



Submission to the 'Parliamentary Joint Committee on Law Enforcement re-initiated inquiry into crystal methamphetamine' from Dr John Coyne

This submission does not reflect an Australian Strategic Policy perspective but is the opinion of the author Dr John Coyne, Senior Analyst, Border Security Program, ASPI.

Overview

On 12 October 2016, the *Parliamentary Joint Committee on Law Enforcement* (PJCLE) re-initiated its inquiry into crystal methamphetamine (ice). This submission addresses the PJCLE's terms of reference in the areas of:

- (a) the role of Commonwealth law enforcement agencies in responding to the importation, manufacture, distribution and use of methamphetamine and its chemical precursors;*
- (b) the adequacy of Commonwealth law enforcement resources for the detection, investigation and prosecution of criminal activities involving the importation, manufacture, distribution and use of methamphetamine and its chemical precursors; and*
- (c) the effectiveness of collaborative arrangements for Commonwealth law enforcement agencies with their regional and international counterparts to minimise the impact of methamphetamine on Australian society.*

In 2015, Australia experienced a moral panic over the scale of its domestic ice problem. This panic created a level of political and public interest in drug abuse not seen since Australia's heroin epidemic in the 1990's. Despite claims to the contrary, Australia's ice problem was not an overnight phenomenon. Successive Australian Crime Commission (ACC) reports¹ have for many years highlighted the growing magnitude of the nation's domestic ice market, and its associated harms. Somehow, amidst this reporting and warnings from various non-government organisations (NGO), Australian policy makers' sleep walked into its ice epidemic.

Whilst the ice problem in Australia is continuously evolving existing government, non-government and academic reporting consistently highlights that Australia is faced with:

- A globally statically high per-capita user demand for ice, from both addicts and so-called 'recreational' users;
- A globally high profit ice market due to comparatively high prices;
- A user base that in economic terms is price insensitive;
- A situation where Australia's police and enforcement agencies are achieving record ice seizures and arrests but the market remains well supplied; and
- New organised crime groups rapidly replace syndicates that are disrupted by police.

¹ The Illicit Drug Data Report and Organised Crime in Australia Report

In December 2015, the Final Report of the Australian National Ice Taskforce was released. The report made it clear that Australia wasn't going to arrest its way out of the ice epidemic. Since December 2015, supply reduction efforts have continued at a striking pace. We've had the new '*dob in an ice dealer*' hotline and a number of remarkable mega drug seizures. Along the way the public outcry, and its associated media coverage, have quietened. Arguably, despite law enforcement's best efforts, little has changed in Australia with respect to ice supply.

The role of Commonwealth law enforcement agencies in responding to the importation, manufacture, distribution and use of methamphetamine and its chemical precursors.

The Australian Institute of Criminology (AIC) research, '*Findings from the DUMA program: Impact of reduced methamphetamine supply on consumption of illicit drugs and alcohol*' (2015) cast doubts over the effectiveness of Australian enforcement agencies' use of seizure statistics as performance measures. The research reinforced the validity of Australia's '*harm minimisation through supply reduction*' policies, but found that the strategies employed by law enforcement appeared to be having little effect on supply.

While the ACC continues to report increased seizures of Amphetamine Type Substances (ATS)—from 2012 to 2013 an 85.6% increase in detections and a 515.8% increase in total weight of ACC seizures—the AIC researchers found that these were not having any marked impact on the drug's domestic availability to users. It could be argued that border enforcement's impact on ATS domestic availability is delayed by factors such as the presence of stockpiles, or market-responsive domestic manufacturing. But increased seizure rates have been a consistent trend over recent years, so decreases in domestic availability should have been realised by now, if the current strategy were effective.

Police forces in Australia are achieving record high drug seizures and arrests. That's the key finding from the Australian Criminal Intelligence Commission's (ACIC) latest Illicit Drug Data Report. Australia's Commonwealth law enforcement agencies achieved a 13.7 percent increase in the number of illicit drug seizures, a 13.9 percent increase in the overall weight of illicit drug seizures and a whopping 19.5 percent increase in drug arrests.

