



V I C T O R I A P O L I C E

Submission to the
Law Reform, Road and
Community Safety Committee

Inquiry into Drug Law Reform

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1 Introduction

1.1 Inquiry and terms of reference

On 11 November 2015, the Law Reform, Road and Community Safety Committee (the **Committee**) commenced an Inquiry into Illicit and Synthetic Drugs and Prescription Medication.

The Committee later amended the Inquiry title and refined the Terms of Reference to the following:

1. *The effectiveness of laws, procedures and regulations relating to illicit and synthetic drugs and the misuse of prescription medication in minimising drug-related health, social and economic harm; and*
2. *The practice of other Australian states and territories and overseas jurisdictions and their approach to drug law reform and how other positive reforms could be adopted into Victorian law.*

1.2 Focus of this submission

Victoria Police welcomes the opportunity to provide a submission to this Inquiry.

The purpose of this submission is to provide the Committee with a broad overview of Victoria Police's experience of and policies and strategies for reducing drug-related harm (Chapter 2), and to specify a number of issues identified by Victoria Police as areas in which positive law reforms could be adopted (Chapter 3). Victoria Police also identifies in Chapter 4 of this submission two emerging issues which are of relevance to this Inquiry. Victoria Police is available to provide further information regarding these matters if required by the Committee.

Victoria Police does not address the issue of misuse of prescription medication, which it is noted is to be explored in this Inquiry.

A summary of Victoria Police's submission, including a consolidated list of recommendations, is set out in Chapter 5.

2 Drug-related harm in Victoria

2.1 Overview

In this Chapter, Victoria Police outlines its experience of drug-related harm, as well its harm minimisation policy approach and experiences and responses.

2.2 Victoria Police's experience

Victoria Police recognises drugs as a key contributor to many widespread social harms. It also recognises that the harmful consequences of drug use are not only in respect of the individual, but also to families, the community and the economy.

Drug use is intimately connected with other forms of criminality. This is commonly referred to as the 'drug-crime nexus'. Responding to drug affected people presents demand pressures for frontline policing resources. Police regularly deal with drug-affected people, some of whom commit assaults, engage in family violence, and display other aggressive and antisocial behaviour. Police also respond to drug-related road trauma and investigate thefts and burglaries committed by drug-addicted people seeking money and other goods to fund their drug dependency. Law enforcement responses to these challenges are hampered by advances in technology that facilitate easier access to illicit drugs and a drug market that has evolved and expanded into a networked, poly-drug trafficking environment.

In addition to investigating and responding to drug-related crime, police regularly inform family members of the death of a loved one by drug overdose or in a fatal collision caused by drug-affected drivers.

Drug policing necessarily involves responding to both crime and health problems. Victoria Police members are first-hand witnesses to the wide range of health and community safety harms caused or enabled by drugs. This unique insight into the damage caused by drugs forms the underlying context for this submission by Victoria Police.

2.3 Australian and Victorian policy approaches

Australia has adopted a harm minimisation policy approach to illicit drugs, which has been guided by the National Drug Strategy since its inception in 1985. The purpose of the Strategy is to provide a national framework which:

- Identifies national priorities relating to alcohol, tobacco and other drugs
- Guides action by governments in partnership with service providers and the community
- Outlines a national commitment to harm minimisation.¹

The most recent National Drug Strategy² was developed by the Commonwealth, states and territories and has been endorsed by Victoria Police.

¹ Australian Government Department of Health, *National Drug Strategy 2017-2026* (2017) 1
<[http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/\\$File/National-Drug-Strategy-2017-2026.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/$File/National-Drug-Strategy-2017-2026.pdf)>

Victoria Police is also a member of the National Drug Strategy Committee, which is responsible for overseeing the development and implementation of the National Drug Strategy.

The concept of harm minimisation applied in the National Drug Strategy encompasses three key pillars:

- Demand-reduction strategies, which aim to:
 - prevent the uptake and/or delay the onset of use of drugs and reduce the misuse of drugs in the community, and
 - support people to recover from dependence and reintegrate with the community through drug treatment and other programs
- Supply-reduction strategies, which aim to prevent, stop, disrupt or otherwise reduce the production and supply of illicit drugs, and control, manage and/or regulate the availability of legal drugs
- Harm-reduction strategies, which aim to reduce the health, social and economic consequences of the use of drugs.

Victoria's response to addressing drug-related harm is also guided by the Victorian Ice Action Plan.³ The Plan arose out of the recommendations made by the Law Reform, Drugs and Crime Prevention Committee in the Report, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria*.⁴

As part of the Ice Action Plan:

- The Ice Action Taskforce was established, which brings Victoria Police together with legal, health and youth experts in an effort to reduce the supply, demand and harm of methylamphetamine (or 'ice')
- A Drug Court was launched in Melbourne to complement the existing court at Dandenong
- Funding was provided to Victoria Police to implement a project to recruit and train forensic drug and intelligence analysts, develop additional forensic testing methods to support the profiling of drug seizures, and develop intelligence products to assist in understanding drug production and distribution patterns
- Face-to-face training was extended to justice, emergency service, child protection and education frontline workers to help them respond to people affected by methylamphetamine.

2.4 Victoria Police's strategic response

Victoria Police is developing a new 'Drug Response Plan' as part of its Annual Plan for 2017-18. The purpose of this Plan is to enable Victoria Police to implement a coordinated, strategic and operational response to illicit drugs, which is flexible and adaptive so as to respond to changes in the illicit drug market, community expectations and other emerging issues.

² See Australian Government Department of Health, *National Drug Strategy 2017-2026* (2017) <[http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/\\$File/National-Drug-Strategy-2017-2026.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/$File/National-Drug-Strategy-2017-2026.pdf)>

³ Victorian Government, *Ice Action Plan* (2015) <<http://www.premier.vic.gov.au/ice-action-plan/>>

⁴ Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria* (2014) <<https://www.parliament.vic.gov.au/57th-parliament/lrdcpc/inquiries/article/2135>>

To ensure a nationally coordinated approach to policy and legislation in relation to law enforcement and crime, Victoria Police is represented on national law reform bodies. These include:

- National Justice and Policing Senior Officers Group (**NJPSOG**), which provides support to the Law, Crime and Community Safety Council (**LCCSC**)⁵ on justice and policing issues. It also operates as a forum to consider co-operation, efficiency and innovation in service delivery and administration by considering national and cross-jurisdictional approaches to administering justice and policing issues. The Group comprises the Chief Executive Officer of each jurisdiction's Attorney-General's or justice department and the Australian Criminal Intelligence Commission (**ACIC**), and each jurisdiction's Commissioner of Police.
- Senior Officers' Group on Organised Crime, which meets as necessary to coordinate organised crime policy issues and reports to the NJPSOG and LCCSC. It is also responsible for leading the National Organised Crime Response Plan 2015-18, articulates Australia's national response to the threat posed by serious and organised crime.⁶ The Group comprises senior officials from Commonwealth, state and territory justice departments and law enforcement agencies.

Victoria Police is also represented on the Australia New Zealand Policing Advisory Agency to identify opportunities for improved performance that result in better community safety outcomes for Australia and New Zealand.⁷

2.5 Victoria Police's operational response

Victoria Police has developed a range of proactive responses to address drug-related harm across each of the three key pillars. This work is being undertaken at a state, regional and local level.

