

Inquiry into Amphetamines and Other Synthetic Drugs (AOSD)

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A. Trends in the production and consumption of AOSD in Australia and overseas

A.1 Australia

Trafficking/importation

The annual *World Drug Report*¹ published by the United Nations Office on Drugs and Crime (UNODC)² shows a significant increase in the seizures of amphetamine-type stimulants (ATS) in recent years. Worldwide seizures increased ten-fold between 1990-91 (4 mt) to almost 40 mt in 2000-01,³ with further growth in recent years. After cannabis, AOSD are the most frequently seized drugs.

In Australia, seizure of ATS and, in particular, of ecstasy (including MDA, MDEA, and MDMA) between 1998 and 2003 also increased significantly, as illustrated in Figure 1 below. This is also confirmed by other submissions made to this Committee.⁴

Figure 1: Seizures (in kg), 1998-2003, Australia (UNODC)⁵

| | 1998 | 1999 | 2000 | 2001 ⁶ | 2002 | 2003 |
|------------------|-----------|-------|-----------|-------------------|-------|--------|
| ATS ⁷ | 182.2 | 276.8 | 427.3 | 876.0 | 561.1 | 707.6 |
| Ecstasy | no report | 55.6 | no report | 338.4 | 722.0 | 1083.1 |

The seizures of ATS (not including ecstasy) in Australia, for the most part, confirm global trends, which also reflect increases in seizures. After a decline of ATS seizures between 2001 and 2002, global ATS seizures have again increased by 32% in 2003 to 32 mt. Of the ATS seized in 2003, 52% was seized in East and Southeast Asia.⁸ Australia reports among the highest seizures of ATS worldwide, accounting for approximately 6% of global seizures.⁹

Global seizures of ecstasy declined by 37% between 2002 and 2003, mostly due to a decline in production in Europe. There is some evidence that worldwide seizures have again increased since 2004.¹⁰ In Australia, too, seizures of ecstasy have grown significantly and steadily in recent years. According to UNODC, 13% of global seizures of ecstasy between 2001 and 2003 were made in Australia. In 2003, Australia seized 24% of the world total, second only to the Netherlands (28%). A growth in seizures of ecstasy (MDMA) in Australia has also been reported in other submissions to this Committee.

In recent years, there has been growing concern about trafficking in and abuse of so-called crystal methamphetamine (or 'ice') in Australia and the Pacific Islands. The seizure of a large-scale illicit laboratory used for crystal methamphetamine production in Fiji in July 2004,

¹ Formerly *Global Illicit Drug Report* published by UNODCCP, the United Nations Office for Drug Control and Crime Prevention.

² The methodology of UNODC data collection is set out in UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 379-97.

³ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 3.

⁴ See the submissions by the Australian Federal Police (AFP) (Feb 2006); NSW Crime Commission (14 Feb 2006).

⁵ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 316, 321.

⁶ Fiscal year.

⁷ Not including ecstasy.

⁸ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 103.

⁹ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 103.

¹⁰ INCB, *Report 2005* (New York: UN, 2005) para 640.

the seizure in Australia of 125 kg of 'ice' from PR China in October 2004, along with significant seizures in New Zealand has led to suggestions "that Oceania may be emerging as a transit area for consignments of crystal methamphetamine [...]; the abuse of the drug may also be increased in the region."¹¹ This view is supported by reports in the Australian media in 2006 suggesting that up to 50,000 people in Australia use crystal methamphetamine.¹²

The increasing availability of 'ice' in Australia seems to follow similar developments in Japan, Philippines, Brunei Darussalam, Singapore, and Malaysia, where crystal methamphetamine has become the main type of AOSD used. Indonesia, too, is experiencing growing levels of crystal methamphetamine use (locally referred to as 'shabu').¹³

The significant increase in seizure of AOSD in Australia can be explained by greater law enforcement activity (levels of activity and investigation, intelligence, etc) and by the greater availability of AOSD on the illicit market (local production and importation). In the context of ATS (including ecstasy), UNODC has described the upsurge in seizures over the past 15 years as "a frightening measure of a growing market".¹⁴ This view is supported by evidence showing an increase in the number and size of manufacturing sites in more countries,¹⁵ including Australia.¹⁶

Domestic production

The global production of AOSD (ATS combined) is estimated to be between 332 mt¹⁷ and 523 mt.¹⁸ According to UNODC reports, approximately half of the global production of amphetamines (not including ecstasy) takes place in East and Southeast Asia, with North America and Western Europe being the other main producers of amphetamines.¹⁹ Ecstasy, in contrast, is, for the most part produced in Europe (78%) with significantly lower production in North America (14%) and East and Southeast Asia (5%).

