



Families and Friends for Drug Law Reform (ACT) Inc.

committed to preventing tragedy that arises from illicit drug use

PO Box 36, HIGGINS ACT 2615

Telephone (02) 6254 2961

Email mcconnell@ffdlr.org.au

Web www.ffdlr.org.au

SUBMISSION OF FAMILIES AND FRIENDS FOR DRUG LAW REFORM TO THE REVIEW BY THE PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION OF THE *AUSTRALIAN CRIME COMMISSION ACT 2002*

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LAW REFORM
TO THE
REVIEW BY THE PARLIAMENTARY JOINT COMMITTEE
ON THE AUSTRALIAN CRIME COMMISSION
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*AUSTRALIAN CRIME COMMISSION ACT 2002***

I. INTRODUCTION

A. SUMMARY

In its review of the *Australian Crime Commission Act 2002* pursuant to s. 61A(4), Families and Friends for Drug Law Reform asks that the Committee consider the seven recommendations the group made in its submission dated 14 April 2005 on the 2003-2004 annual report of the Australian Crime Commission. These are that:

1. The performance criteria should not reflect mere activity but instead whether there has been meaningful progress towards the achievement of substantive objectives.
2. Having regard to the unique intelligence and assessment capacities of the Commission, annual reports should incorporate an assessment of whether law enforcement effort is making progress towards the achievement of substantive objectives.
3. When measures of law enforcement activity such as the levels of drug seizures are provided, the annual report should also include an assessment of the extent to which this activity impacts on the overall level of criminal activity involved.
4. As part of its intelligence assessment, the Commission should regularly include in its report estimates of the size of the market in Australia for different illicit drugs.
5. Rather than using the gross level of drugs seized, estimates of effectiveness of law enforcement should have regard to the extent that law enforcement effort reduces the quantity of drugs needed to satisfy the demand of the Australian market.
6. As it bears on its governance, the anti-corruption prevention and response system being instituted for the Commission should be the subject of public scrutiny by the Committee and be covered in the Committee's report.
7. All Governments and Agencies involved in the management of the Commission should commit themselves to maintain and strengthen the values of the Commission as set out in its corporate plan.

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2. In the present submission Families and Friends for Drug Law Reform makes just one further recommendation. It is that:

8. The Australian Crime Commission should apply drug market indicators in performance criteria that assess the effectiveness of law enforcement in reducing the supply of illicit drugs to the Australian community.

The reasons are clear. To quote a 1996 evaluation undertaken at the behest of the predecessor of this very Committee, “. . . traditional performance indicators adopted by drug enforcement agencies: the number, volume, and type of illegal drug seizures, and the number and type of drug-related arrests and convictions . . . are well recognised as basically flawed indicators of effectiveness. They reflect more upon levels of law enforcement *activity* than they do ratios of interdiction and reduction, and therefore cannot be used as indicators of the effectiveness of agencies in reducing the total supply of illegal drugs” (Sutton & James 1996, 107).

3. There is now available to assess performance, a range of drug market indicators such as price, purity and surveys of drug users on availability. The submission reproduces a number of graphs with examples of the market information that is regularly collected and assembled. This section is followed by examples of law enforcement indicators. These include a set of graphs, in many cases assembled by the ACC itself, showing trends in drug arrests, clandestine laboratories detected and the quantity of drugs seized. Such law enforcement indicators are similar to catch data used in fisheries management. The section points out the importance of supplementing this with the equivalent of fisheries effort data which, in the case of law enforcement, would be measures of resources deployed.

4. The next section illustrates what the analysis of both drug market indicators and measures of law enforcement can show about the effectiveness of drug law enforcement in reducing the supply of the drugs. It does so in the very different situations of cannabis, the use of which is declining; amphetamine-type stimulants including ecstasy, the use of which is increasing; and heroin of which there was a severe supply shortage and continuing evidence of some supply restrictions compared to pre-shortage levels.

5. The application of market indicators to law enforcement indicators for these drugs would seem to show that law enforcement has not achieved a reduction in supply. The decline in cannabis usage cannot be attributable to law enforcement bringing a supply shortage because market indicators show that the drug remains readily available. The growth in use of amphetamine-type stimulants including ecstasy is taking place in spite of some high law enforcement “catch” indicators while market indicators are showing that these drugs continue to be readily available.

6. Heroin market indicators show increasing availability since the 2001 drought in an environment of mixed law enforcement “catch” indicators. The submission briefly reviews the officially funded study of the causes of the heroin drought. This study found that “a small number of key groups had traditionally financed major heroin imports to Australia in the 1990s, and these groups had withdrawn from the financing and facilitating these imports in the late 1990s” (Degenhardt *et al.* 2004a,

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77). The study did not find that law enforcement brought about the drought directly by interdicting supply but rather accepts the assessment of key informants that Australian law enforcement successes acted as a deterrence influencing the decision of the financiers. The submission points out that even if this assessment is correct, it occurred in circumstances of low opium production and high demand elsewhere that Australian law enforcement did not bring about and could not replicate.

7. Following this review of the application of drug market indicators to drug supply, the submission illustrates how misleading it is to judge the effectiveness of drug law enforcement supply reduction by exclusive reference to “catch” indicators. The submission does this with reference to the benchmarking system and drug harm index of the AFP. The benchmarking system seeks to compare the performance of the AFP with law enforcement agencies in comparable countries. The drug harm index attributes a dollar value to harm said to be saved by the AFP’s supply reduction activity. Both the benchmark and the index are based on quantities of drugs seized. The submission points out that these methods of assessment are demonstrably a meaningless.

8. The submission then turns to the application of drug market indicators to performance measures of the ACC. It points out that the ACC is uniquely qualified to undertake evaluations of the effectiveness of law enforcement supply reduction. It incorporates the intelligence functions of the former Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments and is a meeting point of all Australian law enforcement agencies. The submission then discusses three objections that may be raised to the ACC undertaking the evaluation, namely that:

- (a) evaluation of supply reduction measures having regard to drug market indicators is of little or no operational relevance;
- (b) it involves the gathering and evaluation of non-law enforcement data; or
- (c) the evaluation may be politically sensitive.

9. The submission recalls that if drug law enforcement is to operate as a rational system there must be systematic monitoring of intended and unintended effects. Management initiatives may be required to overcome perceptions of lack of relevance. Data is now regularly gathered on a range of drug market indicators and there is scope for the ACC to work with research institutions to develop other indicators, notably good estimates of the size of various Australian illicit drug markets. As to the acknowledged political sensitivity of the evaluations recommended, the submission notes that a special responsibility therefore falls on this oversight Committee to ensure that the evaluations recommended may be carried out with professional independence.

10. Finally the submission recalls that supply reduction is not the only aspect of drug law enforcement that requires evaluation. Law enforcement also has a role in deterring demand and although it may seek to minimise harm it also creates harms additional to the harms of the drugs themselves. It is important to ensure that the life and welfare of one group of young people is not sacrificed in favour of an attempt to reduce the risk of a much smaller harm that another group of young people may be

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exposed to. Much less is it morally acceptable that drug law enforcement with its harmful consequences should be undertaken with a principal objective – supply reduction – that it does not achieve.

B. OTHER SUBMISSIONS OF FAMILIES AND FRIENDS FOR DRUG LAW REFORM

11. Families and Friends for Drug Law Reform requests that its submission dated 14 April 2005 on the 2003-2004 annual report of the Australian Crime Commission be considered with this one in the Committee's present review of the *Australian Crime Commission Act 2002*.

12. Families and Friends for Drug Law Reform recalls that it made a submission to the inquiry of the Committee's predecessor into the *Australian Crime Commission Establishment Bill 2002*. The group has made other submissions to various inquiries including the following:

- (a) in September 2002 to the Inquiry into crime in the community by the House of Representatives Standing Committee on Legal and Constitutional Affairs;
- (b) in May 2005 to the Inquiry of the Senate Select Committee on Mental Health into the provision of mental health services in Australia; and
- (c) in July 2005 to the Inquiry of the Senate Legal and Constitutional Affairs Committee into the provisions of the *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005*.

C. ABOUT FAMILIES AND FRIENDS FOR DRUG LAW REFORM

13. Families and Friends for Drug Law Reform was formed in April 1995 around a group of people who had a child, relative or friend who had died from a drug overdose. The grief that all shared turned to frustration and anger that those lives had been lost: all would be alive today if drug use and addiction had been treated as a social and medical problem and not principally a law and order one. The criminal law and how it was enforced at the level of those who consumed the drugs contributed to the death of these young Australians.

14. Since then the group has been intent on reducing the tragedy from illicit drugs, reducing marginalisation and shame, raising awareness of the issues surrounding illicit drugs and encouraging the search for and adoption of better drug policies.

15. Families and Friends for Drug Law Reform does not promote the view that drugs should be freely available. Indeed it believes that they are too available now in spite of their illegality. Families and Friends for Drug Law Reform supports an evidence-based search for policies that maximise effective control of dangerous substances so that their availability and the harm from them are minimised.