2.5.1 Law enforcement and crime prevention focus - creating a hostile environment for drug trafficking

Victoria Police is responsible for enforcing Victoria's criminal laws. It is at the frontline of responding to drug crime and public safety concerns associated with drug use. As discussed above, Victoria Police has also identified that illicit drugs are a significant driver of other criminal offending.

Victoria Police's focus is on serious drug offending. To target the production and supply of illicit drugs, Victoria Police has established the following specialist taskforces:

- Drug Task Force, which has a wide responsibility to undertake investigations and provide a high level of assistance in the investigation of serious drug offences
- Clandestine Laboratory Squad, which provides a response, and processing of all entry, to clandestine laboratories
- Purana Task Force, which is responsible for conducting targeted investigations to disrupt, disable and dismantle organised crime enterprises or networks predominantly involved in

⁵ The Law, Crime and Community Safety Council consists of ministers with responsibilities for law and justice, police and emergency management from each Australian state and territory, the Australian Government and the New Zealand Government. It is one of eight Council of Australian Government (**COAG**) councils and was established to assist COAG by developing a national focus on fighting crime.

⁶ Australian Government, *National Organised Crime Response Plan 2015-18* <<https://www.ag.gov.au/CrimeAndCorruption/OrganisedCrime/Documents/NationalOrganisedCrimeResponsePlan2015-18.pdf>>

⁷ Australia New Zealand Policing Advisory Agency, *About* (2015) <<https://www.anzpaa.org.au/>>

major fraud, money laundering, tax evasion, extortion, murder and drug manufacture, trafficking and importation offences.

These taskforces and units are supported by Victoria Police's specialist forensic capability, intelligence, surveillance and asset-confiscation units.

Drug-related offending often overlaps across jurisdictions in Australia and internationally. Accordingly, Victoria Police works collaboratively with its Commonwealth and state and territory counterparts through the following:

- Joint Organised Crime Task Force, which supports the prioritisation and coordination of multi-agency investigations into serious and organised crime targets and threats, including drug-related targets and threats. The Task Force is led by the Australian Federal Police (**AFP**) and includes Victoria Police, ACIC and Australian Border Force (**ABF**).
- Trident Task Force, which is responsible for investigating serious and organised crime, including drug-related crime, in relation to the maritime environment. The Task Force comprises Victoria Police, AFP and ABF, as well as members from the ACIC, AUSTRAC and Australian Taxation Office (**ATO**).
- Icarus Task Force, which had sought to reduce the availability of illicit drugs and illegal firearms in the Victorian community by preventing their importation through the international mail and air cargo stream. The Task Force comprised of Victoria Police, AFP and ABF.

To ensure a comprehensive and coordinated response to target the most significant threats from organised crime, Victoria Police is represented on various state and national committees. These include:

- ACIC Board, which is responsible for providing strategic direction to the ACIC, approving the use of the ACIC's special coercive powers, and determining special operations and special investigations. It also plays a key role in determining national criminal intelligence priorities. The Board is chaired by the Commissioner of the AFP and comprises state and territory police, and the heads of the Commonwealth Attorney-General's Department, ABF, Australian Securities and Investment Commission, Australian Security Intelligence Organisation, ATO, ACIC and AUSTRAC.
- Serious Organised Crime Coordination Committee, which reports to the ACIC Board and is responsible for prioritising, endorsing and coordinating operational strategies to deal with serious and organised crime investigations, targets and threats. The Committee comprises senior representatives from state and territory police and key Commonwealth operational agencies.
- Joint Management Groups, which comprises representatives from relevant state and territory law enforcement agencies and is responsible for providing direction and resourcing to support joint agency operations into serious and organised crime.

At a state, regional and local level, Victoria Police has established the following units and strategies to improve community safety:

- Divisional Response Units and Crime Investigation Units, which are responsible for providing local areas with a targeted criminal investigation capability, many of which have teams dedicated to the investigation of drug-related offending

- Major Drug Investigations (**MDIs**), which target the cultivation, manufacture or trafficking of a commercial quantity of illicit drugs, and criminal groups, drug identities or any criminal action which impacts adversely on the wellbeing of a particular community. MDIs also involve the use of specialist personnel or services, covert methodologies and other law enforcement agencies. In the past 12 months, six MDIs have been undertaken by the Drug Task Force.
- Targeted operations, such as Operation Safenight in Chapel Street, South Yarra which commenced in April 2017 and remains ongoing⁸
- Procedures for identifying principal offenders involved in drug-related offending within local areas
- Regular foot patrols of known drug precincts by uniform and plain clothes members, as well as the use of Passive Alert Detection (PAD) dogs in these precincts,
- The use of closed-circuit television (CCTV) and 'safe city' cameras to identify and monitor drug precincts.

These strategies are used to improve safety within the general community, as well as at and around licenced premises and large events such as music festivals. These particular areas continue to be a challenge for Victoria Police's frontline members and Victoria Police is working to further enhance its strategic response to these issues. As noted above, Victoria Police conducts planned investigations and responses to specific risks associated with these environments, including by targeting drug trafficking by organised crime groups in these venues/events.

Illicit drugs continue to be a significant contributing factor in fatal and serious injury trauma occurring on Victorian roads. In 2016, 728 of the 3799 (approximately 19 per cent) drivers who were involved in serious injury collisions were found to have illicit drugs in their system, specifically:

- 218 tested positive to tetrahydrocannabinol (**THC**)⁹
- 384 tested positive to methamphetamine
- 39 tested positive to 3,4-methylenedioxy-methamphetamine (**MDMA** or 'ecstasy')
- 87 tested positive to a combination of two or more of these drugs.

Also in 2016, 9.4 per cent of drivers who were tested had illicit drugs in their system. This represents a significant and steady increase over the past 10 years, with 1.7 per cent of drivers testing positive in 2006 and 5.8 per cent testing positive in 2011. In response to this trend, Victoria Police has increased its roadside drug testing to 100,000 tests per year.¹⁰

2.5.2 Community engagement

At a regional and local level, Victoria Police is implementing various engagement initiatives aimed at increasing its connection to the community. These engagement activities seek to strengthen relationships between police and local communities to work together to reduce drug-related harm. Some of these strategies include:

⁸ During the first stage of the operation (in April 2017), 20 people were arrested for possessing drugs and 16 of these were referred to a drug possession program. During the second stage of the operation (in July 2017), 10 people were arrested for possessing drugs and nine of these were referred to a drug diversion program.

⁹ THC is the active ingredient in cannabis.

¹⁰ The expanded roll-out of drug tests was implemented under Victoria's Road Action Plan: Victorian Government, *Towards Zero 2016-2020: Victoria's Road Safety Strategy and Action Plan* (2016) <https://www.towardszero.vic.gov.au/__data/assets/pdf_file/0010/183556/STU_0206_RS_STRATEGY_2016_web.pdf>

- The establishment of Local Drug Action Teams, which brings Victoria Police together with local community traders, support services and leaders. These programs provide a framework for stakeholders to work collaboratively to prevent the harmful effects of drugs within their community, through raising awareness of drug-related harm and delivering evidence-based social change activities, such as peer-to-peer learning and the sharing of stories.
- Developing and implementing local Community Safety Strategies, which bring Victoria Police together with local traders and other stakeholders to improve safety and responses through a variety of initiatives such as the sharing of information.
- Contributing to and delivering community and school-based drug education, such as the interactive “Broadening Horizons” program in which children are encouraged to explore and formulate theories around the use of illicit drugs.

