

## Chapter 5

### Law enforcement strategies to address crystal methamphetamine

5.1 As discussed elsewhere in this report, the National Ice Action Strategy (NIAS) outlines a number of key strategies agreed to by Commonwealth, state and territory governments to combat crystal methamphetamine use in Australia. This chapter discusses a range of law enforcement strategies included in the National Ice Taskforce's (NIT) final report and under the NIAS, as well as some suggested in evidence to the committee. Collectively, these strategies propose a law enforcement approach to crystal methamphetamine both domestically and in the Asia Pacific region.

5.2 Specifically, this chapter considers:

- the National Criminal Intelligence System (NCIS);
- a nationally consistent unexplained wealth regime;
- the Swift, Certain and Fair Sanctions model, as trialled in the Northern Territory (NT);
- a national review of drug diversion programs and the need for interjurisdictional consistency; and
- control and monitoring of precursor chemicals and the development of an electronic end user system;
- eligibility criteria of the aviation and maritime security identification cards; and
- co-operation with international partners to disrupt the supply of crystal methamphetamine.

5.3 Finally, the chapter gives consideration to the limitations of law enforcement strategies in combatting crystal methamphetamine use, given its complex health and social elements.

#### National Criminal Intelligence System

5.4 Since 30 June 2015, the Australian Criminal Intelligence Commission (ACIC) has been piloting a National Criminal Intelligence System (NCIS). The pilot program received \$9.8 million in funding under the *Proceeds of Crime Act 2002* (Proceeds of Crime Act). The aim of the NCIS is to:

...strengthen criminal information and intelligence sharing across law enforcement agencies, jurisdictions and the criminal intelligence community. As well as connecting the existing data holdings and making searching across these highly efficient, NCIS will also offer enhanced

analytical and collaboration services. By improving information sharing and system agility, police and national security agencies will have an enhanced ability to detect and disrupt criminal activity.<sup>1</sup>

5.5 There has been consistent and ongoing support for a NCIS. Commonwealth, state and territory governments first agreed to develop a NCIS as part of the National Organised Crime Response Plan 2015–18.<sup>2</sup> The development of a national information sharing system for law enforcement agencies was also recommended by the NIT.<sup>3</sup>

5.6 The NIT's final report identified the need to strengthen information infrastructure between law enforcement agencies across jurisdictions. The NIT subsequently endorsed the ACIC's NCIS. Recommendation 25 for the final report stated:

The Commonwealth Government should establish a new national platform for criminal intelligence to improve the existing information sharing infrastructure. This will enable greater national collaboration to proactively tackle organised crime in Australia, informed by findings of the current programme by the [Australian Crime Commission (ACC)].<sup>4</sup>

5.7 Further support was confirmed in the NIAS, which promises to '[d]evelop a pilot infrastructure platform to inform the design and development of a [NCIS]'.<sup>5</sup>

5.8 The Attorney-General's Department (AGD) explained that the ACIC and 16 partner agencies developed the NCIS as a:

...federated platform which exposes information and criminal intelligence to relevantly authorised staff. The NCIS pilot simultaneously by separate jurisdictions, ensuring that such investigations are connected, coordinated and fully resourced.<sup>6</sup>

5.9 The AGD concluded that the NCIS will be a powerful tool to combat sophisticated drug supply syndicates that operate across national and international jurisdictions.<sup>7</sup>

5.10 The committee was updated on the status of the program during its questioning of the 2015–16 ACIC's annual report. The ACIC reported the project was

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1 Australian Criminal Intelligence Commission (ACIC), *National Criminal Intelligence System*, <https://www.acic.gov.au/ncis> (accessed 11 July 2017).

2 Commonwealth of Australia, *Submission 53*, p. 21.

3 See Recommendation 25, National Ice Taskforce (NIT), *Final report*, p. 141.

4 NIT, *Final report*, 2015, p. xii.

5 Council of Australian Governments (COAG), *National Ice Action Strategy (NIAS)*, 2015, p. 25.

6 Attorney-General's Department (AGD), *Submission 117*, p. 3.

7 AGD, *Submission 117*, p. 3.

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conducted in collaboration with 15 partner agencies and over 400 users. It has 'consolidated over 100 million records, including 30 million records from 400 different data sources' and:

...will exponentially improve the way criminal intelligence and information is shared and used across the country, meaning the right people will have the right information sets at the right time, when they need them, and this will greatly improve Australia's national capabilities to prevent, detect and disrupt threats, particularly those of serious and organised crime and, indeed, matters of national security such as terrorism.<sup>8</sup>

5.11 The committee was informed that the pilot program would end in July 2017, to be followed by an evaluation of the project.<sup>9</sup> The ACIC estimated that the NCIS, if approved, will cost \$200 million. The ACIC's board has committed, subject to the evaluation, \$50 million in funding. The remaining \$150 million would need to be sought elsewhere.<sup>10</sup>

### *Committee comment*

5.12 The value of enhanced co-operation and information sharing between law enforcement agencies is vital to Australia's ability to combat the trade in illicit drugs. The NCIS will assist law enforcement agencies, in all Australian jurisdictions, to share intelligence and further disrupt the activities of serious and organised crime groups, including outlaw motorcycle gangs (OMCGs).

5.13 The committee is supportive of the permanent establishment of the NCIS at the conclusion of the pilot, taking into account the outcome of the evaluation and any recommendations therein. To ensure the implementation and continuity of the NCIS after the conclusion of the trial, the committee recommends that Commonwealth, state and territory governments commit to long-term funding for it.

### **Recommendation 2**

**5.14 The committee recommends that Commonwealth, state and territory governments commit long term funding for the implementation, maintenance and ongoing use of the National Criminal Intelligence System.**

### **Nationally consistent unexplained wealth regime**

5.15 An unexplained wealth regime is a law enforcement strategy that targets and restrains or confiscates money and other assets derived from criminal activities. These laws require suspected criminals to prove to a court how they 'acquired their assets,

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8 Mr Chris Dawson, Chief Executive Officer, ACIC, *Committee Hansard*, 14 June 2017, p. 2.

9 Mr Dawson, ACIC, *Committee Hansard*, 14 June 2017, p. 2.

10 Mr Dawson, ACIC, *Committee Hansard*, 14 June 2017, p. 5.

rather than law enforcement needing to prove the assets were linked to a particular crime'.<sup>11</sup> These laws are primarily targeted at senior organised crime figures.<sup>12</sup>

5.16 According to a paper released by the Australian Institute of Criminology (AIC) in December 2016, unexplained wealth laws are a new approach to confiscating proceeds of crime by securing assets that cannot be recovered through conventional conviction-based legislative means. These unexplained wealth mechanisms do not require the state to prove the owner of the assets had committed a crime; instead, the burden of proof is on the property owner to provide evidence that the asset was acquired legitimately.<sup>13</sup>

5.17 Western Australia (WA) was the first state to implement an unexplained wealth law. By 2014, all Australian jurisdictions, with the exception of the Australian Capital Territory, had developed their own unexplained wealth laws.

5.18 The Commonwealth's unexplained wealth laws were enacted by the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2010 that amended the Proceeds of Crime Act.<sup>14</sup> The legislation places the onus of proof on the respondent, who must 'prove, on the balance of probabilities that their wealth was not derived from one or more offences linked to a Commonwealth head of power'.<sup>15</sup>

5.19 A short description of each state and territory unexplained wealth regime is detailed below.

### ***Western Australia***

5.20 WA's unexplained wealth legislation is enacted under the *Criminal Property Confiscation Act 2000* (WA) (CPCA Act). The powers in the CPCA Act allow the state to have all assets of a convicted drug trafficker seized, regardless of whether they have been lawfully obtained.<sup>16</sup> For an unexplained wealth declaration to proceed, a court must determine whether a 'person's total wealth is greater than the value of their lawfully acquired wealth. It is not necessary to demonstrate reasonable grounds to

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11 NIT, *Final report*, 2015, p. 60.

12 NIT, *Final report*, 2015, p. 60.

13 Australian Institute of Criminology (AIC), *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 1.

14 Parliamentary Joint Committee on Law Enforcement (PJCLE), *Inquiry into Commonwealth unexplained wealth legislation and arrangements*, March 2012, p. 16.

15 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 5.

16 Western Australia Police, *Proceeds of Crime*, <https://www.police.wa.gov.au/Crime/Proceeds%20of%20crime> (accessed 27 July 2017).

suspect that the person committed an offence to apply for an unexplained wealth declaration'.<sup>17</sup>

5.21 WA has a specialised investigative proceeds of crime squad to target assets connected with illegal activity.<sup>18</sup>

### ***Queensland***

5.22 Queensland's unexplained wealth laws are established under the *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Act 2013* (Qld). In this system, a court must determine whether there is reasonable suspicion that an individual has: engaged in serious criminal activity; acquired property that has derived from criminal activities; or that their current or previous wealth was acquired unlawfully.<sup>19</sup>

### ***South Australia***

5.23 Unexplained wealth law in South Australia (SA) is enacted by the *Serious and Organised Crime (Unexplained Wealth) Act 2009* (SA). The Supreme Court of South Australia may authorise an unexplained wealth order if it 'reasonably suspects that a person or an incorporated body has unlawfully acquired wealth' with no requirement to show reasonable grounds to suspect that person has committed an offence.<sup>20</sup>

### ***Northern Territory***

5.24 The NT has an assets confiscation and forfeiture regime established under the *Criminal Property Forfeiture Act 2002* (NT) (CPF Act). Similar to the WA provisions, there is no requirement on police to show reasonable grounds for suspecting a person has committed an offence. The NT's legislation has meant a judge has minimal discretion when making an unexplained wealth declaration. If authorised, the onus of proof is on the respondent, and the person's wealth is presumed to have been unlawfully obtained unless proven otherwise. According to the AIC's report, the CPF Act has successfully obtained approximately \$3.5 million, including one settlement of \$968 000.<sup>21</sup>

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17 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 2.

18 Western Australia Police, *Proceeds of Crime Squad*, <https://www.police.wa.gov.au/Crime/Proceeds-of-crime/Proceeds-of-Crime-Squad> (accessed 27 July 2017).

19 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 3.

20 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 3.

21 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 4.

