

Crime, Violence, and Law Enforcement

Introduction

- 5.1 Not a day goes by, it seems, when we don't hear about some horrible crime, or else see some scary television footage featuring scenes of mayhem and destruction. It is no wonder we are afraid: no one wants to be a victim of a violent home invasion, syringe-stabbing, or ATM-mugging.
- 5.2 These are the images presented to us when we hear about drug-related crime, and it is no wonder many of us have little sympathy for people we regard as criminal perpetrators. The thought of being alongside all this is so threatening it is tempting to demonise it all – to imagine that a person in gaol for a drug-related offence is evil and somehow less than human.
- 5.3 During the course of this Inquiry, we have visited a number of gaols and met with people whose lives have led them into drugs, crime, and gaol. We have talked with them and decided: they are not angels, but they aren't monsters, either. They are people who have been born into families and raised in communities, with us, and we believe we bear at least some responsibility, collectively, for their fate.
- 5.4 We agree with the witness who argued before us that the justice system shouldn't be used as a dumping ground for social problems¹. As parliamentarians and members of communities, we need to ask ourselves

1 Evidence, p. 706.

what we think we are achieving when we incarcerate people with problems, offer them little by way of assistance, and then return them to society where, in fear, we ostracise them and help to make their return to prison almost inevitable.

Links between substance abuse and crime

5.5 Determining the strength of the links between drug use and crime is more complicated than might be imagined, for it depends on how these are defined. If only those offences that are associated with illegal drugs are considered, then according to the Australian Institute of Criminology (AIC), approximately 10 – 12% of crimes can be categorised as drug-related. If the illegal status of drugs is ignored, and the property, violence and other offences committed while under the influence of drugs is considered, then the AIC estimates that approximately 35% of all crimes are drug-related. But if an even broader definition of drug-related crime is adopted (one which includes crimes committed by drug users as well as drug-related crimes which are committed by non-drug-users), then approximately 70% of all crime can be said to be drug-related.²

5.6 Since 1999 the AIC's Drug Use Monitoring in Australia (DUMA) pilot project has been collecting data on the prevalence of drug use in the 'arrestee population'³, and this suggests there is a strong link between opiate use and property offending⁴. Key findings were described to the Committee in the following terms:

So in all the data and all the stuff that we are starting to assemble we find that people who get caught for property offences...are more likely to be drug users. Ninety-three percent of property offenders said that they tried illicit drugs, 85% had used them in the previous six months, 53% had said that they were addicted, 41% said that their offending was due to their illicit drug use, and about 26 % said they were sick for illicit drugs at the time of the offence and that they were really hanging out for them.⁵

5.7 While findings such as these are illuminating – they suggest, for example, that by reducing levels of drug dependency amongst the criminally active population there could be significant benefits for society⁶ - it is important

2 Submissions Vol. 9, p. 2311.

3 Submissions Vol. 9, p. 2205.

4 Submissions Vol. 9, p. 2206.

5 Evidence, p. 924.

6 Submissions Vol. 9, p. 2207.

to remember that offender and illicit drug user populations are different. The National Drug Research Institute (NDRI) pointed out in their submission that, while much acquisitive crime appears to be related to the use of heroin, it is not the case that most drug injectors engage in acquisitive crime.⁷ The Institute pointed to a Western Australian study conducted on a diverse group of drug injectors (that is, users who were not in gaols or in a treatment facility) which found that only a small minority (7%) of injectors was involved in drug dealing or other crime as a form of income.⁸ The head of the Western Australian Drug Strategy Office said to the Committee:

...the first point I would make very strongly is that the amount of crime that is due to drugs is often exaggerated. Certainly, the people who use drugs do a lot of crime, but they are not responsible for all the crime. The best estimates we have are of the order of 30 to 40 per cent, which is often much less than is cited.⁹

- 5.8 A submission from the Alcohol and other Drugs Council of Australia (ADCA) estimated that about a third of Australians aged 14 – 19, and over half of those aged 20-24, suffered some form of alcohol-related personal abuse in 1998.¹⁰ Other submissions specifically highlighted the links between alcohol abuse and violence, and referred to the large proportion of police resources which is dedicated to addressing problems related to alcohol. One from the Northern Territory reported that in 1997-98, 71% of sentenced prisoners committed their offence under the influence of alcohol, and that in remote communities 98% of police resources are used to address excessive drinking.¹¹ When alcohol restrictions were tried in Tennant Creek in the Northern Territory and per capita consumption of alcohol went down by 25%, there was a corresponding three-fold reduction in violence against men and women.¹²
- 5.9 The WA Government estimates that approximately 70% of police duties involve or revolve around the use and abuse of alcohol by members of the community¹³, and this proportion is the same for Tasmania.¹⁴ The SA Government's submission noted that of particular concern there is the incidence of violent crime in the vicinity of licensed premises.¹⁵ A witness