Methamphetamine in Australia is most often (approximately 90%) manufactured domestically in small, often mobile laboratories (sometimes referred to as boxed or boot-labs). This will explain why seizures of precursors have generally been limited to seizures of small quantities which do not suggest large-scale manufacturing sites.²⁰ Small-scale manufacturing is harder to detect for law enforcement agencies and can more easily be relocated. Methamphetamine production can be found throughout Australia, though it appears to be more concentrated in Southeast Queensland.²¹

Data on actual seizures of illicit AOSD laboratories in Australia is limited. UNODC reports that the number of seized illicit laboratories (amphetamine group), in Australia was 201 in the 2001 fiscal year and 240 in the 2002 fiscal year.²² In 2006, the International Narcotics Control Bureau (INCB) reported that 358 clandestine laboratories had been dismantled in Australia in 2003–04; "the majority of those laboratories (221) had been used for the illicit manufacture of methamphetamine",²³

¹¹ INCB, *Report 2005* (New York: UN, 2005) paras 622, 638.

¹² See, for example, ABC TV, Four Corners, *The Ice Age* (20 Mar 2006).

¹³ UNODC Regional Centre for East Asia and the Pacific, *Amphetamine-type Stimulants in East Asia and the Pacific* (Bangkok: UNODC, 2004) 7, 11–12..

¹⁴ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 3.

¹⁵ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003).

¹⁶ See Figure 2 below.

¹⁷ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 139.

¹⁸ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 49.

¹⁹ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 99.

²⁰ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 107–8.

²¹ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 101. See also the submission by NSW Crime Commission (14 Feb 2006); Queensland Government (Mar 2006).

²² UNODC, *World Drug Report 2004* (Vienna: UNODC, 2004) 259.

²³ INCB, *Report 2005* (New York: UN, 2006) para 637.

UNODC has remarked that that “[r]apidly rising laboratory seizures have had no significant impact on prices and purities — suggesting that overall production increased in recent years.”²⁴

Estimates made in 2005 suggest that approximately 9,286 kg of ATS (excluding ecstasy) are available in the illicit ATS market in Oceania. 88% or 8,151 kg are sourced (or produced) in the region while only 12% are imported from elsewhere, most notably East and Southeast Asia (796 kg or 8.6%), Western and Central Europe (229 kg or 2.5%) and Eastern Europe (28 kg or 0.3%).

In contrast to other AOSD, ecstasy in Australia is, for the most part, sourced from overseas (see also Figure 3 below), mostly from Europe and in significantly smaller quantities from Southeast Asia,²⁵ especially PR China. It is noteworthy that ecstasy abuse is less common in Southeast Asia than methamphetamine, except PR China, where it is common.²⁶ Australian law enforcement agencies, too, confirm high levels of ecstasy importation from Europe. In 2004, for example, Australian authorities seized over 800 kg of MDMA which had arrived from Poland via Germany.²⁷

Domestic production in Australia is limited, though there is some evidence of domestic production of ‘fake MDMA’ “to meet demand and as a response to the limited availability of ecstasy precursors.”²⁸

There is a growing number of reports and anecdotal evidence that ecstasy is increasingly produced domestically, which along with the large quantities which continue to be imported from overseas, further increases the availability of ecstasy in the Australian market.²⁹ The INCB reports of “some evidence that clandestine laboratories are increasingly being used for the illicit manufacture of both methamphetamine and MDMA (ecstasy) especially in Australia.”³⁰

Use and abuse

Against global trends, use of ATS and ecstasy has grown substantially in Australia in recent years. This is reflected in the absolute and relative number of users. According to UNODC estimates, 26 million people worldwide or 0.6% of the population aged between 15 and 64 used ATS (excluding ecstasy) in 2003-2004. 7.9 million people, or 0.2% of the global population between 15 and 64 years of age used ecstasy.

Levels of abuse are significantly higher in Australia. In recent years, Australia has had the highest level of ATS and ecstasy abuse in the world. Methamphetamine and ecstasy are the ‘Number 1’ most prevalent drugs in Australia (not including cannabis).³¹ Figure 2 illustrates the significant rise of abuse levels in Australia between 1993 and 2004. Data for the years not shown here was not readily available.