### ***New South Wales***

5.25 The New South Wales (NSW) unexplained wealth powers are found in the *Criminal Assets Recovery Act 1990* (NSW). The AIC's analysis indicates the NSW scheme has been quite successful and equates its success with the powers being administered by the NSW Crime Commission (NSWCC), which has specialist financial investigators. The approach of the NSWCC is different to other jurisdictions because it treats an unexplained wealth matter as a 'financial investigation that can lead to and support legal proceedings, rather than legal proceedings with a financial aspect'.<sup>22</sup>

5.26 The AIC reported that more than 95 per cent of unexplained wealth matters are finalised through a negotiated settlement, rather than through a trial. Recent successes include approximately \$1.25 million recovered in 2013, and \$1.225 million in 2014. Many cases that begin as unexplained wealth proceedings are finalised using other asset confiscation orders.<sup>23</sup>

### ***Tasmania***

5.27 Tasmania's unexplained wealth law is modelled upon the NT's legislation. The *Crime (Confiscation of Profits) Amendment (Unexplained Wealth) Act 2013* (Tas) allows the Supreme Court to make unexplained wealth declarations, which empowers the state to confiscate unexplained wealth, to investigate, conduct examinations and restrain property.<sup>24</sup>

### ***Victoria***

5.28 Victoria's unexplained wealth legislation is the *Confiscation Act 1997* (Vic). The legislation empowers the Victorian Director of Public Prosecutions to seek an order to have property restrained if there is a reasonable ground that a 'person with an interest in the property has engaged in serious criminal activity'.<sup>25</sup>

### ***Application of unexplained wealth legislation***

5.29 A Criminology Research Advisory Council paper authored by Mr Marcus Smith and Mr Russell Smith from December 2016 reviewed the success of

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22 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 4.

23 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 4.

24 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 5.

25 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 5.

Australia's unexplained wealth legislation.<sup>26</sup> They reported approximately \$9 million had been restrained through unexplained wealth regimes, and a further \$32.3 million through drug-trafficker declaration procedures. The report stated there had been no proceedings, orders or settlements under the Commonwealth, Victorian and Tasmania unexplained wealth regimes during the period of review.<sup>27</sup>

### ***Barriers to a national unexplained wealth regime***

5.30 The AIC's report from December 2016 identified a number barriers to the development of a national unexplained wealth regime. These include:

- political issues associated with states and the NT ceding power to the Commonwealth;
- a lack of consolidation between stakeholders;
- the ineffectiveness of current Commonwealth legislation;
- uncertainty about the practical benefits of the approach; and
- uncertainty about how the proceeds of crime would be shared between the Commonwealth, states and territories.<sup>28</sup>

5.31 During the course of the inquiry, some submitters and witnesses argued that a nationally consistent unexplained wealth regime is vital. For example, former Australian Federal Police (AFP) Commissioner, Mr Michael Palmer, identified the need to target those profiting from illicit drugs at the top, rather than targeting 'low-hanging fruit'.<sup>29</sup> To achieve this goal, Mr Palmer supported:

...stronger and more nationally consistent and cohesive unexplained wealth laws that would allow us to seize, freeze and confiscate unexplained wealth from people without the need for a link to a criminal conviction or a predicate offence.<sup>30</sup>

5.32 Failure to improve the current legislation means police:

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26 The authors noted that information on the success of unexplained wealth legislation is incomplete because full data could not be obtained from some jurisdictions and there are no national statistics available on the success of unexplained wealth orders. See, Mr Marcus Smith and Mr Russell Smith, *Exploring the procedural barriers to securing unexplained wealth orders in Australia: Report to the Criminology Research Advisory Council*, December 2016, p. 7.

27 Mr M Smith and Mr R Smith, *Exploring the procedural barriers to securing unexplained wealth orders in Australia: Report to the Criminology Research Advisory Council*, December 2016, p. 7.

28 AIC, *Trends and issues in crime and criminal justice: Procedural impediments to effective unexplained wealth legislation in Australia*, No. 523, December 2016, p. 8.

29 Mr Michael Palmer, *Committee Hansard*, 12 August 2015, p. 2.

30 *Committee Hansard*, 12 August 2015, p. 2.

...do not get the people—many of whom are well known to police—living in very palatial homes, driving very palatial cars, with yachts moored at their bayside moorings. We do not get near them because they go nowhere near the commission of the offence. You do that and you do exactly what they did in the 1920s with Al Capone. You take away these people who are in the business for profit and the influence and power the profit gives them. You take away the profit. You increase the risk their operation poses to them and their wealth and they think about doing other business. I think that has a real chance of making a difference.<sup>31</sup>

5.33 Former NSW Police Commissioner, Mr Ken Moroney, and Mr Palmer during his time as AFP Commissioner, conducted a review of unexplained wealth legislation for the Commonwealth's Justice Minister in 2013.<sup>32</sup> Mr Palmer informed the committee that this report recommended a national seminar to look at ways to achieve a nationally consistent strategy.<sup>33</sup> He also noted that:

It was supported by all the jurisdictions, albeit with some discussion about how you would share the recovery of assets and who would control the agenda, if you like. There was some concern in a couple of the states about whether you could trust the Commonwealth not to take over and whether they would be prepared to refer powers to the Commonwealth to allow them to achieve what they would like to achieve in an ideal world. There was very strong support for it. I think it is critical to increasing our effectiveness.

...

But even without that, a referral to the Commonwealth of the power to oversight state offences, as opposed to just Commonwealth offences, would cure a lot of the problems. I do not know how far those recommendations have gone. To my knowledge they were quite strongly endorsed by most of the police ministers around the country as well as by the federal minister at the time. I have no feedback. My strong advice would be that, to the extent that they have not been enacted or further considered, it would be very valuable to do so.<sup>34</sup>

5.34 Mr Palmer also explained difficulties encountered by Australian law enforcement agencies when seeking to 'follow the dollar' overseas:

...chasing assets offshore is not easy and, as you know, we need the cooperation and goodwill of other countries. There are a number of recommendations that focus on precisely that. Some things are happening at the moment through [the Australian Transaction Reports and Analysis Centre (AUSTRAC)] and the [ACC] to strengthen those relationships and give ourselves better opportunities to chase assets. That has become much

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31 Mr Palmer, *Committee Hansard*, 12 August 2015, p. 2.

32 *Committee Hansard*, 12 August 2015, p. 2.

33 *Committee Hansard*, 12 August 2015, p. 6.

34 *Committee Hansard*, 12 August 2015, p. 6.

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more important because, among other people, I know outlaw motorcycle gangsters are quite deliberately offshoring their assets—they are doing things like buying pubs and casinos, perhaps joss houses and the like in South-East Asia, where they believe the assets cannot be touched, cannot be frozen or seized, regained or regathered, by us. I think we can do better. Internationality of any movement, business or crime, creates problems for us. The legislation was not ever aimed at dealing with that, so it will always be a challenge. But I think there is more we can do, and there are some recommendations that focus on it.<sup>35</sup>

5.35 State police agencies expressed support for strong unexplained wealth legislation. SA Police argued it was critical to develop standardised unexplained wealth legislation across the country:

Because all too often we deal in points where a part of it was committed in New South Wales, a part of it is here and all the rest of it. That complicates matters considerably. We look very closely at that legislation now. When we do apprehend offenders, particularly at the higher end of the organisation, we think very carefully about under what legislation they are going to be charged because more often than not, there will be a federal aspect to their behaviour. The money laundering legislation from a federal perspective is better than our state legislation.<sup>36</sup>

5.36 The NSW Police Force noted more could be done in terms of a nationally consistent unexplained wealth regime and asset seizures.<sup>37</sup> Victoria Police argued that legislation 'regulating unexplained wealth should be harmonised and uniformly enacted across all jurisdiction in Australia' and should include the seizure of 'crypto-currencies used in connection with online trafficking'. Further:

Currently, large scale trafficking and asset seizures are difficult to coordinate when the offence does not fall under Commonwealth legislation. This complexity fosters an enabling environment for the national and international movement of illicit drugs. There are recent efforts to allow the Commonwealth access to state-based legislation when dealing with the confiscation of criminal proceeds which will significantly improve this. Victoria Police is supportive of this proposal and is working with a national workgroup to implement this change. Through the creation of nationally consistent schemes relating to unexplained wealth and asset seizure, multi-agency taskforces would be better positioned to secure the assets of offenders operating in these circumstances.<sup>38</sup>

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35 Mr Palmer, *Committee Hansard*, 12 August 2015, p. 8.

36 Detective Superintendent Graham Malcolm, Officer in Charge, Serious and Organised Crime Branch, South Australia Police, *Committee Hansard*, 28 July 2015, pp 16–17.

37 Deputy Commissioner Naguib Kaldas, Deputy Commissioner, Field Operations, New South Wales Police Force, *Committee Hansard*, 29 July 2015, p. 1.

38 Victoria Police, *Submission 59*, p. 14.

5.37 In its final report, the NIT expressed support for a nationally consistent regime, noting that the Council of Australian Governments (COAG) Law, Crime and Community Safety Council had been considering a national scheme.<sup>39</sup> The NIAS correspondingly reports that COAG would develop 'a national cooperative scheme to target the unexplained wealth of people involved in serious and organised crime'.<sup>40</sup>

5.38 At a public hearing, the AGD provided the following update on the status of negotiations to establish a nationally consistent unexplained wealth regime:

At a Commonwealth, state and territory ministerial level there have been a lot of discussions about this. Where we are up to at the moment is that we have a number of participating jurisdictions. New South Wales, South Australia, Western Australia, ACT and the Northern Territory are working with us. That COAG law meeting—I was talking about the COAG Law, Crime and Community Safety Council—has looked at a whole lot of details on this. Now, where we are up to is that New South Wales is taking the lead on drafting some model legislation. So it is moving ahead, but, as you would understand, bringing together all of these very complicated laws is taking some time. But we are making some good progress, because it is such an important initiative.<sup>41</sup>

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A cooperative part of it is that the states would actually do a referral of powers to the Commonwealth. So you can see that there is a limited referral of powers so that we can make this cooperative scheme work.<sup>42</sup>

### ***Committee comment***

5.39 This committee has an ongoing interest in the effectiveness of unexplained wealth legislation and the development of a nationally consistent regime. In 2012, the committee recommended that the Commonwealth government develop a 'nationally consistent unexplained wealth regime' and that the states and territories should refer their powers to the Commonwealth 'for the purpose of legislation for a national unexplained wealth scheme, where unexplained wealth provisions are not limited by having to prove a predicate offence'.<sup>43</sup>

5.40 Evidence presented during the course of this inquiry indicates that the absence of a nationally consistent unexplained wealth regime continues to be a hindrance to

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39 NIT, *Final report*, 2015, p. 114.

40 COAG, *NIAS*, 2015, p. 25.

41 Ms Catherine Hawkins, First Assistant Secretary, AGD, *Committee Hansard*, 24 March 2017, p. 34.

42 Ms Hawkins, AGD, *Committee Hansard*, 24 March 2017, p. 34.

43 PJCLE, *Inquiry into Commonwealth unexplained wealth legislation and arrangements*, 19 March 2012, p. xvi.

law enforcement agencies and hampers their efforts to target, in particular, the upper echelons of serious and organised crime groups.