II. NEED FOR PERFORMANCE CRITERIA CONCERNING DRUG LAW ENFORCEMENT

16. Families and Friends for Drug Law Reform wishes to take up the challenge posed by the observation of the Committee in its recent report on the 2003-04 report

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of the Australian Crime Commission (ACC) on the difficulty of selecting useful performance criteria for law enforcement. The Committee observed that “while it is relatively easy to point to limitations in the performance measures selected by the ACC, it is somewhat harder to recommend alternatives” (§2.49).

17. In fact there are a range of meaningful performance criteria for drug law enforcement available to the ACC on the basis of data already collected. Further meaningful performance criteria are also available with little additional effort.

18. The purpose of invoking the criminal law to prohibit illicit drugs is clear. In the words of the Attorney-General in introducing the *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005* on 26 May this year it is to “reduce the supply of illicit drugs”. Illicit drugs are a commodity traded in a market. Law enforcement is an influence on that market. Because of its black market status, there are, of course, difficulties in knowing as much about it as about legal commodities. Even so, important aspects of the illicit drug market that would reflect alterations in supply are either measured or measurable.

19. It is well recognised that law enforcement strategies, if effective to reduce supply, would reduce the “availability of the drug. These strategies also aim to disrupt the illicit drug market which can increase drug prices and decrease drug purity” (Spooner *et al.* 2004, 14). In a recent study on the role of police in preventing and minimising illicit drug use and its harms, the intended role of police in supply reduction is expressed to lead to:

“↑ Drug prices

“↓ Drug availability

“↓ Drug purity

“↓ Number of drug traffickers” (*ibid.* 25)

20. In addition, a number of indicators of demand reduction may in some circumstances reflect supply as much as demand and thus, with other data, may be taken as additional performance indicators of supply reduction strategies. A decrease in the number of recent users of illicit drugs could well be such an indicator. The study referred to on the role of police in preventing and minimising illicit drug use and its harms lists the following examples of indicators of successful demand reduction measures:

“↑ Age of initiation of illicit drug use

“↓ Number of new users

“↓ Frequency of drug use among users

“↓ Quantity of drug use per day among users

“↑ Number of dependent users entering treatment (*ibid.*)

To this list may be added reductions in overdoses whether fatal or otherwise.

21. Apart from the number of drug traffickers, accurate information on all these matters is either currently being gathered or could be.

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22. In recommending that market indicators be used in the assessment of the effectiveness of law enforcement supply reduction, we are simply repeating what has been said before. In 1992 the National Police Research Unit commissioned research into supply-reduction strategies. This was in response to a recommendation of the 1989 report, *Drugs, Crime and Society*, by the predecessor of this Committee, the Parliamentary Joint Committee on the National Crime Authority. The research, carried out by Dr Adam Sutton and Dr Steve James of the Criminology Department of the University of Melbourne, was undertaken with the co-operation of law enforcement agencies around the country and published in 1996 as an *Evaluation of Australian drug anti-trafficking law enforcement*. It criticised reliance on the traditional performance indicators adopted by drug enforcement agencies:

“Our evaluation demonstrates that to date there has been little capacity in the law enforcement sector to reliably and validly relate its activities to changes in drug markets. In part, this is a function of the traditional performance indicators adopted by drug enforcement agencies: the number, volume, and type of illegal drug seizures, and the number and type of drug-related arrests and convictions. These measures are well recognised as basically flawed indicators of effectiveness. They reflect more upon levels of law enforcement *activity* than they do ratios of interdiction and reduction, and therefore cannot be used as indicators of the effectiveness of agencies in reducing the total supply of illegal drugs. Similarly, asset confiscation is subject to the same problems as an indicator, in that increased asset seizures are likely to be functions of such factors as the useability of the relevant enabling legislation and the resources that law enforcement devotes to pursuing confiscation” (Sutton & James 1996, 107).

A. LAW ENFORCEMENT INDICATORS

23. To quote the recent study on the role of law enforcement in preventing and minimising illicit drug use and its harms:

“Supply-reduction strategies include higher-level strategies (for example, border control, dismantling clandestine laboratories) and lower-level strategies (for example, street-level crackdowns, policing local hot spots). Both aim to reduce supply, hence availability of the drug” (Spooner *et al.* 2004, 14).

24. Law enforcement resources such as the time of personnel devoted to these strategies would be a measure similar to the measure of effort used in fisheries management. To take the fisheries management analogy further, law enforcement successes are similar to catch levels. Both effort and catch apply pressure to fish stocks which one would expect would be reflected in the size of those stocks – the size of the drug illicit market in our terms. Whereas a combination of high effort but low catch levels spells bad news for fisheries management, the same would be good news in drug policy. “Catch” indicators of drug law enforcement would include:

(a) number of middle and higher level suppliers arrested or otherwise put out of business; and

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- (b) proceedings against drug users including user-dealers;
- (c) levels of domestic drug crops like cannabis eradicated including the estimates of the harvest of immature crops;
- (d) clandestine local laboratories that manufacture synthetic drugs; and
- (e) quantity of drugs seized.

25. As with market indicators, most if not all these “catch” indicators are either being gathered or could be. Families and Friends for Drug Law Reform is not aware that “effort” indicators such as financial and human resources deployed are quantified regularly on a standard basis but they should be. The important study that estimated the social costs of drug abuse in Australia in 1998-99 found that the cost of state policing was \$1,105.4m (Collins & Lapsley 2002 table 36, p. 67). The most recent annual reports, which are for the year 2003-04, of neither the ACC nor the Australian Federal Police (AFP) identifies financial resources devoted to drug supply reduction. Nevertheless it appears that procedures are in place that could be adapted to that end. For example, the AFP has budgetary items for each of its “outcomes” (AFP 2004, 25) and a planning framework “. . . which scans the environment in which the AFP operates, develops target allocations for investigative and financial resources against incident types and integrates these with a performance improvement and reporting system” (*ibid.*, 56).

B. DRUG MARKET INFORMATION

26. To illustrate the market information that is now available, a selection of sources of information that bear upon the size of the market for cannabis, heroin and amphetamine-type stimulants and ecstasy is included at Appendix 1. The information is on drug prices, user reports of drug availability, the purity of drugs seized at street level, the number of people who have used drugs recently and the age that people first used illicit drugs. The drugs selected are probably the ones of chief current concern across Australia but selecting them also has the advantage that the market for each is very different. The number using cannabis, though still the most consumed illicit drug in Australia, is declining. About a quarter of the number who use cannabis, use amphetamine-type stimulants and ecstasy. These drugs appear to be where most of the growth in illicit drug use is. Heroin is consumed probably by less than a quarter of those using the stimulants and ecstasy. There was probably a big reduction in its use during the depth of the heroin drought. It is becoming more plentiful again but its quality is not as high as it was. Cannabis is generally consumed by smoking, the amphetamine-type stimulants and ecstasy by swallowing and heroin by injection. The locality of production also distinguishes the drugs. Heroin is all imported. Amphetamine-type stimulants and what is sold as ecstasy are partly imported and partly locally manufactured. Cannabis is nearly all locally grown. Graphs of law enforcement data on these drugs are included in Appendix 1 after the market information.

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III. WHAT DRUG MARKET INDICATORS AND MEASURES OF LAW ENFORCEMENT

CAN SHOW

27. A comparison of drug market indicators with law enforcement measures can show the extent to which law enforcement achieves its goal of supply reduction.

Potentially, drug markets can be influenced by a range of factors other than supply reduction brought about by law enforcement. Such factors may include:

- (a) changing tastes among drug users which may lead to reduced demand for some drugs and higher demand for others;
- (b) the take up of available drug treatment programmes. Dependent users on such programmes greatly reduce their illicit drug consumption;
- (c) deterrence of use by actual or threatened law enforcement action i.e. law enforcement working as a measure of demand rather than supply reduction;
- (d) publicity and educational campaigns about the undesirability of using the drug concerned;
- (e) reduced supply of drugs as a result of adverse circumstances unassociated with law enforcement action such as poor growing conditions or supply shortages of raw material and other resources (e.g. chemists to manufacture synthetic drugs and refine opium);
- (f) commercial decisions by importers to send product to a market other than Australia on financial grounds unrelated to Australian law enforcement.

28. Illicit drug suppliers and law enforcement have a common interest in maintaining the price of drugs at a level that is above the cost of production. The primary objective of most illicit drug suppliers is to maximise profits. Law enforcement is a factor that affects the drug traffickers' costs of supply. Circumventing the obstacles of law enforcement incurs costs, including the risks associated with getting caught. On account of the nature of drug markets, these costs can often be passed on to drug users in the form of higher prices. As a result, illicit drug suppliers are often able to sell drugs at a price well above the costs of production. Similarly, law enforcement aims to increase the cost of supply by seizing illicit drugs, creating barriers to supply and distribution and increasing the risks associated with supply. From a law enforcement supply reduction point of view, success would be indicated by evidence that the price of illicit drugs has risen to a level where consumption is insubstantial. There is, of course, uncertainty about how much law enforcement effort is necessary to increase prices to the level that would achieve the desired outcome. This issue is complicated by the fact that, as the level of enforcement effort increases, so too will the profit margin available to drug dealers.