7 Submissions Vol. 6, p. 1370.

8 Submissions Vol. 6, p. 1371.

9 Evidence, p. 115.

10 Submissions Vol. 3, p. 560.

11 Submissions Vol. 2, p. 288.

12 Evidence, p. 696.

13 Submissions Vol. 8., p. 1768.

14 Evidence, p. 991.

15 Submissions Vol. 10, p. 2404.

from the SA Police told the Committee at a public hearing in Adelaide that:

For one reason or another, we have seen an escalation in violence over the last decade, a condition which is in large part attributable to alcohol.¹⁶

- 5.10 Alcohol and other drugs are linked with domestic violence, but the nature of these links is contentious. The political nature of this issue was outlined by the Tasmanian Government, which wrote in its submission:

When alcohol is present with domestic violence, it is not causal. This is in contrast to a commonly held belief that alcohol causes violence. In most cases where the perpetrator drinks, domestic violence occurs with or without alcohol. Only in a minority of cases does abuse occur only when the perpetrator is drinking. Alcohol can provide a socially acceptable excuse for male violence in the home. It can provide a powerful reason for men to avoid taking responsibility for their actions.¹⁷

- 5.11 The Western Australian Network of Alcohol and other Drug Agencies (WANADA) agreed that alcohol should not be regarded as the cause of domestic violence, but rather a 'significant contributor' in 50% of cases.¹⁸ The Queensland Government noted that alcohol and drugs do not cause domestic violence, but can intensify the level of abuse.¹⁹ The Western Australian Government estimated that alcohol and other drugs were involved in approximately one-third of cases reported to their Family and Domestic Violence Unit; it further reported anecdotal evidence that the proportion of domestic violence cases involving alcohol in country areas could be as high as 80%.²⁰

- 5.12 The Committee took evidence from the Victorian Institute of Forensic Mental Health which pointed to what it described as:

...increasing evidence that the co-existence of substance abuse and serious mental disorder not only prolongs the illness and makes treatment more difficult, but also dramatically increase the likelihood of violence.²¹

- 5.13 Forensic are referred to Victorian research demonstrating that those who had a history of substance abuse in public mental health were over seven
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16 Evidence, p. 231.

17 Submissions Vol. 9, p. 2126.

18 Evidence, p. 137.

19 Evidence, p. 722.

20 Submissions Vol. 6, p. 1432.

21 Submissions Vol. 2, p. 406.

times as likely to have acquired a conviction than those in the general population; in convictions for violent offences it was nearly ten times as high.²² The Committee considers the links between mental illness, drug abuse, and crime are worthy of further investigation and it looks forward to taking more evidence on this complicated nexus when it continues its deliberations on this subject in the next Parliament.

- 5.14 While there are, undoubtedly, strong links between the use and abuse of drugs (including alcohol) and crime, it would appear that at the present time these cannot be described with enough confidence to enable us to understand all of what is happening. In Victoria, a government witness told the Committee that, while certain figures on the proportion of crime attributable to drug abuse were 'bandied about nationally', he was not in a position to substantiate these.²³ And in Queensland, one police inspector said:

The straight answer is that we do not know exactly what percentage of police work is related to either alcohol or illicit. We know anecdotally that it is a very high percentage.²⁴

- 5.15 The Commonwealth Attorney-General's Department argued in their submission to the Inquiry that much of the discussion on the link between drugs and crime in Australia is based on anecdotal evidence, or localised studies, and that more rigorous national data collections are required for evidence-based policy making purposes.²⁵ This view was echoed by Dr Adam Graycar, Director of the Australian Institute of Criminology, when he told the Committee at a public hearing in Canberra that:

Our crime statistics do not tell us about cause and they collect fairly limited information. By and large, when we start to deal with some of the big questions about what comes first, drugs or crime, or whether drugs cause crime, or the options, or how well law enforcement is doing, we do not really have the data to answer many of our big questions unequivocally and clearly.²⁶

- 5.16 The Committee agrees it is of vital importance that national data sets are adequate for the purposes of planning and effective policy formulation. It notes, there is a risk that if analysts in this area are unable to explain what is happening with clarity and certainty, we will not be able to tell what is working, and we will all become more vulnerable to sensationalist and

22 Submissions Vol. 2, p. 407.

23 Evidence, p. 436.

24 Evidence, p. 732.

25 Submissions Vol. 9, p. 2205.

26 Evidence, p. 924.

unhelpful media reportage conjuring images of Australia rushing, pell-mell, into a violent, American-style 'war on drugs'.

