



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE DRUGS OF DEPENDENCE (PERSONAL USE)

AMENDMENT BILL 2021

Mr Peter Cain MLA (Chair), Dr Marisa Paterson MLA (Deputy Chair),

Mr Johnathan Davis MLA

Submission Cover Sheet

Inquiry into the Drugs of Dependence
(Personal Use) Amendment Bill 2021

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Drugs of Dependence (Personal Use) Amendment Bill 2021

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Submission by ACT Policing

Executive Summary

ACT Policing appreciates the opportunity to provide a submission to the Select Committee to the Inquiry on the Drugs of Dependence (Personal Use) Amendment Bill 2021 (the Bill). ACT Policing is committed to initiatives that improve community safety and continue to support the ongoing ACT Government commitment to harm minimisation and the treatment of substance use as health-led wherever possible. ACT Policing also remains committed to targeted deployment of efforts and resources to disrupt, deter and bring to justice the sellers, marketers, commercial growers and distributors of illegal drugs.

This submission should be read in conjunction with the ACT Government submission on the Bill. The intent of this submission from ACT Policing is to raise operational issues that require consideration to successfully implement the Bill. It is possible that the issues raised could necessitate changes to the text of the Bill. ACT Policing remains committed to working with Government and the community sector to implement the Bill, including if changes to the Bill flow from the Inquiry.

ACT Policing very rarely criminalises the personal use of substances – resources are targeted at drug trafficking. However, criminality can often be driven by drug use. For instance, drug possession offences are regularly prosecuted alongside other more serious offences.

ACT Policing already adopts a harm minimisation approach to illicit drugs. This includes the ACT Policing Illicit Drug Diversion Program which provides intervention and education to people who engage in consuming drugs. This program aims to reduce harms associated with drugs by giving people an incentive to access additional services they may require for their health. In 2019/20, ACT Policing completed 192 referrals to the Illicit Drug Diversion Program.

ACT Policing looks forward to this opportunity to continue to work with the Government and community sector to divert people toward a health-led response in appropriate circumstances. However, operationalising this reform does not come without challenges. Significant consideration for both internal governance changes for ACT Policing, as well as whole-of-system changes, are required to ensure that the Bill operates as intended on a practical level. Key concerns from ACT Policing include:

- Ambiguity for police dealing with possession under Commonwealth law;
- Diversionary programs in ACT are already working reasonably well (detailed more in the submission from ACT Government). It is unclear if the Bill intends to replace those programs or complement them;
- The need for adequately resourced and 24/7 available health-supports to respond to community needs; and
- A number of operational challenges that need solutions, depending on the final form of the Bill.

Notwithstanding these issues to be addressed in the drafting and implementation of the Bill, ACT Policing will continue to support the Government in implementing its public health approach and safety policies, including collaborative consultation with ACT Government, partners, and key stakeholders to identify solutions to the issues identified herein.

Commonwealth Legislation

Legal ambiguity

As was the case with the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, ACT Policing also views that this Bill (if passed) would not negate existing offences within the *Criminal Code 1995* (Cth) (the Code). That is, the offences of supplying and possessing the listed substances would continue to exist under Commonwealth law in the ACT.

All Australian police officers, be they federal, state or territory, are empowered to enforce Commonwealth criminal law. Individual Constables of police are each accountable for their own decisions regarding the exercise of their powers on becoming aware of the presence of controlled drugs, or the occurrence of an offence.

Possession of substances listed in the Bill would remain illegal in the ACT by effect of Commonwealth law. As with laws regarding the decriminalisation of cannabis, this continues to create tension for ACT Policing members between their obligation to implement ACT Government policy and to have regard for the Commonwealth criminal law. Whilst this risk can be mitigated to some extent by introducing new governance encouraging utilisation of ACT laws, the legislative ambiguity remains.

