

Crime, violence and law enforcement

The link between crime and substance abuse

- 8.1 In its discussion paper, the former committee explored the links between crime and substance abuse. The information that came to the committee from various sources pointed to the following conclusions.
- Much crime is alcohol or drug-related.
 - Offenders are often illicit drug users and their drug habit may contribute to their offending. However, not all drug users are offenders.
 - Alcohol-related verbal and physical abuse is common and consumes a very substantial part of local police time. However, consuming alcohol does not cause violence, rather it disinhibits and intensifies existing aggressive tendencies.
 - When substance abuse coexists with a mental illness, violence is more likely than with mental illness alone.
 - Although there are clearly strong links between drug taking (including alcohol) and crime, our understanding of these links is incomplete.¹
- 8.2 Where newer information is now available it confirms and clarifies some of the findings mentioned above. For example, Dr Graycar and
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1 House of Representatives Standing Committee on Family and Community Affairs, *Where to next? - A discussion paper: Inquiry into substance abuse in Australian communities*, FCA, Canberra, September 2001, pp 66-69.

his associates found that although illicit drug offenders make up a very small proportion of the offenders that police arrest each year, in a sample of 1770 offenders arrested in 2001, at least 70 per cent of those arrested for violence and traffic or property offences tested positive to an illicit drug.² Between 37 and 52 per cent of the offences for which a group of police detainees were arrested have been estimated to be related to alcohol or drug use³, and about one-third of the offences committed by a group of male prisoners.⁴

Dr Weatherburn reported that about half of all assaults are alcohol-related⁵ and, according to the Alcohol and other Drugs Council of Australia (ADCA), 34 per cent of offenders and 31 per cent of homicide victims were under the influence of alcohol at the time of the homicide. Alcohol-related violence is particularly prevalent among Indigenous people.⁶

- 8.3 Of the Australians questioned in the National Drug Strategy (NDS) Household Survey in 2001, 26.5 per cent reported that they had been verbally abused by a drunk person and 4.9 per cent had been physically abused. Fewer people reported having being harmed by illicit drug users, 11.3 per cent having experienced verbal abuse and 2.2 per cent physical abuse. Abuse by drunk persons appeared to have fallen since 1998 but there had been no change in abuse by illicit drug users.⁷

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- 2 Graycar A, transcript, 16/8/02, p 1215; Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', paper given to the *South Australian Drug Summit 2002, Adelaide, 26 June 2002*, p 2.
- 3 Calculated from Makkai T & McGregor K, Appendix D, 'Drugs and crime: Calculating attributable fractions from the DUMA project', in Collins DJ & Lapsley HM, *Counting the cost: estimates of the social costs of drug abuse in Australia in 1998/9*, Monograph series no 49, Commonwealth Department of Health and Ageing, Canberra, 2002, p 111.
- 4 Williams P, 'Appendix C, Aetiological fraction estimates of drug-related crime', in Collins DJ & Lapsley HM, *Counting the cost: Estimates of the social costs of drug abuse in Australia in 1998-9*, Monograph series no 49, Commonwealth Department of Health and Ageing, Canberra, 2002, p 105.
- 5 Weatherburn D, transcript, 23/9/02, p 1258.
- 6 Alcohol and other Drugs Council of Australia, sub 80 to the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, pp 7-9.
- 7 Australian Institute of Health and Welfare, *2001 National Drug Strategy Household Survey: First results*, Drug statistics series no 9, AIHW, Canberra, May 2002, p 39.

Costs of drug-related crime

- 8.4 The cost of drug-attributable crime is very high. Estimates by Collins and Lapsley based on information from 1998-99 put the tangible cost of crime due to alcohol at \$1.2 billion and that due to illicit drugs at \$2.5 billion. Crimes committed by those who have taken both types of drugs together cost a further \$582.3 million. According to Collins and Lapsley, these figures are likely to be underestimates as a substantial number of crimes are never reported to the police and so cannot be included when calculating these figures.⁸
- 8.5 Alcohol and drug-related crime has an impact far beyond the economic. It touches the every day lives of individuals, families and communities when they become victims of crime or find themselves providing support to those affected. Collins and Lapsley estimated that in 1998-99 the intangible cost of drug-attributable crime (reflecting loss of life-violence) totalled \$501.7 million for alcohol-related costs, \$492.5 million for costs associated with illicit drugs, and \$574.6 million for both alcohol and illicit drugs.⁹ In addition, as the former National Crime Authority (NCA) pointed out, through the involvement of organised crime in the drug trade, damage is done:
- ... in a broader sense to the national interest by undermining public and private sector institutions, for example through fraud and corruption. This, too, ultimately affects every member of the community.¹⁰

Australia's response to licit and illicit drug-related crime

- 8.6 As previously outlined in this report, Australia's approach to its drug problems is driven by the NDS which has been based on the premise that efforts to reduce the supply of and demand for drugs are to be complementary and interdependent, and programs should be based on a balance between these. The National Alcohol Strategy, for

8 Collins DJ & Lapsley HM, pp x, 47-48.

9 Collins DJ & Lapsley HM, pp 47-48. Some component of crime costs is causally attributable jointly to alcohol and illicit drugs. It is not possible to indicate what proportion of these joint costs is attributable to either alcohol or illicit drugs individually.

10 National Crime Authority, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 214.

example, seeks a balance between public health, law enforcement and educational strategies in its aim of reducing the incidence of social disorder, family disruption, violence, including domestic violence, and other crime related to misuse of alcohol.¹¹ The National Illicit Drug Strategy (NIDS) *Tough on Drugs* also provides a balanced and integrated approach to reducing the supply of and demand for illicit drugs and delivering education about drugs.¹²

- 8.7 The Commonwealth Department of Health and Ageing advised that of the more than \$1 billion allocated to the NIDS since 1997, approximately \$456 million are being spent on supply control measures, and \$691 million for a range of demand reduction measures. Of the \$691 million earmarked for demand reduction measures, approximately \$659 million is for health and family measures and of this \$325 million is for the diversion of users from the criminal justice system into education and treatment. The percentage of funding (\$1 billion) allocated to law enforcement is 39.75 per cent (\$456 million).¹³

Evaluation of law enforcement activities

- 8.8 Graycar et al pointed out that finding the best ways in which law enforcement efforts can reduce drug market activity and contribute to reducing the demand for drugs requires constant trialling and evaluation of new approaches, as well as evaluation of existing approaches. They suggested that successful strategies are built on local and international experience and research evidence; all the relevant stakeholders need to be involved in developing strategies; and cooperation among stakeholders is essential.¹⁴ They also stressed it is important to realise that 'The complexity of all drug policy is that there is no 'one size fits all'...'¹⁵

11 *National Alcohol Strategy: A plan for action 2001 to 2003-04*, endorsed by the Ministerial Council on Drug Strategy, Commonwealth Department of Health and Ageing, Canberra, July 2001, p 7, viewed 28/1/03, <http://www.health.gov.au/pubhlth/nds/resources/publications/alcohol_strategy.pdf>.

12 House of Representatives Standing Committee on Family and Community Affairs, *Where to next?*, p 70.

13 Commonwealth Department of Health and Ageing, sub 291, p 2.

14 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', p 15.

15 Graycar A, transcript, 16/8/02, p 1225.

8.9 The Commonwealth government contributes funds for the development and assessment of new approaches. One such project that will be discussed is the Illicit Drug Diversion Initiative. Another is the National Drug Law Enforcement Research Fund. This fund promotes quality evidence-based practice in drug law enforcement to prevent and reduce the harmful effects of licit and illicit drug use in Australian society.¹⁶ In commenting on the fund, Atherton noted that its current priorities include:

- approaches to curb alcohol-related violence and alcohol-related anti-social behaviour, particularly around licensed premises and public places;
- youth-related issues, particularly with respect to underage and binge drinking and other drug use;
- alternative criminal justice approaches to drug offences and drug offenders including community-based approaches;
- education and training for police in the use of diversion options; and
- promoting greater community cooperation in the provision of information to drug law enforcement agencies.¹⁷

8.10 Other research initiatives funded by the Commonwealth government are adding to our understanding of the links between substance abuse and crime which, as the introduction to this chapter point out, is incomplete. The Commonwealth Attorney-General's Department advised that the Australian Institute of Criminology's (AIC) projects on Drug Use Monitoring in Australia – DUMA - and the Drug Use Careers of Offenders – DUCO - are helping to answer the question of how much and in what ways crime is drug-related.¹⁸ Graycar et al noted that the more we know about different groups of drug using criminals, the better able we will be to design appropriate law enforcement strategies for each group.¹⁹

16 National Drug Strategy, 'National Drug Law Enforcement Fund', viewed 6/11/02, <<http://www.health.gov.au/pubhlth/nds/igcd/ndlerf/>>.

17 Atherton T, 'National Drug Law Enforcement Research Fund', *Conference Papers Collection*, CD-ROM, 2nd Australasian Conference on Drugs Strategy, Perth, 7-9 May 2002, p 3.

18 Commonwealth Attorney-General's Department, sub no 259, pp 14-16.

19 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', p 4.

8.11 Graycar et al commented that few if any evaluations of what works in law enforcement have been carried out.²⁰ According to the evaluation of the national illicit drug initiatives, best practice in law enforcement is an under-researched area and lacks best practice guidelines.²¹

8.12 Dr Weatherburn commented that:

... the critical question in crime control is not whether a measure is effective but whether it is the most cost-effective way of achieving the result in question. To my knowledge there has only ever been one cost-effectiveness study in crime control policy in Australia, even though it is routine in every other area of government policy to ask for the alternatives, how much they cost and how much benefit you get from them.²²

Family Drug Support and the Public Health Association of Australia noted that information about the cost-effectiveness of different approaches is critical in direct funding to the most appropriate supply and demand reduction measures among both law enforcement and other approaches.²³

8.13 The committee believes that it is important that evaluations take a broad view and consider not only the immediate outcomes of particular law enforcement operations but their wider impact. For example, Dr Weatherburn pointed out that if a particular drug is targeted for attention, we need to know how this affects the consumption of other drugs that might be alternatives to the targeted drug. Targeting cannabis might push its price up and make more dangerous drugs like heroin, cocaine or amphetamines more attractive and so worsen rather than improve the overall situation.²⁴

20 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', p 4.

21 Health Outcomes International Pty Ltd, p 8.

22 NSW Bureau of Crime Statistics and Research, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 254.

23 Family Drug Support, sub 229, pp 4- 5; Public Health Association of Australia, sub 159, pp 3-4.

24 Weatherburn D, transcript, 23/9/02, pp 1261, 1263.

Conclusion

- 8.14 The dearth of evaluation of law enforcement approaches to drug use needs to be rectified. The committee is therefore pleased to see that greater efforts have been made recently to evaluate diversion initiatives and efforts to prevent alcohol-related problems. It believes that evaluations should be carried out routinely and take a comprehensive approach.
- 8.15 The committee believes that finding the best ways of dealing with alcohol and drug-related crime will also be improved as we extend our understanding of the factors that protect individuals from using and abusing drugs and that build their resilience to abuse.