²⁴ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 101.

²⁵ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 101. CF submission by NSW Crime Commission (14 Feb 2006).

²⁶ UNODC Regional Centre for East Asia and the Pacific, *Amphetamine-type Stimulants in East Asia and the Pacific* (Bangkok: UNODC, 2004) 9.

²⁷ INCB, *Report 2005* (New York: UN, 2005) para 640.

²⁸ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 108.

²⁹ See also submission by South Australia Police (17 Feb 2006).

³⁰ INCB, *Report 2005* (New York: UN, 2006) para 621.

³¹ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 58, 107. Cf INCB, *Report 2005* (New York: UN, 2005) para 640.

Figure 2: Annual prevalence of abuse as percentage of the population aged 15-64, ATS, ecstasy, Australia (UNODC)³²

| | 1993 | 1995 | 1998 | 2000-01 | 2001 | 2004 |
|---------|------|------|--------------------|--------------------|------|------|
| ATS | 2.0% | 2.1% | 2.4% | 2.78 ³³ | 4.0% | 4.0% |
| Ecstasy | 1.0% | 0.9% | 3.6% ³⁴ | | 3.4% | 4.2% |

UNODC also confirms that “the prevalence of use [of ATS] is highest in the Oceania region ([630,000 or] 3% of the population age 15-64).”³⁵ Moreover, “[m]ore people report having used ecstasy in [2004] in the Oceania region (3.1% [or 634,000]) than any other region.”³⁶ It needs to be noted that the absolute figure of users is based on Australian and New Zealand data only; statistics from other Pacific Islands were not supplied. Thus the relative level of abuse in Australia (4% for ATS, 4.2% for ecstasy) is the highest in the world and is actually higher than in Figure 2 shown above. This is confirmed by other submissions made to this Committee.³⁷

UNODC research shows that little, if any, information is available on the average consumption per user.³⁸

Abuse of ATS and ecstasy is particularly prevalent among youth which have much higher rates of abuse than the general population. Among young people, abuse of ATS and ecstasy is much higher than of cocaine and heroin.³⁹

A.2 South Pacific (not including New Zealand)

There is growing evidence of trafficking of AOSD to and through the South Pacific islands and anecdotal evidence supports concerns in Australia and in the international community about growing levels of AOSD abuse in some Pacific island nations. Significant seizures of heroin in Fiji in recent years, along with the seizure of a large-scaled illicit laboratory used for the manufacturing of crystal methamphetamine in Laucala Bay, Suva, Fiji in July 2004 illustrate the growing trade in illicit drugs, including AOSD, in the region. Anecdotal evidence, too, suggests that AOSD are trafficked from the Philippines and Indonesia to Papua New Guinea with some ‘ice’ being sold locally, and some trafficked to other destinations in the South Pacific, including Australia. The Pacific Islands (other than Australia and New Zealand) currently do not submit reports about drug production, seizures, and abuse to UNODC and the INCB; thus it is difficult to make more detailed statements about the availability and use of AOSD in the region.

One of the main concerns in the context of AOSD is the lack of comprehensive and up-to-date legislation in the majority of South Pacific nations. Many countries do not—or do not

³² UNODCCP, *Global Illicit Drug Trends 2002* (New York: UN, 2002) 268; UNODC, *World Drug Report 2004* (Vienna: UNODC, 2004) 401; UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 371–2; UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 107.

³³ Amphetamine and methamphetamine, including ecstasy, UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 63.

³⁴ 14 years and older.

³⁵ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 112.

³⁶ Ibid.

³⁷ See the submission by the AFP, Chief Police Officer for the ACT (16 Feb 2006); ADCA (Feb 2006); National Drug Research Institute (3 Mar 2006); South Australia Police (17 Feb 2006); WA Police (12 Jan 2006); Queensland Alcohol and Drug Research and Education Centre (27 Feb 2006).

³⁸ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 143. Cf UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 49.

³⁹ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 2.

adequately—criminalise the activities associated with AOSD manufacturing, trafficking, and sale.