The legal ambiguity presented by the decriminalisation of cannabis, has to some extent, been addressed by ACT Policing adopting internal governance encouraging police to defer to using the ACT law. However, due to the independent office of constable, officers cannot be directed whether or not to utilise particular offences. That is why ACT Policing's internal governance makes it clear that whilst the Commonwealth law remains available for ACT Policing officers, the ACT law is encouraged to be deferred to, to give effect to the ACT Government's policy intent. It is anticipated that a similar approach for the current Bill would need to be taken, and the way that internal governance would take shape depends on the final form of the Bill.

It remains unclear and open to judicial interpretation as to whether or not defences to existing offences in the Code would be available to persons should they be charged with possession of the "personal possession limit" of the listed substances in ACT.

The relevant offences in the Code incur a penalty of up to two years imprisonment with no established criminal diversion options.

ACT Policing expects to introduce internal policies to ensure that police continue to divert individuals away from the criminal justice system, following further collaboration with ACT Government to clarify the intent for implementing the Bill.

ACT Policing is not necessarily of the view that the Bill needs to explicitly state that upon receiving a Simple Drug Offence Notice (SDON), a person should be referred to a health or support service. However, this could be one option to achieve the policy intent. Another option is for the text of the Bill to state that a police officer 'should', or 'may', refer a person to the appropriate service. However, even if the final form of the Bill does not state this, ACT Policing would still need to reflect this step within internal governance.

External Territories

It is ACT Policing's understanding that the intention is *not* for the Bill to apply to the Jervis Bay Territory (JBT), as the intent was for the previous decriminalisation of Cannabis was also not to apply to the JBT. However, there are legislative complexities in this approach, as the *Jervis Bay Acceptance Act 1915* (Cth) applies the laws of the ACT to the JBT. ACT Policing encourages the Committee to consider whether there is deliberate intention regarding the application of this Bill to the JBT. The current Bill *would* apply to JBT. Laws applying in this context may also apply on certain flights under the *Crimes (Aviation) Act 1991* (Cth).

Practical Implications for Police

The Bill seeks to remove criminal sanctions for those in the ACT found to be in possession of an amount of an illicit substance deemed to be within the limit for personal use. The Bill changes the penalty for possession of certain drugs of dependence and prohibited substances to a maximum of one (1) penalty unit (down from a maximum of 50 penalty units and two (2) years imprisonment) if the amount of drug or substance is below a certain amount. These amounts are described in the Bill as 'personal possession limits'.

The scheme would allow a police officer who finds a person in possession of the listed drugs of dependence in a quantity less than the prescribed 'personal possession limit' to issue an SDON. If the person pays the offence notice amount, the offence is discharged without further action. The proposed SDON amount is one (1) penalty unit or \$160 (at the time of writing).

For police to operationalise the Bill, at a high-level, this would require clarity on:

- Whether or not the intent of the Bill is for each substance to be tested on mixed or pure weight – this is an important distinction for police to make a visual assessment and for how the ACT Government Analytical Laboratory (ACTGAL) would be able to confirm whether the substance falls within the prescribed possession amounts;
- Expectations of police to test substances to implement the Bill (as outlined further in this submission):
 - a. Is it the intent for police to make a visual assessment of the substance on reasonable suspicion, refer testing to ACTGAL to confirm the type of substance/s and whether it falls under the prescribed personal possession amount, then to track down the person to issue the SDON, divert or charge them (as appropriate);
 - b. Noting that police do not currently have equipment to test substances on the street, if the expectation is that police test substances at police stations - there are various hurdles to this option being expanded, and consideration would need to be given to equipment, certification, and resources;
 - c. Alternatively, a process could also be established where an offender can make an acknowledgement of what the substance is allowing the police to issue an SDON on-the-spot, negating the need for ACT Policing to conduct or refer for testing.
- Whether the amounts prescribed in the Bill are based on local community data and research on what is indeed a "personal use dosage" or "usage" amount – this is for both ensuring a true harm minimisation approach, and ensuring that the Bill does not unintentionally enable illicit drug supply and trafficking, for example, creating a 'safe-haven' for organised crime;

- Whether the intent of the Bill is for a person to be given multiple SDONs for multiple substances. For example, if one person has four of the listed substances all under the prescribed limits, is the policy intent that four separate SDONs be issued – that is the way ACT Policing reads the current Bill.