Recommendation 72

- 8.16 **The committee recommends that the Commonwealth, State and Territory governments build evaluation into all their law enforcement initiatives related to substance abuse and misuse.**

Controlling drug supplies

National initiatives

- 8.17 The committee notes that the key to controlling the availability of illicit drugs is understanding how the market works and hence where and how law enforcement activities should be targeted to have maximum impact. The Commonwealth government's focus in this context is on Australia's borders and beyond, and on the operation of the criminal syndicates which sell illicit drugs as an important part of their activities. Much of the law enforcement within Australia is the responsibility of state and territory police forces, operating on information collected locally, as well as on intelligence from other sources, including Commonwealth agencies.
- 8.18 Evidence from the former NCA and Federal Agent McDevitt of the Australian Federal Police (AFP) indicated that criminal syndicates are best seen as businesses run according to recognisable business principles. They are well informed and resourced and increasingly flexible, switching from one product to another and forming alliances

with one another to advance their business.²⁵ According to the former NCA, 'It is not unusual for criminal syndicates to be multi-jurisdictional, exploiting weaknesses in the ability of law enforcement agencies to effectively investigate across national and international borders'.²⁶

- 8.19 A view of the market as shown in Figure 8.1 demonstrates where the supply chain is most vulnerable to intervention and can direct the attention and activities of law enforcement agencies. According to Federal Agent McDevitt, taking out facilitators for example, including in other countries can have an impact far greater than seizing large quantities of drugs at Australia's borders.²⁷ The former NCA pointed out that 'a narrow focus by law enforcement on the interdiction of drugs would not necessarily be successful in dismantling networks and prosecuting the Mr Bigs', because major figures in organised crime usually distance themselves from high-risk illegal activity.²⁸
- 8.20 The NCA listed the capabilities needed to combat the 'Mr Bigs' as, among others:
- investment in knowledge;
 - coordinated investigative and legislative responses;
 - an attack on the drivers and motives of criminal syndicates;
 - whole of government responses;
 - an intelligence-led, proactive, integrated approach; and
 - strategies to ensure resources are being allocated in the best way possible.²⁹

25 McDevitt B, transcript, 16/8/02, p 1220; National Crime Authority, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 214; As of 1/1/03, the National Crime Authority, the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments have been incorporated into the Australian Crime Commission.

26 National Crime Authority, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 215.

27 McDevitt B, transcript, 16/8/02, p 1220; National Crime Authority, transcript of the inquiry into crime in the community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 214.

28 National Crime Authority, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 215.

29 National Crime Authority, sub 86 to the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, pp 10-11.

INSERT FIGURE 8.1

- 8.21 The Commonwealth Attorney-General's Department advised that funding from the NIDS, a new legislative framework and international agreements have been pursued to improve Australia's capabilities in controlling the drug market. With increased funding, for example, the Australian Customs Service (Customs) and police overseas liaison networks and programs have been expanded and are providing information relevant to the increasingly globalised drug market. The National Heroin Signature Program is being expanded to include cocaine and amphetamines.³⁰ By identifying unique characteristics of samples seized, this program enables the drugs' source country to be identified and distribution networks traced.³¹ In the 2002-03 federal budget additional funding has been provided for the AFP, the former Australian Bureau of Criminal Intelligence (ABCI) and Customs to combat terrorism and boost national security, and that will also contribute to reducing the supply of illicit drugs.³²
- 8.22 On the legislative front, the Commonwealth Attorney-General's department stated powers conferred by the *Measures to Combat Serious and Organised Crime Act 2001* 'significantly enhance the capacity of Commonwealth law enforcement agencies to fight drug trafficking networks and prevent illicit drugs from reaching our community'.³³ The Department noted importantly, the profit motive in the drug trade is being attacked with the introduction of a system of civil forfeiture of the proceeds of crime. All jurisdictions, with the exception of the Australian Capital Territory, Tasmania and the Northern Territory, can now prosecute drug offenders under civil forfeiture legislation.³⁴
- 8.23 The Attorney-General's Department said that at a meeting on 5 April 2002, Commonwealth, state and territory leaders agreed that a new national framework was needed to combat multi-jurisdictional crime as well as combating terrorism.
- 8.24 A significant initiative in relation to fighting multi-jurisdictional crime at an operational level was the establishment of the Australian Crime Commission (ACC) on 1 January 2003.³⁵ The commission was formed

30 Commonwealth Attorney-General's Department, sub 259, pp 4, 9, 12.

31 Commonwealth Attorney-General's Department, sub 149, p 13.

32 Commonwealth Attorney-General's Department, sub 259, pp 4-5, 12.

33 Commonwealth Attorney-General's Department, sub 259, p 11.

34 Commonwealth Attorney-General's Department, sub 259, p 10 and informal communication, 17/2/03.

35 Commonwealth Attorney-General's Department, informal communication, 6/5/03.

by the amalgamation of the NCA, the ABCI and the Office of Strategic Crime Assessments.

8.25 Among the other measures being pursued are:

- reforming the laws relating to money laundering;
- legislation through model laws for all jurisdictions and mutual recognition for a national set of powers for cross-border investigations;
- legislation and administrative arrangements to allow investigation by the AFP into State and Territory offences incidental to multi-jurisdictional crime;
- modernising criminal laws in the areas of model forensic procedures (during 2002), model computer offences (during 2002) and model serious drug offences (pursued during 2003);
- ensuring adequate access to radio-frequency spectrum for an effective inter-operability between national security, police and emergency services;
- enhancing capacity in each jurisdiction for the collection and processing of samples to create DNA profiles and their uploading to the national DNA database; and
- priority work in law enforcement in: control over the illegal importation of criminal contraband specifically illicit drugs and firearms; extradition between States; recognition of expert evidence; identity fraud; gangs; etc ³⁶

8.26 In the 2003-04 federal budget, the government announced it is to:

- provide ongoing funding for four years (that is, \$2 million each year from 2003-04 for the ACC and \$1 million each year from 2003-4 for the AFP) to the ACC and AFP to continue programs to investigate illicit drug trafficking and other major crimes;
- continue to provide funding (that is, \$2.1 million in 2003-04, \$2.2 million in 2004-05, \$2.2 million in 2005-06 and \$2.2 million in 2006-07) to the AFP for the Law Enforcement Cooperation Programme to support offshore disruption to transnational criminal threats. This program facilitates cooperation with overseas law enforcement agencies to increase the flow of intelligence

36 Commonwealth Attorney-General's Department, sub 259, p 13.

information on activities that may adversely impact on Australian security;

- continue to provide funding (of \$1.4 million in 2003-04 and \$1.5 million in each of 2004-05, 2005-06 and 2006-07) to the AFP for the Overseas Liaison Network which supports Australia's drug law enforcement intelligence and participation in joint investigations with overseas law enforcement agencies to disrupt the supply of illicit drugs reaching Australia;
- continue to provide funding (\$5.1 million over four years) for the connection of the AFP overseas posts to the national computer network AFPNET which allows overseas liaison officers to access real-time information on operations;
- provide funding of \$4.3 million over four years to enable the AIC to continue the government's Drug Use Monitoring in Australia (DUMA) program which provides an ongoing national picture of drug use and crime in Australia by conducting interviews and urinalysis of police detainees; and
- provide additional funding of \$2.3 million to enhance the Australian Transaction Reports and Analysis Centre's (AUSTRAC's) financial intelligence capability to identify illicit drug trafficking and related activities.
 - ⇒ Related to this is an additional \$2 million over four years for AUSTRAC to provide law enforcement agencies with intensive training and support to better integrate financial intelligence into major drug and money laundering investigations; and
 - ⇒ also related is continued funding of \$7.3 million over four years to AUSTRAC for the High-Risk Cash Dealer Strategy to ensure ongoing provision of high quality financial intelligence targeting organised criminal networks involved in drug trafficking and other forms of major crime.³⁷

Conclusion

8.27 The committee:

- supports the development of this new national framework to deal with multi-jurisdictional crime, believing that it will contribute significantly to limiting the drug trade;

³⁷ *Budget measures 2003-04*, Budget paper no 2, Department of the Treasury, Canberra, May 2003, pp 170-173.

- applauds the government's commitment to limiting drug trafficking and associated activities in the 2003-04 budget; and
- applauds all jurisdictions and agencies commitment to limiting drug trafficking and associated activities.

Recommendation 73

- 8.28 **The committee recommends that Commonwealth, State and Territory governments put in place as soon as possible all components of the new national framework to combat multi-jurisdictional crime.**

Local and state initiatives

Policing practices

- 8.29 The previous committee drew attention in its discussion paper to the very substantial amount of police time that is devoted to dealing with alcohol-related incidents.³⁸ Police target dangerous drinking with random breath testing of drivers and by monitoring compliance with the laws governing the sale of alcohol. These matters are discussed further later in the report in relation to road trauma (Chapter 9) and the prevention of alcohol abuse (Chapter 5).
- 8.30 Voltz stated supplies of illicit drugs can be controlled or made harder to access by targeting vulnerable points in the local drug and associated markets. This in turn depends on understanding the nature of the market, for example, whether it is a cottage industry or dominated by more organised groups.³⁹ Dr Weatherburn noted that experience has shown that police activity can disrupt open drug markets without simply shifting it to another area. Acquiring property to finance a drug habit can be made more difficult by proactive policing of problem areas and targeting the receivers of stolen goods and repeat offenders.⁴⁰

38 House of Representatives Standing Committee on Family and Community Affairs, *Where to next?*, p 67.

39 Voltz D, 'Illicit market scans: The findings of two pilot studies examining the heroin and amphetamine markets in Queensland', *Conference Papers Collection*, CD-ROM, 2nd Australasian Conference on Drugs Strategy, Perth, 7-9 May 2002, slide 3.

40 Weatherburn D, transcript, 23/9/02, pp 1259-1261.

- 8.31 More proactive policing received support in many submissions to the inquiry. There were calls for:
- adequate⁴¹ or more⁴² policing, particularly in relation to removing dealers and drug affected individuals from the streets, schools, night clubs, pubs and other venues⁴³;
 - improved liaison between police and family members⁴⁴ and the community⁴⁵, including the appointment of police liaison officers trained to help drug users, their families and communities⁴⁶; and
 - more attention to reducing the amount of stolen goods for sale, including from pawn shops.⁴⁷
- 8.32 Some communities are facilitating proactive involvement between the police and the community. For example the Cabramatta Chamber of Commerce and Industry advised the Legal and Constitutional Affairs Committee as part of its inquiry into Crime in the community that initiatives it had undertaken included: a monthly business magazine with the majority of articles on policing issues; a Business Watch program to improve communication between business and the police; extending the hours and programs of the Police and Community Youth Club; raising funds to purchase equipment for the police such as pushbikes, personal alarms for distribution to the elderly etc.⁴⁸
- 8.33 Graycar et al noted traditional police approaches to illicit drug crimes have included such activities as street sweeps, raids and surveillance. More recently, multi-agency approaches have been developed that recognise that police clients are often also clients of other agencies such as the health care and social security systems.⁴⁹ Williams et al stated there is an increasing emphasis on addressing the underlying

41 Australian Family Association, sub 73, p 6.

42 Drug Advisory Council of Australia, sub 165, p 1; Shortland Youth Forums, sub 223, p 4.

43 Reece S, sub 180, p 10; Fairfield City Council, sub 83, p 14; National Council of Women of WA, sub 172, p 2.

44 Hampson I, sub 103, p 7.

45 Fairfield City Council, sub 83, p14.

46 Family Drug Support, sub 87, p 8.

47 Fairfield City Council, sub 83, p 14; Family Drug Support sub 87, p 8; Hampson I, sub 103, p 7.

48 Cabramatta Chamber of Commerce Inc, sub 44 to the Inquiry into Crime in the Community by the House of Representatives Standing Committee on Legal and Constitutional Affairs, pp 13-14.