2.5.3 Multi-pillar and collaborative responses

Although Victoria Police’s operations predominantly focus on strategies to prevent and reduce illicit drug availability and accessibility, it recognises that these supply-reduction measures must closely align with demand-reduction and harm-reduction strategies and therefore actively supports a multi-pillar and comprehensive approach.

Victoria Police recognises that it cannot tackle drug-related harm alone. It therefore works closely in partnership with government, industry and community service providers.

The Department of Health and Human Services (**DHHS**) is a key partner in assisting Victoria Police in its community safety role. Victoria Police recognises the importance of early intervention and the availability of individualised treatment services for those with drug addictions.

Victoria Police and DHHS are currently working collaboratively on the development and implementation of various demand-reduction and harm-reduction strategies, including:

- Under Victoria Police’s Drug Diversion Program, police members may divert away from the criminal justice system eligible¹¹ offenders who have been apprehended for the use and possession of small (non-traffickable) amounts of illicit drugs other than cannabis.¹² If an offender is diverted under the Drug Diversion Program, they are required to undertake a clinical-drug assessment and at least one treatment session, which is managed by DHHS. If the offender fails to comply with these requirements, the charges progress through the criminal justice system.
- Victoria Police’s e-Referral System (**VPeR**) is a consent based, non-crisis, non-family violence referral service for various issues, including drug dependency and misuse. Between January and October 2016, Victoria Police made 3,860 referrals for persons seeking assistance with their drug use, which represents approximately one in every eight support service referrals

¹¹ To be eligible for a drug diversion, the offender must be above 10 years of age, admit to the offence, understand the requirements of the caution and consent to participate, have received no more than one previous drug cautioning notice (including cannabis cautions) and not be involved or detected in any other offence. An offender is not precluded from the Drug Diversion Program if they have a prior criminal history.

¹² Offenders who have been apprehended for the use and possession of small (non-traffickable) amounts of cannabis may be eligible under Victoria Police’s Cannabis Cautioning Program. To be eligible under the Cannabis Cautioning Program, the offender must be above 18 years of age, admit to the offence and consent to being cautioned, have received no more than one previous drug cautioning notice (including cannabis cautions) and not be involved or detected in any other offence.

made by Victoria Police during this period. Victoria Police and DHHS are continuing to work to improve VPeR with a focus on long term sustainability and the ability of service providers to meet the volume of referrals.

- There are a number of community-based and residential drug treatment options in Victoria for people who need them. To ensure that all providers provide high quality assessment and treatment services, Victoria Police and DHHS are continuing to support the development and implementation of a national quality framework for alcohol and other drug treatment services through the National Drug Strategy Committee and Ministerial Drug and Alcohol Forum, which oversees the development, implementation and monitoring of Australia's national drug policy frameworks.¹³
- The Victorian Needle and Syringe Program (**NSP**) is a public health initiative by DHHS that aims to minimise the spread of blood-borne viruses among people who inject drugs and into the wider community. There are different types of NSP service delivery, including fixed sites, mobile services, a disposal hotline and outreach services.

To support the NSP, Victoria Police responds to any calls for assistance, however does not, where possible, conduct targeted patrols, person checks or surveillance in the immediate vicinity of an NSP. Victoria Police does not target the vicinity of an NSP solely for the purpose of enforcing drug use or possession laws.

Although these initiatives have proven effective in responding to drug-related health, social and economic harm, Victoria Police suggests that the reform proposals identified in Chapter 3 may assist in supporting and advancing this work.

¹³ Australian Government, *Ministerial Drug and Alcohol Forum* (2007)
<<http://www.health.gov.au/internet/main/publishing.nsf/Content/ministerial-drug-alcohol-forum>>

3 Law reform proposals

3.1 Overview

Victoria Police acknowledges that there are potentially many areas in which positive law reforms could be adopted. We welcome the opportunity to consider recommendations for reform across each of the three key pillars, and how Victoria Police can work in partnership with other agencies and bodies to implement these recommendations. Victoria Police's focus in this submission is however on potential reforms in respect of law enforcement and supply-reduction strategies.

This Chapter identifies that in Victoria:

- Large quantities of illicit drugs are regularly being trafficked across and within Victorian borders using intrastate and interstate transit routes
- The easy access to hydroponic equipment is facilitating the illicit cannabis cultivation industry
- Drug trafficking laws no longer reflect the reality of the drug trade, and loopholes are being used to mask the extent of an accused's criminality
- The storage of drug exhibits is posing serious health and safety risks for Victoria Police staff, as well as resulting in excessive storage and resourcing costs.

In Victoria Police's view, these are all areas in which positive law reforms could be adopted.

3.2 Power to search vehicles travelling on a drug transit route

3.2.1 Background

Victoria Police has identified that illicit drugs are regularly trafficked across and within Victorian borders using interstate and intrastate roads.

By way of example, during 2013, "Brian Gregory"¹⁴ ran a drug trafficking business in regional Victoria. The drugs, principally methyl amphetamine, were brought to regional Victoria from New South Wales by a van, which was fitted with hidden compartments to conceal cash, firearms and drugs. In a period of just one month, the van had been driven 7,000 kilometres. Brian Gregory plead guilty to trafficking in a commercial quantity of methyl amphetamine,¹⁵ as well as several other charges related to his drug trafficking business, and was sentenced to a total effective sentence of nine years and five months' imprisonment.¹⁶

Music festivals have been identified by Victoria Police as a particular risk of being targeted by traffickers. These festivals are often held in remote locations only accessible by road and have a culture of widespread drug use.

¹⁴ To ensure that there was no possibility of identification, the judgement was anonymised by the adoption of a pseudonym in place of the name of the accused.

¹⁵ Section 71AA of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic).

¹⁶ *DPP v [Gregory]* (Unreported, County Court of Victoria, Judge Bourke, 13 October 2015). The sentence was upheld on appeal: *Gregory (a Pseudonym) v The Queen* [2017] VSCA 151 (23 June 2017).

During the 2016 Rainbow Serpent music festival, Victoria Police arrested one male who was found in possession of 73.68 grams of MDMA or 'ecstasy', 63.68 grams of ketamine, 18.81 grams of methyl amphetamine, 22.56 grams of cocaine, 2.3 grams of cannabis and \$8,651.55 cash. At the same festival, Victoria Police arrested a second male who was found in possession of 3.1 grams of cocaine, 4.6 grams of methyl amphetamine, 128 caplets of methyl amphetamine, two valium tablets, three dexamphetamine tablets and \$2,883 in cash. These illicit drugs were transported to the music festival via road access.

Victoria Police has identified that illicit drugs are also being trafficked using other means of transport, such as railroad and boat. By way of example, illicit drugs were identified as being carried by swimmers across the Murray River from Victoria to the Strawberry Fields Music Festival in New South Wales.

3.2.2 Effectiveness of current laws, procedures and regulations

A member of Victoria Police may search a vehicle under either s 115 of the *Road Safety Act 1986* (the **Road Safety Act**) or s 82 of the *Drugs, Poisons and Controlled Substances Act 1981* (the **DPCS Act**), however these powers are limited.

Section 115 of the *Road Safety Act* provides that an inspector (which includes a police officer) may conduct an inspection or a search of a heavy vehicle, however only for the purpose of ensuring compliance with that Act.