In the depths of this year's edition of the drug data report are a couple of telling statements that suggest that, in Australia, drugs are actually becoming easier to obtain.

- When it comes to regular users of methamphetamine or ice, 91 percent of respondents reported that the drug is easy or very easy to obtain, up from 88 percent in 2013. Other analysis reveals that this figure may have increased to 95 percent.
- The story is no better when it comes to heroin in Australia. The latest figures show 89 percent of respondents 'able to comment on the availability of heroin' reported it as being easy or very easy to obtain: an increase of 4 percent from 2013.
- Similarly, the average price for one gram of ice has decreased from \$300-1600 in 2013-2014 to between \$250-1200 in 2014-2015. In other words, the figures suggest that despite record seizures, illicit drug supply in Australia is increasing.

For organised crime groups (OCG) the Australia ATS market has strong economic pull factors; a high per-capita user demand, and a market that's characterised by high and stable prices (in global terms). To undermine the profit motivation for OCG in the Australian ATS market, border agencies need to seize large proportions of the total quantity of incoming drugs. Despite record seizures, stable user prices reveal border and enforcement agencies are not seizing increasing percentages of the total ATS (and their precursors) being imported into Australia.

These findings indicate the existence of a disconnect between the use of seizure rates as a performance measure and the achievement of the government's policy intent of harm minimisation. More specifically this submission argues that concentrating enforcement strategy towards higher seizure rates, restricts the ability of enforcement officers to implement innovative strategies to reduce supply reduction.

The intent of the enforcement regime of Australia's national drug strategy is not concerned with arresting more people, nor seizing more drugs. Rather, the intent behind our illicit drug enforcement strategy should be to reduce the supply of these harmful drugs in our communities.

Fearing criticism for weak performance, law enforcement decision-makers continue to focus on achieving higher seizure rates and arrests. But the dogged pursuit of such performance measures comes at the cost of other, more innovative strategies and measures, which may include interventions by agencies not involved in law enforcement. Seizure and arrest rates have great political value, as they provide tangible quantitative measures of '*getting tough*' policies. Law enforcement policymakers face a conundrum: whether to continue to pursue politically sensitive increases in seizures and arrests or to pursue less tangible but more complex and difficult outcomes, such as cooperating internationally to reduce illicit drug supply.

It is recommended that the PJCLE consider:

- Reducing the pressure on border security and law enforcement agencies to increase seizure and arrest rates.
- Establishing a strategic ice disruption taskforce, within the Attorney General's Department (AGD). The taskforce could be comprised of representatives seconded from all Commonwealth Law Enforcement Agencies as well as representatives from AGD and DFAT). The taskforce could work directly to the Minister for Justice's office. This taskforce could be charged with identifying and operationalising innovative ways to strategically disrupt global and regional ice supply chains: free of some of the siloed departmental constraints.

Australia's border environment is a complex jurisdictional challenge in which there is increasingly a need for clearer policy to resolve longstanding role conflicts between stakeholders. On one hand we see the Australian Federal Police (AFP) under budgetary pressures, while also dealing with increasingly complex and diverse organisational roles. More and more often this results in the AFP having to make tough decisions in prioritising its efforts; especially with respect illicit drugs. In a practical sense this often results in AFP interventions being limited to only the largest of illicit drug importations.

In contrast, Australia's Border Force (ABF), is becoming increasingly operationally capable at the border. The Border Force reform was focused on professionalising front line officers in terms of capability and accountability. ABF officers weren't to be public servants with a gun. They were to be a disciplined force in frontline domestic security. In many senses the ABF is perfectly situated to take the lead on the detection, investigation and disruption of many illicit drug importations. Unfortunately, such burden sharing between AFP and ABF is limited by legislative and cultural barriers.

The vulnerabilities in the Border Force legislative framework relate to inconsistent access to relevant enforcement powers and delegations. This is particularly evident with surveillance and telecommunications powers.

ABF officers are increasingly undertaking complex investigations into drug importation. When it comes to these kinds of complex operations, telecommunication intercept powers are an essential investigative tool. Unfortunately there are a number of legislative inconsistencies that prevent the full benefits of ABF being realised. Senior Border Force officers can authorise the deployment of ABF officers to undertake physical surveillance. But these same officers are unable to authorise the use of technical devices such as electronic trackers. That's despite the fact that they achieve the same outcome as physical surveillance at a fraction of the cost.