49 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', p 13.

problems that cause crime and disorder, and this means that police work more with other agencies than in the past.⁵⁰

- 8.34 One example of this, as discussed later in this chapter, is provided by the programs that divert drug using offenders to treatment. Another example is Operation Mantle which operated in Adelaide from 1997 to 1999. Williams et al said Operation Mantle aimed to disrupt local drug markets, using specialist and non-specialist police; it targeted low and middle level dealers and diverted them into treatment. During the operation, links were also forged with local government, government agencies and the local community to gain intelligence about local drug markets.⁵¹
- 8.35 According to the Police Federation of Australia, there is a case for a greater involvement by the Commonwealth government in local law enforcement. The Police Federation of Australia pointed to federal initiatives in the United States that substantially increased the police presence on the nation's streets. The Federation particularly pointed to the need for an investigation of the United States Violent Crime Control and Law Enforcement Act (VCCA) enacted in 1994 and the COPS MORE (Making Officers Redeployment Effective) program. It advocated that the Australian federal government follow this example and provide financial support for more community policing.⁵²

Conclusion

- 8.36 The committee believes that more attention should be focussed on breaking the links between organisational dealers and substance-dependent dealers. This could involve police liaison officers working with families and communities to remove substance-affected dealers and individuals from areas of risk to interim safe havens.

50 Williams P, White P, Teece M & Kitto R, 'Problem-oriented policing: Operation Mantle- a case study', Australian Institute of Criminology, *Trends and issues in crime and criminal justice*, no 190, February 2001, p 1.

51 Government of South Australia, 'Drugs: Together, South Australians can make a difference: A guide to community programs in South Australia', p 3, viewed 1/4/03, <<http://www.ministers.sa.gov.au/Premier/others/Drug%20Booklet.pdf>>; Williams P, White P, Teece M & Kitto R, 'Problem-oriented policing: Operation Mantle-a case study', p 3.

52 Police Federation of Australia, sub 58 to the Inquiry into Crime in the Community by the House of Representatives Standing Committee on Legal and Constitutional Affairs, pp 2-3.

- 8.37 The committee believes that the suggestion for greater involvement by the Commonwealth government in supporting local law enforcement bears further examination.

Recommendation 74

- 8.38 The committee recommends that the Commonwealth, State and Territory governments urgently examine the need for Commonwealth initiatives, to supplement that available in the States and Territories, directed at supporting local community drug control initiatives.**

Sentencing practices

- 8.39 Sentencing practices also received attention. Tougher, severe penalties were favoured by some⁵³, including by respondents to the 2001 NDS Household Survey. The survey indicated that there was a high level of support for increased penalties for the sale or supply of illicit drugs (marijuana/cannabis 57.9 per cent, heroin 87.8 per cent, amphetamines/speed 84.7 per cent and cocaine 86.0 per cent). Support for a prison sentence as an action against those in possession of illicit drugs was: marijuana/cannabis 3.7 per cent, ecstasy/designer drugs 15.9 per cent, heroin 27.8 per cent and amphetamines/speed 21.2 per cent. 37.7 per cent of survey respondents thought that the possession of small quantities of marijuana/ cannabis for personal use should be a criminal offence.⁵⁴
- 8.40 However, the evidence for the effectiveness of severe penalties is mixed. Dr Weatherburn told the committee that US experience showed that increasing the level of imprisonment had a small effect on crime levels, but little on drug trafficking.⁵⁵ Coerced drug treatment of offenders was also suggested and is discussed further later in this chapter.
- 8.41 Less stringent sentencing practices were favoured by others.

53 Community Coalition for a Drug Free Society, sub 251, p 3; National Council of Women of WA, sub 172, p 2; Riley family, sub 32, p 4; Toughlove South Australia, sub 236, p 1.

54 Australian Institute of Health and Welfare, *2001 National Drug Strategy Household Survey: Detailed findings*, Drug statistics series no 11, AIHW, Canberra, December 2002, pp 965-100.

55 Weatherburn D, transcript, 23/9/02, p 1265.

- Sisters Inside advocated that the special needs of drug-dependent parents with dependent children be acknowledged and they be imprisoned only as a last resort.⁵⁶
- Youth Substance Abuse Services suggested that the particular attributes of young offenders be recognised, including through the introduction of national guidelines for juvenile justice dispositions.⁵⁷
- National Aboriginal Community Controlled Health Organisation suggested that Indigenous people are another group for whom alternatives should be sought to incarcerating them for offences related to substance abuse. According to ADCA, imprisonment simply compounds the grave social problems they already face.⁵⁸

8.42 While the Commonwealth government does not have a primary responsibility for these matters, it does have an interest in sponsoring best practice, as well as promoting a nationally consistent approach to national problems.

Conclusion

8.43 The committee believes that the Commonwealth government should take a leadership role in pursuing consistency and best practice in sentencing practices through the ministerial councils responsible for policing, justice and corrective services and other means at its disposal. This ensures that there is not displacement to a jurisdiction with weaker sentencing laws.

Recommendation 75

8.44 **The committee recommends that the Commonwealth government play an active role through the ministerial councils on police, corrective services and justice in establishing best practice and promoting nationally consistent policies and practices in policing and sentencing as they relate to drugs.**

56 Sisters Inside, sub 30, p 16.

57 Youth Substance Abuse Services, sub 102, p 5.

58 Alcohol and other Drugs Council of Australia, sub 80 to the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, p 9; National Aboriginal Community Controlled Health Organisation, sub 122, p 16.

Issues in controlling drug supplies

Gathering and sharing intelligence

Resources

- 8.45 Federal Agent McDevitt, representing the AFP at the committee's roundtable, reported that as drug syndicates have become more sophisticated in their mode of operation, intelligence gathering has become more complex. Considerable effort is needed to identify emerging trends in the drug market and to understand their implications.⁵⁹ The committee notes that with such knowledge, appropriate, rapid responses to changing illicit drug use can be developed, enabling early intervention when epidemics of particular drugs are developing.
- 8.46 According to the AFP Association, investigating narcotic-related crime is very resource intensive and more funding is needed. Funds should be supplied for more human and technological resources, including local intelligence gathering capacity. The AFP Association claimed that the then ABCI and the Commonwealth Forensic Services (CFS) would also benefit from increased resources to expand the services they provide, that is, the then ABCI to provide more extensive access to data and the CFS to improve their technical capacity.⁶⁰

Conclusion

- 8.47 The committee is convinced that the critical nature of intelligence gathering is of such importance that without adequate resources agencies charged with pursuing significant players in the drug market will be unable to do their job to the standard needed.

Recommendation 76

- 8.48 **The committee recommends that, with respect to the Australian Customs Service, the Australian Federal Police, the Australian Crime Commission and the Commonwealth Forensic Services, the**

59 McDevitt B, transcript, 16/8/02, pp 1219-1221.

60 Australian Federal Police Association, sub 70 to the Inquiry into Crime in the Community by the House of Representatives Standing Committee on Legal and Constitutional Affairs, pp 33-35, 45, 76.

Commonwealth government:

- **undertake an independent external review by the Australian National Audit Office every three years of the adequacy and funding of these agencies' capacity to gather the intelligence about drug-related crime that is needed to intercept supplies; and**
- **funding levels recommended by the review be set as the minimum for the subsequent period.**

Consistency of data across jurisdictions

8.49 Predicting and understanding emerging changes in drug markets are important not only for law enforcement purposes but for other purposes as well, such as informing strategies to be used by other front line workers. This point is illustrated by the burgeoning market for amphetamine type stimulants (ATS). Federal Agent McDevitt reported that controlling ATS calls for different law enforcement strategies from other common drugs, because ATS are not sourced from crops but are manufactured from chemical precursors in South East Asia and increasingly in mobile clandestine laboratories within Australia.⁶¹ Furthermore, the behaviour of offenders who are under the influence of ATS differs from that of other users: dealing with hallucinating, aggressive people presents a contrast for police and emergency and health workers more used to managing heroin users.⁶² The committee notes that forewarning of emerging drug use epidemics enables front line staff who deal with users to be better prepared.

8.50 In its June 2000 submission to the inquiry, the former ABCI highlighted a number of deficiencies in the intelligence it collected from other agencies to provide national, regional and local views of the drug situation in Australia. Since then, progress has been made in standardising the data obtained from each jurisdiction,⁶³ but further improvements are needed. For example, the former bureau's data on the availability and street price of drugs are provided on a state by state basis only, not on a local level, and not always consistently for

61 McDevitt B, transcript, 16/8/02, pp 1222-1223, 1228; Australian Federal Police, sub 288, p 1.

62 McDevitt B, transcript, 16/8/02, p 1219.

63 Australian Bureau of Criminal Intelligence, sub 49, pp 2-3 and sub 261, p 1.

all states for all time periods. Graycar et al have said that if local information were available, it could be used to assess the success of local initiatives as well as guide street-level policing.⁶⁴

8.51 Current police data on how crime is drug-related from different jurisdiction are not standardised. Graycar et al stated:

... Both classification systems and offence names can differ across the country. Furthermore counting rules in police jurisdictions have changed over time, and what may have been counted once may not today, and vice versa.⁶⁵

Conclusion

8.52 The committee believes that the lack of consistency of data across jurisdictions is an unsatisfactory situation that cannot be expected to adequately deliver the outcomes required.

Recommendation 77

8.53 **The committee recommends that the Commonwealth, State and Territory governments give high priority to:**

- **further standardising the drug-related data collected by different jurisdictions; and**
- **ensuring that such data is consistently collected and capable of being reported to reveal what is happening at the local, state and national level.**

Linking agency databases

8.54 Other agencies referred to the limitations imposed by different computer systems that are unable to communicate with one another and the need for greater cohesion. Federal Agent McDevitt stressed the need to link police, court and corrections databases.⁶⁶ The former NCA described other obstacles to cooperation, such as secrecy provisions in legislation and reluctance to share information when

64 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', pp 6-7.

65 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', p 5.

66 McDevitt B, transcript, 16/8/02, p 1228.

corruption within law enforcement agencies is feared. The former NCA referred to 'major steps forward' in the last five or six years in removing barriers to communication in a whole of government response to organised crime. It warned, though, that 'we still have a long way to go'.⁶⁷

- 8.55 The committee notes there may also be difficulties in some jurisdictions with compatibility of computer systems because a particular jurisdiction is using a whole-of-government approach and law enforcement agencies therefore have no discretion on their jurisdiction's computer system which may not be compatible with the law enforcement computer system network.
- 8.56 In the committee's view, this is clearly another area that needs particular attention. The committee is mindful however of difficulties that some jurisdiction may face if they are operating on a computer system that applies to all government agencies in that jurisdiction.

Recommendation 78

- 8.57 **The committee recommends that the Commonwealth, State and Territory governments devote more resources to overcoming barriers to communication between jurisdictions and agencies dealing with drug-related crime, including barriers within information management systems.**

Interagency cooperation and collaboration

- 8.58 The AFP's Federal Agent McDevitt told the committee that:

... the best results [from law enforcement efforts] are when there is active collaboration and cooperation between agencies. The AFP could not do it alone—there is no doubt about that at all. We have a very good and strong relationship with Customs; they are absolutely critical to our success. We have a very good relationship with the Australian Bureau of Criminal Intelligence ... Intelligence is absolutely critical to all of us. I think there is a hell of a lot more sharing of

67 National Crime Authority, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 220.

intelligence and information between law enforcement agencies, both at a national level and at a Commonwealth level, than we have ever seen in the past.⁶⁸

He went onto say one way of stimulating and tracking improvements in the level of cooperation and collaboration between agencies is the use of performance measures that assess these characteristics.⁶⁹

- 8.59 In its 2000-2001 annual report the AFP notes the significant benefits of the continuing development of effective strategic alliances and enhanced coordination of the AFP with other Commonwealth law enforcement agencies, partner agencies and with international law enforcement agencies. It cites the Joint Asian Crime Group - JACG as an excellent example of cooperation between the Commonwealth and State law enforcement agencies. Agencies involved comprise representatives of Customs, the AFP, the former NCA, the NSW Crime Commission and the NSW Police. Another successful group is the Western Australia Joint management Group comprising the AFP, Western Australia Police Service and AUSTRAC. The AFP's vision statement - To fight crime together and win - reflects the priority given to agencies working together.⁷⁰
- 8.60 The committee commends all law enforcement agencies involved for the effective efforts they are putting into collaboration and cooperation in intelligence sharing both at management and operational levels in agencies.