5.41 The committee is pleased to hear that a nationally consistent unexplained wealth regime is currently the subject of negotiation by COAG and that work has progressed as far as the preparation of draft model legislation. The committee is very supportive of this work and urges all Australian governments to participate in and commit to it. The committee would welcome prompt resolution of this matter and therefore recommends that Australian governments, as a matter of urgency, formally agree and enact nationally consistent unexplained wealth legislation.

### **Recommendation 3**

**5.42 The committee recommends that Commonwealth, state and territory governments, as a matter of urgency, agree and enact nationally consistent unexplained wealth legislation.**

### **Swift, Certain and Fair Sanctions**

5.43 Both the NIT and NIAS support the development of a pilot Swift, Certain and Fair Sanctions model (SWIFT model). The NIAS reported that this pilot SWIFT model would be trialled in the NT (the COMMIT program).<sup>44</sup> The model originates from Hawaii, the United States of America (USA) and is known as Hawaii's Opportunity Probation with Enforcement (HOPE). As of January 2015, this model had been implemented in 21 states across the USA. An evaluation of HOPE after one year indicated that probationers in the program were:

- 55 per cent less likely to be arrested for a new crime;
- 72 per cent less likely to use drugs;
- 61 per cent less likely to skip appointments with their supervisory officer; and
- 53 per cent less likely to have their probation revoked.<sup>45</sup>

5.44 Associate Professor Peter Miller, an advocate for the SWIFT model, gave evidence that suggested those in the program had larger reductions in positive drug tests, missed fewer appointments, and were less likely to be arrested in the three, six and 12 months after the program, compared with those on regular probation. Professor Miller argued:

With a growing prison population in Australia, as well as an increase in those people seeking treatment for methamphetamine use in prisons, it is important that this issue is addressed. HOPE provides the opportunity for

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44 COAG, *NIAS*, 2015, p. 25.

45 Office of Justice Programs, *"Swift and Certain" Sanctions in Probation Are Highly Effective: Evaluation of the HOPE Program*, 3 February 2012, available: <http://www.nij.gov/topics/corrections/community/drug-offenders/pages/hawaii-hope.aspx> (accessed 1 August 2017).

those who use crystal methamphetamine to take responsibility for their drug use, and demonstrate they are capable of managing their substance use problem in the community. Not only will this result in a reduction of resources being spent on placing crystal methamphetamine using offenders in prison, but it also allows people to maintain employment, housing, and their support network, which may in turn result in a drug-free and crime-free lifestyle.<sup>46</sup>

5.45 Professor Ann Roche from Flinders University commented on the high rates of methamphetamine use in Hawaii and for that reason it:

...introduced and evaluated, very successfully, a program where parolees, after having been charged and gone through the criminal justice system for a methamphetamine related offence, have now introduced an alternative way of supporting and managing parolees so that they get really intensive monitoring and care. That is showing exceptionally positive results...So there are some success stories through the criminal justice system.<sup>47</sup>

5.46 Despite its reported success, questions remain about the effectiveness of the program outside of the one year mark, in particular after probationers are released from supervision.<sup>48</sup> A follow-up evaluation paper on HOPE<sup>49</sup> from 17 May 2016 reported that HOPE probationers performed better<sup>50</sup> than those under routine supervision, and were half as likely as control subjects to have a new drug charge during the follow up period.<sup>51</sup>

5.47 In August 2015, the former Attorney-General of the NT, Mr John Elferink, called for the implementation of the SWIFT model in the NT. The founder of the model, Judge Steven Alm, visited the territory to assist with the NT government's consideration of the plan. Judge Alm reportedly expressed confidence that the program would work in the NT, despite its difference to the criminal profile of the

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46 Associate Professor Peter Miller, *Submission 1*, p. 2.

47 Professor Anne Roche, Director, National Centre for Education and Training on Addictions, Flinders University, *Committee Hansard*, 28 July 2015, p. 5.

48 Office of Justice Programs, National Institute of Justice, *Swift and certain sanction in probation are highly effective: Evaluation of the HOPE program*, 3 February 2012, available: <http://www.nij.gov/topics/corrections/community/drug-offenders/pages/hawaii-hope.aspx> (accessed 24 July 2017).

49 The 10 year follow up evaluation is limited by its small sample size and selection biases inherent in the selection of the original study groups. The researchers noted this 'substantially limits the strengths of any conclusions that might be drawn'.

50 The report noted the follow up evaluation was limited by its small sample size and the selection biases inherent in the selection of the original study groups.

51 Angela Hawken, Jonathan Kulick, Kelly Smith, Jie Mei, Yiwen Zhang, Sara Jarman, Travis Yu, Chris Carson, Tifanie Vial, *HOPE II: A follow-up to Hawaii's HOPE evaluation*, 17 May 2016, p. 13.

USA. He argued that '[h]uman nature being what is, we think this can work anywhere'.<sup>52</sup>

5.48 The AGD informed the committee that the Commonwealth government is not currently providing support to the NT government to develop and implement the model.<sup>53</sup>

### *Committee view*

5.49 Given the evidence presented to the committee during the course of this inquiry that crystal methamphetamine use in Australia is not a problem that has to date nor will in the future be solved simply by traditional law enforcement measures, the committee is supportive of more novel approaches such as the HOPE program.

5.50 While the HOPE program has only been underway for a relatively short period of time in the USA, the results thus far seem positive. The committee sees value in similar programs being developed and implemented in Australia, and welcomes the NT's commitment to trial the HOPE program 'to increase offenders' ability and motivation to participate in behavioural change processes'.<sup>54</sup>

5.51 The committee emphasises the importance of pilot programs such as that announced by the NT government being critically reviewed so that their success and possible implementation in other Australia jurisdictions can be assessed. To that end, the committee encourages the NT government to conduct a review at the conclusion of its HOPE trial, including feedback from the justice system, alcohol and other drug health, support and treatment services, law enforcement agencies, and academics. The committee is also of the view that, in order to meaningfully inform other jurisdictions, the results of that review should be made publicly available.

### **National review of drug diversionary programs**

5.52 Drug diversionary programs divert perpetrators of minor illicit drug-related crimes to treatment programs, rather than the justice system. These programs are run by the states and territories and vary across Australian jurisdictions. According to the NIT:

Diversion programmes work to break the cycle of offending by diverting offenders away from the criminal justice system towards appropriate drug-based assessment, education and treatment services. These programmes

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52 Katherine Gregory, 'NT Attorney-General calls for US HOPE program of swift and certain sanctions to deter 'knuckheads' from reoffending', *ABC*, 17 August 2015, [www.abc.net.au/news/2015-08-17/john-elferink-calls-for-us-hope-program-to-deter-offenders/6703492](http://www.abc.net.au/news/2015-08-17/john-elferink-calls-for-us-hope-program-to-deter-offenders/6703492) (accessed 31 July 2017).

53 AGD, answers to questions on notice, 28 March 2017 (received 12 April 2017).

54 Northern Territory government, *Tackling ice in the Northern Territory*, 26 February 2016, [https://breaktheice.nt.gov.au/\\_\\_data/assets/pdf\\_file/0007/231919/tackling-ice-in-nt-action-plan.pdf](https://breaktheice.nt.gov.au/__data/assets/pdf_file/0007/231919/tackling-ice-in-nt-action-plan.pdf) (accessed 27 July 2017), p. 10.

were once seen as controversial, but are increasingly seen as a pragmatic response, and have become one of the most used policy interventions in Australia.<sup>55</sup>

5.53 A number of submitters and witnesses spoke of the benefits of drug diversionary programs. Tasmania Police outlined the program in Tasmania, which includes an inter-agency drug committee, and spoke highly of it. From the perspective of Tasmania Police:

...our policy is that the users that meet certain criteria, we divert them from the justice system. We are not interested in low-level users being entered into the justice system. As an organisation, we focus on traffickers and suppliers, not on users. Obviously, as part of our operations, we come across users on a regular basis, and our objective there is to divert those to health facilities or health professionals for assistance in drug diversion.<sup>56</sup>

5.54 WA Police shared a similar view:

...we do not go out of our way to target drug users. We target drug suppliers. Where we are charging people with simple possession and not going to diversionary programs, that is usually part of another action—that is, we stop a vehicle and they just happen to have drugs et cetera. We execute search warrants, and there will be a number of people within a house. You will have a supplier and the users. We do not go out of our way to target drug users as such. We are focused primarily on drug suppliers and traffickers.<sup>57</sup>

5.55 The NSW Police Force remarked on the success of the Magistrates Early Referral Into Treatment (MERIT) program and argued that the program could be used more frequently in relation to crystal methamphetamine users:

...another scheme introduced at the same time [2000] has not been utilised enough, in my view, particularly now with the emerging presence of ice...this scheme is MERIT—the Magistrates Early Referral Into Treatment program. It is designed for offenders with drug problems who are eligible for bail and may benefit from treatment and rehabilitation. This diversion option is now being championed by a number of my sergeants at Cabramatta, and to date we have had 38 referrals for the year. Two of those involved ice users.

Although one of these referrals was not successful, as the male ice user reoffended within weeks of commencing the program, I can provide the committee with some detail of what I consider a relative success story to date. This girl is 19 years of age, from Cabramatta, and she was arrested

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55 NIT, *Final report*, 2015, p. 62.

56 Mr Glenn Frame, Assistant Commissioner of Police (Operations), Tasmania Police, *Committee Hansard*, 24 March 2017, p. 5.

57 Commander Pryce Scanlon, Commander (Crime Operations), Western Australia Police, *Committee Hansard*, 3 May 2017, p. 8.

during a drug operation in February of this year. At the time she was in possession of 0.19 grams of ice. She was employed in working in the food industry. She admitted to using between \$150 to \$200 of ice per week. She had no priors and had not been known to police prior her arrest. She accepted a merit referral and commenced treatment. She was later convicted at court and placed on a good behaviour bond, and part of that bond was that she continued the drug counselling.

At this stage she has had no further involvement or charges since that particular date. She has a hope of full recovery. The Cabramatta Local Area Command, and obviously with myself, will continue to use the program as its primary diversion strategy for detected meth or ice users. I intend to expand the opportunities to engage persons detected with meth and ice into the future, but not just by engaging these persons during proactive operations.<sup>58</sup>

5.56 Mr Mick Palmer, former AFP Commissioner, echoed law enforcement agencies' support for drug diversionary programs and highlighted that imprisonment does little to resolve an offender's drug use and generally worsens their future prospects upon release:

Some of the drug court diversionary initiatives are still working quite well. It gives us a much better chance of reducing the reoffending ratio...Of course, one of the problems with simply arresting people and throwing them in the can is the fact that they will probably get drugs while they are inside and the moment they come out they go back where they started from, and the fact that they have a conviction makes them even less employable than they were before they went in. I have just seen so many examples, and some of them I know personally and some of them are related in a broader family sense. I have, as no doubt many of you people have, seen this firsthand, and everything about it is tragic. We are almost ensuring that this guy or this woman—normally a guy—ends up at the bottom of the heap. If we sat down and worked out a plan to ensure that that is where he would finish, we probably could not do a much better job.<sup>59</sup>

5.57 Although there was overall support for drug diversionary programs, some submitters and witnesses identified a number of factors that may limit the success of these programs. For example, SA Health said:

...the current drug diversion program is somewhat inadequate as a deterrent to drug use and needs to be more complex and consist of more than one counselling session. If we are serious about deterring drug use, we need to be hard and fast about consequences for actions.