The INCB has also repeatedly pointed to the lack of ratification of international instruments by South Pacific nations. Only five of the 15 South Pacific nations, Australia, Fiji, Federated States of Micronesia, New Zealand, and Tonga have signed the three main UN drug conventions: the 1961 *Single Convention on Narcotic Drugs*, the 1971 *Convention on Psychotropic Substances*, and the 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. The Cook Islands, Kiribati, Nauru, Niue, Tuvalu, and Vanuatu have not signed any of the three conventions. Samoa and the Solomon Islands have not signed the 1971 *Convention on Psychotropic Substances* (which covers AOSD), and the 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. The Marshall Islands, Palau, and Papua New Guinea have not signed the 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.⁴⁰ The lack of comprehensive drug laws along with weaknesses in the regulation of the financial markets in many countries make the Pacific islands particularly vulnerable to AOSD and other drug trafficking and to the laundering of proceeds of AOSD and other drug-related crime.

The obligations under international drug conventions pose significant challenges to the Pacific island nations. Many, if not most countries will have to amend their laws, including penal codes and procedural legislation. The criminal justice and law enforcement systems of some countries will also require adjustment to put in place the provisions under the international instruments. In addition to the legislative amendments required to meet the obligations under the conventions, many of the international measures require substantial financial, material and human resources. This creates particular difficulties for smaller and economically less developed nations. Many countries in the South Pacific do not have the resources to commit themselves to the international drug control regime.

It is desirable that the international conventions addressing the trafficking in narcotic drugs and psychotropic substances (including AOSD) obtain more recognition, further support, and greater enforceability. It is crucial that more countries in the South Pacific ratify the existing conventions. The role of international and regional forums in this field needs to be strengthened in order to make their work more effective and, insofar as possible, enforceable. The harmonisation of criminal law and criminal justice systems should go hand in hand with closer judicial and law enforcement cooperation as well as with greater appreciation of the root causes of drug abuse.

⁴⁰ INCB, *Report 2005* (New York: UN, 2006) paras 624–6,

C. The extent and nature of organised crime involvement

The production, trafficking, and sale of AOSD is a significant and growing illicit market and thus presents an opportunity for criminal organisations, especially if the risks of detection, arrest, and seizure are outweighed by the possibilities of large profits, monetary and otherwise.

The total illicit drug market in Oceania (Australia and New Zealand only) is estimated to be US\$16 billion. On a per capita basis, US\$ 502 (2.6% of GDP, 2003) is spent on illicit drugs in Oceania, ten times the global average of US\$ 51 (0.9% of GDP, 2003). UNODC confirms “that the highest expenditures on drugs per year are found in the Oceania region [...]. Expressed as a percentage of GDP, drug sales (at the retail level) seem to be most important in the Oceania region.”⁴¹

UNODC estimates that the global market for amphetamine-type stimulants (ATS) including methamphetamine, amphetamine, and ecstasy amounts to US\$ 44.3 billion (2005), approximately 13.8% of the global illicit drug market (at retail level).⁴² The value of amphetamine retail is estimated to be US\$ 28 billion; ecstasy and MDMA are valued at US\$ 16 billion. Oceania accounts for approximately 9% (US\$ 3.8 billion) of the global ATS market (not including ecstasy).⁴³ It is estimated that 10% of the world’s ecstasy market is in Oceania.⁴⁴

Figure 3 ATS and ecstasy supply and demand in Oceania (UNODC)⁴⁵

| | ATS (excl. Ecstasy) | Ecstasy |
|-----------------------------------|--------------------------|--------------------------|
| Production in Oceania | 8,151 kg | 784 kg |
| Total Available for Sale | 8,151 kg | 784 kg |
| Laboratory Price per kg at Origin | USD 7,099/kg | USD 47,014/kg |
| Producer income | USD 58 million | USD 37 million |
| | | |
| Total intended for consumption | 9,286 kg | 5,940 kg |
| Total seize/lost | 569 kg | 748 kg |
| Total Available for consumption | 8,718 kg | 5,192 kg |
| Wholesale price per pure m | USD 63 | USD 143 |
| Wholesaler income | USD 550 million | USD 741 million |
| | | |
| Estimated user population | 794,000 | 519,000 |
| Estimated actual consumption | 7,846 kg (per year) | 5,192 kg |
| Implied consumption per user | 10 g | 10 g |
| Average retail price per pure gm | USD 293 | USD 298 |
| Retailer income | USD 2,296 million | USD 1,549 million |

Figure 3 illustrates the profits generated in the ATS and ecstasy markets. Profit margins are particularly high at the wholesale and retail level of the ecstasy trade. The Figure also highlights the relatively low impact of seizures on the availability of ATS and ecstasy, and confirms that higher levels of seizures (748 kg or 12.6% of total intended for consumption) has a direct impact on wholesale and retail and on the profit margins achieved by criminal

⁴¹ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 129.