Not a war on drugs...

5.17 Unlike the United States, where it is said there is a war on drugs, Australia is not running a 'war on drugs'; nor does the Committee think Australia ought to go down that road. The combative policy of the United States is widely regarded as being not only ineffective but extremely costly, in every sense of the word. The US federal government will spend over \$US19.2 billion dollars this year on the War On Drugs and incarcerate approximately 236,800 people for drug law violations, at a rate of around 648 people per day.²⁷ The United States has one of the highest incarceration rates in the world; it jails around 700 per 100,000 of population, compared with Australia's rate of about 100 per 100,000 of population.²⁸

5.18 Australia's approach to drug problems was contrasted with that of the United States in this way by a witness from the New South Wales Police:

I think that if the governments, state and federal, were to say, 'We want to declare a war on drugs', I think we could solve the drug problem in Australia relatively quickly. I think, however, society would suffer much as a result of that. The fact of the matter is that in war you kill people, they don't face trial, they are arbitrarily interned, there a whole range of human rights that are given up in the face of war. We have never declared that situation to be the case here with drugs. What we are doing is trying to have a law enforcement role in a civil and democratic society.²⁹

5.19 Australia's response to drug problems has been based, in large part, on the recommendations of the 1977 report of the Senate Standing Committee on Social Welfare, which was quoted in Chapter 2 of this report. This argued, among other things, that: (1) the total elimination of drug abuse is unlikely, and (2) efforts to reduce the supply of and the demand for drugs are complementary and interdependent, and Commonwealth programs should be based on a balance between these.³⁰

27 Information is taken from the drugsense website at www.drugsense.org.

28 Evidence, p. 627.

29 Evidence, p. 565.

30 Senate Standing Committee on Social Welfare, *Drug Problems in Australia – an Intoxicated Society?*, The Commonwealth Government Printer, Canberra, 1977, pp. 1-2.

- 5.20 Sectoral collaboration, in particular between the health and law enforcement sectors, has been a defining – and much lauded - feature of Australia’s strategic approach to drug-related issues (the National Drug Strategy) for the past two decades. It has been, and still is, based on a number of principles, most notably perhaps that of harm minimisation, which is the term now widely used to distinguish Australia’s approach to substance misuse from, for example, that adopted in the United States of America.
- 5.21 Harm minimisation has been described by the Commonwealth Department of Health and Aged Care as:
- ... encompassing supply reduction strategies to disrupt production and supply of illicit drugs, demand reduction strategies to prevent the uptake of harmful drug use, and harm reduction strategies to reduce drug-related harm for individuals and communities.³¹
- 5.22 The nature, strength, and viability of the partnership between health and law enforcement in the delivery of Australia’s national drug strategies has been the subject of some disputation over the years. One witness in Canberra denied, however, that relative expenditure by governments on health and law enforcement measures was a big stumbling block:
- Relative expenditure by governments on health and law enforcement measures should not be the central issue. What is important is that health and law enforcement agencies work in partnership to combat illicit drugs.³²
- 5.23 Relative expenditure has been a sensitive issue, though. An analysis of total (Commonwealth, State and Territory) licit and illicit drug budget expenditure in 1991-2 revealed that 33.1% of the total budget was spent on law enforcement, and 58.4% on health. However, when budgetary expenditure on licit drugs was removed from these calculations, the vast majority of expenditure (ranging from 76.3% - 97.3%) at the Federal and State/Territory levels was shown to be oriented towards law enforcement rather than to health measures.³³
- 5.24 An evaluation of the National Drug Strategy (NDS) from 1993 to 1997 reported that, despite the acknowledged success of the partnership between health and law enforcement in the NDS, it was widely recognised that there were a number of tensions in the relationship, and more could be done to ensure that the health and law enforcement sectors were true

31 Submissions Vol. 9, p. 1988.

32 Evidence, p. 58.

33 Submissions Vol. 9, pp. 2190-91.

'equal partners' in their working relationship. The evaluation report recommended, among other things, that consideration be given to increasing the proportion of cost-shared NDS funds allocated to law enforcement.³⁴