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58 Superintendent Wayne Murray, Commander, Cabramatta Local Area Command, NSW Police Force, *Committee Hansard*, 29 July 2015, p. 5.

59 Mr Palmer, *Committee Hansard*, 12 August 2015, p. 3.

Giving a person one counselling session for being in possession of a drug is probably not enough to change that person's mindset: I go to one session and that is my penalty. I can sit through one session and then go back and do the same behaviours again and again.<sup>60</sup>

5.58 NSW Police Force highlighted that drug diversionary programs must be matched with adequate treatment and rehabilitation capacity:

...if drug diversion strategies are pushed by police. You will have a lot of meat being put into the mincer and a lot of sausages coming out, but I hope there will be someone there to grab them at the other end. When police start to focus on an area there are unintended consequences. So I think there will need to be an increase in the availability of health professionals for treatment and rehabilitation programs.<sup>61</sup>

5.59 Not only must those services be available to offenders, but:

Drug diversion programs need to be able to adequately address the inherent challenges associated with providing services to small, geographically disparate communities, which often experience these higher levels of social disadvantage and have a higher proportion of Aboriginal residents. It is important, therefore, to ensure that the Illicit Drug Diversion Initiative continues to have the capacity and capability to deliver services that are responsive to changes in drug use patterns and, in particular, can meet the needs of this diverse and sometimes challenging group of psychostimulant users.<sup>62</sup>

5.60 The Australian Psychological Society, which expressed support for diversionary programs as a more effective means to deal with illicit drug use than incarceration,<sup>63</sup> said these programs need 'to be a therapeutic diversionary approach rather than a custodial or supportive one. It needs to be therapeutic'.<sup>64</sup>

5.61 The NIT's assessment of Australia's drug diversionary programs was that they have benefits over traditional criminal justice responses, including reducing rates of reoffending, lower overall costs, and improving health and social outcomes for users. However, the NIT found that these programs:

...differ greatly in governance structures and how they operate. Some of this variation is justified due to differences in geography, culture, the nature

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60 Ms Jennifer Cruise, Mental Health Clinician, Mental Health Services, SA Health, *Committee Hansard*, 28 July 2015, p. 31 and 33.

61 Superintendent Murray, NSW Police Force, *Committee Hansard*, 29 July 2015, p. 11.

62 Deputy Commissioner Nick Kaldas, Deputy Commissioner, Field Operations, NSW Police Force, *Committee Hansard*, 29 July 2015, pp 3–4.

63 Dr Louise Roufeil, Executive Manager Professional Practice, Australian Psychological Society (APS), *Committee Hansard*, 27 July 2015, p. 54.

64 Dr Roufeil, APS, *Committee Hansard*, 27 July 2015, p. 61.

of drug-related problems and other interventions, but there is room for the broader application of best-practice approaches.<sup>65</sup>

5.62 Concerns about existing diversionary programs identified by the NIT were:

- equity of diversion;
- access to the programs;
- inconsistencies with the implementation of the programs; and
- female offenders, young offenders, Indigenous offenders and offenders in regional and remote communities having difficulty participating in a diversionary program (due to not meeting eligibility criteria, physical remoteness and the cultural factors).<sup>66</sup>

5.63 The NIT recommended that state and territory governments, under the National Drug Strategy Framework, review drug diversionary programs 'to determine best practice approaches, and consider options for improving and expanding existing arrangements'.<sup>67</sup> It was suggested that reviews include:

- assessing how current designs are working and interacting with each other;
- identifying types of offenders and who would be best served by a court-based diversion;
- identifying issues of access and equity, particularly for young people; and
- examining different approaches and the best program design.<sup>68</sup>

5.64 To further implement the NIT's recommendations, the NIAS identified a national review of drug diversionary programs to 'inform best practice approaches and options for improving and expanding existing arrangements' as a key priority.<sup>69</sup>

5.65 The Penington Institute supported the review of Australia's diversionary programs, but added that a review should also consider how to 'use diversionary programs to identify people at greatest risk of progressing to problematic use'. Further, the Institute argued for greater consistency in 'reporting on the use of diversionary programs, especially where access to diversion is determined by police discretion'.<sup>70</sup>

5.66 The AGD informed the committee that:

Western Australia Police has undertaken a national review of police drug diversionary programs, which was identified as a key priority under the

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65 NIT, *Final report*, 2015, p. 146.

66 NIT, *Final report*, 2015, p. 146.

67 NIT, *Final report*, 2015, p. 147.

68 NIT, *Final report*, 2015, p. 147.

69 COAG, *NIAS*, 2015, p. 25.

70 Penington Institute, *Submission 114*, p. 6.

National Ice Action Strategy. We understand that the outcomes of this review will be provided by Western Australia to the National Drug Strategy Committee for its consideration.<sup>71</sup>

### *Committee view*

5.67 Australian law enforcement agencies are largely supportive of drug diversionary programs for some illicit drug offenders, and have seen some success with them.

5.68 From the committee's perspective, effective drug diversionary programs can have a range of positive impacts, not only for drug users, but also for government by reducing the burden on and resources required by police and the justice system. However, the committee agrees with the evidence from NSW police and SA Health that drug diversionary programs must be implemented in conjunction with adequate and accessible health and treatment services: there is little value in diverting a drug offender to treatment and counselling services if these are not fit-for-purpose, nor available in a timely and geographically proximate way.

5.69 The committee concurs with the recommendation in the NIT's final report and the key priority under the NIAS that drug diversionary programs should be reviewed to inform best practice and identify options for improving and expanding such programs. The committee suggests that action is taken one step further and that subsequent to the national review, states and territories commit to improving, expanding, or where no drug diversion program(s) currently exists, implementing drug diversionary programs across their jurisdictions.

### **Recommendation 4**

**5.70 The committee recommends that, subsequent to the national review of drug diversionary programs articulated by the National Ice Taskforce and in the National Ice Action Strategy, states and territories commit to improving, expanding, or where no drug diversionary program(s) currently exists, implementing such programs across their jurisdictions.**

### **Control and monitoring of precursor chemicals**

5.71 In its 2015 submission to this inquiry, the Commonwealth government indicated that its law enforcement agencies have seen strong growth in the importation of precursor chemicals. These agencies report that organised criminal groups are purchasing precursor chemical from lower priced countries, such as China and India, and importing them in large volumes.<sup>72</sup>

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71 AGD, answers to questions on notice, 24 March 2017, p. 2 (received 12 April 2017).

72 Commonwealth of Australia, *Submission 53*, p. 8.

5.72 These precursor products are imported illegally, by mislabelling and concealing the products, or by importing quantities that are inconsistent with their intended use. Criminal groups also use a technique known as precursor masking, which involves altering the product's chemical structure to avoid detection at the border.<sup>73</sup>

5.73 Reporting by the ACIC in its *Illicit Drug Data Report 2015–16* shows a continued decline in the detection of clandestine laboratories within Australia. However, the ACIC noted that the detection of industrial scale laboratories has increased.<sup>74</sup> In 2014–15, law enforcement agencies detected 667 clandestine laboratories, in 2015–16 there were 575.<sup>75</sup>

5.74 At the border, amphetamine-type stimulants (ATS), (excluding MDMA) precursor detections have also declined, from 620 in 2014–15 to 400 in 2015–16. Although the number has decreased, the weight has increased substantially: 500.8 kilograms in 2014–15 to 1063.7 kilograms in 2015–16.<sup>76</sup> Most of the detections by number were in international mail; however, by weight, it was via air and sea cargo routes.<sup>77</sup>

5.75 China (including Hong Kong), Vietnam, Malaysia, India, the United Kingdom, Ethiopia, Korea, Indonesia and the USA are the main embarkment points for precursor chemicals trafficked to Australia.<sup>78</sup>

5.76 A concern raised during the course of the inquiry was that of domestic controls for precursor chemicals. Although compliance with regulatory and voluntary controls has increased, inconsistencies between jurisdictions have meant that domestic diversion of precursor chemicals can be exploited by organised criminal groups. Chemicals are being diverted from hospitals, medical centres, transport chains, waste destruction facilities, pharmacies and chemical companies. The Commonwealth government reported that criminal groups resort to 'breaking and entering, exploitation of contacts within legitimate businesses, internet sales', or establishing seemingly legitimate chemical companies to use as cover for purchasing and possessing precursor chemicals.<sup>79</sup>

5.77 The NIT's final report discussed precursors and the manufacture of crystal methamphetamine. It noted a doubling in clandestine methamphetamine laboratories in Australia over a decade. However, in recent times this number has plateaued. The

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73 Commonwealth of Australia, *Submission 53*, p. 8.

74 ACIC, *Illicit Drug Data Report 2015–16*, 2016, p. 161.

75 ACIC, *Illicit Drug Data Report 2015–16*, 2016, p. 160.

76 ACIC, *Illicit Drug Data Report 2015–16*, 2016, p. 156.

77 ACIC, *Illicit Drug Data Report 2015–16*, 2016, p. 158.

78 ACIC, *Illicit Drug Data Report 2015–16*, 2016, p. 159.

79 Commonwealth of Australia, *Submission 53*, p. 8.

NIT stated, however, that laboratories are becoming larger and more sophisticated, and it is unclear whether the overall quantity of domestically-produced methamphetamine has fallen.<sup>80</sup> The NIT ultimately recommended that:

The Commonwealth Government should:

- continue to work with the states and territories to examine ways to achieve greater national consistency of controls on precursor chemicals and equipment, and an agile mechanism to amend existing legislation as illicit manufacturing methods evolve
- prioritise the development of a national electronic end-user declaration system to provide law enforcement agencies with access to information about precursor and equipment sales across Australia through an online, searchable database
- encourage states and territories to enact legislation to support compliance with the new end-user declaration regime
- engage with industry to facilitate the development of a more contemporary and comprehensive industry code to provide best-practice guidelines for supply diversion into illicit drug manufacture.<sup>81</sup>

### *Nationally consistent controls of precursor chemicals and equipment*

5.78 The control of precursor chemicals and equipment is the responsibility of the states and territories, and at present, the regulatory systems differ between jurisdictions resulting in three particular problems:

- inconsistencies in jurisdictional controls, both in terms of the type of controls and the list of precursor chemicals and equipment to which they apply
- the lack of real-time submission and sharing of information about precursor sales with law enforcement agencies, and
- limited collection and sharing of intelligence regarding the importation of precursor chemicals.<sup>82</sup>

5.79 To improve the currently inconsistent control of precursor chemicals and equipment, and in response to the NIT's recommendations, the Commonwealth government has announced a number of initiatives. For example, on 5 April 2016 the government released the Precursor Chemicals Information Resource (PCIR). The Minister for Justice, the Hon. Michael Keenan MP described the PCIR as 'a vital tool

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80 NIT, *Final report*, 2015, p. xii.