⁴² UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 128.

⁴³ Ibid, at 139, 143.

⁴⁴ Ibid, at 143.

⁴⁵ UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 140.

organisations. It has been observed that “[a]t each trafficking step the mark-up is still greater. Also, the closer the manufacturing site, the cheaper the product.”⁴⁶

Figure 3 also confirms that much of the Australian ATS trade (not including ecstasy) involves substances manufactured locally and only a small percent is imported from elsewhere, thus reducing the costs for cross-border trafficking and transportation. Ecstasy, in comparison, shows much lower levels of local production and higher levels of importation, thus explaining the higher costs of ecstasy at wholesale and retail level.

UNODC confirms that the distance to the manufacturing site, domestically and internationally, has a direct impact on the price: “2001 prices in Queensland (a major source of methamphetamine) were 1/3 less than those in neighbouring New South Wales, and significantly less than in Victoria or Northern Territory.”⁴⁷

The increasing market and availability of AOSD in Australia is also reflected in the retail price for AOSD which continues to decrease.

Figure 3: ‘Typical’ retail price (in USD), 1998-2003 amphetamines, methamphetamines, ecstasy, Australia (UNODC)⁴⁸

| | 1999 | 2001 | 2002 | 2003 |
|------------------|-------|------|------|----------------------|
| Amphetam. | 118.4 | n/a | 95.8 | n/a |
| Ecstasy | 30.4 | 28.6 | n/a | (16.7) ⁴⁹ |

Data for the years not shown here was not available.

UNODC has observed that ATS retailing “is moving up-market, practiced not in filthy alleys populated by emaciated addicts, but in middle-class neighbourhoods and discos.”⁵⁰

A study of the global ecstasy and amphetamine market conducted by UNODC in 2003 has found that

low costs, high profits, easily camouflaged labs and manufacturing close to retailing are incentives for organised crime's involvement in ATS. Small capital investment, ease of manufacturing, low costs for precursors and equipment, and high volumes make the ATS business extremely lucrative, despite the low (unit) prices. Similar economic incentives are unavailable to the producers of cocaine and heroin, for example.⁵¹

In contrast to opiates, cocaine, and cannabis, the ATS industry is not dependent on climate, weather, and agricultural production.

In 2003, UNODC released the following analysis of the connection between ATS and organised crime:⁵²

⁴⁶ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 7.

⁴⁷ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 8, 44.

⁴⁸ UNODCCP, *Global Illicit Drug Trends 2002* (New York: UN, 2002) 209, 211; UNODC, *World Drug Report 2004* (Vienna: UNODC, 2004) 385; UNODC, *World Drug Report 2005* (Vienna: UNODC, 2005) 357.

⁴⁹ Oceania, price per gram, UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 7.

⁵⁰ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 5-6.

⁵¹ UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 5.

⁵² UNODC, *Ecstasy and Amphetamines, Global Survey 2003* (New York: UN, 2003) 10.

ATS and organized crime

Without question, the popularity of amphetamines and ecstasy amongst younger people has been exploited by organized groups of criminals.

Production and distribution of the drugs are increasingly becoming structured, and integrated into international organized crime syndicates with diverse interests. Driven by high profits, an illicit synthetic drug 'industry' characterized by large-scale manufacture and international distribution networks is evolving. More and more, operators are sharing technology and expertise, spread via the Internet, to set up laboratories and a more sophisticated "commercial" production capacity. The old loose network of independent laboratory operators working at the national level has been supplanted by larger organizations able to produce more and better quality drugs at lower costs. The larger groups are more flexible, and are able to identify and exploit any lucrative business opportunity, as well as any flaws in law enforcement efforts. They assist each other to more efficiently produce, market, transport and distribute their products.

The involvement of organized crime to any large extent is new to synthetic drugs. Because of the regional nature of illicit manufacture and trafficking, there has been no need previously to build complex international networks for smuggling across frontiers and continents. Traditionally, the requirements for manufacture, distribution and use have been available locally, and the market has been controlled by small self-contained groups, buying chemicals, setting up laboratories and selling products locally. Now, for example, drug trafficking groups based in Western Europe, supported by Israeli and Russian organized crime syndicates, have extended their exporting operations, arranging the supply of ecstasy produced in Europe to consumer markets in Eastern Europe, Asia, Australia and, most recently, North America. Criminal organizations in East and South-East Asia, including Japanese yakuza gangs, have forged new partnerships to facilitate regional trafficking of methamphetamine. Some criminal investors exploit economic and employment situations by investing the necessary capital, delivering the precursor chemicals for manufacturing ATS, taking orders for markets abroad, and laundering profits through front companies.