Under s 82 of the DPCS Act, a member of Victoria Police may search a vehicle in or upon a public place without a warrant if they have reasonable grounds for suspecting that there is on or in the vehicle a drug of dependence in respect of which an offence has been committed, or is reasonably suspected to have been committed, under a provision of Part V of the DPCS Act.¹⁷

Victoria Police gathers general intelligence regarding the trafficking of illicit drugs across state borders, such as the common methods that drug couriers employ, the routes they take, the types of vehicles they use and the times they prefer to travel. However, in the absence of any additional or specific evidence, it would be difficult for a member of Victoria Police to establish grounds for searching a specific vehicle under the provisions of the DPCS Act on the basis of this generic intelligence alone.

In the Report, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria*, the Law Reform, Drugs and Crime Prevention Committee recommended that the Victorian Government introduce legislation allowing for the declaration of 'drug transit routes' to assist in cross-border detection and seizure of illicit drugs on intrastate and interstate roads.¹⁸

Victoria Police believes that the introduction of 'drug transit route' laws would assist it in its investigation, detection and prevention of the trafficking of illicit drugs across and within Victorian borders.

¹⁷ The offences under Part V of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) include trafficking in a drug of dependence (ss 71-71AC), supply of a drug of dependence to a child (s 71B), possession of a drug of dependence and drug-related equipment (ss 71A, 71C-71E, 73), cultivation of narcotic plants (ss 72-72B), possession of a drug of dependence (s 73) and use of a drug of dependence (s 75).

¹⁸ Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria* (2014) 396
<https://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_02.pdf>

3.2.3 Practice of other Australian states and territories and overseas jurisdictions

Drug transit laws have been introduced in South Australia, Western Australia and the Northern Territory.¹⁹ In these jurisdictions, a police officer of or above the rank of Inspector, Superintendent or Commander respectively may, if he or she reasonably suspects that an area is being, or is likely to be, used for the transport of illicit drugs, give an authorisation in relation to the area. These laws are directed at deterring the trafficking of illicit drugs, not offences of minor possession.

If such an authorisation is given, police officers may exercise various powers such as:

- Direct the driver of a vehicle to stop the vehicle
- Search the vehicle, using the reasonable force necessary
- Detain and search the driver or any passenger of the vehicle
- Seize any item or thing connected to an offence
- Allow a drug detection dog to enter any part of the vehicle.

The laws in these jurisdictions also provide a number of safeguards. These include:

- An authorisation must be in writing
- An authorisation must not exceed a prescribed time period (14 days in all jurisdictions)
- No more than three authorisations may be in force at the same time
- The area the subject of an authorisation must not:
 - Be in the metropolitan region or within a specified distance from the General Post Office of the State or Territory's capital city
 - Exceed a certain area
- The Commissioner of Police must give a report to the Minister that provides details of authorisations.

3.2.4 Recommendation

It is suggested that consideration be given to the introduction of legislation that allows for the declaration by a senior police officer of 'drug transit routes'. These declarations could apply in respect of an 'area' rather than a section of road to capture other means of transport utilised by persons trafficking illicit drugs.

These laws could allow Victoria Police to better detect and disrupt the trafficking of illicit drugs on intrastate and interstate routes.

Victoria Police welcomes the opportunity to be consulted so as to facilitate the drafting of any legislation which provides adequate powers and safeguards and meets the objectives of this suggestion.

Recommendation 1

Victoria Police suggests that consideration be given to the introduction of legislation that allows for the declaration by a senior police officer of an area as a 'drug transit route'.

¹⁹ See Part 7 of the *Controlled Substances Act 1984* (SA), Part 4A of the *Misuse of Drugs Act 1981* (WA) and Part IAB of the *Misuse of Drugs Act* (NT).

3.3 Regulation of the hydroponics industry

3.3.1 Background

In the most recent National Drug Strategy Household Survey, completed in 2016, cannabis was identified as the most commonly used illegal drug in the last 12 months.²⁰ Compared to other illicit drugs, users were also more likely to use cannabis on a regular basis, including as often as weekly (36 per cent).

Since the 2013 National Drug Strategy Household Survey, it was identified that there was a 0.6 per cent increase in users aged 18 years and over reporting cannabis use within the last 12 months (from 10 per cent in 2013 to 10.6 per cent in 2016). The age group with the largest increase was 20-29 year olds, although users aged under 20 years reported not using cannabis as much as they used to.

During 2015-16, 9,717 cannabis arrests were recorded in Victoria.²¹ Although this represents a 5.6 per cent decrease from the previous reporting period, nationally Victoria recorded the greatest percentage increase in the weight of cannabis seized (185.6 per cent).²² Victoria also accounted for the greatest proportion of the weight of cannabis seized nationally (26.2 per cent).²³

Hydroponic methods or “grow houses” are the primary means of cultivating cannabis in Victoria. Victoria Police estimates that 1,000 to 3,000 grow houses are currently operating in Victoria. With the average grow house producing approximately 100 plants every 12 weeks, the annual production is estimated to exceed a black market wholesale value of \$1.5 billion and a retail value of \$8 billion.

Victoria Police has identified that the cultivation and trafficking of cannabis often involves serious and organised crime. Flow-on effects have seen invasions of grow houses, extreme violence, proceeds used to fund other criminal activity, theft of electricity and grow houses presenting significant fire hazards, along with health and safety risks to police and emergency services members.

By way of example, in 2016, Victoria Police commenced Operation Persian, an investigation targeting violent offenders responsible for several aggravated burglaries at grow houses in the North West Metro Region. As a result of the investigation, 38 offenders were arrested and 17 of these were identified as using the proceeds from the grow houses to fund the trafficking of methamphetamine. Eighteen firearms (including a machine gun and .303 assault rifle), 2.5 kilograms of illicit drugs, a heroin press and \$1.2 million of alleged tainted property (\$80,000 of which was cash) were also seized.

In addition, over the past 12 months, the Drug Task Force has executed 149 search warrants. During the execution of these warrants, 19,133 cannabis plants with an approximate weight of 8.5 tonnes were seized.

These examples indicate the size of the illicit cannabis industry in Victoria. The easy access to hydroponic equipment is facilitating this problem.

²⁰ Australian Institute of Health and Welfare, *Illicit use of drugs* (2017) 2016 National Drug Strategy Household Survey <<http://www.aihw.gov.au/alcohol-and-other-drugs/data-sources/ndshs-2016/illicit-drug-use/>>

²¹ Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2015-16* (2016) 70 <https://acic.govcms.gov.au/sites/g/files/net1491/f/2017/06/illicit_drug_data_report_2015-16_full_report.pdf?v=1498019727>

²² *Ibid* 69.

²³ *Ibid* 70.

3.3.2 Effectiveness of current laws, procedures and regulations

Hydroponic equipment is essential for commercial-scale cannabis production, as hydroponic methods achieve faster growth rates and higher yields than soil farming. However in Victoria, hydroponic equipment may be sold without any regulation or oversight. Victoria Police has identified that, as a consequence, the industry has been infiltrated by organised crime seeking to facilitate illicit cannabis cultivation.

In the Report, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria*, the Law Reform, Drugs and Crime Prevention Committee recognised the association between organised crime groups and the illicit drug trade, and that lawful occupations and industries may be used to enable or facilitate organised crime. The Committee recommended that the Victorian Government investigate the appropriateness of using administrative regulatory measures to reduce the opportunities available to organised crime groups for engaging in illegal activities.²⁴

The Victorian Law Reform Commission was subsequently tasked to establish a framework of principles for assessing the risks of organised crime infiltration of lawful occupations and industries, and for developing suitable regulatory responses to those risks.²⁵ The Commission was not asked to focus on specific industries, but provide general guidance for application to any industry.