Tough on Drugs

- 5.25 *Tough on Drugs* or the National Illicit Drugs Strategy (NIDS), the most recent phase of the NDS, was launched in November 1997. Under the Strategy, the Commonwealth has allocated \$516 million over four years for a range of measures designed to provide a balanced and integrated approach to reducing the supply and demand for illicit drugs and minimising the harm these cause.³⁵
- 5.26 Relative expenditure for health and law enforcement under this phase of the Strategy appears to be fairly evenly split, with approximately \$213 million being dedicated to supply control measures, and \$303 million for demand reduction measures including health, education, and family activities.³⁶ Of the \$303 million earmarked for demand reduction measures, approximately \$275.5 million is for health measures, and \$27.5 million for education initiatives. Included in the \$275.5 million dedicated for health demand reduction measures is \$111.5 million for the diversion of drug users from the criminal justice system into education and treatment.

Supply control measures

- 5.27 Controlling the supply of illegal drugs is important to try to do because, as a number of witnesses argued, demand reduction interventions, which aim to educate about the risks associated with taking drugs, are less likely to be effective in an environment of unfettered supply.³⁷ As one witness explained:

It seems to us that it is unlikely that the problems of demand can be dealt with adequately as long as the flow of illicit drugs continues unimpeded. Reducing the demand for drugs through education, treatment, rehabilitation is absolutely crucial. Unless more effective curbs can be placed on drug supply, and those who

34 Single, E, and Rohl, T. *The National Drug Strategy: mapping the future*. Ministerial Council on Drug Strategy, Canberra, 1997, p.89.

35 Submissions Vol. 9, p. 2199.

36 Evidence, p. 79.

37 Evidence, p. 57.

traffic in drugs, demand reduction is unlikely to achieve its full potential.³⁸

What is being done

5.28 Since the beginning of the *Tough on Drugs* Strategy in 1997, considerable funding and law enforcement effort has been directed at reducing the supply of illicit drugs entering Australia. While Commonwealth law enforcement agencies such as the Australian Federal Police (AFP) and the Australian Customs Service (ACS) have shared responsibility for reducing the supply of illicit drugs for around twenty years, it is only since the beginning of the *Tough on Drugs* Strategy that law enforcement agencies have received resources specifically targeted to carry out this function.

5.29 *Tough on Drugs* money has been allocated in the following ways:

Australian Federal Police (AFP)	\$74.2m
Increase protection of our borders	\$69.9m
Enhance capacity of National Crime Authority (NCA)	\$22.6m
Research into drug and crime links	\$3.3m
Australian Transaction Reports and Analysis Centre (AUSTRAC)	\$1.8m
Further investigation and training activities of AUSTRAC	\$9.5m
Expansion of international law enforcement liaison	\$18.9m
Enhance AFP and NCA investigatory procedures	\$11.7m
Total	\$211.9m

5.30 Under *Tough on Drugs* the Commonwealth Government has, among other things:³⁹

- developed a Law Enforcement Cooperation Program (LECP) in the Asia-Pacific region and in other parts of the world. The LECP is designed to assist overseas law enforcement agencies to improve their capacity to investigate drug trafficking and contribute to the collection of law enforcement intelligence;
- created new AFP liaison posts in key transit countries to assist in closing gaps in Australia's capacity to combat international drug trafficking and transnational crime directed at Australia. The network facilitates the exchange of drug and other crime related intelligence between the AFP and other Australian and international law enforcement agencies;

38 Evidence, p. 558.

39 Submissions Vol. 9, pp. 2163-4.

- enhanced the NCA's capacity to intensify targeting of south-east Asian organised crime, in particular heroin importation and distribution, through the Blade National Task Force, comprising all Federal and State law enforcement agencies;
- established a Heroin Signature Program which aims to determine the unique signature of any heroin samples seized and help establish common features between seizures and so help trace distribution networks in Australia; and
- set up a technical assistance fund of \$A1 million to be used to support United Nations International Drug Control Program (UNDCP) initiatives in the Mekong subregion; two projects have so far been approved under this initiative.