Recommendation 79

- 8.61 **The committee recommends that Commonwealth, State and Territory government agencies dealing with drug-related crime:**
- **extend the cooperation and collaboration between them; and**
 - **develop performance measures to report on improvements in inter-agency cooperation and outcomes.**

68 McDevitt B, transcript, 16/8/02, p 1228.

69 McDevitt B, transcript, 16/8/02, p 1228.

70 *Australian Federal Police- To fight crime together and win - Annual report 2001-02*, AFP, Canberra, September 2002, p 17.

Should illicit drug laws be changed?

Views for and against

- 8.62 A great range of views was expressed to the committee about existing drug laws, whether they should be changed, and how they might be altered to deliver a better outcome for the community.
- 8.63 Major Brian Watters pointed out that the current laws were introduced to counteract the harm caused by substance abuse. They deter drug use, he claimed, and provided the authority for interventions that limit harm; lives are saved and users are directed into treatment when they are unable to make decisions for themselves.⁷¹ Studies by Jones and Weatherburn confirmed that prohibition does deter some young people from using cannabis.⁷² For example, they also found that users reported that imprisonment or arrest would make them stop or reduce their use; more frequent users would, however, be less influenced by arrest and imprisonment than infrequent users.⁷³
- 8.64 In evidence to the inquiry, opposition was voiced against changing drug laws⁷⁴, including those relating to cannabis.⁷⁵ Responses to the NDS Household Survey also indicated little support (less than one in 10 Australians) for legalising the personal use of heroin (7.6 per cent), amphetamines/speed (6.8 per cent) or cocaine (6.6 per cent), although legalising marijuana/cannabis was favoured by three in 10 people (29.1 per cent).⁷⁶
- 8.65 Major Watters also said that among those who opposed changes to drug laws, it was seen as important that cannabis use remain illegal to retain the deterrent impact associated with that status.⁷⁷ Professor Saunders while having concerns about liberalisation of cannabis laws in general stated, that if further changes were being made, measures

71 Watters B, transcript, 16/8/02, pp 1240-1241.

72 Weatherburn D and Jones C, 'Does prohibition deter cannabis use?', *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, no 58, August 2001, 8p.

73 Jones C & Weatherburn D, 'Reducing cannabis consumption', *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, no 60, November 2001, pp 1-2.

74 Drug Advisory Council of Australia, sub 165, p 1; Catholic Women's League, transcript, 21/5/2001, p 960.

75 Toowoomba Drug Awareness Network, sub 273, p 5.

76 Australian Institute of Health and Welfare, *2001 National Drug Strategy Household Survey: Detailed findings*, p 95.

77 Watters B, transcript, 16/8/02, pp 1240-1242.

to prevent large scale cultivation and trafficking should remain in place.⁷⁸

- 8.66 Specific recommendations were made in submissions to the committee regarding the regulation of hydroponics shops⁷⁹, the confiscation of drug-related paraphernalia⁸⁰, random drug testing at rock and dance concerts, and selected night clubs and pubs (known to be central points for drug trading in the drug subculture)⁸¹, and the repatriation of immigrants who deal in commercial quantities of drugs regardless of how long they have been in the country.⁸²
- 8.67 Dr Wodak noted that those who favour a more liberal regime argue that trying to reduce drug supply is 'expensive, relatively ineffective and quite often counterproductive'. Prohibition creates powerful market forces; prohibitionists ignore the importance of the profit motive. Dr Wodak also suggested that, in the case of cannabis, the least bad approach is to tax and regulate it to cut out criminals, corrupt police and motor cycle gangs.⁸³ Ms Daley suggested that if illicit drugs were legalised, they should be retailed by non-profit organisations.⁸⁴ Dr Rosevear suggested that taxes collected from the sale of illicit drugs could be spent on education, control, rehabilitation, disease prevention and alternative approaches to helping drug users.⁸⁵

Current legislative framework

- 8.68 The nature of our drug laws is influenced by three international conventions to which Australia is signatory. They are the 1961 Single Convention, the 1971 Convention on Psychotropic Substances and the 1988 United Nations Convention (The Vienna Convention). Signatories are obliged to establish control systems that prohibit the availability of controlled drugs, except for scientific or medical use. The obligations of these treaties are given effect by three Commonwealth acts: the *Narcotics Drugs Act 1967*, the *Psychotropic Substances Act 1976* and the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*.

78 Saunders J, transcript, 15/8/02, p 1104.

79 Toughlove South Australia, sub 236, p 1.

80 Toughlove South Australia, sub 236, p 1.

81 Reece S, sub 180, p 10.

82 Community Coalition For A Drug Free Society (Vic), sub 251, p 3.

83 Wodak A, transcript, 16/8/02, pp 1244-1245, 1247.

84 Daley H, sub 63, p 5.

85 Rosevear W, transcript, 2/5/01, p 825.

- 8.69 Although interpretations of the international treaties differ, Lenton suggested there is general agreement that:
- the international treaties would be violated by free availability of illicit drugs;
 - they would be violated by regulated availability of illicit drugs for recreational purposes;
 - partial prohibition would only be consistent with the treaties if the laws against personal use were retained but not enforced; and
 - prohibition with civil penalties does not violate the treaties; nor does prohibition with an expediency principle, in which the government agrees not to enforce the law under defined circumstances⁸⁶, such as use for scientific or medical purposes.

Recommendations that all drugs be legalised⁸⁷ are therefore very unlikely to be realised.

- 8.70 Traditionally it has been a matter for each state and territory government to determine its own approach to illicit drug control, within the limits of the Constitution. The Commonwealth government:
- has some legislation of its own relating to illicit drugs, for example, governing their import and export; and
 - is bound by the international drug conventions listed above.

In addition, the Commonwealth government has an interest in promoting consistency with the national drug policy. It also provides extensive funding for research and program development, most recently for diversion initiatives which influence state and territory practices.

- 8.71 The states and territories differ somewhat in their legislative approaches to the use, possession, cultivation, manufacture and supply of illicit drugs. For example Rickard reported that all states have legislation that prohibits cannabis possession and supply for personal use and count them as offences that ought to be penalised. Each jurisdiction prohibits these offences with different degrees of coercive strength reflected in the different types of penalties they

86 Lenton S, 'Using prohibition with civil penalties to reduce harm on the supply side', *Conference Papers Collection*, CD-ROM, 2nd Australasian Conference on Drugs Strategy, Perth, 7-9 May 2002, slides 13, 14.

87 For example, Rosevear W, transcript, 2/5/01, p 825.

apply. The possession and use (and cultivation) of small amounts of cannabis (presumptively for personal use) in South Australia, the Northern Territory and the Australian Capital Territory incur civil penalties such as minor fines or similar forms of expiation. Criminal penalties apply to minor offenders in the other states, although diversionary cautioning allows first or second time offenders to be cautioned or provided with education or counselling instead of the normal court appearance.⁸⁸

8.72 Rickard went onto say that these differences can have a downside because:

... Within a federation of state jurisdictions with open geographical boundaries and easy transport, such as in Australia, it [is] important that legislative approaches to cannabis be as coordinated as possible to minimise counter productive effects.⁸⁹

Conclusion

8.73 The committee does not favour any change to the general thrust of Australia's illicit drug laws. It strongly advocates that illicit drugs remain illicit. However, it believes that clear definitions of state laws must be determined regarding the quantities in drug possession that constitute a dealer and the levels of criminal offences of possession and supply. It also believes that the laws would serve the country better if there were greater consistency and coordination of legislative approaches between jurisdictions. In line with Recommendation 75 about greater consistency in policing and sentencing, the committee recognises that this is starting to happen under the model criminal code but makes a similar consistency recommendation in relation to legislation.

Recommendation 80

8.74 **The committee recommends that the Commonwealth, State and Territory governments work together to develop nationally consistent legislation relating to illicit drugs.**

88 Rickard M, *Reforming the old and refining the new: A critical overview of Australian approaches to cannabis*, Department of the Parliamentary Library, Information and Research Services, research paper no 6 2001-02, DPL, Canberra, October 2001, pp 6-7.

89 Rickard M, p 22.

How effective are law enforcement efforts at controlling supplies?

- 8.75 According to the Commonwealth Attorney-General's Department, the detection and seizure of illicit drugs in Australia and overseas, either directly by Commonwealth agencies or in partnership with overseas agencies, have increased since the start of the NIDS in 1997.⁹⁰ Relative seizure rates compared with other nations have also increased. The AFP reported that between 1996 and 1998, the performance of the AFP in seizing heroin per head of population improved in the league table of 18 nations from 14th to second.⁹¹ It also said drawing on its records of seizures and cost of operations, it has developed a measure of the harm that the seizures have prevented. Over the two years 1999-2001, five dollars of harm have been averted for every dollar spent on AFP and Customs operations which the AFP described as 'a good return on investment for the funds invested in it ...'⁹²
- 8.76 The committee notes that it is, however, difficult to assess the extent of the successes claimed without knowing what proportion of the total was seized. The former NCA estimated that 'Law enforcement has interdicted only a fraction of the illicit drugs circulating in the community ...' The authority estimated that in 1999-2000, for example, just 12 per cent of the heroin brought into the country was intercepted.⁹³
- 8.77 Evidence suggests that performance measures of the success or otherwise of law enforcement efforts should be qualitative as well as quantitative. More important than knowing how much is seized is the impact of the seizures on the market; a better indicator of success is whether criminal groups are dismantled and there is a lasting effect on the availability of drugs on the black market.⁹⁴ In late 2000 there was a sharp decline in the availability of heroin in Australia to which, according to the former ABCI and the United Nations Office for Drug

90 Commonwealth Attorney-General's Department, sub 259, pp 7-8.

91 Australian Federal Police, 'Benchmarking heroin seizures', AFP research notes series, research note 1, p 2, 2002, viewed 10/12/02, <<http://www.afp.gov.au/raw/publications/ResearchReports/Issue1/RN1.pdf>>.

92 Australian Federal Police, 'Measuring the costs and benefits of AFP investigations', AFP research notes series, research note 2, 2002, p 2, viewed 10/12/02, <<http://www.afp.gov.au/raw/publications/ResearchReports/Issue2/RN2.pdf>>.

93 National Crime Authority, *NCA Commentary 2001*, p 22, viewed 6/11/02, <http://www.nca.gov.au/content/publications/NCA_Commentry_2001-28977.pdf>.

94 Families and Friends of Drug Law Reform (ACT), sub 266, pp 6-7; National Crime Authority, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 215; McDevitt B, transcript, 16/8/02, pp 1218-1219.

