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JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION

Reference: Amphetamines and other synthetic drugs

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JOINT STATUTORY COMMITTEE ON THE

AUSTRALIAN CRIME COMMISSION

Monday, 19 June 2006

Members: Senator Ian Macdonald *(Chair)*, Mr Kerr *(Deputy Chair)*, Senators Ferris, Ludwig and Polley and Mrs Gash, Mr Hayes, Mr Richardson and Mr Wood

Members in attendance: Senator Ian Macdonald and Mrs Gash, Mr Hayes, Mr Kerr, Mr Richardson and Mr Wood

Terms of reference for the inquiry:

To inquire into and report on:

The manufacture, importation and use of Amphetamines and Other Synthetic Drugs (AOSD) in Australia.

In particular:

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

b. Strategies to reduce the AOSD market in Australia.

c. The extent and nature of organised crime involvement.

d. The nature of Australian law enforcement response.

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

f. An assessment of the adequacy of the response by Australian law enforcement agencies, including the ACC.

WITNESSES

Committee met at 5.54 pm

COOPER-STANBURY, Mr Mark, Director, Outposted Australian Institute of Health and Welfare Unit, Strategic Planning Branch, Population Health Division, Department of Health and Ageing

PRICE, Ms Karen, Director, Research Data and Policy Development, Drug Strategies Branch, Population Health Division, Department of Health and Ageing

ROSEVEAR, Ms Allison, Acting Assistant Secretary, Drug Strategy Branch, Population Division, Department of Health and Ageing

STUART, Mr Andrew, First Assistant Secretary, Population Health Division, Department of Health and Ageing

CHAIR (Senator Ian Macdonald)—I open this resumed public hearing of the Parliamentary Joint Committee on the Australian Crime Commission in our inquiry into amphetamines and other synthetic drugs. I welcome back Mr Stuart and his team and thank him for returning. We heard some evidence from the Department of Health and Ageing at the last hearing but we were just getting into interesting things and had to stop, so we asked if the DHA might come back. They have agreed to do that and I thank them very much for doing so. You are of course aware that parliament is still meeting. As you will see from people rushing to and fro when divisions are called, some of us will have to leave and sometimes we all might have to leave, in which case we will beg your indulgence whilst we deal with those things.

I do not know if there is any point in asking you for an opening statement again, as you have already done that, although at the end of the last hearing we did indicate to you a number of questions we would like to have addressed. Would you like to go through some of those and then we can ask additional questions? Or would you like to make any sort of opening statement?

Mr Stuart—No, not additional to the statement at the last hearing and our submission. We are working on written answers to the questions that we have been asked but they are not yet complete, so we will use the discussion at this hearing to consider those answers and then finalise them.

CHAIR—We have heard that in, New Zealand, some lower grade amphetamines have been legalised. Do you have any detail about how that program is operating and why it was introduced? Was it seen that there were particular benefits? What can you tell us about that particular program, if anything?

Ms Rosevear—A New Zealand ministerial action group endorsed a methamphetamine action plan in May 2003. Within that action plan, they established the Misuse of Drugs Amendment Act 2005. Under that act, they have allowed one substance, benzylpiperazine, to be made available as a restricted substance. It is an offence to sell it or supply it to a person under the age of 18. That is an amphetamine type substance of a fairly low potency. They made it restricted pending evidence on its harm, and studies are being undertaken at the moment to determine what the harms are. I believe those studies are coming to an end and the particular ministerial group is going to get back together in the near future to look at whether or not they are going to keep that

at the restricted status. They might think of putting stronger restrictions on that particular substance. That is the one substance that they have allowed for the time being.

CHAIR—It gives a reaction once taken, obviously. Was it thought that it was not a dangerous reaction? Perhaps it is not something you are able to comment on.

Mr Stuart—There is obviously a limit to how far we can go in interpreting what we think the New Zealanders are doing. There is an action plan with an informative website that we will refer you to in our written response. I prefer not to speculate on what the New Zealanders had in their minds. Factually, it is interesting to note. We call it BZP, which is a low-grade substance which is being treated as Ms Rosevear has outlined.

CHAIR—Are you aware of whether or not other governments around the world have allowed some amphetamine type substances to be legally taken?

Ms Rosevear—I did a quick search and it did come up that BZP is available in New Zealand, but I cannot answer that question conclusively. I could not find any evidence that it is available in other countries but that does not mean that it is not.

CHAIR—Can I go back to matters from our original hearing. As I recall, you are the first post for advice to government on these types of matters. Would it be true to say—I think we had some discussion on this—that we are going backwards, that there are more people taking amphetamines in Australia now than ever before? Is that correct?

Mr Stuart—I think it is true to say we are going forward in some areas and backward in others. The data indicates that overall health harm from drug taking is going forward. I believe I put on the record at the last hearing that, if you factor in all drug taking, deaths from drug taking have fallen very significantly, to about one-third of the level in the mid- to late-90s. We do know that heroin harm is falling and amphetamine harm is rising, but because amphetamine is not at the moment causing the same level of overdose related death then the overall death rate is a lot lower than it was.

CHAIR—It leads to the conclusion that whatever we are doing now is not succeeding in the fight against amphetamines. We are doing education, enforcement, supply disruption; we are doing a lot of great things. But, regrettably, the facts seem to show that whatever we are doing is not enough because amphetamine use is increasing.

Mr Stuart—I think it is a question of how you measure success. The data shows that health harm is lower now than it was at the start of the government's program. I think we would all acknowledge that it is a very difficult thing to measure success in terms of the complete absence of drugs. I do not think society has ever been drug free. We factor success in terms of supply reduction, demand reduction and harm reduction. In terms of harm reduction, I think the data show that we are moving forward.

CHAIR—But not with demand—demand is increasing.

Mr Stuart—I think on supply we have made gains on some things and on others we are still learning.

CHAIR—That is supply, I particularly said 'demand'.