81 Department of the Prime Minister and Cabinet (PM&C), *Final report of the National Ice Taskforce*, 2015, p. xiii, [https://www.pmc.gov.au/sites/default/files/publications/national\\_ice\\_taskforce\\_final\\_report.pdf](https://www.pmc.gov.au/sites/default/files/publications/national_ice_taskforce_final_report.pdf) (accessed 28 July 2017).

82 AGD, *Precursor chemicals and equipment: Decision Regulation Impact Statement*, 17 October 2016, p. 62, <https://www.ag.gov.au/CrimeAndCorruption/Drugs/Documents/Decision-Regulation-Impact-Statement-Controls-on-precursor-chemicals-and-equipment.pdf> (accessed 28 July 2017).

for those involved in the legitimate chemical supply chain, whose products are being diverted to the illegal market'.<sup>83</sup> He continued:

The PCIR is designed to educate industry about what indicators to look out for in relation to the diversion of chemicals, which in turn will assist law enforcement in combating the illicit manufacture of drugs...The chemicals and methods in the PCIR are those which have either been directly linked to illicit manufacturing events, or which are considered viable and likely to be used in a clandestine laboratory environment...This new resource is another important step in responding effectively to the domestic manufacture of illicit drugs to protect Australians, and in identifying and understanding drug manufacturing techniques which are being used by organised crime groups.<sup>84</sup>

5.80 On 21 October 2016, the COAG Law, Crime and Community Safety Council agreed to introduce new measures to improve the national consistency of controls on precursor chemicals and equipment used to manufacture crystal methamphetamine and other illicit drugs.<sup>85</sup> To improve national consistency of controls:

Ministers agreed that all jurisdictions will implement harmonised schedules of precursor chemicals and equipment, to establish a national electronic end user declaration system and to strengthen information-sharing between border and law enforcement agencies.<sup>86</sup>

5.81 As stated above, an element of these reforms is the development of the national electronic End User Declaration System (eEUD). The eEUD will give law enforcement agencies access to information in 'real time' and according to the Regulation Impact Statement:

- The key benefit of the proposed electronic system is its ability to automatically to alert law enforcement about suspicious precursor sales using pre-defined triggers. This would enable proactive investigation of illicit activity and enhance visibility of precursor distribution, new and emerging precursors, manufacturing trends and illicit drug availability across Australian jurisdictions.
- Improved 'data matching' across jurisdictions would assist in deployment of resources to target higher value investigations and to undertake proactive deterrence strategies. This may also enhance collaboration in cross-jurisdictional/national responses.

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83 The Hon. Michael Keenan MP, Minister for Justice, 'New resource to combat illicit drug manufacture', *Media release*, 5 April 2016.

84 The Hon. Michael Keenan MP, Minister for Justice, 'New resource to combat illicit drug manufacture', *Media release*, 5 April 2016.

85 AGD, *Submission 117*, p. 2.

86 PM&C, *Regulation Impact Statement Update: Precursor Chemicals and Equipment [Decision]*, <http://ris.pmc.gov.au/2017/01/06/precursor-chemicals-and-equipment-decision> (accessed 28 July 2017).

- A centralised system would reduce the resources that need to be devoted to on-site visits to suppliers and enable law enforcement to target their efforts towards strategic rather than compliance-based activities.
- More broadly, by tracing sales through either an account, or via a traceable means (for non-account holders), law enforcement would be equipped with an audit trail with which to aid investigations and prosecutions.<sup>87</sup>

5.82 The ACIC will host the eEUD system<sup>88</sup> and informed the committee:

Criminals often take the path of least resistance, so if they can easily divert a precursor that has been legitimately imported into Australia then they will do that. The purpose of the end-user declaration system is to clearly record who is actually purchasing with a licence those particular precursors. By the same token you can illegally import precursors, just like you can the finished product. So there are two streams that they can come in: they can come in lawfully and be diverted, or they can come in unlawfully in the first instance, just like the finished product.<sup>89</sup>

5.83 Concerns about the control and diversion of precursor chemicals and equipment were raised with the committee during the early stages of its inquiry.

5.84 In 2015, the NSW Police Force discussed with the committee the issue of precursor controls. It spoke about the work it had done to inform a national control framework. At the time, the NSW police commented that there was a 'limited capacity to monitor and regulate the supply and subsequent diversion of precursor chemicals and equipment used in manufacture of methamphetamines' and this has 'contributed to its production and availability nationally'.<sup>90</sup>

5.85 In response to this issue, the NSW Police Force at the time was leading a national working group to develop an end of user declaration system.<sup>91</sup> This working group reported in May 2015 and supported:

- the development and implementation of a national web-based system for end user declarations;
- the implementation by states and territories of legislative and regulations that mandate an end of user system;
- the harmonisation by states and territories of schedules that deal with precursor chemicals and equipment; and

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87 AGD, *Precursor chemicals and equipment: Decision Regulation Impact Statement*, 17 October 2016, p. 64.

88 AGD, *Submission 117*, p. 2.

89 Mr Col Blanch, Executive Director, Intelligence, ACIC, *Committee Hansard*, 24 March 2017, p. 29.

90 Deputy Commissioner Kaldas, NSW Police Force, *Committee Hansard*, 29 July 2015, p. 2.

91 Deputy Commissioner Kaldas, NSW Police Force, *Committee Hansard*, 29 July 2015, p. 2.

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- that consideration be given to align Commonwealth border controls of precursor chemical and equipment with legislation and regulations of the states and territories.<sup>92</sup>

5.86 The NSW Police Force highlighted the importance of the Commonwealth aligning its border control with state and territory legislation and regulations, and added the importance of dialogue with Australia's international partners:

Australia is currently vulnerable to the business practices of our trading partners. There are many examples of the importation of mislabelled chemicals and equipment which is aided by overseas manufacturers. This raises the need for ongoing dialogue with international trading partners regarding their own border controls.<sup>93</sup>

### *Committee view*

5.87 The committee is supportive of measures that improve control and monitoring of precursor chemicals and equipment. Such measures will help to eliminate the local manufacture of crystal methamphetamine and reduce the prevalence of clandestine laboratories in Australia. To this end, the committee recommends that the eEUD is implemented as soon as practicable.

### **Recommendation 5**

**5.88 The committee recommends that Australian governments implement the electronic End User Declaration System as soon as practicable.**

5.89 However, the committee highlights that recent data show that the importation of precursor chemicals and the prevalence of local clandestine laboratories are in decline (see paragraphs 5.72–5.76). During the same period, the availability of crystal methamphetamine in Australia has not diminished. Put simply, domestically manufactured crystal methamphetamine pales in comparison to the quantity of crystal methamphetamine manufactured elsewhere and trafficked to Australia. Therefore, efforts to improve the control and monitoring of precursor chemicals and equipment cannot occur in isolation, they must occur in concert with other strategies to disrupt supply of and reduce demand for the drug.

### **Eligibility criteria for aviation and maritime security identification cards**

5.90 Prior to the release of the NIT's final report and the NIAS, the committee received evidence expressing concern about the Maritime Security Identification Card (MSIC) and Aviation Security Identification Card (ASIC) schemes. These schemes

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92 Deputy Commissioner Kaldas, NSW Police Force, *Committee Hansard*, 29 July 2015, p. 2.

93 Deputy Commissioner Kaldas, NSW Police Force, *Committee Hansard*, 29 July 2015, p. 3.

background check and identify individuals working in Australia's aviation and waterfront industries.<sup>94</sup>

5.91 Victoria Police warned the committee that the MSIC and ASIC regimes were 'failing to limit or prevent criminal activity within the aviation/waterfront industries' and that:

Organised crime groups are exploiting inadequacies in the MSIC and ASIC systems and infiltrating ports, airports and related logistics industries. While the Australian National Audit Office conducted a review into the system in 2006 and 2007, there is limited visibility as to how these recommendations have been addressed. There is a need for a thorough review of vulnerabilities in the waterfront and aviation industries and for the robustness and adequacy of the MSIC and ASIC systems to be carefully considered.<sup>95</sup>

5.92 The final report of the NIT discussed the infiltration of serious and organised crime groups at Australia's airports and seaports. The NIT found that:

...the use of criminal intelligence in the background checking process for ASIC and MSICs could help identify links to organised crime among workers at air and sea ports and enhance the effectiveness of this regime in mitigating the risk from trusted insiders. The [ACC] is a valuable source of criminal intelligence to support such background checks.

The [AGD] and the Department of Infrastructure and Regional Development are already progressing reforms to the ASIC and MSIC schemes. These reforms seek to amend legislation (the *Aviation Transport Security Act 2004* and the *Maritime Transport and Offshore Facilities Security Act 2003*) to include serious and organised crime considerations in the ASIC and MSIC eligibility criteria and to introduce a tiered approach to eligibility criteria, based on the seriousness and risk associated with different criminal offences. There is potential to also lay the foundation for the use of criminal intelligence to identify cases where individuals have links to organised crime, but have not been convicted of a relevant offence.

Options for benchmark legislation may be found in state and territory security schemes, such as the 'fit and proper person' and 'public interest' standards that exist in the governance of New South Wales security licences.<sup>96</sup>

5.93 The NIT concluded that the Commonwealth government should:

...continue to protect the aviation and maritime environments against organised crime by strengthening the eligibility criteria for holders of

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94 Department of Immigration and Border Protection (DIBP), *Aviation and Maritime Security Identification Cards*, <https://www.border.gov.au/australian-border-force-abf/protecting/airports-and-seaports/asic-and-msic> (accessed 11 July 2017).

95 Victoria Police, *Submission 59*, p. 15.

96 PM&C, *Final Report of the National Ice Taskforce*, 2015, pp 139–140.

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[ASIC and MSIC]; and establishing a legal mechanism to enable compelling criminal intelligence to be used in determining suitability of workers to hold such a card.<sup>97</sup>

5.94 This recommendation was agreed to by COAG in the NIAS.<sup>98</sup>

5.95 On 11 February 2016, the Transport Security Amendment (Serious or Organised Crime) Bill 2016 was introduced into Parliament. The Bill sought to amend the *Aviation Transport Security Act 2006* and the *Maritime Transport and Offshore Facilities Security Act 2003*; however, this bill is not proceeding.