Control and Crime Prevention, law enforcement operations contributed. The Commonwealth Attorney-General's Department noted that the shortage demonstrated:

... Commonwealth law enforcement's success in dismantling established heroin trafficking networks and removing key players, and therefore the capability of syndicates to conduct further importations. A further factor was the contribution of State and Territory law enforcement with increasingly effective policing of domestic heroin markets.⁹⁵

8.78 The committee believes that such an impact appears to be a good indicator of law enforcement's success. However, as Federal Agent McDevitt and the former NCA stated other factors may also have contributed to the shortage. For example, a drought in Burma where most of the heroin used in Australia originates which led to a reduction in supply, and/or a business decision by syndicates to switch to trafficking amphetamines.⁹⁶ The Commonwealth Attorney-General's Department advised that a project commissioned by the National Drug Law Enforcement Research Fund is investigating the causes and impacts of the heroin shortage and will report in late 2003.⁹⁷

8.79 A number of improvements for assessing law enforcement's impact on drug supplies were suggested to the committee, including:

- Federal Agent McDevitt's suggestion that better measures of offshore seizures and benchmarking border seizures against overseas agencies⁹⁸; and
- Families and Friends of Drug Law Reform's (ACT) (FFDLR) suggestion that making estimates of the annual consumption of drugs as a basis for measuring the effectiveness of supply control.⁹⁹

Such moves could be part of a broader effort to develop national performance indicators for drug law enforcement. ADCA suggested

95 Commonwealth Attorney-General's Department, sub 259, p 6.

96 McDevitt B, transcript, 16/8/02, pp 1218-1219; National Crime Authority, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/10/02, p 218.

97 Commonwealth Attorney-General's Department, sub 259, p 9; Commonwealth Attorney-General's Department, informal communication.

98 McDevitt B, transcript, 16/8/02, p 1220.

99 Families and Friends of Drug Law Reform (ACT), sub 266, p 6.

that such indicators be developed by the Ministerial Council on Drug Strategy.¹⁰⁰

8.80 An evaluation of the supply control activities of the National Illicit Drug Strategy concluded that:

The current performance indicators for drug law enforcement sometimes make it difficult to judge the value of public investment in this area. The indicators that do exist are neither always drug-specific nor easily quantifiable ...¹⁰¹

The evaluation recommended research and development of outcomes measures and suggested further performance indicators that might be used, such as perception among criminals that risks are higher and increased community awareness of, and involvement in, law enforcement efforts against drugs.¹⁰²

Conclusion

8.81 The committee believes, as indicated above, that the development of performance measures to control the supply of drugs is fraught with difficulty. Such performance measures need more attention if they are to provide the most meaningful information possible.

Recommendation 81

8.82 **The committee recommends that Commonwealth, State and Territory governments cooperate to develop robust performance measures for supply reduction strategies of illicit drugs.**

100 Alcohol and other Drugs Council of Australia, sub 80 to the Inquiry into Crime in the Community by the House of Representatives Standing Committee on Legal and Constitutional Affairs, p 24.

101 Health Outcomes International Pty Ltd in association with Catherine Spooner Consulting, National Drug and Alcohol Centre & Turning Point Alcohol and Drug Centre, *Evaluation of Council of Australian Governments' initiatives on illicit drugs: Final report to Department of Finance and Administration vol 1: Executive summary*, St Peters, SA, October 2002, p 44.

102 Health Outcomes International Pty Ltd, pp 44.45.

Amphetamine type stimulants

- 8.83 The Commonwealth Attorney-General's Department advised that the use of ATS has increased over recent years; arrests, seizures and surveys of drug users all point to this trend.¹⁰³ The AFP reported that in 1999 the United Nations Office of Drugs and Crime – UNDO reported that methamphetamine was the most commonly used ATS in North America and East Asia while amphetamine was dominant in Europe. In 2001 global trends had changed with East Asia and Oceania emerging with the highest prevalence amid patterns of stabilisation or decrease in the Americas and Europe. The AFP also reported that the UN Global Illicit Drug Trends 2002 shows annual prevalence of amphetamine abuse as a percentage of the population aged 15 years and over for all reporting regions. Thailand shows the greatest percentage (5.9 per cent) of any country and Australia second at 3.6 per cent. Although data is limited, the AFP said that China, Myanmar and the Philippines appear to be the main sources of the finished product with China the largest supplier of precursors for manufacturing ATS.¹⁰⁴
- 8.84 In the face of the adverse consequences of ATS use, several measures have been suggested to control supplies. Foremost among them is making access to precursor chemicals more difficult. For example the AFP Association recommended this be done by mandatory reporting of theft or loss of precursors and/or listing them as prohibited imports in the *Customs Act 1901*.¹⁰⁵ Federal Agent McDevitt and Professor Saunders supported restricting, even banning, the sale of over-the-counter medicines containing precursors such as pseudoephedrine, and replacing them with other equally effective medicines for the relief of colds and flu.¹⁰⁶ Based on changes introduced by the pharmaceutical company Warner Lambert, the Pharmacy Guild of Australia suggested restricting access to pseudoephedrine could be achieved through agreed ceiling orders for retailers, agreed limitations of replacement by wholesalers, and close liaison between the police and the pharmaceutical industry over high-use customers.¹⁰⁷

103 Commonwealth Attorney-General's Department, sub 259, p 6.

104 Australian Federal Police, sub 288, p 1.

105 Australian Federal Police Association, sub 70 to the Inquiry into Crime in the Community by the House of Representatives Standing Committee on Legal and Constitutional Affairs, p 80.

106 McDevitt B, transcript, 16/8/02, p 1222; Saunders J, transcript, 15/8/02, p 1109.

107 Pharmacy Guild of Australia, sub 151, p 15.

- 8.85 At present the *1 May 2003 Standard for the uniform scheduling of drugs and poisons No 18* lists pseudoephedrine as a Schedule 4 Prescription Only Medicine except when included in Schedule 2 Pharmacy Medicine or Schedule 3 Pharmacist Only Medicine (there are nine exceptions in the later two schedules).¹⁰⁸
- 8.86 Pfizer suggested a national coordinated approach to managing the sale of products containing pseudoephedrine.¹⁰⁹ On a more general level, a formal National Code of Practice for Supply Diversion into Illicit Drug Manufacture¹¹⁰ has been developed to establish a common system of practice for Australian chemical manufacturers, importers, distributors, scientific equipment and instrument suppliers that are company members of the Plastics and Chemicals Industries Association and Science Industry Australia.¹¹¹
- 8.87 A National Working Group on Diversion of Precursor Chemicals into illicit drugs was established in late 2002 with Commonwealth, State and Territory law enforcement, health and industry groups. In December 2002 following the first meeting of the working group the Minister for Justice and Customs and Parliamentary Secretary to the Minister for Health and Ageing stated that:
- The working group's primary aim is to identify a balanced and coordinated approach to stopping the diversion of precursor chemicals, such as pseudoephedrine found in cold and flu tablets, into the production of Amphetamine Type Stimulants (ATS) while ensuring that the public has appropriate access to legitimate products.¹¹²
- 8.88 The Ministers announced that the Working Group had decided to take a national approach to make it more difficult for illegal drug manufacturers to access pseudoephedrine and other chemicals. They also said:

108 *Standard for the uniform scheduling of drugs and poisons: No. 18: 1 May 2003*, Commonwealth Department of Health and Ageing, Canberra, 2003, x, 382p.

109 Pfizer Pty Ltd, sub 276, pp 2- 3.

110 *Code of Practice for Supply Diversion into Illicit Drug Manufacture*. Prepared jointly by Chemical Sector of the Plastics and Chemical Industries Association and Science Industry Australia in consultation with government and law enforcement agencies. NSW Commissioner of Police, Sydney, June 2002, 20p.

111 Australian Bureau of Criminal Intelligence, sub 261, p 3.

112 Senator the Hon Christopher Ellison, Minister for Justice and Customs and the Hon Trish Worth MP, Parliamentary Secretary to the Minister for Health and Ageing, *National working group on diversion of precursor chemicals into illicit drugs*, joint media release, 4/12/02, p 1.

Key outcomes from today's meeting included:

- Recognition of the need to develop consistent penalties and offences across jurisdictions.
- Agreement that regulations and legislation should be improved nationally so that there were consistent controls of precursors, and methods to investigate clandestine laboratories.
- Support in principle for the implementation of a code of conduct for the Australian Self-Medication Industry (ASMI).¹¹³

8.89 In the 2003-04 federal budget, the government announced it will provide \$4.3 million to implement programs targeting precursor chemicals used in the illicit manufacture of drugs. The budget papers stated that funds will provide for: a national forensic database on illicit drug laboratories; strategic research and analysis of current and emerging threats; partnership initiatives; and the raising of awareness amongst key sectors.¹¹⁴

Conclusion

8.90 The committee recognises that part of the difficulty in dealing with ATS is that the precursors can be varied slightly changing the substance and thus making it difficult to regulate. While you can regulate for the precursor today it may change tomorrow.

8.91 The committee welcomes the development of an industry code and the initiatives being followed up by the National Working Group on Diversion of Precursor Chemicals but believes that more needs to be done. Mandatory reporting of loss or theft of precursors, amendments to the Customs Act and restrictions on the supply of over-the-counter medicines containing pseudoephedrine all merit attention.

8.92 The committee believes that other options include registering an individual purchasers name and address or medicare card or medicare number at the time of sale should be investigated.

113 Senator the Hon Christopher Ellison, Minister for Justice and Customs and the Hon Trish Worth MP, Parliamentary Secretary to the Minister for Health and Ageing, p 1.

114 *Budget measures 2003-04*, p 170.

Recommendation 82

- 8.93 The committee recommends that legislation be introduced by governments at the Commonwealth, State or Territory level to:
- require that the loss or theft of the precursors of amphetamine-type stimulants be reported to the police;
 - amend Schedule VI of the *Customs Act 1901* to include the precursors of amphetamine-type stimulants;
 - restrict the supply of the precursors of amphetamine-type stimulants by:
 - ⇒ placing ceilings on orders by retailers;
 - ⇒ limiting replacements by wholesalers; and
 - ⇒ requiring the pharmaceutical industry to report high-use customers to the police.

Recommendation 83

- 8.94 The committee recommends that:
- the National Working Group on Diversion of Precursor Chemicals identify a way to make legislation sufficiently flexible to be able to regulate immediately the changing precursors that are found in amphetamine type stimulants;
 - the Commonwealth government amend its *Standard for uniform scheduling of drugs and poisons* to make all substances containing pseudoephedrine a Schedule 4 Prescription Only Medicine; and
 - State and Territory governments adopt the proposed legislative and scheduling proposals developed on pseudoephedrine, as outlined in the two dot points above, as soon as possible after their identification.

Demand reduction

- 8.95 Earlier chapters of this report have detailed the role of the education and health sectors and non-government organisations in reducing

substance use and abuse through education, treatment and support for those affected by alcohol and drugs. The criminal justice system can also contribute to demand reduction by diverting those encountering the system into drug education and/or treatment. This can occur at any point along the chain from first contact with the police to post sentence in the courts.

Diversion from the criminal justice system

Rationale for diversion

8.96 Several studies have shown that, with treatment, some drug users will cease using altogether and stop their criminal activities. Even those who eventually relapse commit fewer crimes while in treatment and before relapsing than the untreated criminal. For example, Hall reported that:

There is consistent evidence that MMT [methadone maintenance treatment] reduces heroin use and crime while heroin-dependent persons receive adequate doses of methadone in programs with a methadone maintenance treatment goal ...¹¹⁵

Dr Weatherburn stated:

The available evidence suggests that coerced treatment, if properly resourced, is no less effective than voluntary treatment in reducing drug use and drug related crime.¹¹⁶

Graycar et al stated:

... Coerced treatment is based on two pieces of empirical work. The first is that the length of time a person spends in treatment is a significant factor in predicting success. The second is that there appears to be no difference in outcomes between people coerced into treatment and those who enter voluntarily. To effectively implement these two pieces of research evidence drug courts have been introduced ...¹¹⁷

115 Hall W, 'Methadone maintenance treatment as a crime control measure', NSW Bureau of Crime Statistics and Research, Report B29, 1996, p 14, viewed 26/9/02, <http://lawlink.nsw.gov.au/bocsar1.nsf/pages/cjb29text>

116 Weatherburn D, transcript, 23/9/02, p 1259.

117 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', p 10.