Mr Stuart—And demand—supply, demand and harm are the three aspects of the government's policy.

CHAIR—But we are not succeeding in demand. There is more demand—is that right?

Mr Stuart—I think in the amphetamines area the data show that usage is higher than it was. Mark Cooper-Stanbury put some of that data on the record at the last hearing.

CHAIR—Yes, he did. I am just trying to clarify in my mind that, whilst we may be having some success in supply reduction and in harm reduction, we are not having success at the current time in the demand area.

Mr Stuart—I might ask Mr Cooper-Stanbury to remind you about some this data. It is a very complex picture, depending on what substance we are talking about, with the market shifting, with some things rising and other things falling. When we measure health harm in terms of death, though, we very definitely see that there have been advances made in the last few years.

Mr Cooper-Stanbury—The National Drug Strategy Household Survey is showing that the overall population prevalence of amphetamine use has been going down over the last six years. In 1998 it was—

CHAIR—Amphetamine use has been going down?

Mr Cooper-Stanbury—That is what our survey is recording. It was 3.7 per cent in 1998, 3.4 per cent in 2001 and 3.2 per cent in 2004. That is, of course, the proportion of the population reporting. You need to multiply that proportion by the population. I do not have those figures handy, but I still think the total number of people would be flat at least, perhaps even going down. What it may betray is that each of those users is actually using more and that may be contributing to the harm.

CHAIR—But there is a reduction in the harm, we have just been told.

Mr Cooper-Stanbury—Yes. I was not meaning to be contradictory, but for any one user: if the total amount of amphetamines is not changing or going up but the supply is being exhausted then it suggests that fewer numbers of users are using more.

CHAIR—These are not trick questions. As you are the government's principal agency for advice in this area, I want someone to say to me, 'No, you are wrong; we are winning,' whereas my general impression of the evidence so far is that certainly heroin usage has reduced—although different people give different reasons why that is—but it seems that amphetamine usage is increasing. If that is not statistically correct, that is okay, but I am struggling to think how the committee might help with a solution if the government's principal drug advice agency does not have the solutions. That is a bit of a defeatist attitude. That is more of a statement, I suppose.

Mr RICHARDSON—Some commentators argue or comment that drug use should be seen as a health issue rather than a legal issue. As background, addicts themselves and workers in the field say that they are sufferers of a medical and social problem that cannot be solved through the criminal justice system. In their eyes prohibition and law enforcement have clearly failed to eradicate demand and supply, and prevention and treatment should be the focus. Mr Stuart, has the department any response to such a statement? Is it possible to make treatment and prevention the main focus with law enforcement as a secondary and supportive role?

Mr Stuart—I think I would respond to that by pointing out that government policy is to have a balance of supply reduction, demand reduction and harm reduction, and the government's view is that a balanced policy is the best policy across those areas of effort. I know there are people who have been appearing who emphasise that they think the policy is all about the heavy hand of the law, but not so. It is a very balanced response now and the health response is a very significant part of the current response, including a diversion program funded through the health department through which we fund the states and territories to identify people who would benefit from diversion from the justice system, to address the health harm first.

Mr RICHARDSON—Yours and our critics may say that, even though balanced, as it has been, the level of amphetamine use—as Mr Cooper-Stanbury was just saying—has been going down, the result of heroin definitely going down, however other people have given evidence that the amphetamine use has significantly gone up.

Do you think that currently the Department of Health and Ageing have any other strategies? That is probably leading into my next question. You might like to comment on that. At the last hearing, the strategy that I believe you were commenting on—and I hope you were—was the national ATS strategy. You did not mention it in your actual opening statement. We as a committee wonder if that was left out. Do you think that that strategy is one of the primary objectives, leading into the future?

Mr Stuart—I will take the second part first. We left the ATS strategy out of our original submission because it was before the ministerial council met to endorse the fact that the ministerial council wanted to have such a strategy. When we came to the hearing about a week ago, I think I said in my opening statement that a couple of things had changed since we wrote our submission. One of them was that the ministerial council had since endorsed the need for a strategy. The other was the federal budget, which provided funding for a new set of programs to target emerging drugs of concern. We did not leave the ATS strategy out of the submission for any reason other than that the ministerial council had not yet endorsed having one.

Mr RICHARDSON—Would you like to give us some comments on that?

Mr Stuart—The development of that strategy, to take the first part of your question, is a complex picture. While the overall household use of amphetamines might be tailing off a little, anecdotally some of the more harmful forms are on the rise. The injecting of ice is a particular health risk. Whenever injecting is involved, the health alerts start to go up because there are then related health harms—not so much from the drug itself but from the spread of communicable diseases such as HIV and hepatitis C, which are particular health issues. We have done a lot of work over a long period of time with people who inject other substances. But if there is a new injectable substance with a different sort of user, with a different sort of community, we are

going to have to look very hard, in the development of the strategy, at how we address that, how we identify those people, how we reduce the health harms in relation to those people and how we encourage them to access the needle and syringe exchanges that people who have been injectors of other sorts of substances have got used to accessing and so on. So there is some work to do in that area for sure.

Mrs GASH—I was not at some of the hearings, but looking through the evidence that was presented, particularly from Triple J staff and other witnesses, there is the suggestion that many people do not believe in advertising which demonises recreational drug use. This is particularly appropriate to where I come from. A lot of young people there are taking drugs. It does not matter what you say to them; they think it is not going to happen to them. What do you feel is the best way of communicating with young people about the harms associated with drug use?

Mr Stuart—The evidence is quite interesting. Our previous campaign, you might recall, was focused on parents. The evidence was that quite high proportions of parents and young people reported to us that they felt more comfortable about talking to each other about drug use after the campaign than before it. In fact, the campaign led to quite a lot of discussion between parents and young people. The evidence is also that kids do take note of their parents. We think that the last people teenagers want to listen to are their parents, but the evidence suggests that there are very large groups of young people who do take particular notice of their parents. I will ask Allison Rosevear to rehearse the numbers on that shortly.