29. In the light of these considerations we will now examine, drug by drug, the sample of indicators reproduced in Appendix 1 for what they reveal about the success of law enforcement supply reduction as opposed to other factors that may influence the market. In so far as they are capable of doing this, they serve as examples of performance criteria that we urge the ACC to adopt.

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A. CANNABIS

30. The fairly reliable surveys of usage of this drug show it to be in decline since 1998 (figure 7, p. 29). This is occurring in the context of the following market indicators.

31. *Price:* According to the Illicit Drug Reporting System (IDRS) the price was overwhelmingly stable or declining (figure 4, p. 26): “Consistent with the result of the IDRS in previous years, cannabis remained cheapest in SA and the price of an ounce of cannabis has gradually declined from 1997 in VIC, NSW and SA. The price has remained relatively stable (ranging from \$200-\$300) in the other jurisdictions since data collection began in 2000. The majority of the national sample [of users who were surveyed] reported the price of hydroponic and bush cannabis as stable: 72% and 61% respectively. Substantial minorities in the NT (16%) and SA (15%) reported that the price of hydroponic cannabis had increased recently” (IDRS 2004, 85). Information from law enforcement sources reported by the ACC fairly much coincide with that: “During the reporting period a slight rise in the price of a pound of cannabis head was recorded in South Australia, Western Australia, Tasmania and Northern Territory. The price of a pound of bush-grown cannabis increased from around \$2400 to \$3500 in the ACT after the January 2003 bushfires, however, it is unclear how long this increase in price continued” (IDDR 2003-04 cannabis, p. 5).

32. *User reports of drug availability:* “As in previous years, cannabis (hydroponic and bush) was described as ‘very easy’ or ‘easy’ to obtain by the vast majority of participants in all jurisdictions, and the majority of those [injecting drug users] who commented perceived the availability of hydroponic and bush cannabis to be stable over the six months preceding the interview. Substantial proportions in TAS reported that hydroponic and bush cannabis had become easier to obtain over the last six months (22% and 20% respectively)” (IDRS 2004, 88). The ACC reported that: “Cannabis remained widely available throughout Australia” (IDDR 2003-04 cannabis, p. 5).

33. *Conclusion regarding cannabis drawn from indicators:* In this environment of easy availability, law enforcement indicators show an increase of 14% in arrests between 2000-01 and 2003-04 (figure 11, p. 32) contrasting with a low level of seizures (figure 14, p. 34). Indeed the quantity seized in 2003-04 was the lowest for many years.

34. The indicators show that the use of cannabis, while still the most popular illicit drug in Australia, is declining. This cannot be because of law enforcement bringing about a reduction in supply. Other things being equal, a small level of seizures would be consistent with low availability but market indicators show this is not the case. The reduction in cannabis usage must be attributable to one or other of the other factors mentioned above at p. 8.

B. AMPHETAMINE-TYPE STIMULANTS INCLUDING ECSTASY

35. The range of different drugs encompassed within the category include amphetamine powder long known as speed that has been around for many years and liquid, powder, base and crystalline methamphetamine which made their appearance

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on Australia's illicit drug market in the late 1990s. At the retail level, methamphetamine-type stimulants are often passed off as ecstasy, the most common phenethylamine. For reasons such as this a number of surveys do not distinguish between the different drugs concerned.

36. Compared to 2001, the 2004 household survey showed a decrease from 3.4% to 3.2% in recent use of "methamphetamine, amphetamines (speed)" (figure 8, p. 29) and an increase that more than compensated for this of recent use of ecstasy from 2.9% to 3.4% (figure 9, p. 29). This is occurring in the context of the following market indicators.

37. *Price of methamphetamine &c:* "Fifty six percent (n=457) of the national sample [of the 2004 survey under the Party Drug Initiative] commented on whether the price of speed had changed in the preceding six months. Over half (52%) reported the price of speed had remained stable in the preceding six months Twenty nine percent (n=247) of the national sample commented whether there had been changes in the price of base. Of those who were able [to] comment, over half (60%) reported the price of base had remained stable in the preceding six months. Eleven percent thought the price of base had decreased" (PDI 2004, 53). 69% of the national sample of injecting drug users under the 2004 Illicit Drug Reporting System reported that the price of methamphetamine powder was stable and 73% that the price of base was stable. With crystal methamphetamine only 37% of the national sample thought the price stable. There was a larger spread of opinion about price trends for this form (IDRS 2004, 48, 50, 51). From law enforcement sources the ACC reported of methamphetamine-type stimulants that "The price of amphetamines (where available) remained relatively stable across most jurisdictions. A decrease was noted in South Australia. Increases in price were noted for certain weights in the Northern Territory and Western Australia. . . . These increases in price in Western Australia and the Northern Territory may indicate that high purity methylamphetamine forms are gaining a foothold in the market and that demand for them is high" (IDDR 2003-04 , amphetamines, p. 7)

38. *Price of drugs sold as ecstasy:* According to the 2004 survey of the Party Drug Initiative: "The majority of ecstasy users in all jurisdictions reported that the price of ecstasy had remained stable in the preceding six months Substantial proportions in all states except the NT reported a recent decrease in price" (PDI 2004, 23). This was consistent with reports of law enforcement agencies which reported that: "The street price for a single MDMA tablet/capsule remained relatively stable across all jurisdictions" (IDDR 2003-04 , phenethylamines, p. 8).

39. *User reports of availability of methamphetamine &c:* "Over half (61%) of the national sample of the [2004 Party Drugs Initiative] reported speed availability had remained stable over the preceding six months, while similar proportions reported that it had become easier (14%) or more difficult (13%)" (PDI 2004, 59). Of those who commented on base, "the majority (80%) reported that it was 'very easy' (40%) or 'easy' (40%) to obtain" (*ibid*). "The majority (68%) that commented [on the availability of crystal] believed it to be 'very easy' (37%) or easy (31%) to obtain" (*ibid*. 60).

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40. *User reports of availability of ecstasy:* “In all jurisdictions, almost all participants [in the 2004 Party Drugs Initiative] described ecstasy as ‘very easy’ or ‘easy’ to obtain, and agreed that availability had either remained stable or easier to obtain” (PDI 2004, 29).

41. *Purity of seizures of methamphetamine:* Figure 6 p. 28 of the purity of methamphetamine seizures by state police shows “no clear trend . . . at a national level although overall, the median purity generally remains low at less than 35%, except in WA where the purity reached a high of 52% in the second quarter of 2004” (PDI 2004, 57). According to the *Illicit drug data report 2003-04* testing for purity occurs only in the case of contested court proceedings so that only an unrepresentative sample is tested. That report includes separate graphs of the purity of amphetamine and methylamphetamine (IDDR 2003-04 , amphetamines, p. 8). These show, if anything, wider variations in purity levels.

42. *Purity of ecstasy seizures:* According to the *Illicit drug data report 2003-04:* “It is still common for tablets marketed as ecstasy to be incorrectly represented as containing MDMA, when in fact they are compressed methylamphetamine tablets with additives such as ketamine and caffeine. The majority of ecstasy tablets seized in Australia continue to contain a variety of products, often with little or no MDMA. As such, the purity of phenethylamines fluctuates across time and jurisdictions” (IDDR 2003-04 , phenethylamines, p. 8). The 2004 report of the Party Drug Initiative summarised purity levels as stable: “The median purity of the State Police seizures analysed indicates that generally purity has remained relatively stable around 30% purity” (PDI 2004, 28).

43. *Conclusion regarding amphetamine-type stimulants including ecstasy drawn from indicators:* The picture that emerges of amphetamine-type stimulants including ecstasy is that overall these drugs are readily available. Their use is increasing and subject to some regional and other variations, price and purity are stable. These market indicators of stability and growth exist in the face of a big variation in law enforcement “catch” indicators. In 2003-04 there was a continuation of a substantial steady increase that has gone on over a number of years in border seizures of phenethylamines (figure 17, p. 36) and detection of clandestine laboratories in Australia (figure 13, p. 33). These increasing seizures and detections may seem to track increasing availability and use. In contrast, though, there was an enormous reduction in the two years from 2001-02 in the quantity of amphetamine-type stimulants seized at the border (figure 16, p. 36). In 2003-04 there was a less dramatic falling off of the quantity of seizures by State law enforcement agencies of methamphetamine-type stimulants. This followed many years of increasing seizures (figure 15, p. 35). “Nationally, there was a slight increase in the number of arrests for [amphetamine-type stimulants]” (IDDR 2003-04 , amphetamines, p. 12). These fluctuating law enforcement indicators bear no relationship to the market indicators of stability and growth. Taken as a whole, it is fairly clear that law enforcement was not effective in reducing the supply of amphetamine-type stimulants including ecstasy to the Australian drug market in 2003-04.