The regulatory responses identified by the Commission include restricting entry to an industry through a registration or licencing scheme and regulating post-entry behaviour through audits, inspections and ‘know your customer’ and cash-based restrictions. However the Commission recognised the diversity of occupations and industries and the different forms that infiltration may take, and that therefore there is not a ‘one size fits all’ regulatory response that could be applied in Victoria.

Victoria Police believes that a regulatory response could be developed in respect of the hydroponics industry so as to effectively respond to the infiltration of the industry by organised crime.

As the most recent National Drug Strategy recognised, “supply reduction requires regulation, working with industry, intelligence and coordination between enforcement agencies, within jurisdictions, across jurisdictions, nationally and internationally.”²⁶ The Strategy noted that the regulation of retail and wholesale sales is one of the strategies that could affect supply of illicit drugs.

3.3.3 Practice of other Australian states and territories and overseas jurisdictions

In South Australia, the *Hydroponics Industry Control Act 2009* was enacted to prevent criminal infiltration of the hydroponics industry and to prevent the misapplication of certain types of hydroponic equipment by monitoring its sale and supply.

This Act requires any person who, or business which, sells prescribed hydroponic equipment to be licensed. The Commissioner of Police holds the responsibility of administration of the licensing

²⁴ Law Reform, Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into the Supply and Use of Methamphetamines, Particularly Ice, in Victoria* (2014) 433
<https://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_02.pdf>

²⁵ Victorian Law Reform Commission, *Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries* (2016)
<http://www.lawreform.vic.gov.au/sites/default/files/VLRC_Regulatory_Regimes_Report_for_web.pdf>.

²⁶ Australian Government Department of Health, *National Drug Strategy 2017-2026* (2017) 12
<[http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/\\$File/National-Drug-Strategy-2017-2026.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/55E4796388E9EDE5CA25808F00035035/$File/National-Drug-Strategy-2017-2026.pdf)>

regime, and each applicant is required to undergo a “fit and proper person” test. This licensing requirement is restricted to “retail” sales and does not extend to wholesale transactions.

The South Australian legislation also requires licence holders to make and keep records of all prescribed transactions, including to whom they have sold prescribed equipment.

Similar reporting requirements in relation to hydroponic equipment exist in New South Wales under the *Drug Misuse and Trafficking Regulation 2011*, however this regime only extends to post-entry monitoring.²⁷

In Victoria, regulatory regimes currently exist that have a similar operation to the South Australian hydroponics licensing scheme. Applicants for firearm, private security, liquor, gaming and sex work service provider licences must undergo a “fit and proper person” or “suitable person” test,²⁸ whilst applicants for tow truck licences must be determined to be persons of “appropriate character”.²⁹ Under the DPCS Act, the “fit and proper person” test is also applied in respect of applicants for licences to cultivate or possess alkaloid poppies and sell or supply poppy straw³⁰ and to cultivate and process low-THC cannabis.³¹ Record-keeping requirements also exist under these regulatory regimes.

In Victoria, these regulatory roles are assigned to various agencies. In some circumstances, an inter-agency collaboration model has been adopted, for example, Business Licencing Authority/Consumer Affairs Victoria is responsible for the licencing of sex work service providers and Victoria Police is responsible for the enforcement of the *Sex Work Act 1994*.

3.3.4 Recommendation

It is suggested that consideration be given to the introduction of a regulatory regime in respect of the hydroponics industry. The regime could include both a restriction to entry to the industry as well as the regulation of post-entry behaviour. It could also extend to any person who, or any business which, sells hydroponic equipment either by retail or wholesale.

The regulatory regime could enable Victoria Police to better detect and disrupt the supply of hydroponic equipment to organised crime groups for use in the cultivation of cannabis.

Victoria Police welcomes the opportunity to be consulted and provide technical advice so as to facilitate the development of any industry-specific and collaborative regulatory model which is consistent with the Victorian Guide to Regulation.³²

Recommendation 2

Victoria Police suggests that consideration be given to the introduction of a regulatory regime in respect of the hydroponics industry.

²⁷ Specifically, it is an offence for a person to supply certain apparatus (contained within Schedule 3 of the Regulations) unless they comply with particular record-keeping requirements such as receiving proof of a receiver’s identification and recording the name and quantity of the apparatus supplied.

²⁸ *Firearms Act 1996* (Vic), *Private Security Act 2004* (Vic), *Control of Weapons Act 1990* (Vic), *Liquor Reform Act 1998* (Vic), the *Gambling Regulation Act 2003* (Vic) and *Business Licencing Authority Act 1998* (Vic),

²⁹ *Accident Towing Services Act 2007* (Vic).

³⁰ Section 690 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic).

³¹ Section 62 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic).

³² Commissioner for Better Regulation, *Guidance and Resources* (2017)

<<http://www.betterregulation.vic.gov.au/Guidance-and-Resources>>

3.4 Offences of trafficking in a large commercial and commercial quantity of a drug of dependence

3.4.1 Background

The increasing resourcefulness and sophistication of the global and domestic drug trades present novel and complex challenges for law enforcement agencies.³³ In utilising emerging technologies and adopting hierarchical and network structures that are difficult to detect and dismantle, the investigation and prosecution of the 'Mr Bigs' of the drug trade is a formidable task, which in turn undermines efforts to minimise drug-related harm.

In order to effectively combat organised drug traders and commercially motivated drug crime, it is imperative that Victoria's drug laws reflect the reality of the drug trade and eliminate loopholes being used to mask the extent of an accused's criminality.

3.4.2 Effectiveness of current laws, procedures and regulations

Currently, Victoria Police experiences great difficulty in proving drug trafficking offences that specify the quantity of drugs that must be trafficked in order to establish liability. For example, s 71 of the DPCS Act makes it an offence to:

[traffick] or [attempt] to traffick in a quantity of a drug of dependence or of 2 or more drugs of dependence that is not less than the large commercial quantity applicable to that drug of dependence or those drugs of dependence...

To establish an offence under s 71, the prosecution must prove, beyond reasonable doubt, that the accused intentionally trafficked in a drug of dependence, the amount trafficked was not less than a large commercial quantity, and that the accused *intended to traffick in an amount not less than a large commercial quantity*.³⁴

The DPCS Act does not contain an exhaustive definition of the term 'traffick'.³⁵ In *Giretti v R*,³⁶ the Victorian Court of Appeal held that trafficking can be established by the prosecution proving that the accused was involved in a continuing trade or business of dealing in drugs over a period of time (***Giretti* trafficking**).

In *R v McCulloch*³⁷ and *Mustica v R*,³⁸ the Victorian Court of Appeal applied the principle of *Giretti* trafficking to allow the prosecution to accumulate the quantities involved in multiple dealings in the course of the accused's drug business to establish the required 'commercial quantity' and 'large commercial quantity'. However, in *Mustica*, the Court clarified the law and also held that the prosecution needs to prove that the accused intended to traffick in a large commercial quantity, *from the outset of the trafficking business* and throughout the trafficking period.³⁹

³³ As observed by the United Nations Office on Drugs and Crime, '[o]rganized crime groups have always been resourceful in adapting to change': United Nations Office on Drugs and Crime, *World Drug Report 2017* (2017) 15 <<https://www.unodc.org/wdr2017/index.html>>

³⁴ A person found guilty of an offence under s 71 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) is liable to life imprisonment and a fine of up to 5000 penalty units. Section 71AA is cast in similar terms, but applies to a 'commercial quantity' and sets the penalty at 25 years' imprisonment.