That said, we also have had some research done, through focus groups, with different groups of young people. There is a sort of typology in relation to how young people react to information about drugs. There is a group that are called risk takers. If you tell that group that something is potentially harmful and they had better watch out, they think that is a very fine thing and they are off to try whatever they can try, irrespective of the consequences. The more risky you make it sound, the more appealing you make it sound in some cases. We have to be very mindful of that in the way that we do our communications.

The data on our communications campaign showed that there is a very high recognition factor and that the vast majority of people who see it think that it is credible in describing the harms associated with drugs. I do not think that we can be accused of having overdone our previous campaigns at all. We went to a lot of trouble to work with law enforcement and other experts to present a very credible picture.

Mrs GASH—You said that you had focus groups. Did you actually go to country—rural and regional—areas as well as to city areas? Did you take your focus groups to the country areas?

Ms Price—The sampling was nationally representative.

Mrs GASH—Particularly in country and remote areas as well?

Ms Price—It was nationally representative.

CHAIR—Is it easy enough to just give us a bit of paper to show where the focus groups were?

Mr Stuart—I could say two things about that. Focus groups went into the typology of how different kinds of kids respond to the messages—there were thrill seekers, risk managers and people who just did not want to know. That is not so much about a nationwide sample; that is about focus groups to see how different kinds of kids think about drugs. The survey that followed up on the recognition of the campaigns was sample based. We will take on notice what that sample was and we will provide that in our written response.

Mrs GASH—Turning back to the chairman's remarks, is it possible to have a copy of where those focus groups were held?

CHAIR—You did not actually say that in this case the focus groups were held in country areas; you said it was representative. That made me think that we might like to look at where those focus groups were held. In a political sense, when they tell us that there are focus groups, they never seem to get to the country.

Mr Stuart—We go to a lot of effort to get broadly representative groups of kids. We will provide that information.

Mrs GASH—I come back to another question. It is the same question, if you like. Did you emphasise peer pressure in your advertising? I did not see that anywhere. I certainly saw the advertising about talking to your parents, but I did not see anything much about peer pressure. What affects young people today is peer pressure. Were you able to address that or are you thinking about addressing that?

Mr Stuart—I think that in the last round of TV advertisements that we did, there was some quite good use made of images about peer pressure. I recall one about cannabis, with a young footballer missing a mark and some of his friends commenting, 'He's stoned again.' Another has young people looking very concerned about one of their friends displaying some behaviour changes.

Mrs GASH—So you felt that there was enough on that area? I certainly did not, but that is just my personal opinion.

Ms Rosevear—I will tell you a bit about the evaluation of the second stage of the campaign. The post-campaign research was conducted with 1,490 young people aged 13 to 20 in 2005. Specific questions were included to measure the young person's response to the campaign. In the study of the effectiveness of campaign planning and implementation, it was confirmed that 99 per cent of young people recognised at least one component of the campaign. Further to that effectiveness testing, there was refinement of the campaign communication material. Findings confirmed that 97 per cent of young people rated the amphetamines and ecstasy television commercials as believable, with 96 per cent rating the marijuana component as believable. Similarly, 93 per cent of young people rated the amphetamine and ecstasy commercials as effective, while 90 per cent said that the marijuana commercial was effective. So that is fairly good success in getting the message across to that age group.

CHAIR—Could you have a look at the evidence that we have from that Triple J program—not a radio station I often listen to—and give me a comment on the responses from those users on that program? They seem to have a different view than the statistics you are quoting on the

effectiveness of advertising. It was a very small sample; I think about 30 people rang in in half an hour. Can you give us a comment about the responses of these actual users who took the trouble to ring in on this program as opposed to the statistics you are giving us, which do not seem to bear any correlation?

Ms Rosevear—The transcript is not in front of mind. I have read it.

CHAIR—I am not asking you to answer that now. I did mean for you to take it on notice, if you would not mind. I cannot remember what they said either, but I have a feel of it. I would appreciate your professional view on how that relates to the official statistics.

Ms Rosevear—Sure.

Mr KERR—In relation to the three approaches that you refer to—that is, supply reduction, demand reduction and harm minimisation—the evidence we have before us is that there are of the order of 1.2 million Australians who have used MDMA or ecstasy as a party drug, much of it consumed at home. A far larger number of people have used amphetamines, and there is a continuing tranche of young people who are entering the user group. Whatever the education is, it is plainly not in a position to reduce use to a phenomena that you would regard as marginal. These are large numbers. With regard to the overall percentage of the community, 1.2 million people is approximately five or six per cent.

Ms Rosevear—I do not think the figures are mutually exclusive. There is an overlap between the ecstasy users and the amphetamine users. I do not think you can just add the figures. Nevertheless, as individual figures, I think they are correct.

Mr KERR—About 4.5 million Australians have reported some illicit drug use. That is about a quarter of the population. With regard to arrest statistics, the figures we have suggest that about 85 per cent of persons who are subject to the criminal law process are brought before the courts for personal use offences. I was interested and very pleased to hear the evidence of the Australian Federal Police that, as a national policing body, they do not pursue personal use offences. There may be some instances where somebody gets caught up in a personal use offence incidentally, but they never target that. Their target is the larger producers. Have you any comment from a harm minimisation point of view on the consequences of putting personal users through the law and justice system? Have you done any modelling of the actual harm or social consequences of what it means to go through these various processes?

Mr Stuart—I think that is taking us to why the government has, in recent times, been increasingly investing in the diversion initiatives, which are about identifying people who can benefit from diversion away from the criminal justice system into education and treatment. But in terms of modelling, no.