It is recommended that the PJCLE consider whether Border Force powers, including access to search warrant (section 3e powers *Commonwealth Crimes Act 1914*) and telecommunication powers need to be reviewed. A joint parliamentary committee on border security could be established to undertake the review or the PJCLE's terms of reference could be expanded to include the ABF in its remit. Without such a review a number of substantive vulnerabilities will continue to hamper Border Force operations.

The adequacy of Commonwealth law enforcement resources for the detection, investigation and prosecution of criminal activities involving the importation, manufacture, distribution and use of methamphetamine and its chemical precursors

Since 1987, the efficiency dividend has been a central principle in successive Australian government budgets. There should be no doubt that the government's efficiency dividend initially resulted in reductions to inefficient expenditure in non-operational areas within agencies, which was long overdue.

As the number of non-operational efficiencies available to decision-makers decreased, cuts to operational expenditure became inevitable and, finally, commonplace: even in agencies such as the AFP, ABF and ACIC (as well as their predecessors). To address the effects of reductions in expenditure, these agencies developed new policy initiatives to obtain sufficient funding to offset risks to national security. For 10 or so years, a delicate equilibrium of cuts and '*just in time*' policy initiatives was maintained.

In recent years the budget has seen a drastic reduction in the availability of new funding - which is resulting in incremental reductions in Australia's national law enforcement capability.

Further complicating and undermining the funding arrangements of organisations such as the AFP, ACIC and ABF is the new policy initiative offset methodology adopted by successive federal governments since 2008. In this approach, departments that submit new policy proposals to government must offset the expenditure from within their existing budget. The end result is a continuous erosion of funding for existing programs of work, such as the highly regarded AFP international network.

Arguably each of Commonwealth's major law enforcement agencies with responsibility for ice—AFP, ABF, and ACIC—are under substantial fiscal pressures that are impacting on operational outcomes. While each agency has sought to limit the impacts on operational staff numbers, this has come at the cost of important operational support capabilities including such areas as undercover operations, human source operations, surveillance, telephone intercepts, intelligence and offshore engagement. While the direct operational impacts of these fiscal decisions is difficult to calculate arguably it affects each agencies' strategic and operational decision making.

It is recommended that the PJCLE consider whether the application of efficiency dividends on the AFP, ACIC and ABF are now impacting on community safety.

The effectiveness of collaborative arrangements for Commonwealth law enforcement agencies with their regional and international counterparts to minimise the impact of methamphetamine on Australian society;

ACIC reporting highlights the pivotal role of China in the production and shipment of ice and its precursors. This is made possible because of China's enormous chemical and pharmaceutical industries. The importance of the Chinese connection for ice supply reduction shouldn't be underestimated.

To have a lasting impact on the availability of ice, the AFP, ABF and ACIC will each now need to pursue less tangible, but more complex and difficult strategies focused on addressing the diversion of drugs and precursors in the Chinese chemical and pharmaceutical industry. This will also need careful diplomatic moves from the Department of Foreign Affairs and Trade. There are positive signs that Australia's efforts will be welcomed by the Chinese government. Cooperation is in China's interest as well: they also have a substantial domestic drug problem.

The challenge with this continuing body of international engagement work is two-fold. The first challenge is a question of budget and resources: which, was highlighted in the previous section. The second challenge relates to lifting the level of thinking around international law enforcement engagement to a more strategic level that is focussed on strategic disruption: as opposed to just operational cooperation.

The number of Australian police operating overseas is rapidly reducing due to the continuous erosion of the AFP's budget by bureaucratic demands for financial efficiency dividends. This is likely to have short and long-term implications for ice supply reduction efforts. In no uncertain terms, Australia's offshore capacity is being eroded.

With a decreased AFP presence across the world, there is a real risk that important international policing relationships will be severed. This will impact on our access to intelligence exchanges and police-to-police cooperation.

