commission's report, the way in which legislation, legal practices, rules, definitions, and processes are implemented and operationalised can enable the development and embedding of certain stereotypes of people who use drugs¹⁵. To address these concerns, *Changing Attitudes, Changing Lives* recommended (among other things) the development and delivery of anti-stigma awareness training for frontline police officers in

¹³ Queensland Productivity Commission (2019) Inquiry into Imprisonment and Recidivism Final Report

¹⁴ Queensland Mental Health Commission (2018) *Changing attitudes, Changing lives: options to reduce stigma and discrimination for people experiencing alcohol and other drug use*.

¹⁵ Lancaster, K., Seear, K., & Ritter, A. (2017) *Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use*, Drug Policy Modelling Program, National Drug and Alcohol Research Centre: University of New South Wales

collaboration with relevant experts as well as the development of new evidence based, harm reduction strategies.¹⁶

At times, law enforcement entities, particularly through their engagement with media around illicit drug seizures, actively perpetuate stigma and discrimination towards people who use drugs. For example research shows that media reporting on illicit drugs is heavily biased towards a 'crime and deviance' narrative, with some substances, such as heroin, more narrowly framed and subjected to explicit moral evaluations than others, (particularly where there is a heightened level of community concern).¹⁷

This narrative is also perpetuated by law enforcement research bodies who seek to minimise or gloss over the limitations of their data sources in presenting the findings. For example while the Australian Criminal Intelligence Commissions reports that the National Wastewater Drug Monitoring Program can provide insights into drug consumption trends and assist in identifying 'new sources of threat' the data set has a range of limitations that are absent from the reporting that surrounds the release of each report. Of most concern are the frequent claims that increases or decreases in detections of a particular substance can be said to reflect increases or decreases in use in the community, despite noted qualifiers on dose and purity provided by the scientific team delivering the data, as well as the obvious qualifier that people may simply have moved outside the collection area. Further, the lack of transparency on the location of collection sites means that while the collection covers approximately 50% of the population, it is relatively useless in health service planning.

Finally, as outlined within the [International Guidelines on Human Rights and Drug Policy \(2019\)](#) responding to the harms associated with drug use and the illicit drug trade is one of the greatest social policy challenges of our time, and it is important to recognise that all aspects of this challenge have human rights implications.

In particular, the guidelines highlight measures that should be undertaken (or avoided) to comply with human rights obligations and concurrent drug control conventions.¹⁸ Specific to the justice system, they recognise that drug legislation and policy tends to have disproportionate and compounding impacts for lower socio-economic and marginalised populations. They also emphasise the requirement for all states to take positive steps to increase the life expectancy of people who drugs, including through the provision of evidence informed harm reduction and prevention strategies (including those that seek to reduce and prevent overdose and the transmission of blood borne viruses).

¹⁶ See more [here](#)

¹⁷ 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.

¹⁸ Such as the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; and the 1988 United Nations Convention against Illicit Traffic on Narcotic Drugs and Psychotropic Substances.