It is ACT Policing's preference that all seized alleged substances continue to be tested by ACTGAL. Members do not have the appropriate equipment to test for all of the listed substances on their person or in their vehicles (for example, scales or on-the-spot drug-testing kits), nor is ACT Policing resourced to introduce such equipment. There are three TruNarcs™ available throughout ACT, however this equipment is for indicative purposes only, and does not always capture minor ingredients in a substance. For evidential purposes, best practice and the highest accuracy, the ACTGAL testing facilities would need to be relied on. ACTGAL would also still be required to provide the authorised certificates. Expanding the current capability beyond the use of TruNarcs™ (used for indicative purposes) at police stations is not a suitable option to meet the needs as presented by this Bill. ACT Policing is also of the understanding that calibrated scales for police officers to carry are not currently an affordable, accessible or practical option. However, it is also noted that the process to test at ACTGAL ranges from a couple of days to several weeks.

ACT Policing is of the view that clarity is needed on what is expected for the testing process for drugs captured under the "personal possession limits", and for appropriate funding to be considered to implement that testing.

It may also be a matter for Government to consider which testing equipment is most appropriate to implement the Bill, depending on the capability sought. In this vein, ACT Policing notes that there is not currently any capability to test 'bad batches' of substances. Whilst the ACT Government has plans to establish a permanent pill-testing facility, which will assist users to identify especially harmful ingredients (such as those linked with high fatalities) - this service will not be able to test every substance listed in the Bill. It is argued that testing capabilities to identify especially harmful ingredients within substances is necessary to give effect to true harm minimisation. ACT Policing also supports ongoing education to promote that even if a substance is tested and reveals no 'especially harmful' ingredients, all substances can cause harm, even those relatively pure.

This discussion also raises the issue within the drafting of the Bill about how an item is dealt with if multiple substances listed in the Bill are in the ingredients of one 'item'. For example, for an ecstasy pill (largely MDMA), with LSD and methylamphetamine (ice), it is unclear if it is expected that police would issue three separate SDONs. ACT Policing argues this should be made more clear for both drug users and police, as it may not be possible for a user on the street to identify the exact specific ingredients within their substances (with the caveat that a pill testing facility may soon be available in the ACT).

Diversion programs are already working well

Is the intent of the Bill to replace or complement existing diversionary processes?

Whilst ACT Policing welcomes the Bill, the current mechanism for police to divert individuals away from the criminal justice system to some extent relies on the existing offences – that there is an offence to be 'cleared' which encourages participation in health programs.

Nonetheless, ACT Policing welcomes alternative methods for diversion (whether legislative, or through new ACT Policing governance) if the offences relating to low-level possession are no longer in effect.

However, ACT Policing seeks further clarity on whether the intent to implement the Bill includes:

- Whether or not the new SDON process provided by the Bill is intended to replace or complement the existing diversionary programs;
- Introducing new, or strengthening current programs, that are available 24/7 to promote access to health-led services for individuals with substance use issues; and
- If it is expected that ACT Policing introduce internal governance, to encourage ACT Policing members to divert people, if found with a relevant substance under the prescribed personal possession limits, to relevant programs. This is what ACT Policing currently expects to do to implement the current version of the Bill.

ACT Policing is of the view that the proposed SDON process could potentially complement existing programs rather than replace them, given the current diversion is working reasonably well.

Current ACT Policing Diversion

In 2019/20, ACT Policing completed 192 referrals to the Illicit Drug Diversion Program.

At present, ACT Policing internal governance indicates that the threshold for diversion for the majority of the listed substances in the Bill is around 25 per cent of the trafficable amount, or for personal use. However, depending on the circumstances at hand, police officers have discretion to divert people away from charges in a number of circumstances. This could include, but is not limited to, the age of the person (particularly, youth), and the context, for example if other offences are committed at the same time.