Issues

5.31 While it is impossible to know with certainty what proportion of illicit drug supplies is interrupted⁴⁰, the United Nations Office for Drug Control and Crime Prevention estimates that the global interception rate for heroin was 17% in 1998, and argues that this represents a substantial increase on the average of 10% prior to 1998. In Australia law enforcement agencies have reported record seizures of illicit drugs over the past few years⁴¹, and one witness from the AFP argued the case that authorities were making inroads into the supply of heroin in the following way:

If you look at the figures, and again I am simplifying here, the amount of to-take heroin that is interdicted has risen by roughly 500 per cent in the last decade. I think it would defy the imagination to suppose that the amount of use of heroin has risen that much in the last decade.⁴²

5.32 The Committee is aware that recently there have been heroin shortages in several jurisdictions, and these could be interpreted as evidence of the positive impact of supply reduction strategies. Certainly, an Assistant Commissioner in the New South Wales Police believed this to be the case:

...present shortfalls in supply suggest that increasing disruptions in the supply chain at the highest levels are having a positive impact on the trade.⁴³

5.33 However, other possibilities were proffered as possible explanations for what appear to be periodic supply shortages, including that suppliers are

40 Evidence, p. 60.

41 Submissions Vol. 9, p. 2159.

42 Evidence, p. 64.

43 Evidence, p. 559.

manipulating these in order to force up prices.⁴⁴ One Queensland witness said:

The big hauls of recent times would be blips on the market and usually do not really interrupt supply for very long, as we have seen with the local heroin drought that has hit across the country and up here as well. We suspect that is more about market forces and market manipulation than about intercepts.⁴⁵

- 5.34 While the reasons for supply shortages can be debated, it is undoubtedly the case that illicit drug shortages result in troubles of various kinds. These were outlined to the Committee, which happened to be conducting part of its program of public hearings and visits at the same time that a heroin shortage was emerging in various parts of Australia.
- 5.35 Witnesses in Canberra, Queensland and New South Wales pointed to how heroin shortages had resulted in price rises and, associated with this, ironically, increased levels of crime and violence. Addicts forced into withdrawal encountered inadequate drug treatment systems, and inability to find suitable assistance compounded their desperation.⁴⁶ The situation in Sydney was described this way:
- When there is a reduction in supply there are some very negative consequences. Our support line is receiving lots of phone calls about more violence, more polydrug use, an increase in use of benzodiazepines, amphetamines, particularly and cocaine, crime is increasing because of the increase in price and we of course are having people demanding treatment now. There are no detox places available, yet people are hammering at the doors because they are forced into withdrawal because of a reduction in supplies.⁴⁷
- 5.36 It is distressing and confusing for anyone concerned about substance abuse to realise that what might be a good news story for law enforcement has the potential to be experienced as a disaster for those working with drug dependent people in the health sector. Realisations like this highlight the complexities of implementing a comprehensive strategy such as the National Illicit Drugs Strategy, and serve to emphasise the importance of cross-portfolio cooperation and collaboration across all levels of government to ensure 'harm minimisation' applies to individual users on the streets, anywhere.

44 Evidence, p. 812.

45 Evidence, p. 765.

46 Evidence, p. 881.

47 Evidence, p. 608.

Demand reduction measures: the National Drug Diversion Initiative

What it's about

- 5.37 On 9 April 1999, the Council of Australian Governments (COAG) agreed to work together to put in place a new nationally consistent approach to drugs in the community involving diversion of drug offenders by police to compulsory assessment. The diversionary scheme subsequently agreed by COAG emphasises diversion of offenders by police at apprehension to maximise the opportunities for early intervention with illicit drug users.
- 5.38 At a meeting of 10 June 1999, the Ministerial Council on Drug Strategy (MCDS) endorsed 19 principles to underpin the national diversion scheme. These include respect for jurisdictional flexibility within the operation of a broad national framework which emphasises the need for inter-sectoral and intergovernmental collaboration to achieve the following outcomes:
- people being given early incentives to address their drug use problems – hopefully before they incur a criminal record;
 - an increase in the number of illicit drug users diverted into drug education, assessment and treatment; and
 - a reduction in the number of people appearing before the courts for use or possession of small quantities of illicit drugs.
- 5.39 The Department of Health and Aged Care is currently administering the following funds for a range of diversion initiatives, including:
- \$111.5 million over four years to support the diversion of drug users by police into education, counselling, or treatment by:
 - ⇒ creating an increased assessment and referral capacity for illicit drug users diverted by the police;
 - ⇒ providing additional funding for a range of community-based education, assessment and treatment services to provide police with an additional option in managing illicit drug users;
 - ⇒ producing and distributing training resources for law enforcement and health personnel involved in the programme and material for use in counselling and training programmes for users; and
 - ⇒ increasing capacity for the education and training of health workers in the assessment and management of people with drug problems.
 - \$58 million over four years for a range of supporting measures, including funds for the following:
 - ⇒ \$1.2 million for the development and dissemination of cannabis cessation strategies for adults and adolescents;