Mr KERR—I just want to be clear on this. Your data that has led you to support this shift away from the criminal justice system to diversion is impressionistic—in other words, you imagine or believe that there may be harms associated with that tranche of people, a very small subset of overall users, being identified and processed through the criminal justice system, carrying perhaps the stigma of conviction and the like—but there is no empirical research that has followed and tracked the consequences of that intervention.

Mr Stuart—It is the usual approach. If you are asking if there was any research as an input into the formation of the program, I would have to take that on notice. I do not have that at my fingertips.

Mr KERR—Is there any research being built into evaluation of the diversion program?

Mr Stuart—There certainly will be evaluation of the diversion program. Evaluation of all programs is required, and we will be evaluating this program in the next 12 months.

Mr KERR—Against what benchmarks? If you do not know the consequences or the outcomes of the alternative—that is, the prison punishment model as opposed to the diversion model—how can you do a comparative study of outcomes without doing a test of the outcomes?

Mr Stuart—It is not the sort of area where I think we could contemplate a randomised control trial where you allocate people to different outcomes although they are otherwise the same. I think what we are trying to do is treat the same people in a similar way, but I will ask Karen to talk a bit more about our plans for evaluation.

Ms Price—The evaluation of the diversion program will take in a number of different measures of outcome, numbers of people diverted and numbers of people showing up when they are diverted into education sessions, treatment and that sort of thing. On your earlier question, though, a way of thinking about this is as a continuum where the prevention, education, health related responses and law enforcement all work in government and sometimes the effects are blurred across a number of different silos, if you want to put it like that—for example, a person with a small quantity of an illicit drug on them who is eligible for diversion is talked to by a police officer and then goes off later on. But that interaction with the police officer is an important thing. It is a bit of a transition point for many people.

To suggest that diversion was brought in because lots of harms are related to the law enforcement side is a little simplistic, I would say, because I think it is recognised that there are points of intervention right from early childhood where people get taught about drugs at school, in families and right through the life course to the point where they are using an illicit substance or have an illicit substance on them, come to the attention of police and that becomes an issue for them, whether they get diverted or something else happens. They are all interventions which can lead to a person not using drugs in the future, and I think that continuum approach is actually quite an important—

Mr KERR—But, realistically, the interventions that we are speaking of relate to less than one per cent of the user population—much less. Even if we take all the statistics aggregated together nationally, it is far less than one per cent.

Ms Price—That is why I think it is—

Mr KERR—In statistical terms it is almost at that vanishingly insignificant point in terms of saying, 'Look, our success depends on how we interact with one per cent.'

Mr Stuart—I think the question of how arrests are targeted would be more for the law enforcement side. It is not something that we have a lot of background on.

Mr KERR—But the harm minimisation side concerns whether or not this is actually causing harm as opposed to remediating harm. Some of the evidence we have had is that even the diversion process—which has a compulsory side where, if you do not go through certain processes, you will then be streamed back into the coercive arm of the law—actually is no more effective and may in fact be counterproductive as opposed to making treatment voluntarily available to a wider range of people. So there is an actual health issue on harm minimisation that is being put to us, and it is against that framework that I think I am entitled to ask that question of you.

Mr Stuart—I think we will have to go and look to the evidence for that. We will need to consider it in our evaluation of the program.

Mr RICHARDSON—Particularly there you need to look at recidivist offenders versus the general population and use, because the diversion method may be instrumental with that group. Therefore you would need to look at the statistics, like Mr Stuart just said, for recidivist offenders.

Mr WOOD—I will take up that point on cautioning and diversion programs. Most of the time the people who have been apprehended are now going out and committing crimes to support their habit. That is where the police get involved. They are not using it at home anymore; they are going out. Taking up Senator Kerr's point, it would be worth while finding out the statistics, across the state police forces, of how many people have actually gone into diversion programs and subsequently gone on to reoffend, because that will be the clear indicator. These people are the most likely to continue to reoffend, because they are already out there committing crimes to support their habits. I would be interested to make sure your research undertakes to build a clear profile of these people and whether they are reoffending. Has there been any research commenced overseas on pill testing?

Ms Price—Yes, but not very much. There is a paper that we have very recently made available on the ministerial council's website. We will attach it to our written response to the committee; I think that is probably the simplest and most convenient thing to do. That paper looks at the international evidence. It was first written a few years ago and then updated very recently for the ministerial council. It was the paper that the ministerial council had on the table when they made their decision across states, territories and the Australian government not to support pill testing. The evidence is lacking—I think that is the right way to describe it. At this stage there is no strong evidence from anywhere in favour of pill testing.

Mr WOOD—When did this report come out?

Mr Stuart—We put it on the website about two weeks ago.

Mr WOOD—I have grave concerns about pill testing. One of the concerns I was going to take further is that a young person at a rave party may see a line of people trying to get their pills tested. What type of influence would that have on them? Obviously you do not want to undertake research to find out, because therefore you are encouraging it. I was wondering if any research had been commenced overseas specifically for young people.

Ms Price—I think most people who go to rave parties are young, so it depends on your definition.

Mr WOOD—I would not say that at all. My background is in the police force. Most of the people there are 16 or 17, but then there are other people in their 20s or even 30s. My greatest concern is a 14- or 15-year-old child going there and seeing people lining up for pill testing. In their minds, they may think it is actually safe. I know that the people do not actually say whether it is safe or dangerous, but it is of great concern to me. I am glad that report has come out. Have the state jurisdictions also agreed to this?

Mr Stuart—Yes. The Ministerial Council on Drug Strategy includes the health ministers, the education ministers and the police ministers of all the states and territories and the Australian government. So it is a very powerful group. It also includes New Zealand.

CHAIR—We read that, but is there evidence that pill testing actually encourages drug use?

Mr Stuart—As I have been saying, the evidence all around is very sparse. There was an interesting UK survey of 1,200 clubbers who were asked what they did when they thought the quality of pills got better or worse. They were asked: 'When you think the pills get better, what do you do? When you think the pills get worse, what do you do?' Of this group, 40 per cent said that when the quality gets better they take more; 12 per cent were put off taking more of the pills. When the quality of the pills gets worse, 40 per cent said it would not make any difference and 20 per cent said they would take more because the pills were not very strong.

