

PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN CRIME COMMISSION

RECD: 13 March 2006

FROM: AG's Dept.

AUTHORISED FOR PUBLICATION:

SECRETARY: 

**Attorney-General's Department (AGD)
Submission to the Parliamentary Joint
Committee on the Australian Crime Commission
Inquiry into Amphetamines and other
Synthetic Drugs**

10 March 2006

Attorney-General's Department (AGD) Submission to the Parliamentary Joint Committee on the Australian Crime Commission Inquiry into Amphetamines and other Synthetic Drugs

The Attorney-General's Department (AGD) welcomes the opportunity to provide the Parliamentary Joint Committee inquiry into Amphetamines and Other Synthetic Drugs (AOSD) with a submission and considers it as an excellent instrument to increase the visibility of AOSD issues in Australia.

The submission will outline the AGD's involvement in the development of policies on AOSD in Australia and the specific projects that it is facilitating to generate legislative regulatory and policy changes. The submission will not specifically refer to the terms of reference as set down by the PJC. However, it will address issues including drug use trends and the nature and adequacy of the Australian response to AOSD.

Throughout this submission the term Amphetamines Type Stimulants (ATS) will be used in place of AOSD. We believe that it better reflects the nature of substances that are involved in the synthetic drug problem in Australia.

Overview of Illicit Drugs

Trends in illicit drug consumption, production and trafficking

Australia has seen an increase in the consumption of ATS since the mid 1990's. The National Drug Strategy Household Survey 2004 reported that:

- Between 2001 and 2004, Australia saw an increase of 100,000 people reporting to have used ecstasy in the last 12 months.
- In 2004, 1.2 million Australians reported using ecstasy at some stage in their lifetime and 560,000 Australians reported using ecstasy at least once in the last year.
- In 2004, 1 in 10 persons over the age of 14 had used methamphetamines.

There has been an increase in the number of seizures of high grade methamphetamine (commonly known as "Ice") being detected at the Australian boarder. In May 2003, Customs and the AFP seized 233kg of Ice, which remains Australia's largest ever Ice seizure. A further major Ice detection occurred in October 2004 when 125kg was uncovered hidden in 624 candles as part of a consignment that arrived in a shipping container that was targeted by Customs.

Precursor chemicals in the legitimate and illegitimate markets

The illegal production of ATS is dependent upon ready access to widely available substances with legitimate uses, known as precursor chemicals. Controlling the interface between the legitimate market for these chemicals and illicit drug manufacturing is an internationally recognised strategy for reducing the supply of ATS.

Increase in clandestine laboratory detection

The majority of the ATS that is consumed in Australia is locally manufactured in clandestine laboratories. These laboratories are fast, easy and cheap to

set up. All they require to function is running water, electricity and locally available chemicals. The number of clandestine laboratories detected nationally has risen dramatically. In 1996 58 laboratories were detected. This number has risen dramatically to 358 in 2003-04.

The dramatic increase in local detections of clandestine laboratories is consistent with the global trends. There has been an increase in the number of global detections of clandestine laboratories from 547 in 1989 to 11253 in 2003 (mostly producing Methamphetamine).

Role of the AGD in ATS

The AGD plays a central role in the implementation of the Australian Government's National Illicit Drug Strategy, *Tough on Drugs*. The NIDS pursues a balanced and integrated response to the harms caused by illicit drugs to the Australian community. Since 1997 this has involved more than \$1 billion worth of measures aimed at reducing the supply of dangerous drugs, preventing the uptake of harmful drug use and reducing the harmful impact of illicit drugs on Australians.

The AGD pursues a cooperative whole of government approach to implementing the ideals of the NIDS. AGD plays a facilitative role when working with law enforcement agencies, health departments and non-government agencies. AGD seeks to address ATS issues by facilitating projects that bring about changes through:

- Legislative, administrative or regulatory reform, and/or
- Commonwealth policy change or amendment.

The AGD is presently involved in three specific projects that will be addressed in this submission.