- ⇒ \$17.6 million for increased education, counselling and referral services provided through community-based programmes;
- ⇒ \$10.6 million for the augmentation of the existing community-wide education and information campaign on illicit drugs;
- ⇒ \$4 million for additional funding for the Community Partnerships Initiative, which provides grants to communities to undertake projects aimed at preventing illicit drug use and the harm associated with such use;
- ⇒ \$12.9 million for increasing the number of pharmacies and other outlets distributing needles and syringes; and
- ⇒ \$0.252 million for research to investigate barriers and incentives to illicit drug users accessing and remaining in treatment.⁴⁸

5.40 The following amounts have been offered to the States and Territories as part of the COAG Illicit Drug Diversion Initiative for the four-year period 1999/2000 to 2002/2003:

New South Wales	\$31.9 m
Victoria	\$23.0m
Queensland	\$19.5m
Western Australia	\$11.1m
South Australia	\$9.2m
Tasmania	\$3.8m
Australian Capital Territory	\$2.9m
Northern Territory	\$2.7m
Total	\$104.1m

5.41 To date, seven jurisdictions have signed agreements with the Commonwealth to implement the Diversion Initiative, and it is anticipated that shortly an agreement will be signed with the Northern Territory. For those jurisdictions that have signed agreements, the following amounts have been paid up until 31 August 2001:

- NSW \$8.8 million;
- Vic \$6.4 million;
- Qld \$5.3 million;
- WA \$3.2 million;
- SA \$1.5 million;

- Tas \$1.3 million; and
- ACT \$0.7 million.

Implementation of the scheme so far: issues arising

5.42 The principles underlying the Illicit Drug Diversion Initiative speak of a national approach embodying the ideals of cooperation and collaboration and, certainly, many witnesses before the Committee pointed to the scheme as a good example of intergovernmental cooperation. A government witness in New South Wales said:

In terms of partnership between the state and the Commonwealth, the Commonwealth-state drug diversion agreement is an excellent example of a partnership agreement between two spheres of government. It is extensively funded by the Commonwealth and all diversion programs...are embodied in that agreement. The funding provided under that agreement is providing an enormous number of services to support young people and young adults and divert them from the criminal justice system.⁴⁹

5.43 The Illicit Drug Diversion Initiative certainly does provide significant opportunities for intergovernmental cooperation in efforts to minimise harms to individuals and communities relating to the use and abuse of illicit drugs. It is ambitious and worthy and, while it is premature yet to comment on its effectiveness, a number of issues arose from the evidence provided to the Committee. Two of these are discussed below: (1) the need for more training for law enforcement personnel involved in the diversion process, and (2) the need to ensure that prisoners also have access to opportunities for treatment and rehabilitation.

Need for training in diversion for law enforcement officers

5.44 Under the diversion scheme, police are asked to exercise discretion with regard to whether a particular offender is or is not eligible for referral to health authorities for assessment and treatment. In some jurisdictions, police will divert certain offenders directly to drug education. While each jurisdiction is expected to develop their own diversion eligibility criteria, the nationally-agreed diversion framework provides that certain minimal criteria should apply to the determination of eligibility for diversion.

5.45 Police need to consider whether offenders meet the eligibility criteria of their particular jurisdiction, and then make reasonable attempts to ensure that offenders understand their rights and responsibilities under the diversion program. Furthermore, the 'notices of diversion' they provide need to comply with certain nationally prescribed minimal elements,

principally designed to ensure that sufficient information about compliance is collected to enable evaluation of the Initiative.

- 5.46 Some members of the police service are uncomfortable with the sort of work they are doing with diversion. It isn't really what they expected to be doing when they joined up to become police officers. One witness in Western Australia, for example, said to the Committee:

One of the notions about harm minimising policing is that police could use discretion in whether or not to arrest a person or to issue a caution, or whatever, at the point of apprehension. In WA, particularly, we found that the police have some difficulty with the notion of discretion. They believe it puts police officers in a very untenable position, and that is based on previous experiences within the WA police service. I believe that is something police have to address if they are going to look seriously at the national harm minimising policing.⁵⁰

- 5.47 And in Tasmania, the Deputy Commissioner of Police said:

It is fair to say that in a lot of cases operational police officers do not initially subscribe to the benefits of a drug diversion program. A lot of police officers who encounter these problems on a day-to-day basis feel that the best approach to managing drug offenders is to charge them and allow the courts to deal with their unlawful behaviour – which is what it is.⁵¹