AFP posts in some countries, such as Myanmar, are already earmarked for closure, while others in organised crime hotspots such as Thailand, Indonesia and Cambodia are reducing in size and budget.

Over the next four years it is possible that, despite government promises, the AFP's international network could shrink a further quarter, resulting in closure of more offices. These reductions seem somewhat strange given the recommendations of the recently released final report from the National Ice Task Force: ice is argued to be Australia's number one crime threat. This report argued that international cooperation and improved intelligence sharing offer the best opportunities to tackle the supply of ice in Australia.

Strengthening international advocacy and engagement on cooperation and information sharing between law enforcement agencies will be increasingly more difficult with a reduced international network, especially in Asia.

It is recommended that the PJCLE consider advising government to cease applying the efficiency dividend and off-set provisions to the AFP, ACIC, ABF and Department of Immigration and Border Protection (DIBP) offshore operating budget.

China is one of the world's largest chemical and pharmaceutical manufacturers. China's domestic pharmaceutical market is also the largest in the world, which has led to an ever expanding number of small and medium enterprises manufacturing synthetic chemicals and drugs on the mainland. In addition most of the world's multinational pharmaceutical companies have joint partnerships in China with large scale drug and synthetic chemical manufacturing facilities.

China's fragmented and sprawling pharmaceutical industry includes in excess of 6000 manufactures and 14000, distributors.^{2 3} In addition to being inefficient, the industry is under-regulated, which is evidenced by the quantity of amphetamine type substances' (ATS) precursor shipments seized in Australia that originate in China.

The ACIC's 2015 *Organised Crime in Australia Report* and 2014 *Illicit Drug Data Report* both highlight the role of China in the production and shipment of illicit synthetic drugs. To achieve a substantive reduction in the supply of ice and its precursors in Australia the diversion of drugs and precursors in the Chinese chemical and pharmaceutical industry needs to be addressed.

Australia has enjoyed a privileged position with one of the strongest police-to-police relationship with Chinese authorities. A similarly productive relationship exists between ABF and Chinese border security agencies. The development of such relationships has taken significant time and resource investments.

In the current fiscal environment it should be of no surprise that both DIBP and AFP are regularly reviewing the size and footprint of their respective international activities. The disruption of the Chinese supply routes calls for a greater investment in resources to engage and work collaboratively with Chinese enforcement officials. This is unlikely to occur if counter ice enforcement activities are not consolidated in a concise national supply reduction strategy that will support ongoing national investment.

To achieve ice (and its precursors) supply reduction from China much will need to be done. It is recommended that the PJCLE consider:

- The need for a China national ice disruption strategy that coordinates Australia's national, diplomatic, trade, police and border security efforts to impact on ice supply. As China is a globally significant source country for ice and its precursors this policy recommendation is focussed on disrupting the market at the point of origin.
- Cooperative strategies with Chinese authorities that will restrict the diversion of precursors from China's legitimate economy. Such a strategy requires wider whole of government engagement, highlighting that supply reduction may not be the sole territory of law enforcement. For example Australia's pharmaceutical industry association, with assistance from DFAT, would be in a strong position to cooperate with Chinese officials on developing industry compliance frameworks.

² Hu Yuanjia, Carolina O.L. Ung, Bian Ying and Wang Yitao. 2007 The Chinese pharmaceutical market: Dynamics and a proposed investment strategy. *Journal of Medical Marketing* 7, 18–24.

³ unknown (unknown date), China's Pharmaceutical Industry Lacks Innovation, Lags Behind, China Watch (Washington, D.C., United States: Worldwatch Institute),

Conclusion

Most people appear to have accepted that Australia cannot arrest its way out of the ice problem. There is also an acknowledgment that supply reduction still has a role to play in Australia's national drug strategy alongside demand reduction and harm minimisation. Despite all of this, and the recommendations contained within the Final Report of the National Ice Task Force, nothing seems to have substantially changed in the supply reduction space over the last twelve months. Seizures are rising, supply remains unchanged, and prices are stable. Worse still law enforcement agencies are under increasing budgetary pressures. Addressing this challenge will require an innovation or perhaps revolution in law enforcement thinking, as well as budget stability.