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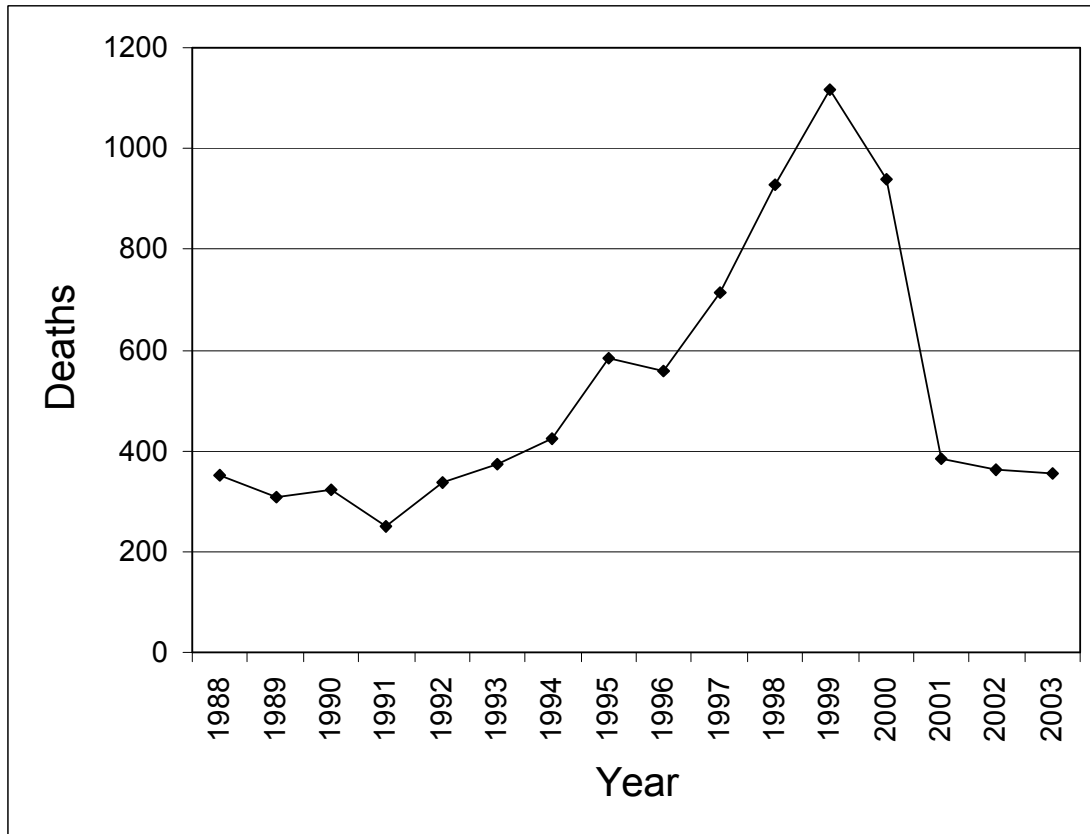
C. HEROIN

1. The current situation

44. Existing regular surveys do not give a particularly accurate picture of trends in illicit drugs such as the overwhelmingly injected drug, heroin, that may be used by a largely marginalised group constituting a very small percentage of the population. While the household survey is particularly inadequate it does show a reduction in recent use from 0.8% in 1998 to 0.2% in 2001 and 2004 (AIHW 2005 Table 2.1, p. 3) which is largely consistent with other sources of information such as the secondary school survey. That showed a reduction of usage between 1998 and 2002 from 4% to 3% of 12 to 17 year olds who had used any opiate such as heroin or morphine (White & Hayman 2004, table 15, p. 32). Compared to 2003, the 2004 *Victorian youth alcohol and drug survey 2004* found for heroin “a decrease in lifetime use (down from 2 per cent to 1 per cent) and recent use (down from 0.7 per cent to 0.3 per cent) of heroin (Victoria 2004, 8 & table 2, p. 10).

45. Indicators of harms like overdoses also indicate trends of usage. As shown in the following graph, the fall in deaths from overdoses is, of course, the most dramatic indicator. This fall probably exaggerates the reduction in use of heroin because the level of deaths probably also reflects a decline in purity – a factor that can bring other health problems. The point should also be made that although the big decline is welcome, there are still too many young people dying. Nor is the national decline of any comfort in the Australian Capital Territory. 17 died in 2003 which was as high as it has ever been.

Figure 1: Opioid deaths in Australia among those aged 15-54, 1988-2003



SOURCE: IDRS 2004, 35.

46. Since it stabilised at about 20% by the end of 2001, figure 5, p. 27 suggests an increase in purity of heroin seized towards 30%. In the last two or three years the retail price of heroin has stabilised (figure 3, p. 25). According to the 2004 Australian drug trends report: “In 2002, the prices of a gram of heroin decreased and remained stable in 2003. In 2004, the price of a gram of heroin dropped in most states to prices below or the same as those reported in 2000 except in NSW where it continues to stay at 2002 levels (and also in TAS, WA and QLD where it continued to be slightly higher than those reported in 2000)” (IDRS 2004 22). Users also report an easing of heroin supply. “Around a two thirds (62%) of the national 2004 sample [of the Illicit Drug Reporting System Survey] commented that the availability of heroin was stable in the last six months. This was similar to the national 2003 sample (65%) however an increase from that reported in 2002 (44%) and 2001 (50%). Smaller proportions reported that it was more difficult (13%) to obtain and similar proportions reported it was easier (15%) to obtain” (IDRS 2004 24). These definite indicators of easing of heroin supply occur in a law enforcement environment of variable levels of seizure and constant levels of arrest.

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47. Heroin is virtually entirely imported so that border seizures are the chief measure of that law enforcement success. Figure 18, p. 37 show an 85% decline in quantity of heroin seized between 2001/02 and 2003/04 (IDRS 2004 25). In fact, the quantity of heroin seized in 2003/04 was the smallest amount since 1995/96. This small seizure would be reassuring if current market indicators showed that heroin was in very short supply but, as mentioned, this is not the case. Figure 12, p. 33 shows the number of people arrested with heroin. “In 2003/04 there was a slight decrease in the number of heroin and other opioids consumer and provider arrests Australia-wide from 3824 in 2002/03 to 3691. As can be seen from [the] Figure, there was a peak in the number of consumer and provider arrests in 1998/99, with a steady decline since that time” (IDRS 2004 32).

48. All told, the indications are of an easing of heroin supply since the latter part of 2001 while heroin seizures declined steeply and arrests declined slightly show that law enforcement is not presently effective in reducing the supply of that drug.

2. The heroin drought

49. The accuracy of the application of performance indicators to heroin can be judged by reference to what is now known from detailed studies of Australia’s heroin drought. The shortage took effect from about Christmas 2000. Market indicators of price, purity and surveys of users about availability all showed this clearly (figure 3, p. 25; figure 5, p. 27 & Degenhardt *et al.* 2004a, 41-43) as did the sharp decline in health-related harms such as overdoses that are closely associated with heroin injection (figure 1, p. 13). Market indicators thus unambiguously showed that there was an abrupt, big and indeed unprecedented reduction in supply of heroin to the Australian market. The question of vital policy concern is the extent to which law enforcement brought that shortage about.

50. The indicator of level of seizures in figure 18, p. 37 shows that 509kg was seized at the border in 1998-99 and 269kg in 1999-2000 (Degenhardt *et al.* 2004, 45-46). 357kg apparently bound for Australia was seized on the eve of the drought in Fiji in October 2000 (*ibid.*, 61 fn). This was during the year from July 2000 when border seizures declined to 218kg. The depth of the shortage occurred in the second half of that year. Between July 1998 and June 2001 heroin arrests across Australia almost halved from a record high (figure 12, p. 33).

51. These indicators are not consistent with a war of attrition in which law enforcement prevailed. If that had been the case one would have expected market indicators to have shown a gradual decline in the size of the heroin market combined with a parallel decline in seizures and heroin arrests. Instead, from about Christmas 2000 there was a sudden switch from a bountiful supply of heroin on the Australian market to a drought of that drug. This was associated with high seizures and drug arrests that in a large measure seemed to track usage patterns.

52. The combination of market and law enforcement indicators points towards co-ordinated human intervention behind the drought – that is that the suppliers of heroin to the Australian market sharply reduced the quantity being supplied to Australia. This could have been as a result of law enforcement incapacitating those

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suppliers through actions such as arrest. It could also have been as a result of a commercial decision by those suppliers to export heroin elsewhere.

53. The officially funded study of the heroin shortage records the arrest of several “key facilitators between South East Asian financiers and Australian importers” (Degenhardt *et al.* 2004, 62). The study does not attribute the drought to their incapacitation but rather to a decision by the financiers of heroin exports from South East Asia from where the Australian market is supplied.

“[Key Informants] consistently reported that a small number of key groups had traditionally financed major heroin imports to Australia in the 1990s, and these groups had withdrawn from the financing and facilitating these imports in the late 1990s. There was some suggestion that these traditionally dominant groups had shifted their activities to areas considered to be of lower risk, such as money laundering and heroin trafficking in other countries” (*ibid.*, 77).