5.96 On 31 August 2016, the Transport Security Amendment (Serious Crime) Bill 2016 was introduced into Parliament. The bill seeks to:

- a) create an additional purpose in the Aviation and Maritime Acts to prevent the use of aviation and maritime transport or offshore oil and gas facilities in connection with serious or organised crime;
- b) support the strengthening of the eligibility criteria for the ASIC and MSIC schemes to target serious criminal offences;
- c) clarify and align the legislative basis for undertaking background checking of individuals under the Aviation and Maritime Acts;
- d) allow for regulations to be made prescribing penalties for offences against the new serious or organised crime requirements that are consistent with existing penalty provisions across the ASIC and MSIC schemes; and
- e) insert an additional severability provision to provide guidance to a court as to Parliament's intention.<sup>99</sup>

5.97 The bill is currently before the House of Representatives.<sup>100</sup>

### ***Committee view***

5.98 The committee is aware that the ASIC and MSIC schemes have been the subject of multiple inquiries by various parliamentary committees, including:

- this committee's 2011 inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime;

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97 PM&C, *Final Report of the National Ice Taskforce*, 2015, p. 140.

98 See, COAG, *NIAS*, 2015, p. 25.

99 Transport Security Amendment (Serious Crime) Bill 2016, explanatory memorandum, p. 2.

100 Transport Security Amendment (Serious Crime) Bill 2016, information available: [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5689](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5689) (accessed 1 August 2017).

- the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity's 2016 inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity;
- the Senate Rural and Regional Affairs and Transport Legislation Committee's 2016 inquiry into the Transport Security Amendment (Serious or Organised Crime) Bill 2016 [Provisions]; and
- the Senate Rural and Regional Affairs and Transport References Committee's 2017 inquiry into airport and aviation security.

5.99 As outlined in paragraphs 5.94 and 5.95, the schemes are also currently the subject of legislative change, as proposed in the Transport Security Amendment (Serious Crime) Bill 2016.

5.100 For these reasons, the committee will not discuss the merits of and possible changes to the ASIC and MSIC schemes in any detail. Nevertheless, the committee agrees with the NIT's recommendation that the eligibility criteria for ASIC and MSIC cards should be strengthened and that a mechanism allowing the use of criminal intelligence—particularly where a person may have links with serious and organised crime but has not been convicted of a relevant offence—in the ASIC and MSIC vetting processes is warranted.

## **Recommendation 6**

**5.101 The committee recommends that the Commonwealth government strengthens eligibility criteria for Aviation Security Identification Cards and Maritime Security Identification Cards to address current inadequacies, particularly the use of criminal intelligence where a person may have links with serious and organised crime.**

## **Co-operation with international partners**

5.102 The NIAS commits the Commonwealth government to strengthening its international co-operation by developing a new international supply disruption strategy.<sup>101</sup> The NIT also advocated that the Commonwealth government consider a transnational engagement strategy in the Asia and Pacific region to target international drug networks.<sup>102</sup>

5.103 The AGD informed the committee that the aim of the international strategy is to 'consolidate and leverage the existing law enforcement efforts to even better disrupt the supply of ice and its precursors from major source and transit countries'.<sup>103</sup> As of

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101 COAG, *NIAS*, 2015, p. 25.

102 NIT, *Final report*, 2015, p. 143.

103 Ms Hawkins, AGD, *Committee Hansard*, 24 March 2017, p. 28.

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March 2017, this strategy was in an advanced stage of development and the AGD confirmed it is forthcoming.<sup>104</sup>

5.104 This forthcoming international strategy will be part of a number of existing collaborative efforts to target the activities of serious and organised crime groups. International collaborations, such as Taskforce Blaze and Strikeforce Dragon, are examples of these existing efforts. Australia also promotes international co-operation through the United Nation's (UN) Commission on Narcotic Drugs (CND). The following sections consider existing international collaboration as well as other opportunities for Australia to engage with the international partners in the Asia Pacific region.

### *Taskforce Blaze*

5.105 In November 2015, the AFP and the Chinese National Narcotics Control Commission established Taskforce Blaze, a joint investigatory body targeting the trafficking of methamphetamine into Australia. This taskforce was the first of its kind, making Australia the first and only country to form this type of crime fighting operation with China.<sup>105</sup> The AFP briefed the committee on its relationship with China:

We have six liaison officers based in China. We have two in Beijing, two in Guangzhou and two in Hong Kong. Hong Kong has always been one of our centres of operation; we have been there for something like 32 or 33 years, with high-level cooperation there. China is a relatively new area for us—within the last 10 or 15 years. Taskforce Blaze, in my view, has been an outstanding success. It commenced in November 2015 almost as a pilot task force that we thought would do some relatively successful operations. It has gone well past that. It has gone well past any expectation that we had at its introduction. Something like seven tonnes of drugs have been taken off the streets both in Australia and China as a result of that task force.<sup>106</sup>

5.106 On 6 June 2017, the Minister for Justice announced Taskforce Blaze would continue to operate until January 2018. The minister said the new agreement would 'continue to focus on expanding investigation into multinational drug smuggling

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104 Ms Hawkins, AGD, *Committee Hansard*, 24 March 2017, p. 33.

105 The Hon. Michael Keenan MP, Minister for Justice, 'Successful Taskforce Blaze to continue fight against illicit drug scourge', *Media release*, 6 June 2017, <https://www.ministerjustice.gov.au/Mediareleases/Pages/2017/SecondQuarter/Successful-taskforce-blaze-to-continue-fight-against-illicit-drug-scourge.aspx> (accessed 13 July 2017).

106 Commander Bruce Hill, Manager, Organised Crime, Australian Federal Police (AFP), *Committee Hansard*, 24 March 2017, p. 31.

organisations'.<sup>107</sup> He added that since Taskforce Blaze's inception, 10.5 tonnes of illicit drugs and precursors, worth more than \$5 billion, had been seized.<sup>108</sup>

5.107 The committee sought further insight from the AFP on relations between China and Australia. Commander Bruce Hill reflected on Australia's relationship with China, as well as other countries in Asia:

China, for us, is a new arena. Their way of operating, their political system—everything—is completely different to us. For us to come together and operate as one is going to take a long time. But I must say: they are making a very strong, sincere effort, particularly with us, to bridge that gap.

Like I said in my introduction, in our wildest dreams we never thought we would be sitting here talking about how successful Taskforce Blaze is. They are definitely taking a leadership role in the region. We have set up other taskforces. There is one in Thailand, Taskforce Storm; one in Cambodia, Taskforce Dragon; we have information from Myanmar. They see the advantages of this union and of us working together.

I think the future is very bright. It has a lot of issues to get there but I think, in the future, it is just going to be better and better for us. Be mindful, like I said, we only have six people in country. We also have Border Force and other agencies there as well. So far we are doing what we can with our resources to be very successful. I think, over the next year or two, you are going to see some very, very successful operations as a result of that.

...

They have organised crime in their country like other countries. China is an incredible country that is emerging like it never has before. It has seven of the top 10 ports in the world. I went to Shenzhen, which is one of the big ports. When you stand there and look at the container terminal, you are just completely blown away. With the size of the ports and the number of containers they move through every year and then we have to try to find 100 kilos or 500 kilos in a container coming to Australia is why intelligence is so important. If we do not have these relationships and are not moving this intelligence between us, we are dead in the water. I think we are very successful. We are ahead of the game in a lot of ways.<sup>109</sup>

5.108 When asked about Australia's role coordinating responses to tackle crystal methamphetamine, Commander Hill replied:

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107 The Hon. Michael Keenan MP, 'Minister for Justice, Successful Taskforce Blaze to continue fight against illicit drug scourge', *Media release*, 6 June 2017, <https://www.ministerjustice.gov.au/Mediareleases/Pages/2017/SecondQuarter/Successful-taskforce-blaze-to-continue-fight-against-illicit-drug-scourge.aspx> (accessed 13 July 2017).

108 The Hon. Michael Keenan MP, 'Minister for Justice, Successful Taskforce Blaze to continue fight against illicit drug scourge', *Media release*, 6 June 2017, <https://www.ministerjustice.gov.au/Mediareleases/Pages/2017/SecondQuarter/Successful-taskforce-blaze-to-continue-fight-against-illicit-drug-scourge.aspx> (accessed 13 July 2017).

109 Commander Hill, AFP, *Committee Hansard*, 24 March 2017, p. 35.

I must say that I am a little bit biased. I have been out to the network three times. I have been to Indonesia, Thailand and China. I would say we are one of the world leaders in this region, and so we should be.<sup>110</sup>

### ***Financial intelligence co-operation with China***

5.109 In addition Taskforce Blaze, AUSTRAC informed the committee that progress has been made in establishing financial intelligence co-operation with China. In November 2016, AUSTRAC signed an agreement with the Chinese Anti-Money Laundering Monitoring and Analysis Centre. This agreement is Australia's first information exchange with China around financial intelligence because China is not a member of the international financial network, known as the Egmont Group.<sup>111</sup> The Egmont Group is a body of 154 Financial Intelligence Units that exchange expertise and financial intelligence to combat money laundering and terrorism financing.<sup>112</sup>

5.110 Since the agreement was made, China and Australia now have monthly exchanges:

...predominantly centred around suspect matter reporting, which is predominantly around money laundering and terrorism financing. But, within those categories, you will find issues around corruption, narcotic trafficking and other predicative offences.<sup>113</sup>

5.111 Since July 2017, there had been five information exchanges that have:

...produced actionable intelligence for partner agencies, and we are in the process of negotiating a [Memorandum of Understanding (MOU)] with the financial regulator in China. Unlike Australia, the financial regulator and the financial intelligence unit are two different agencies. Those negotiations are well progressed.<sup>114</sup>

### ***Strikeforce Dragon and Taskforce Storm***

5.112 In addition to China, Australian law enforcement agencies are progressing their co-operation with other countries in Asia. On 2 June 2016, the AFP formalised an agreement with the Cambodian National Police and the Cambodian General Department of Immigration to target illicit drugs and transnational crime. This agreement has been called Strikeforce Dragon.<sup>115</sup>

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110 Commander Hill, AFP, *Committee Hansard*, 24 March 2017, p. 35.

111 Dr John Moss, National Manager, Intelligence, Australian Transaction Reports and Analysis Centre (AUSTRAC), *Committee Hansard*, 24 March 2017, p. 32.

112 Egmont Group, *About*, <https://www.egmontgroup.org/content/about> (accessed 18 July 2017).

113 Dr Moss, AUSTRAC, *Committee Hansard*, 24 March 2017, p. 32.

114 Dr Moss, AUSTRAC, *Committee Hansard*, 24 March 2017, p. 32.

115 AFP, 'AFP and Cambodian authorities working closely to combat drugs and transnational crime', *Media release*, 2 June 2016, <https://www.afp.gov.au/news-media/media-releases/afp-and-cambodian-authorities-working-closely-combat-drugs-and> (accessed 13 July 2017).