8.97 Furthermore, the cost of treating drug dependent offenders is less than the costs they impose on society through crime and the cost of dealing with them within the criminal justice system. For example, Ashton reported that estimates based on a large British study suggested that every £1 spent on treatment gains over £3 in cost savings from crime.¹¹⁸ A US study showed that for ten US cities crime costs due to US cocaine addicts fell 78 per cent after long term residential treatment and 28 per cent after outpatient drug-free treatment.¹¹⁹ In another US study by Gerstein et al it was reported that the cost of crime was found to have fallen 42 per cent from before to after treatment for the study group of women and men who relied on welfare income, had children, had parenting and custody issues or some combination of these.¹²⁰

Conclusion

8.98 The committee believes that as well as reducing crime in the community and giving dependent drug users an alternative to prison and ultimately a better quality of life, it clearly makes financial sense to divert them away from the criminal justice system into treatment.

Australian programs

8.99 A very significant diversion effort is being made by the Council of Australian Governments through the Illicit Drug Diversion Initiative. The program started in April 1999. Eligible drug users are diverted from the criminal justice system into drug education or assessment, from where they are referred to a suitable drug education or treatment and support program to address their drug problems. They are given the incentive to identify and treat their problems and also avoid incurring a criminal record.¹²¹ The Commonwealth Department of Health and Ageing advised that the Commonwealth government

118 Ashton M, 'NTORS [National Treatment Outcome Research Study]: the most crucial test yet for addiction treatment in Britain', *Drug and Alcohol Findings*, issue 2, 1999, p 18.

119 Rajkumar A & French M, 'Cost and benefit of cocaine treatment', quoted in DATOS [Drug Abuse Treatment Outcome Studies], viewed 29/10/02, <<http://www.datos.org/adults/adults-cost.html>>.

120 Gerstein D, Johnson R, Larison C, Harwood H & Fountain D, *Alcohol and other drug treatment for parents and welfare recipients: Outcomes, costs, and benefits: Final report*, US Department of Health and Human Services, Washington, January 1997, pp 1, 6, viewed 30/10/02, <<http://aspe.os.dhhs.gov/hsp/caldrug/calfin97.htm>>.

121 Council of Australian Governments, National Drug Strategy, *Illicit Drug Diversion Initiative*, 'About diversion', viewed 4/11/02, <<http://www.nationaldrugstrategy.gov.au/nids/diversion/abtdiv.htm>>.

has signed funding agreements with all the states and territories¹²² and has provided \$110 million over four years for the initiative.¹²³ At the end of 2002, the Prime Minister announced the provision of a further \$215 million for 2003-07.¹²⁴ This continuation funding was reflected in the 2003-04 federal budget.¹²⁵

- 8.100 A recent evaluation of Australian programs by Health Outcomes International Pty Ltd (Health Outcomes) found diversion occurring at pre-arrest, pre-trial, pre-sentence and post-sentence stages of the criminal justice system. Up to 31 March 2002, nearly 20,000 referrals to diversion had been estimated to have been made. Police diversions made up 90.3 per cent of these referrals. Not all states have court diversion programs yet (Health Outcomes lists Tasmania, Queensland and South Australia in this category).¹²⁶
- 8.101 Another important diversionary mechanism is provided by the drug courts which have been established in all jurisdictions except Tasmania, the Australian Capital Territory and the Northern Territory. Freiberg noted that drug courts have a number of defining characteristics. They deal specifically with drug offenders and integrate drug treatment into the criminal justice case processing system. They employ a non-adversarial approach, a dominant and continuing role for the court judge, frequent drug testing, comprehensive treatment and supervision, and a system of graduated sanctions and incentives.¹²⁷
- 8.102 Several submissions to the inquiry strongly supported the use of diversion and called for more of it.¹²⁸ Drug courts also received special mention by FFDLR and Dr Santamaria.¹²⁹ FFDLR stressed that diversion was seen as being especially appropriate for early

122 Commonwealth Department of Health and Ageing, sub 238, p 26.

123 Commonwealth Department of Health and Ageing, fax, 12/9/02.

124 Hon John Howard MP, Prime Minister, *Illicit drug diversion initiative*, media release, 31/12/02.

125 *Budget measures 2003-04*, p 177.

126 Health Outcomes International Pty Ltd, *vol 1*, pp 17-18; Health Outcomes International Pty Ltd, *vol 2: Diversion initiatives*, pp 34-80.

127 US Department of Justice, quoted by Freiberg A, 'Australian drug courts: A progress report', *Conference Papers Collection*, CD-ROM, 2nd Australasian Conference on Drugs Strategy, Perth, 7-9 May 2002, p 3.

128 Drug Advisory Council of Australia, sub 165, p 1; Public Health Association of Australia, sub 159, pp 3-4.

129 Families and Friends of Drug Law Reform (ACT), sub 65, pp 1, 5; Santamaria J, sub 231, p 10.

intervention in a drug user's activities¹³⁰, and other groups stressed it is particularly useful for young people.¹³¹ Dr Matthews reported that with really heavy drug users (that is, with an average of six previous incarcerations) as many as 40 per cent of offenders brought before the New South Wales drug court had never sought treatment for their drug habits. Diversion is therefore also a way of getting into treatment people who have never before received help for their problems.¹³² Dr Matthews also noted that points of incarceration are also places where drug users can be diverted into treatment.¹³³

Recommendation 84

8.103 The committee recommends that the Commonwealth works collaboratively with all State and Territory governments to establish effective court diversion programs and drug courts in all States and Territories.

Evaluation of diversion programs

8.104 Early indications from Australia's diversion programs suggested they were having a positive impact. For example:

- a significant drop off in participation from first to second and third cannabis offences pointed to a change of offender behaviour;
- the majority of a small sample of clients reported a positive effect, including reducing drug use and crime, the opportunity to obtain treatment and reflect on their lives; and
- some clients accessed a drug and alcohol service for the first time.

Relative to some overseas programs, Australian initiatives have done well in terms of intersectoral collaboration and the availability of treatment services for diverted clients.¹³⁴

130 Families and Friends of Drug Law Reform (ACT), sub 65, pp 1, 5.

131 Family Drug Support, sub 87, p 8; National Council of Women of WA, sub 172, p 2; Youth Substance Abuse Services, sub 102, pp 4-5.

132 Matthews R, transcript, 16/8/02, p 1238. The former committee's discussion paper, *Where to next?*, (p 83) supported diversion for young illicit drug users.

133 Matthews R, transcript, 16/8/02, p 1238.

134 Health Outcomes International Pty Ltd, *vol 1*, pp 20, 22.

8.105 Graycar et al noted that evaluations of overseas diversion programs have identified some of the elements that make such programs successful. They include:

- a proactive mode of work;
- a working style which wins the respect and trust of users;
- adequate resourcing;
- a capacity to provide ongoing support; and
- appropriate, adequately resourced treatment services to which to refer clients.¹³⁵

8.106 However, evaluations have highlighted some pitfalls than we can learn from. Dr Graycar pointed out for example that:

... An important factor is the different philosophical differences that different agencies bring to the table ... Essentially the health care system is based on consent and in most cases voluntary participation; criminal justice agencies, including the police, operate in a coercive environment ... A productive partnership needs to recognise and accommodate these differences. This can only be achieved in a supportive and trusting environment where there is respect for different views of the world ...¹³⁶

8.107 The difficulties that can arise from the different perspectives of law enforcement and health care are illustrated in the former committee's work. It found that 'some members of the police service are uncomfortable with the sort of work they are doing with diversion'. The former committee considered that 'training ought to be provided to police, as much of the success of this initiative rests on their shoulders'.¹³⁷ The recent evaluation of Australian programs by Health Outcomes also concluded that, despite increasing support for diversion among police and court personnel, 'there is a need for ongoing support for and training of police, magistrates and court

135 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', p 14.

136 Graycar A, McGregor K, Makkai T & Payne J, 'Drugs and law enforcement: Actions and options', p 14.

137 House of Representatives Standing Committee on Family and Community Affairs, *Where to next?*, pp 79-80.

personnel to further develop and sustain their support for the program.¹³⁸

- 8.108 Family Drug Support suggested that this training should be targeted at all groups in the criminal justice system and cover the nature of drug abuse, its treatment, the services available, and avoiding discrimination against drug users.¹³⁹ Spooner et al showed it is important for the police to understand the wider role they can play in reducing harm compared with that delivered by traditional policing. They need to be more aware of how their actions can impact on community health. Greater collaboration with health workers is now happening but is not practised consistently at all levels of health and law enforcement.¹⁴⁰
- 8.109 Other issues raised by Health Outcomes included indications that diversion programs were not engaging illicit drug users early enough in their drug-using activities. Clients in diversion programs were generally in their mid to late 20s and had longer, more problematic drug use than had been expected when the programs were established. This raised the question of how to engage younger users. Also needed are standard data about the programs and research, development and evaluation to further improve programs effectiveness.¹⁴¹
- 8.110 In an evaluation of Australia's first drug court, that in New South Wales, Lind et al said that this court was found to have been both effective and cost-effective, although not dramatically so. They believed further effort is needed to target better the offenders who are accepted into the court program and to fine tune the program's procedures.¹⁴² In reviewing Australian drug courts Freiberg concluded that:

Overall, my interim verdict is that the courts are a worthwhile innovation which deserves further support. Final judgement should be withheld until the results of the Queensland, South Australian, Western Australian and Victorian evaluations are

138 Health Outcomes International Pty Ltd, *vol 1*, p 6.

139 Family Drug Support, sub 87, p 8.

140 Spooner C, McPherson M & Hall W, 'The role of police in illicit harm minimisation: an overview', *Conference Papers Collection*, CD-ROM, 2nd Australasian Conference on Drugs Strategy, Perth, 7-9 May 2002, p 5.

141 Health Outcomes International Pty Ltd, *vol 1*, pp 6, 20, 28-29.

142 Lind B, Weatherburn D, Chen S, Shanahan M, Lancsar E, Haas M & De Abreu Lourenco D, *New South Wales drug court evaluation: Cost-effectiveness*, NSW Bureau of Crime Statistics and Research, Sydney, 2002, p vii-viii.

published and a further review is carried out of the New South Wales court in its mature and settled phase.¹⁴³

- 8.111 Non custodial sanctions also received comment in evidence. Dr Weatherburn noted that in the past in most states they have generally not been actively supervised nor strongly enforced. Penalties have not always been strict. There is scope here to make the non custodial regime more effective by strengthening its operation and penalties.¹⁴⁴ In addition, Professor Freiberg advised the treatments that are provided to people on community based orders are ‘derisory’, ‘the service delivery is intermittent, it is delayed and it is basically inadequate’, and the support services are not really there.¹⁴⁵

Conclusion

- 8.112 The committee is pleased by the Commonwealth and those State and Territory government’s who continue to support the diversion of offenders away from the criminal justice system and into drug education and/or treatment. However, it:
- believes more effort should be put into training and support for those involved in providing diversion initiatives;
 - supports work to develop best practice approaches to the different types of diversion programs and complementary interventions to engage drug users earlier in their drug using activities; and
 - is concerned by the poor quality of non-custodial sanctions.

Recommendation 85

- 8.113 **The committee recommends that the Commonwealth, State and territory governments provide training and support for police, magistrates and court personnel to enable them to effectively refer offenders to proven diversion programs where outcomes can be measured.**

143 Freiberg A, ‘Australian drug courts: A progress report’, *Conference Papers Collection*, CD-ROM, 2nd Australasian Conference on Drugs Strategy, Perth, 7-9 May 2002, p 26.