54. The assessment of key informants accepted by the study is that this decision was motivated by law enforcement pressure – the seizures, high level arrests and increased international co-operation and more resources. At the same time the study acknowledged that this decision was made in the context of a shortage of availability of heroin in South East Asia, a booming demand for it elsewhere and the booming manufacture there of methamphetamine-type stimulants by interests who had been involved in the export of heroin to Australia:

(a) The decision of heroin financiers no longer to supply the Australian market was made “. . . against a backdrop of gradually declining production in South East Asia” (*ibid.* 48) “There was a continuing downwards trend in opium cultivation from the mid-1990s in the South East Asian cultivation regions, with more marked decreases in cultivation noted in 1998 and 1999 due to drought conditions in the area” (*ibid.* 22). This trend was large. Production declined by about a half over this period.

(b) From this smaller harvest traffickers were supplying a new booming market in China. The study tells us that during the 1990s “the number of opiate dependent people registered in China - 80% of whom are heroin dependent – increased almost ten-fold” (*ibid.* 57).

(c) In contrast to heroin, the same region was producing increasing amounts of potent methamphetamines. The study speaks of their production by “large-scale groups who were already involved in heroin production. These people already had connections, trafficking routes, money and power” (*ibid.* 55).

(d) Large quantities of new potent imported methamphetamines were indeed being imported into Australia during the time of the heroin shortage: “the more potent forms of 'base' and 'Ice' methamphetamine were first detected in 1999. Since 2001 all forms of methamphetamine (i.e., 'Ice', 'base' and powder methamphetamine or 'speed') appeared to be readily available to users” (McKetin & McLaren 2004, vii).

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(e) A number of heroin traffickers to Australia had switched to methamphetamines: “some traffickers previously involved in heroin production and trafficking to Australia are now involved in methamphetamine production and trafficking” (Degenhardt *et al.* 2004, 58).

55. If the assessment of the key informants reported in the official study is correct, law enforcement can take credit for the Australian heroin drought only in the context of a set of most unusual circumstances. It found that a small group of financiers decided to divert heroin from Australia in circumstances of low opium production and high demand elsewhere that Australian law enforcement did not bring about and could never do so. Even if heroin financiers were no longer making money from the Australian market, it is clear that many of the same traffickers who had dealt in heroin were continuing to supply the Australian market with larger quantities of other drugs. At best the heroin drought is the most tenuous of victories for law enforcement supply reduction. At worst it is a nightmare-like illustration of the power of drug market manipulation by criminals.

56. The officially funded study on the causes of the heroin shortage is analysed further in the submission numbered 319 earlier this year of Families and Friends for Drug Law Reform to the inquiry of the Senate Select Committee on Mental Health into the provision of mental health services in Australia.

IV. MISREADING OF LAW ENFORCEMENT INDICATORS

57. In this submission Families and Friends for Drug Law Reform has urged adoption by the ACC of performance measures for drug law enforcement that utilise both drug market and law enforcement indicators. As the Sutton and James study documented, the need for this approach is widely acknowledged. The inadequacy of law enforcement indicators alone was recognised by the predecessor of this Committee and the Board of Control of the National Police Research Unit (see p. 6 & Sutton & James 1996, 1-4). In spite of this, law enforcement agencies and others still rely on traditional performance indicators of the number, volume and type of illegal drug seizures and the number and type of drug-related arrests and convictions.

58. In fact, it is accepted even in law enforcement circles that more often than not the level of seizures reflects the amount of drugs available. In the absence of contrary market indicators and given a constant level of law enforcement effort, a high level of seizures points to greater availability. As explained in a West Australian parliamentary report: “seizures of drugs by law enforcement agencies . . . can provide an important insight into the actual trends in illicit drug production and trafficking” (WA 1997, v.1, §3.2.4, p. 61). Thus, police intelligence has acknowledged that: “While seizure rates do not necessarily correspond with production, they can be a good indicator of production trends” (Gordon 2001, 18). Research agencies regularly cite rising trends in the rate of seizure as evidence of greater availability (e.g. IDRS 2001, 67). In fact, the officially funded study of the 2001 heroin shortage acknowledges that the annual weight of heroin seized is “an indication of the amount of heroin imported” (Degenhardt *et al.* 2004a, 45-46).

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59. Thus, if law enforcement is effective in the long term in reducing supply one would expect to see a steady decline in the level of seizures. This is no different to the rabbit trapper. An abundance of rabbits caught shows an abundance of the problem. The number caught will have fallen substantially by the time it comes to the search for the last pair and their warren.

60. It is therefore of concern that the Attorney-General and the Australian Federal Police rely on the misleading indication of seizures alone. For example, the Attorney-General recently cited levels of seizure as an indicator of successful supply reduction:

“In the last financial year over 11 tonnes of illicit drugs were seized by Australian law enforcement officers, preventing a large amount of those products from reaching our community” (H of R, *Hansard*, 18 August 2005, 38).

61. In 2000-01 the Australian Federal Police introduced a benchmarking system that compared the Australian seizure rate of various drugs per million of population with the rate of 18 European and North American countries. The AFP’s report for that year contains the following conclusions of this exercise:

“In this period, AFP:

- heroin seizures increased from 8.3 kg per million residents to 28.1;
- cocaine seizures increased from 1.1 kg per million residents to 16.6; and
- MDMA seizures increased from 1,125 tablets per million residents to 16,890.

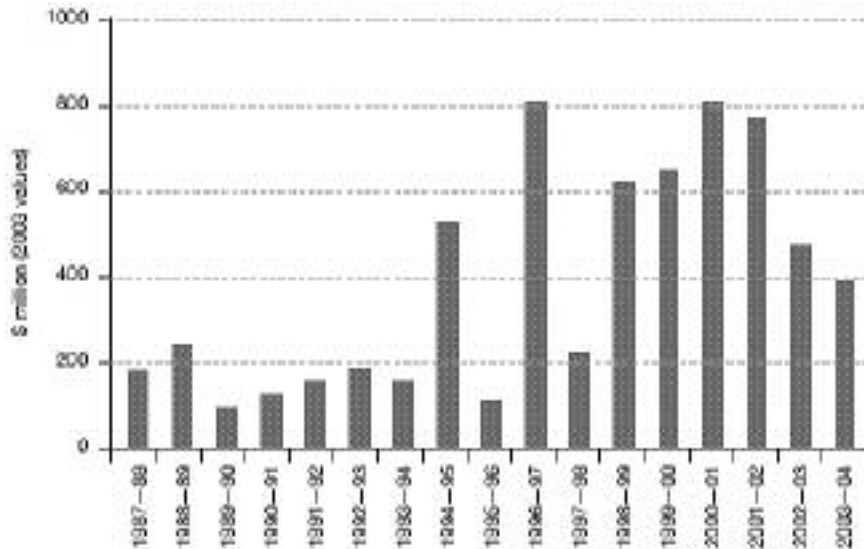
“Results for AFP effectiveness indicated that between 1995 and 1998, the AFP moved from:

- 10th place to 2nd with respect to heroin ;
- 15th place to 12th with respect to cocaine; and
- 11th place to 5th with respect to MDMA” (AFP 2001, 20).

62. The AFP has since built upon this benchmarking system to produce what it terms as a “drug harm index”. It attributes a money value to “domestic and international drug seizures destined for Australia where the AFP played a significant role”. This value is derived from the costs of harm converted to current dollar values of the Collins and Lapsley study of the social costs of drug abuse in Australia in 1998-9. The aggregate costs of the Collins and Lapsley study are divided in accordance with set proportions between particular drugs (AFP RN5 2004). The following chart results from this exercise:

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Figure 2: AFP Drug Harm Index



SOURCE: AFP 2004, 54.

63. The report that contains this chart states that “AFP seizures of illicit drugs saved the Australian community approximately \$389.6 million, similar to the impact each year since additional funding for illicit drug investigations under the National Illicit Drugs Strategy (NIDS) was introduced in 1998” (AFP 2004, 54). None of this analysis has any regard to drug market indicators; it is based upon seizures alone. As a result conclusions drawn from it are little more than mirages built on wishful thinking.

64. That seizures alone are incapable of showing the effectiveness of law enforcement is illustrated by reference to cocaine. The cocaine market in Australia has been small and what there is, in a large measure, has been confined to New South Wales. In the words of the Australian Illicit Drug Report for 1997-98: “The cocaine market has traditionally been relatively small – especially when compared with the heroin market”. It added that “there now appears to be a trend towards cocaine use in some areas” (AIDR 97-98, 83). The reason it ranked low before 2000 on the basis of a seizure rate per unit of population was almost certainly because there was relatively little of it around to seize. Indeed the same AFP report appears to admit this when it states that “Cocaine use in Australia has, until recent years, had a low profile compared with other illicit drug abuse” (AFP 2001, 21). The heroin drought coincided with a big increase in cocaine in New South Wales. On the basis of its benchmarking system the AFP counts this setback as a success:

“Prior to 2000, the AFP did not compare as well in terms of cocaine seizures or the level of targeting by syndicates. The AFP’s rate tended to be among the lowest when compared to the EU and North American nations. In 2000,

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however, the AFP's performance placed it above the 1998 median for the EU and North America" (AFP 2001, 20).