This is quite a limited study and the meaning of 'quality' was not very well defined, but you can see that there are people who are risk takers. There are people who take more if they think the pills are worse; there are people who take more if they think the pills are better. There are also people who moderate their intake. There are different kinds of people with different kinds of behavioural responses.

Mr KERR—I just wanted to follow up on something. We pressed you and other witnesses about harm minimisation and supply and demand issues, but in your evidence to us you say, 'Harm minimisation is a very important component of how we approach our strategic, overarching view.' In this area of amphetamines and other synthetic drugs, what are the actual harm minimisation strategies that underpin that assertion? Apart from saying it, where are we making substantial efforts in harm minimisation that relate to amphetamines and other synthetic drugs as opposed to the strategies that underpin the HIV-AIDS issue, such as the needle exchange program and the injecting facility in New South Wales—whether one supports it or otherwise? A whole range of programs were designed in earlier instances where the greater harm being addressed was that caused by heroin. We have heard evidence that ice and various other drugs are profoundly capable of causing disorientation, aggression and psychosis when used to excess; what are the harm minimisation strategies in these areas?

Mr Stuart—There are a range of them. We are in a state of progress. Obviously, the decision to embark on a new strategy reflects that all ministers think that we can do better, but people who have issues with amphetamines can avail themselves of the existing drug and alcohol services that are available already that are funded by the state government or the Australian government. The difficulty has been that they can be somewhat challenging to that kind of

environment and so our psychostimulants initiative, which the Australian government has been funding, has undertaken a range of initiatives to work through what kind of additional training is required for the drug and alcohol workers in those settings.

Mr KERR—Can we aggregate that answer and break it down a wee bit? If I understand correctly, you are saying that essentially a treatment regime, a first point of call for overdoses, is not designed for this particular group of drug users; it is designed for other drugs such as alcohol and heroin, both of which have established protocols and treatment methods and reasonable success rates if pursued by people of goodwill. It does not fit the amphetamines and other synthetic drugs profile at all. People can go to them but they will not be ready for them. So that part of your answer is: 'We haven't got anything. We are thinking about it.' If I am paraphrasing you crudely, please excuse me, but that is my understanding of that answer.

Mr Stuart—I do not think that is quite right. I think we are saying that those services are available to users of amphetamines who need assistance. Often they are the ones using the amphetamines at the hard end, but I am saying that we are on a learning curve with those interventions and we have been developing packages for training and support for workers in those services using the psychostimulants initiative. We now have significant new funding to further develop that through the budget measure and we are about to embark on a strategy development exercise associated with that. I am saying that there are services available. We have been working on making them more relevant and now we are about to embark on a very significant process of making them more relevant still.

Mr RICHARDSON—Mr Stuart, you said previously with respect to the pill testing that your department is a key adviser nationally to the Attorney-General's office and to Minister Abbott's office, let alone to every state and territory for the police commissioners themselves and also the other respective ministers.

Mr Stuart—I think you might be overdressing that slightly. We are the coordination point for the Australian government response, but we certainly do not claim to be expert across all of our colleagues' areas of interest, and we manage the secretariat for the ministerial council, so again we are a coordination point there.

Mr RICHARDSON—I accept that. The South Australian government just recently put in random drug testing and, of course, legislated only that offences would be detected for the use of either marijuana or other drugs—except ecstasy. The front page, naturally, said to all and sundry, 'Go and take as much ecstasy as you like. It doesn't matter, because you're not going to be tested.' Did the department have any knowledge that they were going to do this? I feel very strongly about this, as so many other people did when reading that article. Do you have any comment?

Mr Stuart—I am advised that we were not aware of that, prior.

Mr RICHARDSON—Perhaps I could have a response at some later time, on notice.

Mr Stuart—I think the response is that we were not aware of it prior. But you are entitled to take your view of the media associated with that.

Mr RICHARDSON—That is fine. Thank you.

Mr KERR—We are in a bit of a time frame difficulty. I wonder whether you might respond by a short note that basically goes through those elements that are said to be part of a harm minimisation strategy in relation to amphetamines and other synthetic drugs, and the budget over, say, the last three years and forward, so we can have a look at what actually has been done or planned. And, if you know of anything useful at the state level, because this is not just a Commonwealth issue—if there are intelligent harm minimisation things being done in this area by states—perhaps you could inform us. I am not aware of any.

Mr Stuart—Absolutely. I am very happy to do that, as I said, in the context of where we have been, what we are learning and where we are going forward to.

CHAIR—Thanks very much for returning to help us with our deliberations. Unfortunately, there will still be a lot of questions in writing for you to plough through, because we have barely scratched the surface on those. But thanks very much again for your help and for the expertise that you have brought to our committee.

Mr Stuart—Thank you very much.

[6.46 pm]

COCKSHUTT, Mrs Melinda, Acting Assistant Secretary, Criminal Law and Policy Review Section, Criminal Law Branch, Attorney-General's Department

HARRIS, Mr Craig Anthony, Assistant Secretary, National Law Enforcement Policy Branch, Criminal Justice Division, Attorney-General's Department

CHAIR—Welcome. Excuse us: we were just having a private meeting that was delayed a bit by some bells when we were supposed to be doing it. Thank you very much for coming along and for your submission. You are obviously aware of the terms of reference and you have probably been to enough committees to understand about privilege, and so I will not repeat those things. Regrettably, one of the difficulties of having these hearings while parliament is sitting is that bells ring and people have other responsibilities in the chamber. I know a couple of our members are speaking or getting ready to speak on bills as we speak. I apologise for that. Hopefully, what we lack in quantity, we do not also lack in quality. I know Mr Kerr has to be in the Main Committee in 10 minutes, so we are going to lack both quality and quantity when he goes. Would you like to make an opening statement?