- 5.48 An Assistant Commissioner with the South Australia Police said that more needed to be done in terms of training police about harm minimisation⁵², and in Queensland the Officer in Charge of the Drug and Alcohol Coordination Unit in the Queensland Police Service described the potential benefits of such training in the following way:

All Queensland police officers received training in the Queensland Police Service Drug Diversion Program during the latter half of 2000...We have also developed training with police on harm minimisation principles. With regard to harm minimisation, it is fair to say that there has been some form of reluctance on behalf of some police to adopt that philosophy. But it is interesting to note that, when you talk to groups of police around the state and actually explain what harm minimisation is, probably 99 per cent of all police would certainly support that philosophy.⁵³

50 Evidence, p. 173.

51 Evidence, p. 997.

52 Evidence, p. 231.

53 Evidence, p. 724.

5.49 The Committee notes that one of the principles underpinning the national Illicit Drug Diversion Initiative refers to the importance of acknowledging the need for training and educating all stakeholders involved in the diversionary process, including police; another refers to the requirement for a clear understanding of the procedures and protocols to be followed in the management of the diversion process. The Committee considers that suitable training ought to be provided to police, as much of the success of this Initiative rests on their shoulders.

Prisoners need treatment, too

5.50 There were 21,714 prisoners in Australia on 30 June 2000, and for 10% of these a drug-specific offence was the most serious offence for which they were imprisoned.⁵⁴ However, as the Director of the Institute of Criminology pointed out to the Committee:

as many as 70 to 75% of people who commit offences that we know about commit offences where there is some drug link there⁵⁵.

5.51 Some witnesses estimated that the proportion of the prison population with a drug or alcohol problem was as high as 75%⁵⁶, and certainly this is consistent with the informal evidence given to the Committee by staff and prisoners in its Inquiry-related visits to gaols in four jurisdictions around Australia. Furthermore, many people imprisoned for drug-related offences have been there before: ABS statistics reveal, for example, that 51% of those gaoled for possession or drug use charges in 2000 had been inside gaol before.⁵⁷

5.52 As part of its consideration of the Illicit Drug Diversion Initiative, the Council of Australian Governments noted, as its meeting of 9 April 1999, that drug use in prisons is common, and a large proportion of prisoners are incarcerated for drug-related crime. To prevent re-offending and to promote public health, states and territories agreed to develop and fund programs to:

- intercept the supply of drugs to prisons and be tough on dealers within prisons; and
- develop and trial diversionary treatment programs within the gaol system so that dependent users can break their addiction.⁵⁸

54 Australian Bureau of Statistics 2000, *Prisoners in Australia (4517.0)*, Canberra, pp. 3, 29.

55 Evidence, p. 923.

56 Evidence, p. 232-233.

57 Australian Bureau of Statistics 2000, *Prisoners in Australia (4517.0)*, Canberra, p. 14.

58 Submissions Vol. 9, p. 2005.

- ~~5.53~~ It makes sense to ensure that suitable treatment programs are made available to dependent drug users in prison, and to take advantage of what one witness described as the ‘very special opportunities for intervention’ provided by a captive population.⁵⁹ Where a substance abuse issue underlies or contributes to criminal behaviour, the Committee strongly believes addressing it on the ‘inside’ will serve to help prisoners break free from addiction and crime.
- 5.54 Drug dependent prisoners need medical support to assist with withdrawal when they arrive in prison, and while they are on the inside they need to have access to treatments such as methadone maintenance or naltrexone to help to stay ‘clean’ and off heroin. Prisoners need to have access to drug education and counselling services, and pre-release programs should support them with planning to help ensure a successful transition into a new life on the outside. Education and training opportunities ought to be generally available to prisoners, too, to improve their employment prospects on the outside.
- 5.55 The Committee was dismayed to discover that corrective service departments around the country are not dedicating sufficient resources to support the health and welfare needs of drug dependent prisoners. The Committee notes that no Federal monies have been specifically earmarked for the treatment trials recommended for the ‘Tough on Drugs in Prisons’ initiative. The Committee heard that in Western Australia, for example, the Ministry of Justice claims to deal with these issues, but:
- The major problem is that they do not resource it. As I said earlier, there is a substance abuse unit there, I think, which has about four staff in it. They are expected to service 14 or 15 prisons around the state with pre-release substance abuse programs. It is a total physical impossibility. They have been going around doing prison inspections in the state. One of the things that keeps popping up in those reports is the fact that this unit does not do its job. It is not that it is not doing its job. It is because it is not resourced to do its job.⁶⁰
- 5.56 The Committee has seen and heard much evidence of short-staffing and the difficulty inmates have in gaining access to suitable drug-related health and counselling services on the inside. In some gaols pre-release programmes consist of opening up the gate for the offender at the end of his or her term. In most, educational opportunities are strictly limited and employed as mechanisms of control rather than rehabilitation. The Australian National Council on Drugs expressed its concern to the