65. The benchmarking system could just as well give a misleading impression that the situation is worse than it is. In a situation of less heroin being sent to Australia during the heroin drought seizures were likely to decline (which figure 11, p. 37 seems to show happened in early 2001). This would reduce the ranking of Australian law enforcement compared to law enforcement in the rest of the world that did not experience a heroin shortage.

66. Asserting a community saving based on a dollar value of harm that would have ensued had the seized drugs reached the community compounds the irrationality if market indicators of availability, price, purity and the like show that the market is fully supplied. Seizures, like taxation, become a cost of doing business and it is a cost that traffickers have some degree of insurance against if law enforcement does manage to reduce supply. In the words of a confidential British report that recently became available:

"Because upstream UK suppliers enjoy high profits, they are more able to absorb the cost of interception. Thus upstream seizures may temporarily impact street availability, but are unlikely to threaten the viability of any individual business" (UK SU Drugs Project 2003, 82).

V. APPLICATION OF DRUG MARKET INDICATORS TO PERFORMANCE MEASURES OF THE ACC

67. This submission has sought to explain how it is possible to give effect, in the area of drug law enforcement, to the recommendations in the submission of Families and Friends for Drug Law Reform of April this year on the 2003-04 annual report of the ACC. In that submission we recommended that:

The performance criteria should not reflect mere activity but instead whether there has been meaningful progress towards the achievement of substantive objectives; and

When measures of law enforcement activity such as the levels of drug seizures are provided, the annual report should also include an assessment of the extent to which this activity impacts on the overall level of criminal activity involved.

68. The alternative to taking such steps is to plough ahead without regard to the impact of law enforcement activities on broader public policy objectives. Indeed, meaningful performance criteria are also essential from the narrower point of view of establishing law enforcement priorities. Sutton and James made these points as well. There is value, they wrote, "... in enabling research to step back and make general assessment. Without such stocktaking it will be impossible for Australia to clarify what long term strategies must be pursued if drug law enforcement is to be both cost effective and in the general social interest." (Sutton & James 1996, 117). "No system," they continue, "can be considered totally rational when a key measure of its impacts - which in the case of supply-reduction always will be price, availability and

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patterns of use of illicit drugs 'on the streets' - is not being used in systematic ways to assess progress and reset priorities” (*ibid.*, 123).

69. The ACC is in an even better position than the NCA was to make the necessary assessments. Indeed, it is the best position of any law enforcement agency in the country to do so. This is because it incorporates the intelligence functions of the former Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments and is a meeting point of all Australian law enforcement agencies. It should be made clear that such assessments are expected of the ACC as part of its first function enunciated in s. 7A of the *Australian Crime Commission Act 2002*, namely:

“to collect, correlate, analyse and disseminate criminal information and intelligence and to maintain a national database of that information and intelligence”.

What is more, the evaluation of drug crime having regard to market indicators should be encompassed by the obligation on the ACC to include in its annual report information on patterns or trends and the nature or scope of criminal activity. Under s. 61(2)(b)

“A report by the Chair of the Board under this section in relation to a year shall include . . . a description, which may include statistics, of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the ACC during that year in the performance of its functions”.

70. It is also a function that needs to be performed as part of the 2004-2009 National Drug Strategy to which all governments in Australia have committed themselves. “Harm minimisation”, which is reaffirmed in the current national policy, is proclaimed to be “a comprehensive approach to drug-related harm, involving a balance between demand reduction, supply reduction and harm reduction strategies”. The supply reduction arm encompasses “supply reduction strategies to disrupt the production and supply of illicit drugs, and the control and regulation of licit substances” (NDS 2004, 2).

A. PERCEIVED OBSTACLES TO APPLICATION OF DRUG MARKET INDICATORS TO PERFORMANCE MEASURES

71. Three possible obstacles to undertaking the evaluation could be a sense that:

- (a) evaluation of supply reduction measures having regard to drug market indicators is of little or no operational relevance;
- (b) it involves the gathering and evaluation of non-law enforcement data; or
- (c) the evaluation may be politically sensitive.

1. Perceived limited operational relevance of the evaluation

72. The answer has already been given to the objection that the evaluation of supply reduction measures having regard to drug market indicators is of little or no operational relevance. To quote Sutton and James again, it must be done if “[drug] law enforcement is to operate as a rational system which systematically monitors

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intended and unintended effects” (Sutton & James 1996, 124). As part of this, the evaluation is necessary to set priorities to ensure that costly law enforcement resources are to be deployed to most effect.

73. Even so there are different perceptions of what is relevant. Officers in the AFP charged with detecting and disrupting international trafficking to Australia may see little immediate relevance to their work in the price that a psychotic young man has paid for crystal meths on which he has been bingeing. Similarly, the constable that had to restrain and arrest that young man for assault on a passer-by may find insight into the working of the illicit drug market of no relevance to keeping the peace on the street. Operational issues dominate the concerns of law enforcement personnel and part 2 on criminal intelligence issues of the current annual report of the ACC reflects this. There may be a problem of perception of relevance akin to the story of the blind men who gain a completely different impression of an elephant by virtue of the part of it that they each happen to feel. Bringing together the whole of the picture is a challenge for management as is implied in the following statement by Sutton and James of the problem as they found it in the mid 1990s:

“The specific mandates of the different agencies understandably mean that each agency will reflect upon its performance in relation to its own mandate. As a consequence, the impact of each agency’s work on other parts of the drug enforcement system are neglected. For ACS personnel, the investigation of the organisation of drug importations is not formally their business, and so the impact of barrier seizures upon drug organisations is not their concern. For AFP regional enforcers, the nature and extent of drug activity on the streets is largely seen as a matter for the State police, and so the impact of AFP investigation of organised importation upon street drug activity is not their concern. For AFP strategic analysts, domestic drug demand indicators are peripheral or irrelevant to the central concerns of, say, monitoring heroin production patterns in the Golden Triangle or assessing the structural connections between different criminal organisations.

“While it is understandable that agencies concentrate upon their performance in relation to their specific mandates, the ultimate consequence is that the impacts of their activities upon the illicit drug market as a whole are neglected, and the necessary monitoring of trends in the drug market falls into the gaps between the different mandates of the agencies. At the same time, the capacities of agencies to assess their impacts even in terms of their own specific mandates are seriously limited” (Sutton & James 1996, 103).

2. Gathering and evaluation of non-law enforcement data

74. There are at least two answers to the possible objection that the ACC is not qualified to undertake the gathering and evaluation of what is essentially economic market information, involving survey and statistical skills. In the first place, as the early part of this submission sought to show, much market information is currently being gathered and analysed by a number of the many Australian drug research institutions such as the National Drug and Alcohol Research Centre in Sydney, the Australian Institute of Health and Welfare in Canberra, the National Drug Research Institute in Perth, Turning Point Drug and Alcohol Centre in Melbourne, the Institute

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of Criminology in Canberra, the Cancer Council Victoria, the WHO Collaborating Centre for Research in Treatment of Drug and Alcohol Problems at the University of Adelaide and the National Centre for Epidemiology and Population Health at the Australian National University. There is scope for the ACC with its unrivalled access to law enforcement information to work with such institutions to arrange, for example, for more frequent or localised sampling of market indicators to assess the impact of particular law enforcement interventions or suspected developments such as the launch of a new designer drug of which law enforcement intelligence has obtained notice.

75. The submission of Families and Friends for Drug Law Reform in April this year also pointed to the importance of having good estimates of the size of the Australian drug market. This information would allow an accurate judgement of the bearing of arrests, seizures and other law enforcement successes on the level of availability. Victorian drug law enforcement officers told Sutton and James that “[w]ithout a base-line of illegal drug supply in the State, it was understood that volume of drugs seized could not be used as a reliable indicator of supply reduction” (Sutton & James 1996, 42). The same applies to border control. “Indication of successful drug interdiction at the ACS [Customs] barrier depends upon knowledge (or at least estimates) of the ratio of detected to undetected shipments; such information does not exist” (*ibid.*, 103). The discussion of Sutton and James on this last point bears quoting in full:

“Without a base-line of total illicit drug supplies entering Australia, drug detection rates cannot tell us anything about the extent to which ACS [Customs] activities are having an effect upon drug supplies. Indeed, interviewees suggested to us that they had no idea of the extent of the 'leakage' rate (undetected to detected drug imports). As a consequence, the extent of detection 'hits' was considered critical to a sense of achieving interdiction objectives. If detection rates go down (as they had at passenger processing at Melbourne Airport in the financial year of our interviews compared with the previous year), then there is a sense of loss of achievement. We were told that ACS enforcers could not assume that such declines in detection rates were functions of the deterrent value of ACS work, as they had no way of measuring this. There is a fundamental irony here; if the leakage rate remains the same, increased detection rates may well indicate an increase in overall illicit imports; this can hardly constitute an effective interdiction impact. Yet the organisational culture of enforcement is such that 'hits' remain the only tangible yardstick of their efforts.

“There were no endeavours that we could discover to establish formal measures which might relate to the quantity of and demand for overall drug importations.” (Sutton & James 1996, 89).