- A. The National Strategy to Prevent the Diversion of Precursor Chemicals into Illicit Drug Manufacture (National Precursor Strategy).**
- B. The *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 (Cth) (SDO Act)* implementing the Commonwealth Model Criminal Code offences. (Serious Drug Offences Act)**
- C. The National ATS Strategy. (ATS Strategy)**

A. National Precursor Strategy.

In the 2003-04 Budget, the Australian Government committed ongoing funding of a million dollars a year to a National Strategy to Prevent the Diversion of Precursor Chemicals into Illicit Drug Manufacture (National Strategy), which seeks to improve controls on the interface between legitimate and illegitimate markets for precursor chemicals.

The National Strategy pursues a partnership-based approach to policy development and implementation that engages all relevant stakeholders from across the community. A National Working Group on the Prevention of the Diversion of Precursor Chemicals into Illicit Drug Manufacture (Working Group) has been working proactively in Australia since 2002 to prevent the

diversion of precursor chemicals into illicit drug manufacture. The Working Group brings together 42 members from Commonwealth, State and Territory law enforcement agencies, forensic and health services, and the pharmaceutical and chemicals industry. The main function of this committee is to inform the implementation of a nationally funded strategy to prevent the diversion of precursor chemicals into illicit drug manufacture.

With the assistance of the Working Group the National Strategy is delivering a multi-faceted proactive policy response to ATS manufacture under four broad outcomes:

1. Enhanced intelligence and information sharing capacity among law enforcement and regulatory agencies.
2. Enhanced law enforcement, forensic and judicial responses through training.
3. National regulatory approaches to control access to chemicals and equipment while recognising the legitimate needs of business and the public.
4. Key stakeholders are aware of the problem of precursor diversion.

To date, a number of significant achievements have been realised in pursuit of the National Strategy's outcomes.

- New regulatory restrictions on the sale of pseudoephedrine-based medications, which has made it more difficult for methamphetamine manufacturers to obtain their key ingredient. This initiative reflected the recognition that the diversion of pseudoephedrine from the community pharmacy sector is the foremost threat posed by ATS production in Australia.
- The development and delivery of a number of precursor-related training initiatives, which are ensuring that front-line workers such as Customs officers and forensic chemists are able to respond to incidents of precursor importation and clandestine laboratory seizures.
- Awareness raising campaigns to ensure high risk areas of the community, such as the pharmaceutical and chemicals industry are fully aware of the dangers posed by ATS and precursors. The effectiveness of Australia's engagement with industry is evident in the voluntary development of a number of industry standards and codes of practice around precursor trade.
- The successful engagement of industry has also resulted in the development of an online database—known as Project STOP—that tracks sales of pseudoephedrine-containing medications, allowing pharmacists to identify potential pseudoephedrine diverters.
- The establishment of an annual National Chemical Diversion Congress, which brings together Australian experts in the field of chemical diversion to discuss ways to better prevent precursor diversion, including improving the capacity of prosecutors to prosecute precursor-related cases.

A number of projects are also currently being developed under the National Strategy, including:

- The development of a National Clandestine Laboratory Database, which will store and integrate information on seized clandestine laboratories from all jurisdictional police and forensic agencies, assisting law enforcement officers to better target their investigations and more accurately detect national trends to inform strategic law enforcement approaches. AGD is closely cooperating with the ACC in the creation of the database.
- A Clandestine Laboratory Site Decontamination Project, which will develop a nationally consistent 'best practice' approach to ensuring premises previously used for clandestine drug production are fit for reclamation by the public.
- Projects to assess the adequacy of controls around precursor chemicals and related equipment, such as tablet presses. This work will inform more effective future legislative and regulatory responses targeted at preventing the use of legitimate products in illicit drug manufacturing operations.

B. The Serious Drug Offences Act

The Standing Committee of Attorneys-General (SCAG) established the Model Criminal Code Officers Committee (MCCOC) in 1990 to develop a Model Criminal Code. The Model Criminal Code drug offences (Chapter 6) are principally targeted at organised illicit drug traders and commercially motivated drug crime.