At the same time, the search for new sources of chemicals, as precursor controls have tightened around the world, has also contributed to the formation of larger coalitions between international criminal groups.

To a large part, the expansion of criminal groups engaged in the production and trafficking of plant-based drugs into synthetic drugs has frequently started with trafficking in precursor chemicals, an activity which, unlike the distribution of synthetic drugs, has always been international in character. If not involved directly with the trafficking of both ATS, and heroin or cocaine, crime groups involved with either are collaborating more. As an example, the international wholesale trafficking of ecstasy from Europe has become increasingly linked to cocaine and heroin destined for European markets, through barter exchange of the illicit products. Business, former colonial, and ethnic connections are being exploited ruthlessly by crime groups. For example, the large ports in Rotterdam and Antwerp provide business opportunities for the alternative routing of smuggled goods, including precursors, into the Netherlands and Belgium. Similarly, because of its historical and language links, highly effective partnerships exist between Spain and the South American cocaine trade. Ethnic criminal groups from Mexico, initially operating 'super labs' based in Mexico have, like any large multinational business, favoured offshore production, e.g., in California, in their search for efficiency.

Undoubtedly, the illegal profit which is a natural outcome of the operations of the criminal organizations supporting synthetic drug trafficking causes a great deal of harm to national and international economic structures by, amongst other things, hampering the development of legitimate business. Even more seriously, the growing involvement of organized crime in the ATS business, bringing with it a greater degree of violent crime, is also a critical risk for society, attacking as it does the inherent security built into society through the rule of law.

It should be noted that there has been no comprehensive study on the nexus between organised crime and drug trafficking in Australia for many year. Further, there are no recent scholarly analyses of the presence, activities, and modi operandi of criminal organisations in Australia.

E. The adequacy of existing legislation and administrative arrangements between Commonwealth and State agencies in addressing the importation, manufacture, and distribution of AOSD, precursor chemicals and equipment used in their manufacture

The following comments and observations are limited to legislation dealing with AOSD offences under federal criminal law.⁵³

Federal drug offences are, for the most part, concerned with conduct that relates to the importation and export of drugs. Up until 2005, these offences could be found in the *Customs Act 1901* (Cth) and the *Crimes (Trafficking in Narcotic Drugs and Psychotropic Substances) Act 1990* (Cth). The most significant federal drug offences used to be in s 233B(1) of the *Customs Act 1901* (Cth), which created several offences; the two most important offences were importing prohibited imports under para (b) and possessing prohibited imports under para (c). 'Prohibited imports' for the purpose of these provisions were defined as meaning narcotics: s 233B(2), (4).

2005 reform

In 2005, the Federal Minister for Justice and Customs proposed a major reform of federal drug offences with the *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005* (Cth). These changes were enacted by Parliament in November 2005.⁵⁴

The purpose of this reform was to remove the drug offences from the *Customs Act 1901* and the *Crimes (Trafficking in Narcotic Drugs and Psychotropic Substances) Act 1990* and bring all federal drug offences together in the Commonwealth *Criminal Code* in a new Part 9.1 entitled 'Serious Drug Offences', new ss 300.1–314.5 *Criminal Code* (Cth).⁵⁵

The principal new categories of drug offences under the *Criminal Code* (Cth) include:

- div 302: trafficking controlled drugs;
- div 303: commercial cultivation of controlled drugs;
- div 304: selling controlled drugs;
- div 305: commercial manufacture of controlled drugs;
- div 306: pre-trafficking controlled precursors;
- div 307: import–export offences;
- div 308: possession offences; and
- divs 309, 310: drug offences involving or harming children.

Inclusion of AOSD

The new *Criminal Code* (Cth) offences use the terms 'controlled drug', 'controlled plant', 'border controlled plant', and 'border controlled drug'. These terms are defined in new s 300.2. The new legislation also makes specific reference to precursors. The lists of controlled drugs, plants and precursors are set out in new s 314.1 *Criminal Code* (Cth). New s 314.1 *Criminal Code* (Cth) includes AOSD (methamphetamine, MDA, MDMA).