³⁵ Section 70(1) of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic)

³⁶ (1986) 24 A Crim R 112.

³⁷ (2009) 193 A Crim R 580.

³⁸ (2011) 211 A Crim R 50.

³⁹ *Mustica v R* (2011) 211 A Crim R 50 at [34] (Ashley JA).

The forensic difficulties involved in establishing the accused's requisite intention of trafficking in the specified quantity at the start of the trafficking business means that drug traders are able to structure their activities in a way that effectively insulates them from liability under either or both of ss 71 and 71AA of the DPCS Act. Some of the negative consequences of the current position are, for example:

- The prosecution has to narrow the charge period of the alleged offending to be able to prove the accused's requisite intention from the outset of the trafficking business. This means that the accused is not prosecuted for the full extent of their alleged offending
- The accused may argue that they did not have the requisite intention to traffick in the relevant specified quantity as they did not know the percentage of purity of the drug they were trafficking in
- The accused purposefully trafficking in individual amounts that are below the relevant specified quantity and taking 'breaks' from the trafficking business to make it difficult for the prosecution to establish the accused's requisite intention of trafficking in the specified quantity.

3.4.3 Practice of other Australian states and territories and overseas jurisdictions

Trafficking laws in other Australian jurisdictions are diverse.⁴⁰ The approach adopted in Queensland and other Commonwealth jurisdictions (New Zealand, Canada and England) is not founded on distinctions between categories of trafficking. Rather, the quantity of drugs trafficked is an aggravating factor at sentence.⁴¹

The Commonwealth, Australian Capital Territory and Northern Territory have a robust set of trafficking provisions. In each of those jurisdictions, 'absolute liability'⁴² applies to the circumstance of quantity.⁴³ Accordingly, the prosecution does not need to prove that the accused intended to traffick in the specified quantity; all it needs to demonstrate is that the amount trafficked was, in fact, a 'commercial' or 'marketable' quantity.⁴⁴

Importantly, the Commonwealth, Australian Capital Territory and Northern Territory also provide an accused with a qualified defence. In those jurisdictions, an accused who can prove, on the balance of probabilities, that at the time of the alleged offending he or she mistakenly believed that the quantity of the drug involved was less than the relevant specified quantity, can be found guilty of a lesser offence.

⁴⁰ New South Wales, South Australia, Tasmania and Western Australia have provisions similar to Victoria.

⁴¹ In New Zealand, for example, if a person is convicted of dealing in *any* amount of a Class A controlled drug, they are liable to life imprisonment and the amount trafficked is reflected on sentence: see s 6 of the *Misuse of Drugs Act 1975* (NZ).

⁴² Pursuant to s 6.2(2) in the Schedule to the *Criminal Code Act 1995* (Cth), 'absolute liability' in relation to a physical element of a particular offence means that: (a) there are no fault elements for that physical element; and (b) the defence of mistake of fact is unavailable for that physical element.

⁴³ See, for example, s 302.2(3) in the Schedule to the *Criminal Code Act 1995* (Cth).

⁴⁴ This approach was recommended by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, and was intended to improve the enforceability of the quantity offences. In enacting these provisions, it was acknowledged that there was a need to 'remove legal loopholes being exploited by drug traders who structure the illegal trafficking of serious drugs in a way which avoids the full consequence of their conduct under the existing law': Explanatory Memorandum, Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005 (Cth).

3.4.4 Recommendation

It is suggested that consideration be given to amending:

- section 71 of the DPCS Act to impose absolute liability as to the circumstance of 'large commercial quantity'
- section 71AA of the DPCS Act to impose absolute liability as to the circumstance of 'commercial quantity'.

Adopting an absolute liability model may help overcome the difficulties which Victoria Police currently faces in establishing an accused's intention to traffick in a specified quantity of drugs where *Giretti* trafficking is alleged. Any amendments can incorporate appropriate safeguards for the accused.

Recommendation 3

Victoria Police suggests that consideration be given to amending sections 71 and 71AA of the DPCS Act as to the circumstance of 'large commercial quantity' and 'commercial quantity' respectively, to facilitate adoption of an absolute liability model for large scale drug trafficking. Any amendments can incorporate appropriate safeguards for the accused.

3.5 Destruction of drugs exhibits

3.5.1 Background

As part of an investigation into an offence, Victoria Police seizes, stores and disposes of exhibits. For drug-related offences, these exhibits include illicit drugs and drug manufacture and cultivation equipment. During the 2016-17 financial year, Victoria Police's Forensic Services Department received 25,686 drug exhibits.

Drug exhibits are stored by Victoria Police across a number of storage facilities. The storage of illicit drugs and drug equipment poses serious health and safety risks for the Victoria Police staff who handle those exhibits during regular audit processes, as well as those who work in the vicinity of where they are stored. For example, cannabis develops mould, fungi and spores as the plant begins to decompose, whilst manufactured drugs can become unstable and release fumes. Generally, the longer that drug exhibits are stored the greater the risk they present to health and safety. In addition, drug equipment has often been improvised and contaminated with illicit drugs, creating additional health and safety risks.

Victoria Police's storage facilities for drug exhibits are required to have special features, including drying areas, chemical segregation and appropriate security. This results in significant and potentially unnecessary storage and resourcing costs for Victoria Police.

3.5.2 Effectiveness of current laws, procedures and regulations

Drug exhibits may be destroyed if they are certified by an analyst or botanist as a health or safety risk under ss 81(3)(e) or 91 of the DPCS Act. However these provisions do not include all equipment used in the cultivation and manufacture of illicit drugs. For example, hydroponic cultivation equipment, as well as new or unused glassware and tablet presses, which are often found in clandestine laboratories, do not meet the health and safety risks required to authorise their destruction.

Drug exhibits may only be destroyed under s 81(3)(e) of the DPCS Act within one month after the warrant under which they were seized was issued by the court.⁴⁵ For various operational reasons, Victoria Police may delay the execution of a warrant which further limits the time period in which drug exhibits may be destroyed on the basis of health or safety risks. The requirement to take a sample of drugs, as well as follow an approved destruction process, further limits the time period in which drug exhibits may be destroyed.

Regarding s 91 of the DPCS Act, this authority to destroy is limited to only those drug exhibits which were seized from public land,⁴⁶ or from land or premises in which Victoria Police was given permission by the owner or occupier to search.

If a drug exhibit does not pose a health and safety risk, it may be destroyed if the accused has been convicted of an offence against Schedule 1 of the *Confiscation Act 1997*.⁴⁷ However court proceedings often take several years and may not result in a conviction.

Accordingly, a drug exhibit may only be destroyed before this time if:

- A 'Finding of Fact' has been made under s 83(1) of the DPCS Act, that is, a finding in respect of a substance being an illicit drug, the quantity of the illicit drug and/or the nature of any instrument or device. This provision however only applies in respect of findings by the Magistrates' Court, not findings by a judge of the County or Supreme Court, or
- Approval has been given under r 115 of the *Drugs, Poisons and Controlled Substances Regulations 2017* in respect of a Schedule 8 and 9 poison or a narcotic plant or seed of any narcotic plant.⁴⁸ These poisons, plants and seeds are however not drugs often seized by Victoria Police, which predominantly seizes only those illicit drugs listed in Schedule 11 of the DPCS Act.