Mr Harris—Given the time constraints, I will keep it very brief and reiterate what we have said in our submission: the Attorney-General's role is one of facilitation. We try to facilitate a whole-of-government response to the issue of illicit drugs, especially on the supply side. We work very closely with our counterparts in health and the law enforcement agencies at the Commonwealth level and also at the state and territory level. Our key aspects in the submission that we have touched on are implementation of legislative responses to illicit drugs through the Criminal Code; the implementation of the national precursor strategy, which is an ongoing project—

CHAIR—Congratulations to your people on the weekend bust on the precursors through the police and the ACC, I think it was.

Mr Harris—and facilitating the precursor working group, which we think is a very effective national body, with 42 members from very broad interest groups around the country. I want to update the committee on the ATS strategy which people have been speaking about—I think there have been questions at previous hearings about it—and its progress.

Ministers have signed off on developing an ATS strategy and Health is coordinating that, as they have indicated. I think that will be taken forward in much the same way as the cannabis strategy, which will involve quite extensive consultation with a number of parties. At the level of law enforcement, we are taking forward a component of that strategy immediately and we are developing an ATS strategy for law enforcement. We are hoping to be able to take that back to ministers out of session this calendar year as an interim measure. It will be a law enforcement component. We will obviously be involved in developing a broader strategy, but we think it is an important area and we think we can develop some new strategies and immediately consolidate the sorts of things that we have been doing into one document.

Mr KERR—I have got a delegated responsibility here. I am not sure whether you were present when Mr Richardson asked the previous department of health witnesses about the South Australian instance that he referred to. I just wondered whether there was any pre-knowledge on your part or anything you can add?

Mr Harris—No, no pre-knowledge whatsoever.

Mr KERR—Thank you. In terms of the law enforcement strategy, are you in a position to anticipate the broad direction that you are speaking of, or do you still regard that as a matter which requires discussion with ministers before it is made public?

Mr Harris—We are really at the point of finalising some consultation with the states and territories before it goes to ministers, so we really could not talk in any detail about the strategy. It does build on the national action plan, or the draft national action plan that the ACC board developed, so it is taking that a step further. It is really trying, as I say, to present a consolidation of the sorts of strategies that we do have in place that we have been undertaking, but I think it has become an opportune time for us to reflect on what it is that we are doing and to try to set it up to go forward.

Mr KERR—At a national level, the witnesses from the AFP and I think the ACC have said that federal law enforcement is exclusively focused on high-end importers, manufacturers and dealers and not on those who are personal users or even suppliers to friends in domestic networks. That cannot be the position in the states, because 85 per cent of those who are the subject of the criminal justice system are brought before the courts on personal possession offences—minor offences. Does the strategy deal with that inconsistency and, in a sense, resource-allocation issues?

Mr Harris—I do not believe that the strategy will go into that sort of detail. Certainly, resourcing of law enforcement efforts at the state and territory level is a matter for them. I think law enforcement at the state and territory level though does recognise, as does the AFP, Customs and the ACC, that there is a need to target the higher end of the market.

Mr KERR—But how can that be so if 85 per cent of the interventions that occur in the criminal justice system—

Mr Harris—Unfortunately, I really could not comment on that. I am not too sure what the statistics reflect. I am not too sure what the source of the statistics is and what the circumstances are of those people presenting before the courts.

Mr KERR—That is the data that the ACC provided to us by way of national law enforcement figures. Then we pressed this with the AFP, who said that none of their effort is directed towards personal use or even the small domestic use, and for obvious reasons. I am not critical of that. It seems to me to be a wise use of resources—strategic targeting of those who are undertaking significant commercial decisions and placing themselves at risk of the criminal justice system. If we are to have a strong strategic focus on trying to interdict large supplies of drugs then that seems the wise course to take, but it does not seem to be paralleled. I am just wondering how you can have a national strategy that does not actually talk about how you develop priorities and focus in law enforcement.

Mr Harris—The strategy will be developing priorities at that national level.

Mr KERR—How can it do that without addressing the question of where the focus of existing law enforcement falls?

Mr Harris—But I think you will find that the national strategy will target the higher level. It will be targeting the traffickers. It will be targeting the manufacturers and the pseudo runners. But I do not think we can take a step backwards—and I am sure the states and territories would indicate this—from the fact that possession of illicit substances is an offence. I do not know the circumstances of how the police go about policing it, but where an offence is committed there is the facility to take someone before the court. We have heard today that there are diversion measures in place. Whilst they possibly do not affect everybody who comes before the criminal justice system, they are still important measures.

Mr KERR—We also know that the number of persons that are involved in illicit drug-taking activities in Australia number around 4.5 million over a lifetime. Some of those will not be persons who are currently using. About 1.2 million Australians are using, say, ecstasy—which is one subject of our current examination. The numbers of people who will be subject to these personal use offences—whilst it is terribly damaging and enormously consequential for those individuals involved—are almost vanishingly small as a proportion of the total drug-using population so that, as a strategic intervention, it is inconsequential.

Mr Harris—As my Health colleagues indicated earlier, an evaluation is being undertaken of the diversion program. One would presume that we will be looking into those very things in the use diversion scheme and the success of the diversion scheme. How many people are being utilised? How are they being pushed through? I know that previously, in developing a national cannabis strategy—clearly, a completely different subject matter—we promoted the point of view that there needs to be further training in the states and territories so that police officers understand the value of diversion and where treatment can assist. That is equally important for ATS. They need to be able to understand the circumstances and the context in which they are utilising these schemes.

Mr KERR—I must let the chair ask some questions. I am going to have to apologise in advance, as I am going in about three minutes. I am chairing the Main Committee and I regret I cannot get out of that. I apologise to our chair, too.