5.113 The AFP has also partnered with the Royal Thai Police, Thailand's Office of Narcotics Control Board and the Thai Department of Special Investigation and Anti-Money Laundering Office to target transnational organised crime, including the trafficking of crystal methamphetamine.<sup>116</sup> Taskforce Storm was:

...set up specifically on the back of the Outlaw motorcycle gang threat. As you all well know, that is a very definite threat in this country. They are not staying just in this country, they are setting themselves up in South-East Asia. The Thais, who are very good partners with us, have joined together. There are four agencies that now form Taskforce Storm and we have an excellent working relationship with them to target particularly organisers of crime. It is not limited to OMCGs, it is most predominantly on ice and on ice traffickers.<sup>117</sup>

### *Model for international 'best practice' and other regional developments*

5.114 The UNODC advised the committee that the 'best practice' model for responding to illicit drugs is the UN's outcome document from the 2016 UN General Assembly Special Session (UNGASS) on the World Drug Problem.

5.115 The outcome document, which comprises a set of operational recommendations encouraging countries to adopt a multifaceted drug policy, focuses on three themes:

- market demand reduction, such as drug use prevention and treatment;
- supply reduction, such as effective law enforcement measures that address organised crime; and
- cross-cutting issues, such as human rights issues and the emerging synthetic drugs market.<sup>118</sup>

5.116 UNGASS signifies international endorsement for a shift away from drug strategies primarily driven by law enforcement policies towards health orientated policies. The UNODC provided the committee with a number of examples of where UNGASS has informed regional drug strategies.

5.117 For example, Myanmar's government is currently aligning drug policies with the UNGASS outcome document. The UNODC informed the committee that consultations from across Myanmar's government have occurred, with a drug policy review document currently being formulated in consultation with the UNODC. This

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116 AFP, *Annual report 2015–16*, 2016, <https://www.afp.gov.au/afp-annual-report-2015-16> (accessed 13 July 2017).

117 Commander Hill, AFP, *Committee Hansard*, 24 March 2017, p. 35.

118 United Nations Office on Drugs and Crime (UNODC), answers to questions on notice, p. 1 (received 11 April 2017).

document is expected to create a new set of holistic strategies to address illicit drug use in Myanmar, including methamphetamine.<sup>119</sup>

5.118 Linked to Myanmar's strategy is the Mekong Memorandum of Understanding on Drug Control (Mekong MOU). The Mekong MOU brings together Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam to address the threat posed by illicit drug production, trafficking and use. It is guided by the UNGASS and prioritises drugs and health, law enforcement co-operation, legal and judicial co-operation and sustainable alternative development.<sup>120</sup>

5.119 The Mekong MOU has also formulated a new Sub-regional Action Plan (SAP) in line with recommendations found in UNGASS.<sup>121</sup> The SAP is updated every two years, with its latest iteration for 2017–19. One of the SAP's thematic areas is law enforcement:

...which provides a strategic outline for collaborative efforts of MOU signatories, and puts into place action-oriented programmes that assist member Governments, individually and collectively, to fight illicit drug production, trafficking and use.<sup>122</sup>

5.120 The UNODC also informed the committee that a delegation from Thailand has visited Portugal to review the decriminalised approach to illicit drugs in that country. Thailand, which has a significant crystal methamphetamine problem, has over recent years moved towards drug policies with a focus on preventative and rehabilitation strategies.<sup>123</sup>

### *Australia's international role*

5.121 The Department of Health informed the committee that one of Australia's objectives as a member of the CND is to 'promote international cooperation in dealing with new psychoactive substances (NPS)...and [ATS] including methamphetamine'.<sup>124</sup> Australia introduced a resolution, adopted by the CND at its 58<sup>th</sup> session in March 2015, that sought to keep ATS issues at the forefront of the

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119 UNODC, answers to questions on notice, p. 1 (received 11 April 2017).

120 UNODC, *Mekong MOU on Drug Control*, <https://www.unodc.org/southeastasiaandpacific/en/what-we-do/toc/mou.html> (accessed 11 July 2017).

121 UNODC, answers to questions on notice, p. 2 (received 11 April 2017).

122 UNODC, answers to questions on notice, p. 2 (received 11 April 2017).

123 Bangkok Post, *Government 'won't legalise' meth*, 23 June 2016, <http://www.bangkokpost.com/archive/government-wont-legalise-meth/1017337> (accessed 21 July 2017).

124 Department of Health (DoH), *Submission 98*, p. 6.

CND and 'emphasised the importance of combining regulatory and treatment delivery responses to address emerging illicit drug issues and improve health outcomes'.<sup>125</sup>

5.122 During the 59<sup>th</sup> session of the CND, in March 2016, a delegation led by Australia negotiated another resolution that:

...focused on:

- international co-operation in monitoring the movement of precursor chemicals used in the manufacture of ATS and [new psychoactive substances (NPS)];
- sharing national approaches to reducing access to prevalent, persistent and harmful NPS that remain outside the system of international scheduling; and
- supporting the World Health Organisation to prioritise assessments of NPS when making scheduling recommendations.<sup>126</sup>

5.123 During the 59<sup>th</sup> session of the CND Australia also held a side event on addressing methamphetamine-related harms, featuring the work of the NIT and the NIAS.<sup>127</sup>

5.124 While Australia already plays an important role in fostering international collaboration and the development of international drug policies, the UNODC argued that Australia could play a larger role in the Asia Pacific region. The UNODC suggested that Australia can achieve this by engaging with existing regional mechanisms addressing illicit drug matters, such as the Mekong MOU, the Association of Southeast Asian Nations (ASEAN) Senior Officials Meeting on Drug Matters and the ASEAN Senior Officials Meeting on Transnational Crime.<sup>128</sup> The UNODC considered Australia's engagement with these regional bodies could:

...strengthen ties with countries in the region, and formulate regional responses that mutually benefit all parties. Australia also could share its own best practices in relation to effective supply and market demand reduction measures.<sup>129</sup>

5.125 According to the UNODC, a current gap in regional co-operation is that information sharing is largely limited to law enforcement. At present, there is no regional mechanism that 'brings not only law enforcement but also public health, and other relevant key authorities to formulate and discuss drug strategies'.<sup>130</sup> The UNODC is currently developing awareness of law enforcement officials' role in supporting public health policies, such as HIV prevention, treatment and care, and

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125 DoH, *Submission 98*, p. 6.

126 DoH, *Submission 98*, p. 6.

127 DoH, *Submission 98*, p. 6.

128 UNODC, answers to questions on notice, p. 1 (received 11 April 2017).

129 UNODC, answers to questions on notice, p. 1 (received 11 April 2017).

130 UNODC, answers to questions on notice, p. 5 (received 11 April 2017).

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'creating partnerships between law enforcement with public health and other authorities'.<sup>131</sup>

### *Committee view*

5.126 The committee continues to support the Commonwealth government's co-operation with regional partners to facilitate a transnational framework for tackling illicit drug trafficking. Existing partnerships, such as Taskforces Blaze and Storm and Strikeforce Dragon are evidence of the success that can be achieved through collaborative efforts; the committee commends Australian law enforcement agencies for their world-leading approach to international co-operation.

5.127 The committee is pleased by the advice from the AGD that an international strategy, to coordinate existing law enforcement activities with our regional partners, is well advanced. It is through enhanced regional co-operation such as this that law enforcement partners will be able to further disrupt the manufacture and supply of crystal methamphetamine. The committee looks forward to the release of this strategy.

5.128 The committee welcomes AUSTRAC's agreement with the Chinese Anti-Money Laundering Monitoring and Analysis Centre to exchange financial intelligence, and the endeavours to establish a MOU with the Chinese financial regulator. AUSTRAC's evidence states that these activities are primarily focused on money laundering and terrorism funding. Other illicit activities, such as corruption and drug trafficking, are supplementary to that work.

5.129 The committee congratulates the Commonwealth government on its advocacy through the CND and its efforts to ensure that addressing the harms arising from ATS remains a priority. The committee strongly supports Australia's objectives to promote international co-operation with respect to monitoring precursor chemicals and sharing approaches to reduce access to illicit drugs. The committee notes, however, that much of the international collaboration to date has focussed on law enforcement.

5.130 As discussed elsewhere in this report, the NIT's final report and the NIAS mark a shift from a primarily law enforcement approach to one with a greater emphasis on health and treatment approaches. The committee notes that the Australian government has already sought to share its approach under the NIAS internationally and encourages the government to continue doing so. Consistent with the UNODC's recommendation that Australia expands its leadership in this area through other international fora such as the Mekong MOU and ASEAN, the committee also recommends that Australia considers strengthening ties with countries in the Asia Pacific (beyond China, Cambodia and Thailand); collaborating to develop regional law enforcement and health and welfare responses to crystal methamphetamine; and sharing its practices with a particular focus on demand reduction and harm reduction. In doing so, the committee recommends that the

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131 UNODC, answers to questions on notice, p. 6 (received 11 April 2017).

Australian government look to establish co-operative relationships with health and welfare authorities, in addition to relationships with law enforcement agencies.

### **Recommendation 7**

**5.131 The committee recommends that the Australian government expand its leadership in relevant international fora and considers:**

- **strengthening ties with countries in the Asia Pacific, beyond existing ties with China, Cambodia and Thailand;**
- **collaborating to develop regional law enforcement and health and welfare responses to crystal methamphetamine;**
- **sharing its practices with a particular focus on demand reduction and harm reduction; and**
- **enhancing co-operation with the United Nations Office on Drugs and Crime.**

### **Limitations of law enforcement strategies**

5.132 Both law enforcement agencies and other stakeholders told the committee that law enforcement strategies cannot operate in a vacuum if they are to succeed in combating Australia's crystal methamphetamine problem. Indeed, the NIT and the NIAS both address this situation by advocating for health-led approaches to the problems created by crystal methamphetamine.

5.133 The AFP described the limits of law enforcement's reach, arguing that the most important approach to reduce illicit drug consumption is, in fact, demand reduction:

You can give us double the money to do this; it is next to impossible to stop importation of methamphetamine or new psychoactive substances. There are a whole series of chemicals and derivatives of chemicals that we simply cannot stop—it is next to impossible. So the emphasis has to be on demand. Most certainly our emphasis needs to be on law enforcement, stopping the organisers—not the people at the street level who are taking it. That should be dealt with, and I know it is being dealt with, but our job is to take the organisers, and we are putting all our effort, particularly at the federal level, into chasing after these guys—whether they are here domestically or internationally. That is what we should be doing. We are not going to stop drugs being imported into this country.<sup>132</sup>

5.134 The SA Police agreed:

We have a very difficult job. Does that mean that we are catching up or trying to get ahead of the curve? It probably does. But what I will say is that the strides forward that we have seen, the partnership, the operations

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132 Commander Hill, AFP, *Committee Hansard*, 24 March 2017, p. 33.