Of the 192 referrals in 2019/20, 32 of these individuals were youth. This includes voluntary diversions – that is, there was no offence to be ‘cleared’ through the diversion. Of the 192, 21 were non-compliant (did not complete the diversionary process). At the time of writing, there are no known outcomes for five cases of the 192. This means compliance with diversion is approximately at 89 per cent.¹

The drugs involved in the offences referred to are as follows, noting that cannabis, cocaine and MDMA are the highest three:

- Cannabis: 56
- Cocaine: 68
- Dexamphetamine: 2
- Diazepam: 1
- Heroin: 1
- Crystal methamphetamine: 2
- Ketamine: 5
- MDMA: 34

¹ For the 5 referrals that have no outcomes as yet, if they were deemed compliant this would be 91.6 per cent. If they were deemed non-compliant, this would be 86.45 per cent.

- Methamphetamine: 8
- Mushrooms: 2
- Multiple substances: 13

Table 1 below shows the age ranges and non-court outcomes resulting from diversion efforts. This shows that while individuals of a wide spread of ages come to the attention of police relating to drugs, the main cohort, according to age, is mostly under 18s and young adults (in the 14-17 year old, 18-25 year old and 26-34 year old age brackets).

Non-Court Outcome	Age Group	2019-20	1 Jul 2020 - 11 Jan 2021
CAUTION	12-13 yrs	2	0
	14-17 yrs	3	0
	18-25 yrs	4	1
	26-34 yrs	0	1
	50+ yrs	1	0
DIVERSIONARY CONFERENCE	14-17 yrs	2	0
	18-25 yrs	5	0
	26-34 yrs	1	1
	35-49 yrs	1	0
DRUG DIVERSION	12-13 yrs	2	0
	14-17 yrs	26	11
	18-25 yrs	95	24
	26-34 yrs	32	9
	35-49 yrs	12	7
	50+ yrs	1	4

Table 1 – Ages for non-court outcomes

Ensuring health focussed outcomes are achieved

Table 2 illustrates the number of seizures over the past five calendar years that would fall under the personal possession limit and therefore attract the new SDON amount of one (1) penalty unit or \$160. This table suggests that if the Bill had been in effect - looking backwards for five calendar years - potentially over 5,500 people would have been diverted away from the criminal justice system. Notably, this would mean that those people would have been in need of appropriate services. This highlights the need for such services to be appropriately resourced, easily accessible and available to drug users.

SUBSTANCE	Proposed limit and under	2016	2017	2018	2019	2020	TOTAL
MDMA	0.5g	62	79	56	67	39	303
Amphetamine	2g	2	17	2	7	5	33
Cannabis (dry)	50g	595	771	576	568	378	2,888
Cocaine	2g	72	243	144	94	80	633
Heroin	2g	18	33	42	35	22	150
LSD	0.002g	0	2	0	0	0	2
Methadone	2g	0	4	2	0	0	6
Methylamphetamine	2g	322	373	267	285	273	1,520
Psilocybine	2g		1	2	0		3
TOTAL							5,538

Table 2 - Number of seizures by confirmed drug type over the past five years (at and below proposed personal limit).

Table 3 shows how many drug seizures over the past five years would have occurred under the proposed Bill. These figures are significantly lower than the above figures for possession of the proposed limit and under. This demonstrates that the Bill has the potential to have a significant impact in diverting individuals away from the criminal justice system.

SUBSTANCE	Over the Proposed Limit	2016	2017	2018	2019	2020	TOTAL
MDMA	0.5g	45	54	58	36	25	218
Amphetamine	2g	4	1	2	0	4	11
Cannabis (dry)	50g	88	113	112	101	125	539
Cocaine	2g	12	25	26	14	13	90
Heroin	2g	12	13	9	7	8	49
LSD	0.002g	4	18	5	8	4	39
Methadone	2g	2	3	0	2	2	9
Methylamphetamine	2g	62	51	42	59	59	273
Psilocybine	2g		1	11	2		14
TOTAL							1,242

Table 3 - Number of seizures by confirmed drug type over the past five years – over proposed personal limit

The comparison between Table 1 and Table 2 suggests that the Bill would be significantly beneficial in diverting people away from the criminal justice system. However, ACT Policing continues to hold concerns that there is no 'trigger' in the Bill to ensure that those individuals diverted away from the criminal justice system are connected and engage effectively with a health and/or support services. Such referrals to diversionary programs occur as a result of ACT Policing's internal policies.