CHAIR—I appreciate that. Mr Harris, I am pleased to hear your evidence about the amphetamine type stimulant strategy, because your submission was relatively small on that. Obviously, as you said in your submission, work was being done and that has now been done. It seems to have taken a long time to get there when it has been a problem that we have really known about for about five years. Is that right? I am surprised that it has taken so long to get this strategy in place.

Mr Harris—I do not think we should misunderstand that, in developing a strategy, this is not the first time it has been looked at. The strategy will largely reflect the sorts of initiatives that are being taken forward already by either Commonwealth agencies or state and territory agencies. There is a lot of activity already ongoing out there at the national level. The strategy really will reflect that consolidation. It will bring together everything that we are doing and obviously look

forward to new initiatives that we can put in place, given the market and given the changes. For instance, we are primarily responsible for the precursor strategy. That has been funded since 2004. It is an ongoing project. We are continually looking, when we undertake an initiative, for what that is going to stimulate in the marketplace and for what the next step is for manufacturers and pseudo runners. We are trying to take that step ahead. We are obviously looking forward and looking over the horizon in developing a strategy, but we are not going to ignore the fact that there are a number of very important initiatives already under way. The strategy gives us a chance to consolidate that into one document at a national level.

CHAIR—The precursor strategy has obviously been successful—although it has been raised with us during the course of the hearings that, as we progress on that, we might well be shutting down a lot of backyard operations but then diverting the demand into the highly criminally organised activities. Do you have a view on that? Do you agree that, as you shut down the backyarders, you are likely to divert it more to the industrial scale operations that are run by the real bad guys?

Mr Harris—I really do not have any evidence of that happening. Clearly, those sorts of flow-on effects can happen at various levels; I do not have any evidence of that occurring. We are targeting the diversion of precursor chemicals in a much broader sense. We are really targeting the higher end of the marketplace, the clandestine laboratories and the more sophisticated set-ups, which we do find.

CHAIR—Dr Mattick from the National Drug and Alcohol Research Centre told the committee that the Model Criminal Code Officers Committee, which used to regularly review the appropriateness of drug offences, no longer performs the role it has in the past. Is that right? If it is right, what bodies exist at the national level to monitor drug laws and make recommendations for amendments? Is it the ministerial council?

Mr Harris—There would be a number of forums in which drug laws could be reviewed, whether it be through the Ministerial Council on Drug Strategy, the Australasian Police Ministers Council or through SCAG, the Standing Committee of Attorneys-General. So there are a number of mechanisms to review that. I am not too sure whether that committee is continuing.

Mrs Cockshutt—The Model Criminal Code Officers Committee sits under the Standing Committee of Attorneys-General. They were tasked as a one-off to create model offences for drugs, which they undertook at that time. They undertook a review of all state, territory and Commonwealth legislation and came up with a report on model offences. Victoria, Tasmania and the ACT have substantially implemented those offences, as has the Commonwealth; we implemented those offences last year.

CHAIR—Our implementation was through the serious drug offences act. Is that right?

Mrs Cockshutt—That is right.

CHAIR—How has that act and the complementary state legislation made a difference in the fight against amphetamine type substances? Is that too broad a question?

Mrs Cockshutt—It is probably too broad. The model offences replicate the import-export offences that were already in the Customs Act; we just moved them over into the criminal code. So the tools that are available to law enforcement are the same as what they had previous to the implementation of the model offences. If anything, we can now cover the field in the federal jurisdiction. If we cannot quite prove the import-export element of the offences, we now have domestic offences that the AFP can utilise to make sure that no gaps exists and that people do not get off on import-export offences just because we cannot prove that they imported or exported the drug.

CHAIR—The act has been in operation for how long? Is it six months?

Mrs Cockshutt—That is right.

CHAIR—Have you noticed an appreciable difference? Has it been appreciably or noticeably easier for your agencies to do their work since the passage of the bill?

Mrs Cockshutt—You would probably have to direct that question to the AFP and Customs to be able to have an answer to it.

CHAIR—Are there some states that still have not done that? Are they on the way? I think we had evidence of that, didn't we?

Mrs Cockshutt—The Standing Committee of Attorneys-General has a process that monitors the implementation of all the Model Criminal Code reports that come out. They have three meetings a year, and the states are required to report. At this point, the other states have not indicated that they will be implementing the code at this time.

CHAIR—I think Western Australia have not done it so far. I think they gave evidence that they were almost there.

Mrs Cockshutt—That is correct.

CHAIR—We have been given evidence by various law enforcement agencies that consistency between state and federal laws is one of their highest priorities. Is that your understanding as well?

Mrs Cockshutt—Yes.

CHAIR—Are you happy with the way that it has all come together? You would be a bit upset that one or two of them are a bit slow, but is it coming together in the right way?

Mrs Cockshutt—We hope that all the reports of the Model Criminal Code committee comes out with are eventually implemented at the state, territory and Commonwealth level. We would definitely be encouraging them to pick up the model offences; it definitely makes it easier for law enforcement. But we have no control about whether or not they can get the legislation through their respective parliaments.

CHAIR—I do not want to be too provocative, but has consideration been given to the Commonwealth in some way taking over as a national law what is being done by the Uniform Criminal Code?

Mr Harris—No.

Mrs Cockshutt—Not at this stage, no.

CHAIR—Is it thought that it is better to do it the other way?

Mrs Cockshutt—Yes.

Mr Harris—It really is cooperative. The states and territories have responsibilities for policing illicit drugs. We have responsibilities principally at the border. It does work together. It is a team based approach and we need each other to be able to pursue them.

CHAIR—Are the various bits of legislation exactly the same in the relevant parts?

Mrs Cockshutt—No.

CHAIR—As a former lawyer—not a very good one—in the criminal area many years ago, there was that sort of thing in regard to border activities where the difference between bits of legislation was a word or two.