In comparison to the legislation pre-December 2005, the new *Criminal Code* (Cth) provisions cover precursors more adequately. The new definition sections make specific references to

⁵³ See further Andreas Schloenhardt, *Queensland Criminal Law: Critical Perspectives* (Melbourne: Oxford University Press, 2006) 272–303.

⁵⁴ *Laws and Justice Legislation Amendment (Serious Drug Offences and Related Measures) Act 2005* (Cth), No 129 of 2005.

⁵⁵ See also the submission by Director of Public Prosecution (Cth).

precursors, and new offences relating specifically to precursors have been included in new div 306.⁵⁶

There appears to be no significant changes to the inclusion and definition of AOSD which were comprehensively covered by the old legislation.

Penalties

The new drug offences under the *Criminal Code* (Cth) slightly alter the position adopted in *Kingswell v R* (1985) 159 CLR 264 in which the High Court (at 276) held that the quantity and other aggravating circumstances under s 235 *Customs Act* 1901 were not elements of the offence that need to be established by the prosecution and that a jury would need to consider as part of the trial. Instead, quantity was merely part of the sentencing process and thus ought to be considered by the sentencing court.

From now on, the quantity—now referred to as ‘commercial’, ‘marketable’, and ‘trafficable’ quantity—is an element of the new offences. The terms ‘commercial’ quantity and ‘marketable’ quantity are defined in new s 300.2 *Criminal Code* (Cth). The quantities vary in size depending on the substance involved, see new div 314. Note, however, that if the quantity is an element of any of the new offences, absolute liability applies to that element. Moreover, some offences under the new regime do not specify a minimum quantity.

It is not anticipated that the inclusion of quantities into the elements of the offence will cause significantly different outcomes in the practical application of federal drug offences. The inclusion of the quantities into the elements of the criminal offence is more consistent with general principles of criminal liability.

The new offences relating to trafficking (and thus to large-scale organised crime operations) use the term ‘trafficable quantity’. The term, however, bears no meaning for the purpose of penalty. Instead, under the new laws, proof of a trafficable quantity deems a person to have acted ‘for a commercial purpose’, new ss 303.7, 305.6 *Criminal Code* (Cth). Trafficable quantities of relevant drugs are set out in new div 314. Trafficable quantities for amphetamine and methamphetamine are 2.0 grams under s 314.1; the trafficable quantity for MDMA and MDA is 0.5 grams.

Figure 5 Penalties for offences in relation to narcotic goods, *Criminal Code* (Cth)

| Conduct | Quantity | | |
|--|---|--|--|
| | No quantity specified | Marketable quantity, new div 314 <i>Criminal Code</i> (Cth) | Commercial quantity, new div 314 <i>Criminal Code</i> (Cth) |
| Cultivating, new div 303 <i>Criminal Code</i> (Cth) | 2000 penalty units and/or 10 years' imprisonment, new s 303.6 | 5000 penalty units and/or imprisonment for 25 years, new s 303.5 | 7500 penalty units and/or imprisonment for life, new s 303.4 |
| Selling, new div 304 <i>Criminal Code</i> (Cth) | 2000 penalty units and/or 10 years' imprisonment, new s 304.2 | 5000 penalty units and/or imprisonment for 25 years, new s 304.2 | 7500 penalty units and/or imprisonment for life, new s 304.1 |
| Commercial manufacture, new div 305 <i>Criminal Code</i> (Cth) | 2000 penalty units and/or 10 years' imprisonment, new s 305.5 | 5000 penalty units and/or imprisonment for 25 years, new s 305.4 | 7500 penalty units and/or imprisonment for life, new s 305.3 |

⁵⁶ Cf Australia, House of Representatives, *Law and Justice Legislation Amendment (Serious Drug Offences and other Measures) Bill 2005, Explanatory Memorandum* (2004–05) 37 See also the submission by Attorney-General's Department (Cth) (10 Mar 2006).