Only members and staff of Victoria Police may transport drug exhibits for the purpose of forensic analysis, storage and destruction.⁴⁹

Victoria Police believes that legislative provisions that allow for the destruction of drug exhibits without a court order would ensure that storage, resourcing and court costs would be reduced, and Victoria Police staff would not be exposed to dangerous exhibits any longer than necessary.

3.5.3 Practice of other Australian states and territories and overseas jurisdictions

In 2016, the New South Wales Parliament introduced changes to the *Drugs Misuse and Trafficking Act 1985*, giving police the power to destroy illicit drugs faster and without a court order. The Act was amended in response to a report by the New South Wales Auditor-General in relation to the storage and disposal of drug exhibits, and the Auditor-General's finding that there was scope to increase safety and efficiency and to decrease costs within the system.⁵⁰

⁴⁵ Section 81(3) of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic).

⁴⁶ 'Public land' is not defined in the *Drugs, Poisons and Controlled Substances Act 1981* (Vic). It is however defined in s 3(1) of the *Summary Offences Act 1996* (Vic).

⁴⁷ Part 10 of the *Confiscation Act 1997* (Vic).

⁴⁸ An approval may be given by an officer of rank not below that of Inspector of the Victoria Police: r 115(1)(c) of the *Drugs, Poisons and Controlled Substances Regulations 2017*.

⁴⁹ If a person other than a member of Victoria Police transports drug exhibits, they may commit an offence against the *Drugs, Poisons and Controlled Substances Act 1981* (Vic). Section 44A of that Act only allows the Chief Commissioner to authorise "an authorised police employee" to receive, handle, store, transfer, transport, deliver, examine, analyse or destroy drugs.

⁵⁰ New South Wales Auditor-General, *Managing drug exhibits and other high profile goods* (2003) <<http://www.audit.nsw.gov.au/news/managing-drug-exhibits-and-other-high-profile-goods>>

Under that Act, a qualified police officer may order in writing that a substance be destroyed if a sample of the substance has been taken and retained and a certificate of analysis has been given to the defendant or accused person or, if the substance is a prohibited plant, a certificate identifying the plant has been issued.⁵¹ The rights of the accused are preserved through a notification process and the right to seek a second independent drug analysis.

In relation to 'Findings of Fact', s 32 of the *Drugs Misuse Act 1986* (Qld) allows *any* court to make a finding in respect of the identity, quantity or nature of a thing. If such a finding is made, the court may also make an order that the thing be forfeited to the State.

3.5.4 Recommendations

It is suggested that consideration be given to the introduction of legislation that allows for the automatic destruction of drug exhibits without a court order:

- Following the execution of a warrant, Victoria Police could be authorised to destroy drug manufacture and cultivation equipment once appropriate evidentiary recordings⁵² and trace samples⁵³ have been taken, and the accused has been notified and viewed the exhibits if he or she elects to do so.
- If a plea of guilty is entered by an accused, Victoria Police could be authorised to destroy any illicit drugs and other drug exhibits following finalisation of the criminal proceedings.
- If a plea of not guilty is entered, Victoria Police could be authorised to destroy any illicit drugs and other drug exhibits once appropriate evidentiary recordings and samples have been taken and a certificate of analysis has been issued, and the accused has been notified and viewed the exhibits if he or she elects to do so.
- If a person is unable to be located in order to serve charges, or a person previously charged absconds, following a specified period of time, Victoria Police could be authorised to destroy any illicit drugs and other drug exhibits once appropriate evidentiary recordings and samples have been taken, and a certificate of analysis has been issued.
- If no person has been charged, or is likely to be charged, with an offence within a specified period of time, Victoria Police could be authorised to destroy any drug exhibits.

To redirect police resources back to the frontline, approved couriers could also be legislatively authorised to transport drug exhibits for the purpose of forensic analysis, storage and destruction.

These laws could ensure that Victoria Police staff are not exposed to dangerous drug exhibits any longer than necessary, reduce Victoria Police's storage and resourcing costs and eliminate the requirement for courts to spend time considering applications for an order for destruction.

⁵¹ Evidence of the substance and prohibited plant must also be recorded through photographing or by other means, and particulars (if any) prescribed by the regulations must be recorded.

⁵² For the purposes of this legislation, evidential recordings may include photographs.

⁵³ Victoria Police believes that for the purposes of this legislation, at least one sample should be taken for analysis by Victoria Police and one sample should be taken for independent analysis by the accused if he or she elects to do so. These samples could then be destroyed at the conclusion of the criminal proceedings.

Victoria Police welcomes the opportunity to be consulted so as to facilitate the drafting of any legislation which provides adequate powers for Victoria Police whilst maintaining the rights of the accused.

Recommendation 4

Victoria Police suggests that consideration be given to the introduction of legislation that allows for the automatic destruction of drug exhibits without a court order.

Recommendation 5

Victoria Police suggests that consideration be given to the introduction of legislation that allows for approved couriers to transport drug exhibits for the purpose of forensic analysis, storage and destruction.

4 Emerging issues

4.1 Overview

Victoria Police has identified drug checking and Victoria's drug legislative framework as issues of relevance to this Inquiry.

4.2 Drug checking

Since October 2016, several deaths and mass overdose incidents at music festivals and in entertainment precincts in Queensland and Victoria have sparked renewed calls for drug checking.

Supporters of drug checking state it is an effective harm-reduction strategy as users are more inclined not to consume drugs if they are alerted to risks related to its strength or contents. Further, supporters of drug checking state it provides opportunities to better inform knowledge of the contemporary drug market and enhance an early warning system for dangerous drugs.

Nevertheless, Victoria Police does not support drug checking for the following reasons:

- Illicit drug use is inherently unsafe. As well as being generally unhealthy, their production and sale is unregulated and their effects therefore unpredictable. They can and do harm peoples' lives by adversely impacting on their health and social circumstances. In this context, drug checking may blur the community's understanding by appearing to guarantee the "safety" of some drugs once they are tested.
- Illicit drug use is illegal because of its unsafe nature, and Victoria Police is required to enforce its prohibition as part of its remit to uphold the law and maintain community safety. However, drug checking may blur the community's understanding of plain illegality of illicit drug use by appearing to condone the consumption of drugs on the condition they have been tested.
- If a drug is tested and determined to be "unsafe", it will potentially be on-trafficked, sparking further illegal behaviour that could result in harm to the new buyer.
- There is currently no proposed legal framework to provide the legal protections required by drug checkers in the event of a trial or full implementation of drug checking. These include, but are not limited to, the legality of handling of illicit drugs by testers, and the culpability of testers in the event drugs are tested and deemed "safe" but go on to cause harm. Lack of clarity over the legal responsibility of testers places them at risk of prosecution for criminal offences.

4.3 Drug legislative framework

In his speech to the Law Oration 2016, his Honour Justice Weinberg raised the following four propositions regarding the current state of Australia's criminal law:

- legislatures, both state and federal, have enacted too many laws
- a number of these laws are incredibly prolix

- some of the provisions contained within these laws are unnecessarily complex, lack coherence, and are far too prescriptive
- the laws are too frequently amended.⁵⁴

Victoria Police believes that Victoria’s drug legislative framework can be seen as representative of all of these propositions.