The ability to divert people away from the criminal justice system in part relies on the fact that criminal offences exist – firstly on the basis that this is what initiates police contact; and secondly, individuals often choose to participate in diversion to avoid further engagement with the criminal justice system. The proposed Bill means that ACT Policing members would simply be able to provide a SDON to the person, as long as the amount of drugs possessed were under the prescribed personal possession amount.

ACT Policing supports in-principle the policy intent of the Bill to not create a criminal record, or commence a criminal process, for a person possessing the prescribed personal possession amounts of illicit substances. This support is provided on the basis that it is widely understood that keeping individuals, particularly youth, away from the criminal justice system is a positive outcome and can assist with preventing further engagement with the criminal justice system. However, this step in and of itself does not enable individuals to be connected with a health-led response. From a policing perspective, this is problematic – drug use can be a driver of crime, and individuals

partaking in drug use need to effectively engage in the appropriate health supports for a positive impact on overall public safety to be seen.

ACT Policing already conducts diversion through a number of pathways. The ACT Government submission explains in more detail the multiple pathways, that diversion is already working reasonably well, and the proposed decriminalisation pathway could be viewed simply as an additional option for diversion, rather than replacing current systems.

Additionally, it is imperative that as a matter of policy and process, appropriate health and support services are identified and adequately resourced to ensure that individuals engaging with drug possession and use are connected with the services they need. Simply preventing criminal justice engagement for an individual does not necessarily mean they become connected with the services needed to assist with the issues commonly associated with drug possession and use, which often includes mental health issues and substance use issues/disorders.

ACT Policing notes that the data available will not be able to definitively show when substance use has impacted the mental health of individuals, which in turn can have a role in other offending behaviour. ACT Policing is acutely aware of the need for support services to address these issues, and to give effect to true harm minimisation.

Linkages with cycles of offending or harmful behaviour

Statistics over the past five years for offences where drugs were also seized cannot definitively demonstrate correlations between drug use and other offending. It does show, however, that the possession of certain drugs *could* be linked with a cycle of criminal offending for some individuals. Table 3 shows the most prevalent offences over the past five years which included a simultaneous seizure of illicit substances.

OFFENCE	2016	2017	2018	2019	2020	TOTAL
Justice procedures	49	84	51	91	48	323
Firearms and weapons	67	70	77	59	32	305
Other motor vehicle, traffic and related offences	34	37	41	31	28	171
Assault other	32	22	25	45	13	137
Driving licence offences	28	28	24	30	20	130
Motor vehicle theft	10	19	28	23	8	88
					TOTAL	1,154

Table 3 – Offences over the past five years where drugs were also seized

For instance, seizures of methylamphetamine appears to have the highest correlation with other offences occurring at the same time as the seizure.

Methylamphetamine					
Offence	2016	2017	2018	2019	2020
Homicide	2	1	1	1	1
Assault	12	17	12	12	8
Sexual offences	0	0	3	0	0
Other offences against the person	0	6	2	3	10
Robbery	6	10	3	3	0
Burglary	8	10	11	16	10

Stolen Motor vehicle	12	24	19	15	4
Theft (excluding motor vehicle theft)	10	19	11	20	14
Property damage	4	5	5	16	2
Other offences against property	18	33	27	28	29
Environmental Offences	0	0	0	0	1
Government security/operations	6	3	5	2	0
Justice procedures	35	47	39	40	55
Firearms and weapons	41	34	38	22	37
Other offences against good order	4	4	2	5	3
Drug offences	146	201	156	142	145
Traffic Offences	59	69	66	73	96
Other offences	5	7	10	7	6
TOTAL	368	490	410	405	421