59 Evidence, p. 567.

60 Evidence, p. 179.

Committee about high (Hepatitis C and HIV/AIDS) infection rates in prison populations and argued that more needs to be done in the prison setting to address inmates' drug dependence issues.⁶¹ One witness said:

People get very little help in our prisons here, even less than in the United States. They come out of prison, and the correctional health system and the health system in the community don't connect up, so that person is stranded and has difficulty getting on to methadone programs or other forms of drug treatment. It is a system that is really designed to set people up to fail and, of course, they do fail and when they fail they are blamed for it.⁶²

- 5.57 It may be, as some witnesses suggested, that the balance between supply and demand reduction measures at the State/Territory government level needs to shift to enable more resources to be dedicated to health-promoting measures in prisons.⁶³ Governments should invest more on the provision of health, education and welfare staff to help prisoners. Some positive developments are apparent: the New South Wales Government told the Committee it plans to expand treatment options (especially detoxification facilities) in prisons across the State⁶⁴, and the Committee understands that a major re-development of the Risdon Prison Complex currently being contemplated in Tasmania will enable the delivery of more comprehensive health care to all prisoners, including those with drug dependency problems.

Summary

- 5.58 A simple way of describing Australia's current policy on illegal drugs is to say it is two-pronged, comprising efforts to be both tough on the suppliers and traffickers of illegal drugs, but tolerant and helpful towards those who are drug dependent, who are best understood as suffering from a health problem. While public opinion supports increasing penalties for the sale or supply of 'hard drugs'⁶⁵, the Committee doubts that the public is entirely comfortable with the idea that drug problems are health problems.

61 Submissions Vol. 2, p. 301.

62 Evidence, p. 627.

63 Evidence, p. 1608.

64 Evidence, p. 567. The Government's Response to the Drug Summit (July 1999) says that additional funding of \$16.6 million is to be provided over four years.

65 Makkai, T. & McAllister, I. 1998, *Public opinion towards drug policies in Australia, 1985-95*, AGPS, p. 36.

- 5.59 In Australia the vast majority of arrests are cannabis-related and most are consumer rather than provider-related.⁶⁶ The Committee believes it is appropriate, to divert young illicit drug users away from the criminal justice system, while aggressively pursuing and incarcerating others who are regarded as being more serious offenders – heroin traffickers, for example.
- 5.60 However, as a number of witnesses explained to the Committee⁶⁷, many heroin users elect to support their addiction by supplying illegal drugs; this is considered preferable to prostitution or committing burglaries. A recent study reveals that over one quarter (26%) of intravenous drug users engage in dealing to help support their habit⁶⁸, and these people are not easily accommodated by diversion schemes which are clearly designed to assist those apprehended for use or possession of small quantities of illegal drugs – cannabis, mainly.
- 5.61 A key element related to the implementation of the Illicit Drug Diversion Scheme is the adequacy of treatment places to cope with those offenders. The Committee looks forward to the findings from on-going monitoring and evaluation processes and assumes that these will be fed back, as appropriate, into the design and operation of these schemes.
- 5.62 The Committee recognises that evaluation of these schemes is one of the principles underpinning the national Illicit Drug Diversion Scheme. The Scheme's ability to fulfill its potential as a good vehicle of harm minimisation policy will depend very much on the realisation of this commitment. It concurs with the words of the witness who said:

Clearly, diversion has the potential to be very effective in bringing people out of the criminal system and into a helping system while, at the same time, not taking away the fact that the community does not tolerate that particular behaviour and sees it as criminal...But, like ...most researchers, I would have to say that all of those kinds of mechanisms need very careful evaluation. We need to be absolutely certain that there are not unintended consequences of the range of diversion programs that have been put in place. I am not suggesting that there might be; I am suggesting that we should, as a matter of course, do that evaluation to reassure ourselves that things are working the way they are intended to work.⁶⁹

66 Submissions Vol. 9, p. 2311.

67 Evidence, p. 85.

68 Miller, M.& Draper, G. 2001, *Statistics on drug use in Australia 2000*, AIHW cat.no.PHE 30, Canberra: AIHW (Drug Statistics Series no. 8, p. 58.

69 Evidence, p. 173.