| Conduct | Quantity | | |
|---|---|---|---|
| | No quantity specified | Marketable quantity, new div 314 Criminal Code (Cth) | Commercial quantity, new div 314 Criminal Code (Cth) |
| Pre-trafficking, new div 306 Criminal Code (Cth) | 1400 penalty units and/or imprisonment for 7 years, new s 306.4 | 3000 penalty units and/or imprisonment for 15 years, new s 306.3 | 5000 penalty units and/or imprisonment for 25 years, new s 306.2 |
| Aggravated offences | 1800 penalty units and/or imprisonment for 9 years, new s 306.4 | 3400 penalty units and/or imprisonment for 17 years, new s 306.3 | 5600 penalty units and/or imprisonment for 28 years, new s 306.2 |
| Import-export, new ss 307.1-307.4 Criminal Code (Cth) | 2000 penalty units and/or 10 years' imprisonment, new s 307.3 | 5000 penalty units and/or imprisonment for 25 years, new s 307.2 | 7500 penalty units and/or imprisonment for life, new s 307.1 |
| Possessing unlawful imports, new ss 307.5-307.7 Criminal Code (Cth) | 2000 penalty units and/or 10 years' imprisonment, new s 307.7 | 5000 penalty units and/or imprisonment for 25 years, new s 307.6 | 7500 penalty units and/or imprisonment for life, new s 307.5 |
| Possessing suspected unlawful imports, new ss 307.8-307.10 Criminal Code (Cth) | 400 penalty units and/or 2 years' imprisonment, new s 307.10 | 5000 penalty units and/or imprisonment for 25 years, new s 307.9 | 7500 penalty units and/or imprisonment for life, new s 307.8 |
| Importing precursors, new ss 307.11-307.13 Criminal Code (Cth) | 1400 penalty units and/or imprisonment for 7 years, new s 306.4 | 3000 penalty units and/or imprisonment for 15 years, new s 307.12 | 5000 penalty units and/or imprisonment for 25 years, new s 307.11 |
| Possession, new div 308 Criminal Code (Cth): precursors and plants | 400 penalty units and/or 2 years' imprisonment, new ss 308.1, 308.2 | | |

The penalties for individual offences and the quantities relevant to those offences have, for the most part, not changed significantly with the introduction of Part 9.1 into the *Criminal Code (Cth)*.

The new legislation introduced new commercial quantities for amphetamine and methamphetamine (not including MDMA and MDA) set at 0.75 kg, s 314.1. Thus increased penalties of 7500 penalty units or life imprisonment apply to the importation and possession of imports of commercial quantities of these substances, ss 307.1, 307.5 *Criminal Code (Cth)*.

The new legislation introduces special penalties for offences involving 'marketable quantities' a term not formerly used in the *Customs Act 1901 (Cth)*. Marketable quantities for amphetamine and methamphetamine are set at 250 grams; a marketable quantity of MDMA and MDA is 100 grams. Penalties of 25 years imprisonment or 5000 penalty units apply to offences involving marketable quantities, ss 307.2, 307.6.

The *Criminal Code (Cth)* amendments reduced the penalties for importation and possessing of imports of less than marketable quantities to 2000 penalty units and/or 10 years imprisonment, ss 307.3, 307.7. The new penalties are, however, significantly higher compared to the *Customs Act* if less than 2.0 grams of amphetamines or methamphetamines or less than 0.5 grams of MDMA or MDA are involved.

Impact of new legislation

It remains to be seen whether the new legislation will have a significant impact on the levels of AOSD trafficking in Australia and on the availability and abuse of AOSD in Australia.

The legislation does remove many of the difficulties and uncertainties of former s 233B *Customs Act* 1901 (Cth). The principles under Chapter 2 of the *Criminal Code* (Cth) now apply more consistently to federal drug offences and there is less room for judicial interpretation of the elements of federal drug offences. The new legislation is significantly easier to use (and understand).

The new legislation recognises large-scale operations by criminal organisations more coherently and provides for appropriate penalties. Moreover, the more comprehensive criminalisation of precursors may have an impact on the number of prosecutions.

It remains doubtful whether the new legislation will have a recognisable effect on the levels of narcotrafficking in Australia. It is unlikely that the new offences and the slightly higher penalties will deter large-scale operators in a growing illicit market.

One of the main obstacles in criminalising AOSD related activities is the diversity of drug laws in Australia and the many discrepancies between drug offences in different States, Territories, and in federal criminal law.⁵⁷ A more uniform approach would be highly desirable to facilitate the work of investigators and prosecutors. States and Territories should follow the example of the new federal offences and amend their laws accordingly. In the long-term, it may be desirable to consolidate jurisdiction over drug offences (along with other aspects of criminal law and criminal justice) in a single, federal jurisdiction, thus avoiding administrative obstacles as well as discrepancies between legislation.

⁵⁷ Cf Jennifer Norberry, *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005, Bills Digest* (Canberra: Department of Parliamentary Services, 2005) 2-5.