Table 4 – Instances when methylamphetamine was seized at the same time as other offences occurring

The strongest themes emerging from the above data include that offences relating to assault, burglary, stolen motor vehicles, theft, property offences, justice procedures and firearms commonly co-occur alongside the seizure of methylamphetamine. Anecdotally, ACT Policing members report that they observe crime in “peaks and troughs” in line with substance users “highs and lows”. For instance, individuals are observed by police to commit crime (consistent with the themes highlighted by the data) in line with their “highs” from methylamphetamine. Again, anecdotally, this is purportedly driven by substance purity – for instance, offenders conversationally mention to police that they may be committing more crime to fund their drug habit due to either a lack of supply of that drug, or lower drug purity, meaning the “high” is not lasting as long as illicit substances of higher purity.

ACT Policing are aware of national-level research that supports these anecdotal reports. For instance, the Australian Institute of Criminology conducted research in 2016 which found that:²

- Methylamphetamine users reported deriving a significantly higher proportion of their income from crime than non-users. Logistic regression analysis reveals the use of methylamphetamine, heroin and/or cannabis predicts engagement in acquisitive crime when other drug use and poly-drug use is controlled for;
- Methylamphetamine users reported their use played a contributing role in their offending, most commonly through intoxication or the need for money to purchase drugs; and
- Recent methylamphetamine use increases the risk of engagement in acquisitive offences.

This context for certain offending provides further support that particular therapeutic pathways should be considered for each particular substance in the local ACT context, due to the inextricable connection between offending and drug use for certain demographics. Connecting these cohorts with the services they need most will therefore have a positive influence of reducing crime in the future. For instance, the therapeutic needs of a long-term

² Susan Goldsmid and Matthew Willis, ‘Methamphetamine use and acquisitive crime: Evidence of a relationship’ *Trends & Issues in Crime and Criminal Justice* (Australian Institute of Criminology, 2016).

methylamphetamine user engaging in offending to fund their addiction is likely to be dramatically different to that of youth who recreationally partake in MDMA.

However, the above policing data does not reveal where substance use may be the underlying factor for a person's offending or harmful behaviour. That is, the above policing data will only show if an illicit substance happens to be seized at the same time of another offence. This data will also not show the true harms that can be caused from drug use. A Canberra youth recently plead guilty to the murder of an 82 year old man whilst under the influence of two LSD tabs. This further emphasises the need for the health-led approach to be substantiated on local evidence, and for a true harm minimisation approach to be achieved, stronger community education is also needed.

Practical Challenges warrant a Staged Approach

The introductory speech by Mr Michael Pettersson MLA included that the intention of the Bill is for a police officer to seize the substance and issue the SDON. However, for instance, if an officer locates cocaine and magic mushrooms on a person, without the ability to test those substances on-the-spot (as is the current status quo), the officer is only able to determine that the object is 'white powder' and 'mushrooms' (generally) and seize the substances on reasonable suspicion that they are illicit. Those objects would be required to be tested by a TruNarc (which cannot confirm absolute purity), or ACTGAL (for absolute purity). Testing at ACTGAL is also time sensitive. Police would then need to track down the person if pursuing legal action with that person, depending on the circumstances.

Noting the information presented in this submission, particularly the practical challenges, ACT Policing would prefer a staged approach to the decriminalisation of the listed substances, with a first phase potentially including cannabis (as per current laws); methylenedioxymethyl-amphetamine (MDMA or ecstasy). Police are able to visually identify substances such as ecstasy or MDMA with reasonable suspicion to seize for further scientific testing. Police can also test the individual for these substances road-side, meaning that individuals may be discouraged from driving under the influence of these substances (which would remain an offence). Additionally, the Government's intent of establishing a pill testing facility in the Canberra City Centre gives further assurance of a comprehensive harm minimisation approach with particular regard to MDMA and ecstasy.