The *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 (Cth)* (SDO Act) implements (as far as possible) the Model Criminal Code offences for the Commonwealth. The Act commenced 5 December 2005

Precursor Offences

These changes have been an important step towards tackling the ATS problem. The SDO Act has introduced new federal offences that focus specifically on the trade in precursor chemicals. The SDO Act creates a range of pre-trafficking offences designed to capture individuals dealing in precursors with the intention of manufacturing illicit drugs. The offences are intended to apply to individuals that engage in conduct that is preparatory to illicit drug manufacture including, precursor sale, manufacture and possession for the purpose of manufacture.

The SDO Act also includes offences relating to the import and export of precursors.

There are three tiers of pre-trafficking offence with the maximum penalty depending on the quantity of controlled precursor involved – a commercial quantity attracts a maximum penalty of 25 years imprisonment, a marketable quantity attracts a maximum penalty of 15 years imprisonment and the base offence with no minimum quantity attracts a maximum penalty of 7 years.

In order to prove the offences, it is not necessary to prove that the drug manufacture actually occurred. What is critical is the intention held by the defendant in selling, manufacturing or possessing a precursor. For example, if a person has a marketable quantity of precursor, and they have no licence/authorisation to have that precursor (and they are required to be licensed or otherwise authorised), they are presumed to have a commercial intention to manufacture a drug.

Child endangerment

The SDO Act creates a new range of offences designed to further protect children from the harms associated with the illicit drug trade. There are specific offences for the sale of drugs to children, the procuring of children to traffic drugs and the exposure of children to the manufacture of a controlled drug or a controlled precursor.

The SDO Act makes the sale of drugs to children punishable by a maximum penalty of 15 years imprisonment and/or 3,000 penalty units (\$330 000).

The SDO Act contains specific offences for the procurement of children to traffic drugs or controlled precursors. Similar to the precursor offences above, there are 2 tiers for the procurement of children for trafficking drugs. Supplying marketable quantities of controlled drugs or precursors to children for trafficking is punishable by imprisonment for life and/or 7,500 penalty units (\$825,000). Supplying controlled drugs or precursors to children for trafficking is punishable by imprisonment for 25 years and/or 5,000 penalty units (\$550,000). The child protection offences also extend to include protecting children from procurement to import and export drugs or controlled precursors.

The most recent legislative amendment has been the inclusion of provisions protecting children from the dangers of exposure to unlawful manufacturing. The Act makes it an offence for a person to engage in conduct that exposes a individual under the age of 14 years to the manufacture of a controlled drug or a controlled precursor. This is punishable by imprisonment for 9 years and or 1,800 penalty units. The exposure must constitute a real and not theoretical harm and can be satisfied by things such as risk of catching a disease that may give rise to a danger of serious harm to the other person.

An important element of this provision is that a person can commit an offence under this provision without being involved in the unlawful manufacture of controlled drugs or controlled precursors. The person only needs to expose a child under 14 to the danger of serious harm from such manufacture.

The SDO Act represents a significant step forward in the fight against ATS and drugs in general. It has created a range of offences to inhibit the supply of ATS to the Australian community through decreasing ATS manufacture and trafficking. It also aims to protect children from the harms associated with ATS. The Commonwealth continues to encourage all States and Territories to include similar offences in their individual drug legislation.

C. National Amphetamines Type Stimulants Strategy.

The National Drug Strategy (NDS) created a strategic framework for government and non-government agencies to work within to decrease the impact of drugs and alcohol on Australia. At its meeting on 23-24 February 2006 the IGCD endorsed the creation of a National ATS Strategy. The strategy is to be developed to further implement the strategic functions of the NDS and address the unique challenges of ATS.

The recent endorsement recognises the breadth of work that is already being undertaken by government and non-government agencies to address the ATS challenges. It is also a recognition of the need to address the alarming growth in the consumption and manufacture of ATS in Australia and globally. The creation of the National ATS strategy aims to combine the existing body of work into a co-ordinated national response.

The new strategy will assist us in gaining a better understanding of the present projects tackling ATS issues. This firm understanding will allow us to then assess any gaps in the approach and instigate a holistic response to any challenges that may occur in the future.

Conclusion

ATS is an issue that will continue to demand a strong reaction from the Australian Government. Coordinated national approaches such as the National Precursor and ATS strategies allow all parties to emphasise their interrelationships, and assist in developing synergies and partnerships to strengthen our individual or collective response to ATS.