144 Weatherburn D, transcript, 23/9/02, p 1260.

145 Freiberg A, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/9/02, p 33.

Recommendation 86

8.114 **The committee recommends that the Commonwealth, State and Territory governments fund research to:**

- **establish best practice in relation to existing diversion programs and disseminate the results widely; and**
- **explore strategies to identify drug users or young people at risk at an earlier stage through precursive or associated behaviour that may present to the criminal justice or welfare system.**

Recommendation 87

8.115 **The committee recommends that the Commonwealth fund a national evaluation of the drug courts to determine their success in achieving beneficial outcomes for offenders, their families and communities.**

Recommendation 88

8.116 **The committee recommends that better resourced, more efficient and effective systems be established to monitor non-custodial sanctions imposed on drug offenders.**

Coerced treatment for drug dependence in a diversionary context

8.117 In keeping with the committee's interest on a greater emphasis on treatment, it is singling out for particular comment the issue of coercing offenders into treatment. This is significantly related to diversion activities. As indicated above, coerced treatment can be as effective as voluntary treatment. Furthermore, coerced treatment for drug dependence was strongly supported in submissions to the inquiry¹⁴⁶, with penalties for refusing¹⁴⁷ or failing to remain in treatment.¹⁴⁸ Major Brian Watters told the committee that:

146 Beswick P, sub 42, p 3; Catholic Women's League, sub 75, p 16; DRUG-ARM, sub 199, p 7; Robinson F, sub 5, p 1; Santamaria J, sub 231, p 10.

147 Hubbard C, sub 8, p 1;

148 Toowoomba Drug Awareness Network, sub 273, p 4.

So many times, people – especially young people – have been sent to us or have come to us at a point of crisis and, after two or three days when they start to feel better and have been detoxed, have decided to leave, and I have had the families plead with me: ‘Please don’t let them go. They will go out there and get back into this and they are going to die.’ In some instances, they have. I have been distressed along with the parents, as a parent and a grandparent myself. We did not have the means, and it was not our role, to incarcerate people and prevent them from leaving. But if there was some way that they could have been contained and constrained until they had gone through that further process of detoxification – and begun to be capable of thinking rationally and normally, begun to get some hope and to recognise that they are not bad people and that they are not useless and worthless people, begun to build up some of that sense of self-esteem, and, in the group work, begun to realise that they are not alone and that there are other people who are struggling with this and there are underlying issues we can help them with if we can get them through that early stage – then the possibility of their going on to successful completion of the program and remaining in a drug free state would be very high.¹⁴⁹

- 8.118 Submissions suggested coercive treatment for addicted offenders who had committed serious crimes¹⁵⁰ and Toowoomba Drug Awareness Network suggested repeat drug offenders on a diversion order should enter into compulsory rehabilitation within the criminal justice system with the possibility of a non-recorded sentence¹⁵¹. DRUG-ARM also recommended that the government introduce compulsory treatment for those whose family has sought and received a court sanction for their family members to undergo a drug treatment option.¹⁵²
- 8.119 One of the questions raised with the committee was whether methadone treatment should be mandatory for drug-dependent offenders in gaols. The argument put to the committee by Dr Matthews was that:

149 Watters B, transcript, 16/8/02, p 1241.

150 Beswick P, sub 42, p 3; DRUG-ARM, sub 199, p 7; Santamaria J, sub 231, p 10.

151 Toowoomba Drug Awareness Network, sub 273, p 4.

152 DRUG-ARM, sub 199, p 7.

... commencing any medication, particularly an S8 [Schedule 8 Controlled Drug] medication [which includes methadone] to which people get dependent, needs to be a decision made between doctor and a patient with all options considered and entered into voluntarily.¹⁵³

Conclusion

8.120 Given that there is evidence that coerced treatment in diversionary programs can be successful, the committee believes that:

- it is necessary to see the issues relating to coerced treatment considered in more detail, particularly in relation to young offenders and repeat offenders;
- targeting these two groups could make a substantial difference;
- seeking early intervention for young people at risk (for example, those caught with cannabis for the first time) to ensure more significant drug problems do not arise is appropriate;
- intervening early in a drug user's activities minimises the damage done to the user as well as to the community;
- as repeat offenders are responsible for a significant proportion of alcohol and drug-related offences, treating them would greatly reduce the burden they place on the community;
- where appropriate social workers should be able to obtain a court sanction for a patient to undergo treatment; and
- as an alternative to the question of whether methadone treatment should be mandatory for drug-dependent offenders in gaols the committee notes that an order to use a non-addictive treatment such as a naltrexone implant (that is, a Schedule 4 Prescription Only Medicine) might well be ethically more acceptable.

Recommendation 89

8.121 **The committee recommends that Commonwealth, State and Territory governments examine the establishment of a regime that would highlight options of appropriate coerced treatment and rehabilitation programs for young offenders and repeat drug-dependent offenders.**

153 Matthews R, transcript, 16/8/02, p 1237.

The regime should include the use of good behaviour bonds and incentive sentencing as an option and sanctions for pulling out of the program.

Treatment for prisoners

- 8.122 At the outset it is important to recognise the existence of drugs in prisons. The treatment and rehabilitation of prisoners is easier when drugs are absent or in short supply. While all jurisdictions pursue strategies to reduce the flow of drugs into prisons, the committee strongly encourages them to make every effort to minimise every chance of drugs getting into prisons, either through contact visits or through the correctional system itself. If this isn't done, other strategies to assist drug affected prisoners won't work.
- 8.123 The former committee noted that as many as 75 per cent of prisoners have a drug or alcohol problem and a high proportion of these are repeat offenders.¹⁵⁴
- 8.124 The committee agreed when offenders come into the prison system their drug use status should be assessed. The question is whether this should be mandatory or not and whether the staff in prisons should be drug tested as well.
- 8.125 Drug testing in the law enforcement system is occurring. In evidence the AFP reported that since July 2000 under the provisions of the Commissioner' employment powers pursuant to the *Australian Federal Police Act 1979* and the *Australian Federal Police (Disciplinary) Regulations* there is mandatory drug testing for employees. The AFP also tests its contractors and volunteers. From 1 July 2002 the Mandatory Targeted Testing was expanded to ensure that 100 per cent of the workforce was tested within a specified time frame – the 2002/03 financial year. The AFP does not conduct random testing for alcohol.¹⁵⁵
- 8.126 The AFP also reported that NSW Police is the only other police jurisdiction in Australia to have implemented mandatory testing and this is limited to sworn members (section 211A, *NSW Police Act 1990*). Other jurisdictions are considering the introduction of mandatory drug testing programs.¹⁵⁶

154 House of Representatives Standing Committee on Family and Community Affairs, *Where to next?*, p 80.

155 Australian Federal Police, sub 288, pp 2-3.

156 Australian Federal Police, sub 288, p 3.

- 8.127 The committee is aware that a long-standing principle in prisons is to ensure first-time offenders are not mixed with hardened long-term offenders. The committee is of the view that a similar approach needs to be implemented in relation to the drug use status of inmates.
- 8.128 Dr Matthews pointed out that many drug dependent offenders have never previously accessed treatment while living in the community, so their incarceration represents an opportunity to get them into treatment.¹⁵⁷ As the former committee noted, treatment for prisoners is important because as highlighted above as many as 75 per cent of them appear to have a drug or alcohol problem and a high proportion of them are repeat offenders (for example, 51 per cent of those jailed for possession or drug use charges in the year 2000 had been inside jail before).¹⁵⁸ Dr Weatherburn said substantial benefits to the criminal justice system, the prisoner and the community can therefore be expected from successful treatment of this group that 'has caused the community most of the grief and ... cost the community most of the money'.¹⁵⁹
- 8.129 The committee is of the belief that repeat offenders should be treated. There is debate about whether this treatment should be mandatory or not as when an offender enters the criminal justice system this is a rare opportunity to intervene in drug taking and crime.
- 8.130 However, Dr Matthews stressed that 'rehabilitation, although a laudable aim, is not logistically possible in the correctional setting'; since most prisoners do not stay in one place for very long.¹⁶⁰ Research by the Victorian Alcohol and Drug Association into several overseas studies demonstrates that it is possible, though, to start prisoners on treatment which they continue after leaving jail, and this has been shown to be effective.¹⁶¹ The South Australian Drug Summit recommended that this should happen.¹⁶²
- 8.131 The committee believes that this should happen more extensively than it does at present.
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157 Matthews R, transcript, 16/8/02, p 1238.

158 House of Representatives Standing Committee on Family and Community Affairs, *Where to next?*, p 80.

159 Weatherburn D, transcript, 23/9/02, p 1266.

160 Matthews R, transcript, 16/8/02, p 1231.

161 Victorian Alcohol & Drug Association, 'Tough on crime' versus drug treatment: a VAADA report', August 2002, pp 1, 4-5, viewed 30/0/02, <http://www.vaada.org.au/tough_on_crime.htm>.

162 South Australian Government, sub 279, attachment, *Communique*, South Australian Drug Summit 2002, Adelaide, 24-28 June 2002, p 24.

Recommendation 90

8.132 The committee recommends that the Commonwealth government encourage State and Territory governments to ensure that treatment is provided to all drug dependent prisoners.

8.133 As for treatment on the inside, the former committee reported itself to be:

... 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 ...

... [It declared that] Governments should invest more on the provision of health, education and welfare staff to help prisoners ...¹⁶³

The committee also noted that, the former Commonwealth Department of Health and Aged Care stated that in 1999 as part of the national diversion initiative, Australian governments agreed to develop and trial diversionary programs in jails.¹⁶⁴ However, the Commonwealth Department of Health and Ageing stated informally that NIDS dollars are not generally available for drug prevention and treatment programs in prisons as many prisons are managed by the private sector.

8.134 Information available to the current committee confirmed that, while treatment services are provided in prisons, they fall short of what is needed. For example, a paper prepared for the 2002 South Australian Drug Summit reported that treatments involving opioid substitution therapies had been capped in that state at about 150 prisoners. As a result, some prisoners were being released back into the community

163 House of Representatives Standing Committee on Family and Community Affairs, *Where to next?*, pp 81-82.

164 Commonwealth Department of Health and Aged Care, sub 145, p 90.

before a place became available.¹⁶⁵ It is estimated that the program is meeting only 50 per cent of the demand for it.¹⁶⁶

- 8.135 The joint protocol between the Australian Medical Association (NSW) and the Law Society of NSW recommended that the range and capacity of treatment services in prisons should be expanded so that services are available to all who seek treatment and are of the same standard as services in the community.¹⁶⁷ ADCA also called for the same quality and level of treatment for prisoners as is provided for the general public.¹⁶⁸
- 8.136 Dr Matthews stressed that an appropriate range of treatments is needed and he and several non-government agencies suggested treatments including buprenorphine, methadone, naltrexone and other opioid pharmacotherapies, abstinence-based programs, needles and syringes, and therapeutic communities.¹⁶⁹ Dr Matthews also suggested that preserved places and residential communities which accepted clients undergoing pharmacotherapy would also be very helpful.¹⁷⁰

Conclusion

- 8.137 The committee believes that:
- it is clear that, if treatment is to be effective, it must be of an adequate standard and offer a sufficient range of treatments to meet the diverse needs of the prison population;

165 Department of Correctional Services, South Australia, 'Illicit drugs and correctional services', Issues paper, *South Australian Drugs Summit 2002, Adelaide, 24-28 June 2002*, p 5, viewed 24/4/03, <http://www.drugsummit2002.sa.gov.au/public/summit_themes/drugs_correctional_svcs.pdf>.

166 South Australian Government, sub 279, attachment, *Communique*, South Australian Drugs Summit 2002, Adelaide, 24-28 June 2002, p 24.