Police also see first-hand the connections between substances such as methylamphetamine (ice) with the cycles of crime, including violent and organised crime. ACT Policing is of the view that decriminalising these harder drugs requires a staged approach to ensure that the needs of each specific demographic of drug user are responded to appropriately within the ACT.

Whether or not a staged approach is pursued, an alternative approach specifically for the SDON could be an acknowledgement and acceptance based process for the SDON issuance. For instance, police could issue the SDON seizure notice with an option for the offender to acknowledge the nature of the substance. This could negate the need for the ACTGAL analysis, and make the exchange between police and the offender faster and more straightforward by enabling the on-the-spot fine. This approach would be preferred by ACT Policing.

Similarly, the ACT has a traffic enforcement regime where Part 1C of the *Crimes Act 1914* (Cth) is not required to be given in certain circumstances. This includes where the officer dealing with the traffic offence is not required to issue the offender with the criminal caution

and Part 1C rights where they believe the offence will be cleared by way of an issuance of a traffic infringement notice. It would be open to the Committee to consider whether mimicking this arrangement for SDON offences could be viable. If this approach was favoured, the officer could question on the basis that they expect the matter to be cleared by way of SDON. This type of approach is also supported by ACT Policing.

Evidence base for drug types and amounts

ACT Policing understands from Mr Michael Pettersson MLA in his speech introducing the Bill that the amounts of each drug are based on below the trafficable amounts.

The prescribed "personal possession amounts" across the drug types appears to be inconsistent. For instance, 2g of heroin could be approximately eight doses; 2g of methylamphetamine (ice) could be approximately twenty doses; 0.5g of MDMA could be less or more than one dose depending on purity. ACT Policing is already aware of drug traffickers supplying cannabis using their knowledge of the new cannabis framework to enable trafficking.

Case Study

Since the passage of the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill*, ACT Policing have observed exploitation of statutory personal use cannabis quantities to facilitate cannabis trafficking in public.

Following an anonymous report from a member of the public that an individual had just sold drugs at a children's playground, police attended, located the individual and searched his property.

Within his bum bag, police located nine individual clip seal bags containing cannabis, commonly referred to as "tenners" and a single ten dollar note.

The individual was questioned during which he denied selling cannabis before asserting correctly that the amount was less than the statutorily defined personal use possession quantity which he was permitted to possess.

As the member of the public was unwilling to provide evidence formally against the male, police were unable to establish any offence to an evidential standard and the individual was allowed to remain in the area with his cannabis.

This matter became a repeat call for service issue for the local community and as a result, police deployed additional specialist resources to the area over several weeks. This resulted in the individual being arrested and charged with trafficking cannabis to three Indigenous children, the youngest of which was 12 years of age.

ACT Policing would like to see more of an evidence base that the proposed thresholds for each substance are based on research specific for the ACT. Such research could confirm the 'average dosage/usage amount' for each substance and ensure that the specified amount is therefore achieving a harm minimisation approach, rather than potentially enabling drug trafficking and supply. ACT Policing remains highly concerned that the threshold limits for both heroin and methamphetamine (ice) are far above the

regular personal use limits (2g) and should be revised down appropriately. If enacted in its current form, the Bill would have the inadvertent effect of enabling trafficking.

In ACT Policing's diversionary policies, the discretionary threshold for MDMA is 1-2 tablets. As noted earlier, whether or not a person is diverted will be based on the circumstances at hand. However, the reference to the amount of drug is expressed in terms of an average personal use amount and how that substance is commonly found. This could be an alternative way of phrasing the threshold amounts in the Bill, to enable a more accurate reflection detailing an average dosage amount specific to the local ACT community. However, the legislative difficulties in doing so are acknowledged.

Practical Challenges to Policing Drug Consumption in Public Places

Individuals with untreated substance abuse issues often possess and consume drugs in public places which impact on perceptions of community safety for all members of the public. This results in police calls for service to intervene in the public consumption of many forms of illicit substances from the injection of heroin to the smoking of methylamphetamine (ice) or insufflating of cocaine.