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conducted and the results achieved have then forced the behaviour of these groups to be modified, to change, to take further risks and the like. I would like to think that the efforts, in combination with the education and the treatment programs, are making a significant difference. Is it ahead of the curve now? No, I would not be confident to say that because there are still a lot of people suffering who are addicted and who are still facing significant health issues.<sup>133</sup>

5.135 Dr John Coyne submitted that despite a continued increase in amphetamines seizures, researchers from the AIC have found it is not having any marked impact on the drug's domestic availability to users'.<sup>134</sup> Dr Coyne argued:

...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.<sup>135</sup>

5.136 Dr Coyne provided the committee with an analysis the ACIC's *Illicit Drug Data Report 2014–15*. He argued that illicit drugs are actually becoming easier to obtain (see evidence in chapter 2 about availability) and that the average price of crystal methamphetamine continues to decrease.<sup>136</sup> Dr Coyne remarked that 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.<sup>137</sup>

5.137 And:

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.<sup>138</sup>

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133 Detective Superintendent Graham Goodwin, SA Police, *Committee Hansard*, 28 July 2015, p. 16.

134 Dr John Coyne, *Submission 92*, p. 2.

135 Dr Coyne, *Submission 92*, p. 2.

136 Dr Coyne, *Submission 92*, p. 2.

137 Dr Coyne, *Submission 92*, p. 2.

138 Dr Coyne, *Submission 92*, p. 2.

5.138 As a consequence, law enforcement agencies 'focus on achieving higher seizure rates and arrests' as a performance measure.<sup>139</sup> However, the pursuit of these 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.<sup>140</sup>

5.139 As discussed in chapter 4, law enforcement strategies have not managed to reduce the availability, purity or price of crystal methamphetamine on the streets, despite record seizures. A common measure of law enforcement's success is seizure data, yet these seizures do not appear to impact the purity or increase the price of crystal methamphetamine. For this reason, a number of submitters argued for changes to the way in which law enforcement agencies' measure success.

#### *Measuring the success of law enforcement agencies*

5.140 Related to the effectiveness of law enforcement strategies, Professor Paul Dietze from the Burnet Institute questioned the appropriateness of measuring the success of law enforcement agencies by the number and/or weight of seizures, and the number of drug-related arrests.

5.141 As an alternative, Professor Dietze identified one possible alternative measure. The purity-adjusted price, which establishes a performance indicator for law enforcement agencies, is to 'drive up the price per pure gram'.<sup>141</sup> Professor Dietze suggested current policies are failing because the price per pure gram is falling quite dramatically (see chapter 2 for information about the purity of crystal methamphetamine)<sup>142</sup> and:

...we need to start thinking about what the indicators are that are important. If disrupting the methamphetamine market is the goal of law enforcement, for example, then driving purity adjusted price upwards would be one of the key targets. In actual fact, it has gone the reverse, despite significant investment. Those kinds of investments probably need to be reviewed.<sup>143</sup>

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139 Dr Coyne, *Submission 92*, p. 3.

140 Dr Coyne, *Submission 92*, p. 3.

141 Professor Paul Dietze, Deputy Director, Centre for Population Health, Burnet Institute UNSW, *Committee Hansard*, 9 September 2015, p. 2.

142 Professor Dietze, Burnet Institute, *Committee Hansard*, 9 September 2015, p. 2.

143 Professor Dietze, Burnet Institute, *Committee Hansard*, 9 September 2015, p. 2.

5.142 Professor Dietze also argued that the increase in the number of arrests for consumer-related offences is a major problem, for both law enforcement and for the community because:

...it does not actually do anything in relation to the purity-adjusted price. Law enforcement resources either need to be reinvested because they have been failing, or alternatively the law enforcement strategies need to be revised so that there is a different targeting.<sup>144</sup>

5.143 The most recent National Drug Strategy (NDS) 2017–2026 specifically outlines five headline indicators that will be used to measure the success of the NDS (see chapter 3). However, the headline indicators do not include quantifiable key performance indicators for purity or availability of illicit drugs. Instead, the availability and purity of illegal drugs, along with the Illicit Drug Data Reports, are listed as supplementary indicators<sup>145</sup> to inform annual progress reports to the MDAF.<sup>146</sup> The former NDS for 2010–2015 had a performance measure<sup>147</sup> aimed at reducing the purity levels and increasing the price of illicit drugs,<sup>148</sup> but the NDS for 2010–2015 did not provide a quantifiable benchmark for this performance measure.<sup>149</sup>

5.144 The NDS 2017–2026 report's headline indicators are informed by the *Evaluation and Monitoring of the National Drug Strategy 2004-2009 Final Report* (evaluation report). The evaluation report considered the matter of illicit drug purity, and advocated for an information system on the purity of illicit drugs to improve the monitoring and evaluation of the NDS as:

...valid and reliable information system on the purity of illicit drugs would be valuable for NDS monitoring and evaluation, because purity has been identified as the best single indicator of illicit drug availability.<sup>150</sup>

5.145 The evaluation report noted the absence of any common data standard for Commonwealth, state and territory police services, thus making it difficult to obtain

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144 Professor Dietze, Burnet Institute, *Committee Hansard*, 9 September 2015, p. 3.

145 See Chapter 3 for full list of other supplementary indicators.

146 Australian Government, *National Drug Strategy* (NDS) 2017–2026, p. 42.

147 The NDS 2010–2015 notes that there is not a straightforward relationship between price or purity and the success of supply reduction strategies. It provides an example that an increase in the price for an illicit drug may reflect increase in its demand as well as decreases in its supply. To measure its success, the NDS 2010–2015 stated that this measure needed to be interpreted alongside performance measure number one, which dealt with the indicators of drug use. For further information see, NDS 2010–2015, p. 23.

148 Australian Government, *NDS 2010–2015*, p. 23.

149 Australian Government, *NDS 2010–2015*, p. 23.

150 Siggins Miller, *Evaluation and Monitoring of the National Drugs Strategy 2004–2009 Final Report*, 2009, available: [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/\\$File/eval1.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/$File/eval1.pdf) (accessed 4 August 2017), p. 81.

an accurate measure of the purity of illicit drugs. The report found the *Illicit Drug Data Report* used 'somewhat patchy purity data on a state-by-state basis but cannot provide a national overview'<sup>151</sup> and recommended a:

consistent, coherent national system for monitoring the purity of illicit drugs<sup>152</sup> as a key indicator of drug availability, and by extension the success of drug law enforcement agencies in reducing drug availability.<sup>153</sup>

5.146 New Zealand has adopted different key performance indicators, in its *Tackling Methamphetamine: Indicators and Progress Reports*. The reporting on supply reduction measures includes indicators tracking the price and purity of methamphetamine, and establishes a desired trend of supply control leading to an increased price and lower purity over time.<sup>154</sup>

### *Committee view*

5.147 Law enforcement strategies play a vital role in combating the manufacture, importation and distribution of illicit drugs. However, evidence to the committee demonstrates that law enforcement strategies alone will not solve the problem of illicit drugs in Australia. Despite record numbers of detections at the Australian border, the committee heard that there continues to be a high level of availability on the streets, and the purity of crystal methamphetamine remains high. Meanwhile, the price of crystal methamphetamine remains low.

5.148 The NIT, the NIAS and the NDS articulate a comprehensive policy solution, combining supply reduction, demand reduction and harm reduction measures, not just law enforcement. Implementation of the NIAS has already begun, as discussed in this report and as evidenced by the Commonwealth's allocation of funds (see chapter 3), and has been integrated into the most recent iteration of the NDS for 2017–2026. The committee is supportive of Australian law enforcement agencies' work to address crystal methamphetamine; the committee also welcomes the shift towards an approach

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151 Siggins Miller, *Evaluation and Monitoring of the National Drugs Strategy 2004–2009 Final Report*, 2009, available:

[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/\\$File/eval1.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/$File/eval1.pdf) (accessed 4 August 2017), p. 81.

152 The report also advocated for the monitoring of cannabis potency. See Siggins Miller, *Evaluation and Monitoring of the National Drugs Strategy 2004–2009 Final Report*, 2009, available:

[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/\\$File/eval1.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/$File/eval1.pdf) (accessed 4 August 2017), p. 82.

153 Siggins Miller, *Evaluation and Monitoring of the National Drugs Strategy 2004–2009 Final Report*, 2009, available:

[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/\\$File/eval1.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/$File/eval1.pdf) (accessed 4 August 2017), p. 81.

154 Department of the Prime Minister and Cabinet (New Zealand), *Tackling Methamphetamine: Progress Report, October 2015*, pp 5–6, <https://www.dpmc.govt.nz/sites/default/files/2017-03/indicators-and-progress-report-oct2015.pdf> (accessed 18 July 2017).

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with a greater emphasis on health and welfare. The committee intends to monitor the progress of the NIAS and would welcome updates from the Commonwealth government in relation to its progress and efficacy within the broader policy setting established by the NDS.

5.149 With respect to measuring the success of law enforcement strategies, however, the committee acknowledges the criticism raised by some submitters and witnesses, and agrees that alternative and potentially more meaningful measures should be given consideration. Using seizure rates as a measure of success fails to capture nuances in the crystal methamphetamine market such as the impact of seizures on the quality, quantity and price of crystal methamphetamine, which to date have not been negatively affected by higher numbers of seizures.

5.150 The need for a national monitoring system for the purity of illicit drugs committee was not raised the course of this inquiry; the committee notes that such information is currently provided in the ACIC's Illicit Drug Data Reports. The committee is, however, concerned that the current iteration of the NDS omits measures of availability, purity and price as headline benchmarks, despite the evaluation report identifying purity 'as the best single indicator of illicit drug availability'.<sup>155</sup> The committee recommends that attempts to measure the impact of law enforcement strategies should include assessments of the availability, purity and price of the drug, particularly at the street level. Steps should be taken to include these measures in the NDS 2017–2026.

## **Recommendation 8**

**5.151 The committee recommends that Australian law enforcement agencies, in addition to the number and volume of drug seizures, assess and report on the availability, purity and price of illicit drugs, particularly at the street level, to better determine the impact of law enforcement and other strategies on the illicit drug market.**

**Mr Craig Kelly MP**  
**Chair**

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155 Siggins Miller, *Evaluation and Monitoring of the National Drugs Strategy 2004–2009 Final Report*, 2009, available: [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/\\$File/eval1.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/FD973BE3A786C9B0CA257682000E70DC/$File/eval1.pdf) (accessed 4 August 2017), p. 81.