167 The Law Society of New South Wales, sub 39, attachment – copy of The Law Society of NSW submission to the NSW Parliamentary Drug Summit, Sydney, 17-21 May 1999, attachment *Joint protocol between the Australian Medical Association (NSW) Ltd and The Law Society of New South Wales: Developing more effective responses to Australia's growing problem with illicit drug*, p 1.

168 Alcohol and other Drugs Council of Australia, *Drug policy 2000: A new agenda for harm reduction*, ADCA, Canberra, June 2000, p 133.

169 Alcohol and other Drugs Council of Australia, sub 61, p 23; Family Drug Support, sub 87, p 8; Australian National Council on AIDS, Hepatitis C and Related Diseases, sub 111, p 5; Matthews R, transcript, 16/8/02; p 1238; Toowoomba Drug Awareness Network, sub 273, p 5; DRUG-ARM, sub 199, p 19.

170 Matthews R, transcript, 16/8/02, p 1238.

- prisoners should be assessed and treated in accordance with their individual needs. A database on prisoners and their treatment would assist this process;
- in addition, if the trial of naltrexone implants recommended in Chapter 7 proves them to be safe and effective in assisting opioid dependent people, serious consideration should be given to requiring the use of such implants with suitable heroin dependent prisoners; and
- a long-standing principle in prisons is to ensure first-time offenders are not mixed with hardened long-term offenders. The committee is of the view that a similar approach needs to be implemented in relation to the drug use status of inmates.

Recommendation 91

- 8.138 The committee recommends that every prisoner should be assessed to determine their exposure to drug use and an appropriate drug-related treatment and management strategy should be implemented if substance abuse or risk thereof is determined.**

Recommendation 92

- 8.139 The committee recommends that State and Territory governments ensure that they provide a range of treatments for drug-dependent prisoners to the standard to which they are available in the wider community.**

Recommendation 93

- 8.140 The committee recommends that, as part of the trial recommended in Recommendation 55, naltrexone implants also be trialled to treat opioid dependent prisoners. Should the trial be successful, then the use of naltrexone implants be an ongoing treatment for opioid dependent prisoners. Participation in the trial must be voluntary and agreed between the doctor and patient.**

Recommendation 94

8.141 The committee recommends that the Commonwealth government work with State and Territory governments to facilitate:

- **the establishment of independent drug free units in correctional centres;**
- **drug free units should incorporate education programs including drug education;**
- **admission to the drug free unit should be on a voluntary basis by inmates who are assessed to be willing to achieve drug free outcomes;**
- **numeracy, literacy and life skills should form part of an education program in the unit;**
- **compulsory blood or urine tests should be undertaken during the time of the program to ensure participants remain drug free; and**
- **remissions should be offered as an incentive to become engaged in successful completion of the program.**

Recommendation 95

8.142 The committee recommends all personnel employed in correctional facilities should be subject to mandatory random blood or urine tests.

Recommendation 96

8.143 The committee recommends that State and Territory governments promote best practice in drug treatment in prisons and recognise those organisations which achieve best practice.

Needle and syringe programs in prisons

8.144 Needle and syringe programs (NSPs) in prisons have been suggested because of the benefits that they provide. However, as the Australian National Council on Drugs (ANCD) indicated:

... the benefits to the community from NSPs ... are clearly being undermined by a lack of progress in the prison system – the fact that needle sharing is a regular event in probably all our prisons is quite disturbing.¹⁷¹

- 8.145 The New South Wales Users and AIDS Association - NUAA told the former committee that such programs had been opposed by prison staff on the grounds that the danger of needles being used as weapons would increase.¹⁷² However, according the South Australian Department of Correctional Services, there have been no reports of such incidents in the 19 NSPs operating in overseas prisons.¹⁷³ The NUAA suggested that the establishment of safe injecting rooms within prisons would help to ensure that the needles do not enter other parts of the prison.¹⁷⁴ The ANCD supported serious consideration of the proposal by the Australian National Council on AIDS, Hepatitis C and Related Diseases (ANCAHRD) for a trial of retractable needle and syringe technology in prisons.¹⁷⁵
- 8.146 In terms of the link between injecting drug use and the transmission of hepatitis C, Dolan stated that if transmission is to be cut, 'the primary goal has to be to reduce drug injecting in prison'. She suggested this might be done by providing methadone maintenance treatment, imposing lesser punishments for the use of non-injectable drugs than for injectable drugs, and facilitating non-injecting routes of administration.¹⁷⁶
- 8.147 The importance of reducing injecting drug use in prisons is underlined by two facts. First, according to Dr Matthews, 40 per cent of men and 66 per cent of women in New South Wales correctional centres are hepatitis C positive.¹⁷⁷ Secondly, Dolan reported in year 2000 that about a quarter of prisoners injected drugs while incarcerated.¹⁷⁸ The ANCAHRD advocated the 'Development and

171 Australian National Council on Drugs, *National Council backs investment in needle program*, media release, 23/10/02, p 1.

172 New South Wales Users and AIDS Association, transcript, 21/2/01, p 655.

173 Department of Correctional Services, South Australia, p 6.

174 New South Wales Users and AIDS Association, transcript, 21/2/01, p 656.

175 Australian National Council on Drugs, *National council backs investment in needle program*, media release, 23/10/02, pp 1-2.

176 Dolan KA, 'Can hepatitis C transmission be reduced in Australian prisons?', *Medical Journal of Australia*, vol 174, p 378.

177 Matthews R, transcript, 16/8/02, p 1234.

178 Dolan KA, p 378.

implementation of Models of Care and Prevention of blood-borne viruses for people in custodial settings'.¹⁷⁹

- 8.148 ADCA recommended that education about reducing the harm associated with drug use should be provided to prisoners, preferably within a peer-based structure arrived at in consultation with prison officers.¹⁸⁰ Education about hepatitis C should also be included.

Special needs of women and children in prisons

- 8.149 In evidence attention has been drawn to the special needs of women prisoners. The South Australian Department of Correctional Services pointed out that most current programs for women are adapted from those developed for male prisoners. As such they do not acknowledge the strong relationship between drug use and the child sexual abuse and other forms of violence that many women prisoners have experienced.¹⁸¹ Based on its experience in Queensland, Sisters Inside recommended much greater coordination of drug treatment policy and programs for women prisoners so that the provision of counselling and treatment meet the needs of these women.¹⁸²

Recommendation 97

- 8.150 **The committee recommends that the Commonwealth, State and Territory governments initiate specific programs for women and children to address drug treatments in prisons and make available support services post-release from prisons.**

Prisoners who have a mental illness / disorder

- 8.151 The committee notes that another group in need of particular attention are those with the comorbid condition of drug dependence and mental illness, which is common in the prison setting. Dr Matthews reported that the national mental health interview showed that 90 per cent of women and 78 per cent of men on arrival in prison were suffering from a mental disorder, and 63.3 per cent of men and 74.5 per cent of women were abusing or dependent on drugs

179 Australian National Council on AIDS, Hepatitis C and Related Diseases, sub 111, p 5.

180 Alcohol and other Drugs Council of Australia, *Drug policy 2000: A new agenda for harm reduction*, p 133.

181 Department of Correctional Services, South Australia, p 11.

182 Sisters Inside, sub 30, pp 2, 16.

or alcohol.¹⁸³ The Victorian Institute of Forensic Mental Health noted the considerable impact that substance abuse has on mentally disordered offenders and the need for continued research on overcoming the difficulties of dealing with and treating them. It also commented on the lack of experts working in this field in Australia, and emerging evidence of a relationship between coexisting substance abuse and mental disorder and a dramatic increase in the likelihood of violence.¹⁸⁴

- 8.152 In Chapter 4, the committee recommended increased funding for alcohol and drug services, with particular emphasis on those for people suffering from mental illness and substance abuse, including those in prison. It now recommends increased efforts to understand the links between comorbidity, crime and violence.

Recommendation 98

- 8.153 **The committee strongly recommends that the Commonwealth, State and Territory governments:**
- **fund research into the nature of the links between coexisting substance abuse, mental illness, crime and violence; and**
 - **ensure sufficient research workers with appropriate skills are available in Australia to carry out this work.**

Linking pre- and post-release treatment arrangements

- 8.154 Most importantly, evidence suggested that there must be good links between pre- and post-release treatment arrangements, and this is often not the case.¹⁸⁵ In addition, support services are needed in association with treatment, and sometimes such services are very inadequate. Professor Freiberg told the House Legal and Constitutional Affairs Committee in connection with its inquiry into crime in the community that:

183 Matthews R, transcript, 16/8/02, pp 1233-1234; Matthews R, presentation to roundtable, Canberra, 16/08/02, exhibit 49, slide 8.

184 Victorian Institute of Forensic Mental Health, sub 52, pp 4, 12.

185 Matthews R, transcript, 16/8/02, p 1236; South Australian Government, sub 279, attachment, *Communique*, South Australian Drugs Summit 2002, Adelaide, 24-28 June 2002, pp 24-25; Weatherburn D, transcript, 23/9/02, p 1260.

... the major problems are not the drug problems: they are housing problems; they are employment problems; they are, if you like, personality and mental illness related problems and family problems. Unless you provide the package of services, you are not going to make a large difference.¹⁸⁶

Recommendation 99

8.155 The committee recommends that State and Territory governments ensure that:

- **arrangements are put in place to provide closely coordinated pre-release and post-release treatment and support services for drug-dependent prisoners with the objective of assisting them to become drug-free; and**
- **in particular a strong focus on education and employment should form the basis of post-release support.**

Resourcing health services in prisons

8.156 The issue of resourcing health services in prisons was raised by Dr Matthews who pointed out that as prisons are a state responsibility, prisoners do not have access to Medicare.¹⁸⁷

8.157 The present committee agrees with the former committee that more funding for such programs is clearly needed. The committee believes that in the absence of Medicare funding for prisoners, there is a case for Commonwealth funding for a program that promises equivalent benefits.

Recommendation 100

8.158 The committee recommends that the Commonwealth government make equivalent medicare benefit funding available to corrections health services to enable the level of treatment described in previous recommendations to be provided to eligible drug-dependent prisoners.

186 Freiberg A, transcript of the Inquiry into Crime in the Community by House of Representatives Standing Committee on Legal and Constitutional Affairs, 9/09/02, pp 33-34.

187 Matthews R, transcript, 16/8/02, pp 1236-1237.

- 8.159 Dr Matthews urged the Commonwealth government to take a lead in establishing minimum standards of health care for people in custody across the country and an ideal framework for delivering these services.¹⁸⁸
- 8.160 The committee agrees that such standards and advice on best practice would be helpful.

Recommendation 101

- 8.161 **The committee recommends that the Commonwealth government, in consultation with State and Territory governments, establish minimum standards for the health care of people in custody and the best practice in the delivery of health care.**
- 8.162 The ANCD has commissioned the National Drug and Alcohol Research Centre to conduct an overview of the drug-related strategies employed by all Australian jurisdictions to reduce the supply of and demand for drugs in correctional services. Among the data being sought is information on the types of programs in operation, their cost and any evaluations of them.¹⁸⁹

188 Matthews R, transcript, 16/8/02, p 1236.

189 Australian National Council on Drugs, 'Review of correctional services responses to reduce the initiation, level and impact of drug use within Australian prisons', viewed 24/4/03, <<http://www.ancd.org.au/current/current11.htm>>; National Drug and Alcohol Research Centre, 'Current project: title: 'Review of correctional services responses to reduce the initiation, level and impact of drug use within Australian prisons'', viewed 1/4/03, <<http://notes.med.unsw.edu.au/ndarc.nsf/website/Research.current.cp46>>.