Police respond to these calls for service by speaking with drug users, searching them, seizing any illicit substances found and wherever possible, diverting them to a drug diversion program for therapeutic treatment rather than referring the offence to the criminal justice system.

ACT Policing holds concerns that the passage of the bill in its current form will be deleterious to the existing police search powers framework as it applies to situations of drug consumption in a public place. Should this result, police will be unable to effectively respond to these situations with a resulting negative impact on perceptions of community safety and reduction in drug diversions to connect those with untreated drug abuse issues to therapeutic treatment options.

Road Trauma

ACT Policing supports that the Bill does not change current criminalisation of driving under the influence of substances. However, the currently available roadside drug tests do not test for all of the substances proposed to be decriminalised which could be problematic.

ACT Policing holds concerns that decriminalising the proposed substances could influence road trauma, noting that driving under the influence is associated with higher harms, such as dangerous driving and vehicle collisions causing fatalities. For instance, in both 2019 and 2020 respectively, over 700 drivers were charged as driving under the influence of illicit substances. Again in 2019 and 2020 respectively, over 20 vehicle collisions resulted in fatalities or serious injuries. ACT Policing remains committed to lowering the amount of serious injuries and fatalities on the roads as much as possible.

ACT Policing notes that there is currently little capability to conduct road-side testing for all of the listed substances, and holds concern that if certain substances are decriminalised, this could lead to a perception from the community that driving under the influence of drugs

is acceptable. ACT Policing encourages the Committee to consider whether this issue needs to be researched further in the ACT context, to ensure the Bill does not inadvertently impact on road trauma. If it is determined that ACT Policing requires further road-side testing capability, such technologies will also require appropriate resourcing and funding.

An alternative option is to again consider a staged implementation of decriminalisation. This is because of the ability for police to conduct road side testing for MDMA or ecstasy, ensuring that decriminalisation of the current full list of drugs does not adversely influence road trauma. As mentioned earlier, the Government's intent of establishing a pill testing facility in the Canberra City Centre provides further assurance of a comprehensive harm minimisation approach, with particular regard to MDMA and ecstasy.

Conclusion

ACT Policing supports harm minimisation. To operationalise this policy intent, there are key issues for police that require further clarity for this to be successful, including:

- The necessary introduction of policing governance to accommodate for the final form of the Bill to provide guidance to members due to the Commonwealth legal ambiguity;
- The application of the Bill to the Jervis Bay Territory;
- Whether the intent is for a person to given multiple SDONs for multiple substances (as is the case under the current interpretation of the Bill);
- Whether the prescribed listed substances are to be interpreted as mixed or pure weights;
- Expectations of police regarding testing of substances, including referring to ACTGAL; and potentially establishing a process where offenders can acknowledge the content of the substance negating the need for testing;
- That appropriate resourcing be considered for police, depending on the outcomes of this Inquiry – for instance, resourcing for appropriate equipment to conduct testing;
- That the prescribed limits are based on local community data and research on what is a “personal use” amount – this is for both ensuring a true harm minimisation approach, and ensuring that the Bill does not unintentionally enable illicit drug supply and trafficking, for example, creating a ‘safe-haven’ for organised crime;
- In particular, that the prescribed amounts for methylamphetamine (ice) and heroin are far above the usual personal amounts, and should be revised down, to prevent both trafficking as well as unintended harms;
- That 24/7 health supports are available, when police have a duty of care to take a person somewhere and where no offence has been committed so arresting the person is no longer appropriate or necessary;
- That community education and harm minimisation initiatives accompany implementation of the Bill to ensure other unintended harms do not occur, such offending driven by drug use, and driving under the influence;
- That a staged approach for specific drug types be considered, and that pathways for diversion are clear for police (whether or not this is legislated or remains in policing governance), so that the intent of harm minimisation can actually be achieved.

Chief Police Officer Neil Gaughan