3. Using drug market indicators to evaluate the impact of law enforcement may be politically sensitive

76. Of course drug policy is politically sensitive but anyone with the interests of our country at heart and the welfare of us, its people, would prefer light along the difficult road we are travelling with drugs rather than proceed further in the darkness

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of deliberate ignorance. Any number of difficulties can be invented to excuse using drug market indicators to evaluate the impact of law enforcement – excuses such as the likelihood that the indicators will always be approximate rather than exact. These should be seen for what they are – self-serving excuses. Want of certainty can always be relied upon as an excuse for not taking an unpalatable course of action even though decisions are regularly taken in government on the basis of far flimsier evidence.

77. In addition to this obvious political sensitivity there is also the need for the Committee to ensure that there is the administrative space for the ACC to undertake the evaluation. The April submission of Families and Friends for Drug Law Reform referred to the importance of independence of the ACC for its effectiveness and credibility as an intelligence gathering, assessing and operational law enforcement agency. There is a potential institutional difficulty in the ACC carrying out the evaluation recommended here. This lies in the fact that some of the members of its Board may have committed their own organisation to evaluation procedures that would be discomfited by the recommended approach to evaluation. As discussed above (pp. 17ff), one such organisation may be the AFP whose commissioner chairs the ACC Board. A special responsibility therefore falls on this oversight Committee to ensure that the evaluations recommended be carried out in professional independence.

VI. EVALUATION OF OTHER ASPECTS OF DRUG LAW ENFORCEMENT

78. This submission has concentrated on the evaluation of one aspect of drug law enforcement – its effectiveness in reducing the supply of drugs. This is not the only impact of drug law enforcement much less the only intended impact. Another intended effect is to deter people from using illicit drugs. This and the harms associated with drug law enforcement are the subject of a recent report entitled: *The role of police in preventing and minimising illicit drug use and its harms* (Spooner *et al.* 2004). Families and Friends for Drug Law Reform has a vital interest in these other aspects of drug law enforcement. Indeed the experience of many of our members has been a bitter one. The harms to drug users associated with the criminal processes and the associated illicit status of the drugs has been extensively documented. The report of a committee inquiring into serious drug offences contains as good a summary as any:

“ . . . it has become increasingly apparent that significant elements in the harm which results from habitual use of illicit drugs are a consequence of criminal prohibitions and their effects on the lives of users. Quite apart from the risks of arrest and punishment, there are risks to health or life in consuming illicit drugs of unknown concentration and uncertain composition. The circumstances in which illicit drugs are consumed and the widespread practice of multiple drug use add to those risks. Medical intervention in emergencies resulting from adverse drug reactions may be delayed or denied because associates fear the criminal consequences of exposing their own involvement. The illicit consumer’s expenditure of money, time and effort on securing supplies may lead to the neglect of other necessities. It will often

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impose substantial costs on the community, and the user, if the purchase of supplies is funded from property crime. Further social costs result from the stigmatisation of habitual users as criminals and their alienation from patterns of conformity in employment, social and family life.

“Risks are inherent, of course, in habitual use of most, if not all, recreational drugs. But criminal prohibitions amplify those risks. They amplify, for example, the risk of death from overdose” (SCAG 1998, 6-7).

79. Sisters, brothers or children of some of our members would be alive today if law enforcement had not been what it was. We therefore do not want it to be assumed that the objective of supply reduction should be the be all and end all of drug law enforcement. It is disproportionate and wrong that the life of one young person should be sacrificed against the possibility that in so doing another young person may not be exposed to a drug that would not lead to death if other available measures were taken. Much less is it morally acceptable that drug law enforcement with these consequences should be undertaken with a principal objective – supply reduction – that it does not achieve.

5 September 2005

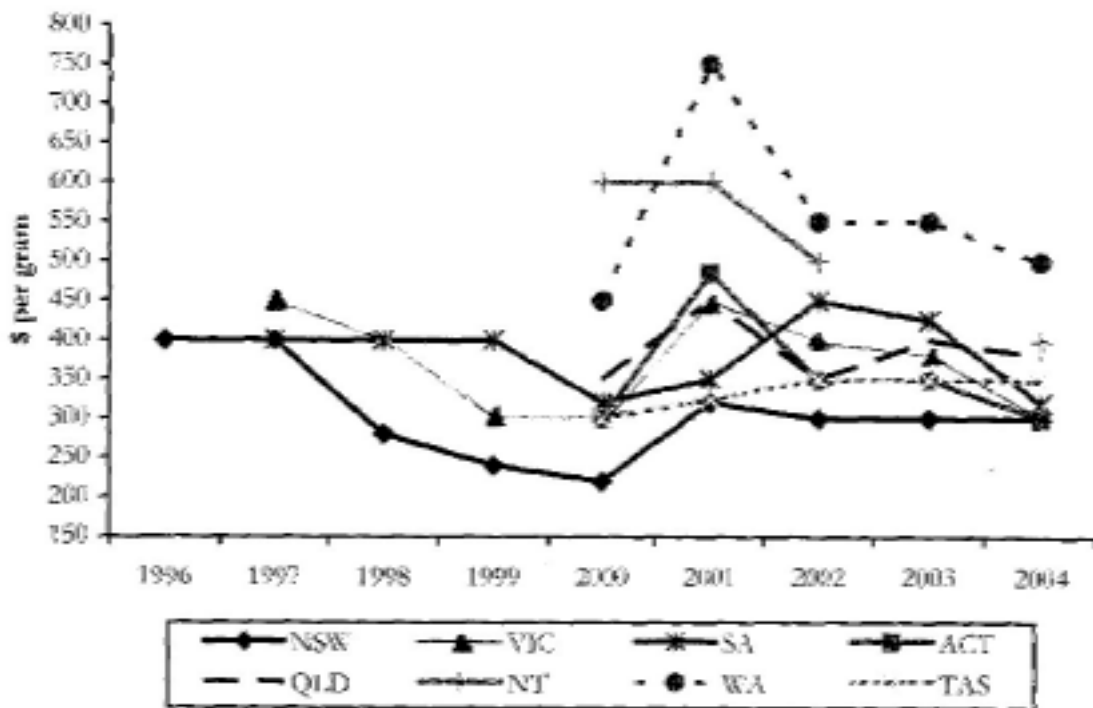
APPENDIX 1

DRUG MARKET AND DRUG LAW ENFORCEMENT INDICATORS

DRUG MARKET INDICATORS

1. The following is a selection of sources of information that bear upon the size of the illicit drug market, namely, drug prices, user reports of drug availability, the purity of drugs seized at street level, the number of people who have used drugs recently and the age that people first used illicit drugs.

Figure 3: Median price of a gram of heroin by jurisdiction, 1996-2004



SOURCE: IDRS 2004, 24 from IDRS IDU interviews

Drug prices

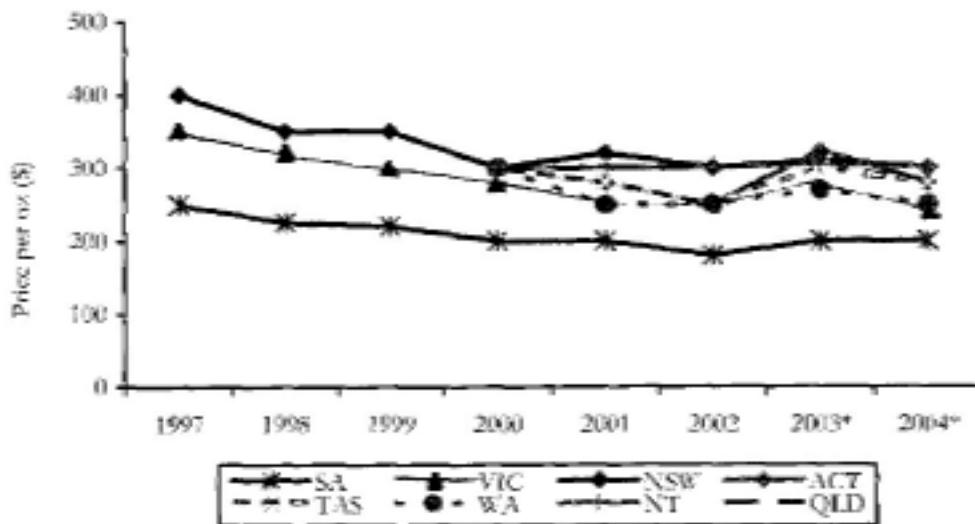
2. The retail price is a useful indicator of the levels of supply and demand. Information is collected from drug users in the course of a regular annual survey in all jurisdictions as part of the Illicit Drug Reporting System (IDRS) and the Party Drugs Initiative (PDI) co-ordinated by the National Drug and Alcohol Research Centre of the University of New South Wales. The foregoing and following graphs are examples of price changes over several years for heroin and cannabis. These graphs reflect large retail quantities. The small retail measures of a cap for heroin and a deal of cannabis (which is approximately a gram) are even more sensitive to market

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pressures. For example, from June 2000 to June 2001 the price of the standard street measure of a cap doubled in New South Wales. This followed stable or decreased prices since the first survey in 1996 (IDRS 2001, 42-44; Darke *et al.* 2002, 11-12 & similarly Degenhardt *et al.* 2004a, 43-44). It is unclear whether the prices are nominal or have been adjusted for inflation. If the former, the decline in price of cannabis is even more marked.