Mrs Cockshutt—That just does not apply to the drug legislation. That would apply to quite a few bits of legislation.

CHAIR—Absolutely. I am not sure whether there is anything much more serious than drugs. Are penalties uniform across the board?

Mrs Cockshutt—No. For the people who have picked up the Model Criminal Code, yes, the penalties are the same. But the penalties are not necessarily the same across all jurisdictions.

CHAIR—That is because some jurisdictions have not adopted it.

Mrs Cockshutt—No other jurisdiction has the border import-export offences. That is completely in the control of the Commonwealth and we now have the offences aligned with what the code says.

CHAIR—There has been some evidence about pill testing. I am not sure whether you would have a view on that as such, but you may have a view on the law related to those who are pill testing. Again, from my very rusty knowledge, they would be accessories before or after the fact of an illegal activity—that is, having in their possession an illicit substance.

Mr Harris—It is not something that we have a view on. It is not something which we have investigated. We are aware that within some states and territories some pill testing does occur. It really is a matter for that state and territory as to whether or not they think it is an offence under their laws. It is certainly not something that we are pursuing at a national level. As Health has

indicated previously, the Ministerial Council on Drug Strategy has clearly indicated that they do not support pill testing, certainly in terms of a government endorsed position, because there are a number of problems with it. With the current pill-testing kits, you cannot determine the dosage. You cannot determine all the constituents of the drug. There might be some very harmful additions to the drug which are not going to be found. My own personal view is that any testing which is presented as being in some regard scientific is, I suspect, going to endorse an aspect of quality—that is, this is okay to take if the test indicates there is nothing problematic in it. I think that causes some difficulties.

CHAIR—I do not want to take you away from your area of expertise—and perhaps you can tell me if this is not your area—but I thought we had some evidence that, for a lot of money—I think a figure of $80,000 was mentioned—you could get very good testing equipment off the shelf that addressed a lot of the things that you are rightly concerned about. Could you comment on whether that is right or wrong?

Mr Harris—It is not in my area of expertise. Even if such equipment did exist, I do not think it removes the other concern with testing, and that is, as members of the committee expressed earlier, if you have a line of people queuing up, does that endorse the taking of drugs? If you were testing one particular pill with, for instance, a Nike symbol on it, would the person immediately think, 'I've got another few with the Nike symbol on them; they must be okay as well.' You cannot take that stance. The manufacture of illicit drugs is not done in a scientific way; it is done in quite dirty circumstances. There are all sorts of adulterers found in them. You cannot be assured that, because you have a Nike pill this time that the next Nike pill you get is going to be of the same standard.

CHAIR—I think those who support pill testing—and we have had some evidence from a couple of groups who are out there at the rave parties doing it—would probably agree with a lot of your reservations, but their approach is: 'The kids have them anyhow and they are going to take them. If we happen to be there and find a really bad one, at least we might save one person from the harmful effects. If they have paid money for them, they are going to take them anyhow, but they may not take them if we say that this one is really going to send them over the dividing line.'

Mr Harris—I think there is a lack of evidence as to what the consequences are—for example, if you warn someone that a pill has these contaminants in it, whether or not they are still going to take it. I do not think there is any thorough research to indicate that.

CHAIR—They do have some statistics on that. But it is a difficult thing. What we cannot seem to find out from anyone is whether non-taking young people in the audience might see this as the imprimatur from people in official positions; whether it might encourage people who might otherwise never do it to say, 'It looks okay; let's have a go.' That is the difficulty. I suppose this information is in the legislation, but I do not think I have seen it: is there a difference in the penalties that have been applied for those caught with precursor drugs and those caught with the end product?

Mr Harris—There is a slight difference. The sorts of penalties for precursors that we have introduced in this legislation are unprecedented in Australia. I think the maximum penalty for precursor chemicals is 25 years, versus life imprisonment for illicit drugs. At some level, people

still do distinguish between precursor chemicals and the finished product. Our view has been quite strongly that we need to at least bring them much closer together than they were, and we have done that within this legislation.

Mrs Cockshutt—We have a tiered system for the controlled drugs of life imprisonment, 25 years and 10 years. For the precursor offences, it is 25 years, 15 years and seven years. So it is slightly lower.

CHAIR—What was the rationale behind that?

Mrs Cockshutt—Precursors are preparatory to the actual trafficking and commercial sale of the drugs. So you have your precursors which, of themselves, are ingredients for the controlled drug; the controlled drug can be taken and used. The slightly higher penalties reflect that.

CHAIR—I suppose you are only arguing a year or two, but there would be no drugs if no-one was manufacturing the precursors.

Mr Harris—I might just add that, under the precursor strategy, there is a component of that strategy in which we will be trying to educate the judiciary and public prosecutors about the impact of precursor chemicals to make sure they fully recognise the harm to the community caused by precursor chemicals, the manufacture of the drugs and obviously the finished product, and so that they are not regarded as a minor offence. Possession of a large quantity of precursor chemicals needs to be taken quite seriously, and that is what these maximum penalties really reflect. We are trying to raise the level of awareness within the judiciary and public prosecutors as to the sort of harm that comes about.

CHAIR—I have not read the act, but it is not just the position of the precursor chemicals. Do you have to prove intent to use the precursors to develop something?

Mrs Cockshutt—If you have got in your possession a precursor, there is a presumption of intent, and then the defendant bears the legal burden of proof. If he does disprove that, then he does not get charged.

CHAIR—So the onus of proof is reversed.

Mrs Cockshutt—Yes.

CHAIR—That is all I had. Thank you very much for coming along, and for your submission and your answers. We have probably been able to get through it a little quicker with only me doing the questioning—we might do this every day! Thank you very much; we really do appreciate that. Keep up the good work—and pass that on to your people, and the agencies that the A-G is responsible for.

Mr Harris—Thank you, Senator.

Mrs Cockshutt—Thank you.

Committee adjourned at 7.16 pm