4.3.1 Too many laws

The DPCS Act is the key piece of legislation governing drugs in Victoria. Historically, the DPCS Act largely focused on the administration and control of medicines and poisons from a health-related perspective. However, the Act has evolved over time to also address the illicit drug trade, the misuse of poisons and controlled substances and law enforcement powers with respect to drug-related offending. It therefore now services diverse administrative, regulatory and law enforcement purposes.

There are numerous other Acts that are also relevant to the investigation and prosecution of drug-related offences in Victoria, including the *Crimes Act 1958* and the *Proceeds of Crime Act 2002*.

As well, there are nine Regulations made under the DPCS Act which are currently in force.

Victoria’s drugs legislation is also applicable to the substances that are listed in the Australian Standard for the Uniform Scheduling of Medicines and Poisons.⁵⁵

This complex array of laws and regulations can be challenging to navigate for those who deal with them daily, including police, forensic scientists, legal professionals and regulators.

4.3.2 Laws that are incredibly prolix

As Justice Weinberg noted, “[t]wenty years ago, the [DPCS Act] managed to deal with the entire body of law relating to illicit drugs in 152 pages. That Act now runs to [385] pages.”⁵⁶ This figure does not include the nine Regulations which are currently in force under the Act.

That Justice Weinberg has used the DPCS Act as an example to illustrate his proposition that laws can be unduly long-winded speaks for itself.

⁵⁴ His Honour Justice Weinberg, ‘Of Mozart, Modern Drafting and the Criminal Lawyer’s Lament’ (Speech delivered at the Law Oration 2016, Banco Court, Supreme Court of Victoria, 21 July 2016) <http://assets.justice.vic.gov.au//supreme/resources/5ef80022-1399-454d-99f9-652ae880a51f/ofmozartmodernraftingandthecriminalallawyerslament_21july2016.pdf>

⁵⁵ This Standard is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Cth) and consists of decisions regarding the classification of medicines and poisons into Schedules for inclusion in the relevant legislation of the states and territories. The purpose of the Standard is to promote uniform scheduling of substances throughout Australia.

⁵⁶ His Honour Justice Weinberg, ‘Of Mozart, Modern Drafting and the Criminal Lawyer’s Lament’ (Speech delivered at the Law Oration 2016, Banco Court, Supreme Court of Victoria, 21 July 2016) [38] <http://assets.justice.vic.gov.au//supreme/resources/5ef80022-1399-454d-99f9-652ae880a51f/ofmozartmodernraftingandthecriminalallawyerslament_21july2016.pdf>. At the time of Justice Weinberg’s speech, the *Drugs, Poisons and Controlled Substances Act 1982* (Vic) ran to 393 pages.

4.3.3 Laws that are unduly complex and excessively prescriptive

Victoria Police suggests that Victoria's drug laws are now overly complex, unwieldy and fragmented across a range of legislative instruments. Victoria Police suggests that this is, in part, a consequence of having one Act and associated Regulations that seek to serve a range of administrative, regulatory and law enforcement purposes in respect of both licit and illicit drugs.

Victoria Police is concerned that should further reforms be incorporated into Victoria's current framework, this may lead to:

- a lack of transparency of laws and the obligations they create, including where drugs are referenced at multiple points and are tied to different offences, and key provisions are included in regulations rather than substantive legislation
- the roles of regulators and law enforcement agencies not always being clearly distinguished
- the conflation of purpose of legislative provisions, which in turn creates confusion between health-related and law enforcement initiatives that will impact outcomes.

Queensland, New South Wales and Western Australia⁵⁷ have addressed these issues through the enactment of distinct pieces of legislation for the purposes of (1) responding to the misuse of illicit drugs and, (2) for the purposes of regulating and controlling licit drugs. These separate frameworks are also reflective of the three key pillars and the distinct types of harm they are aimed at preventing or reducing.

Victoria Police suggests that the current drug law framework could be simplified.

4.3.4 Laws are too frequently amended

Since the DPCS Act commenced in 1982, there have been over 100 amendments to it. None of these amendments entailed a holistic or complete review of the Act, but rather addressed discrete issues such as changes in the illicit drug market.

Victoria Police recognises the importance of having a framework that is flexible so as to respond quickly to emerging threats of drug-related harm. However, Victoria Police believes that this legislation should be set on solid foundations so as to ensure that amendments over time do not bear on the coherence of the framework as a whole. At a minimum, a clearly defined objective or purpose should be established to set the foundations for Victoria's drug legislative framework.

4.3.5 Need for broad drug law review

Accordingly, for those reasons discussed above, if this Inquiry makes numerous recommendations for law reform, Victoria Police notes that this may necessitate a broader review of Victoria's drug legislative framework to ensure it is coherent and contemporary, and continues to meet its purpose and objectives.

⁵⁷ In Queensland see the *Drugs Misuse Act 1986* and *Health Act 1937*; in New South Wales see the *Drug Misuse and Trafficking Act 1985* and *Poisons and Therapeutic Goods Act 1966*; and in Western Australia see the *Misuse of Drugs Act 1981* and *Medicines and Poisons Act 2014*. Note that the *Medicines, Poisons and Therapeutic Goods Bill 2017 (Qld)* is currently being drafted to replace the *Health Act 1937 (Qld)* and subordinate legislation.

Recommendation 6

Victoria Police suggests that consideration be given to a review being conducted of Victoria's drug legislative framework to ensure it is coherent and contemporary, and continues to meet its purpose and objectives.

5 Summary of submission

Victoria Police has identified that in Victoria:

- Large quantities of illicit drugs are regularly being trafficked across and within Victorian borders using intrastate and interstate transit routes
- The easy access to hydroponic equipment is facilitating the illicit cannabis cultivation industry
- Drug trafficking laws no longer reflect the reality of the drug trade, and loopholes are being used to mask the extent of an accused's criminality
- The storage of drug exhibits is posing serious health and safety risks for Victoria Police staff, as well as resulting in excessive storage and resourcing costs.

Accordingly, Victoria Police suggests that consideration be given to:

1. The introduction of legislation that allows for the declaration by a senior police officer of an area as a 'drug transit route'.
2. The introduction of a regulatory regime in respect of the hydroponics industry.
3. The amendment of sections 71 and 71AA of the *Drugs, Poisons and Controlled Substances Act 1981* as to the circumstance of 'large commercial quantity' and 'commercial quantity' respectively, to facilitate adoption of an absolute liability model for large scale drug trafficking. Any amendments can incorporate appropriate safeguards for the accused.
4. The introduction of legislation that allows for the automatic destruction of drug exhibits without a court order.
5. The introduction of legislation that allows for approved couriers to transport drug exhibits for the purpose of forensic analysis, storage and destruction.
6. A review being conducted of Victoria's drug legislative framework to ensure it is coherent and contemporary, and continues to meet its purpose and objectives.

Victoria Police has also identified that recently there have been renewed calls for drug checking. Victoria Police does not support drug checking as it may blur the community's understanding of the illegality of illicit drugs and appear to guarantee the "safety" of some drugs once they are tested. "Unsafe" drugs may also be on-trafficked, sparking further illegal behaviour that could result in harm to the new buyer. Victoria Police notes that there is currently no proposed legal framework to provide the legal protections required by drug checkers in the event of a trial or full implementation of drug checking.