3. Law enforcement agencies in different jurisdictions also collect information on prices of different quantities of drugs. Annual returns are reported by the ACC itself in its Illicit Drug Data Reports (e.g. IDDR 2003-04 table 33 ff at pp. 18 ff).

Figure 4: Price of an ounce of cannabis by jurisdiction, 1997-2004



SOURCE: IDRS 2004, 86 from IDRS IDU interviews.

User reports of drug availability

4. As part of the Illicit Drug Reporting System (IDRS) and the Party Drugs Initiative (PDI) drug users are regularly surveyed on how easy it is to obtain drugs and whether this has changed in the last six months (e.g. IDRS 2004, 24-25 (heroin), 52 (amphetamine type stimulants), 74 (cocaine), 88-89 (cannabis) & PDI 2004, 29-30 (ecstasy) & 59-61 (amphetamine type stimulants)). Changes in the length of time taken by users to procure drugs is another indicator that is used from time to time.

Drug purity

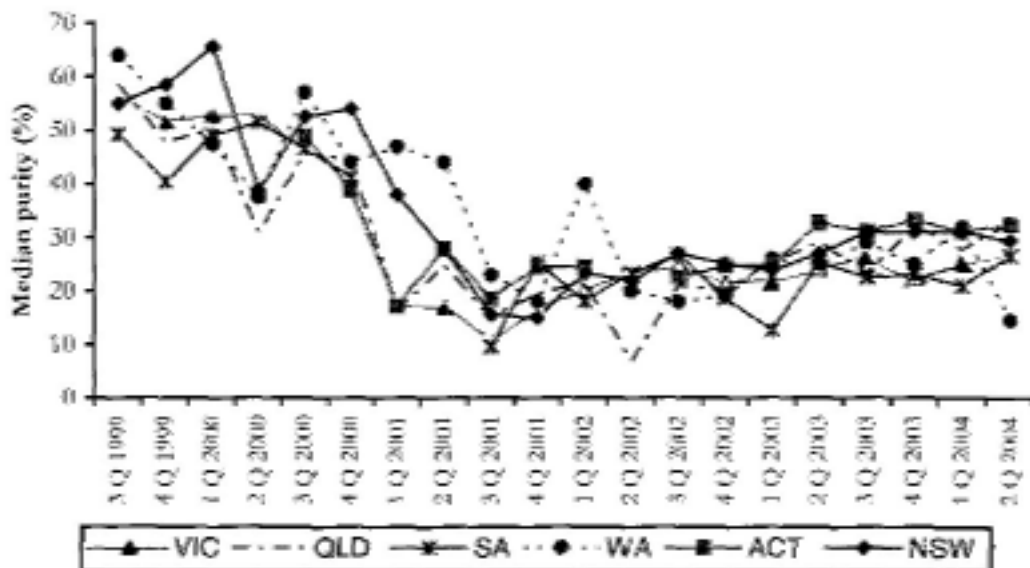
5. Purity levels of drugs at street level are a good indicator of supply. Drugs that are imported in concentrated form to reduce bulk will generally be adulterated with other substances to maximise profits. The greater the degree of adulteration, the

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greater it is likely that there is pressure on supply. While lower purity spells good news for supply reduction, it can have negative health consequences for users. This is the case not only with injected drugs like heroin but also when cheaper and more dangerous drugs are mixed with swallowed drugs like ecstasy as very frequently happens.

6. For a number of years now state police forces have analysed the purity of seizures of heroin and, more recently, some other drugs. The results of these are reported in the ACC's own *Illicit drug data report* and, before that, in the *Australian illicit drug report* of the Australian Bureau of Criminal Intelligence.

Figure 5: Median purity of heroin seizures analysed by State police by jurisdiction, 1999-2004

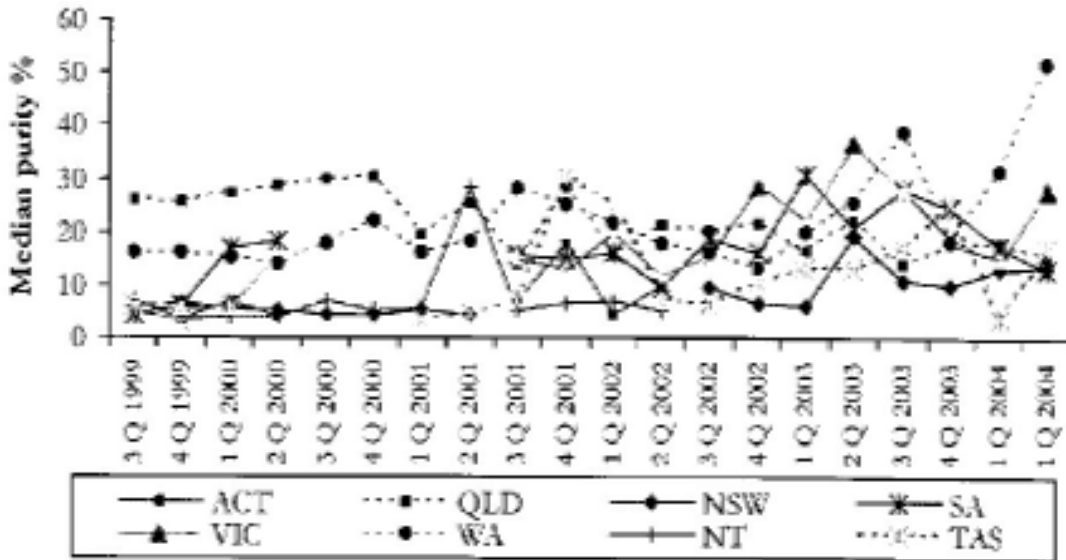


SOURCE: IDRS 2004, 28 from ABCI 2000, 2001, 2002, ACC 2003, 2004.

7. This chart of purity levels of heroin that was seized illustrates the sensitivity of measurements of purity to availability. The sharp decline from the fourth quarter of 2000 coincides with the onset of the heroin drought. Purity levels stabilised at about 20% by the end of 2001. There is a suggestion of an increase in purity since then towards 30%. In contrast the following graph of the purity of methamphetamine seizures by state police shows “no clear trend . . . at a national level although overall, the median purity generally remains low at less than 35%, except in WA where the purity reached a high of 52% in the second quarter of 2004” (PDI 2004, 57).

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Figure 6: Median purity of methamphetamine seizures analysed by State police by jurisdiction, 1999-2004

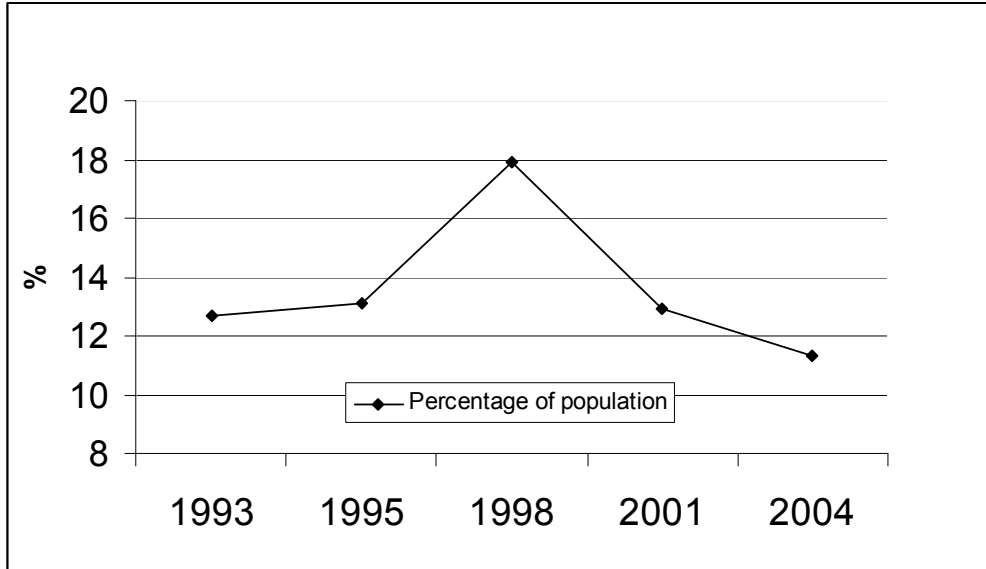


SOURCE: PDI 2004, 58 & IDRS 2004, 56 from ABCI & ACC.

Number of recent drug users

8. Household surveys undertaken about every three years give an indication of the number of people who are currently using illicit drugs. The following charts concerning the more commonly consumed illicit drugs – cannabis, speed and ecstasy – report the percentage of the population that has used them in the previous 12 months. Household surveys are less able to identify reliably trends of usage of lesser used illicit drugs like heroin and cocaine.

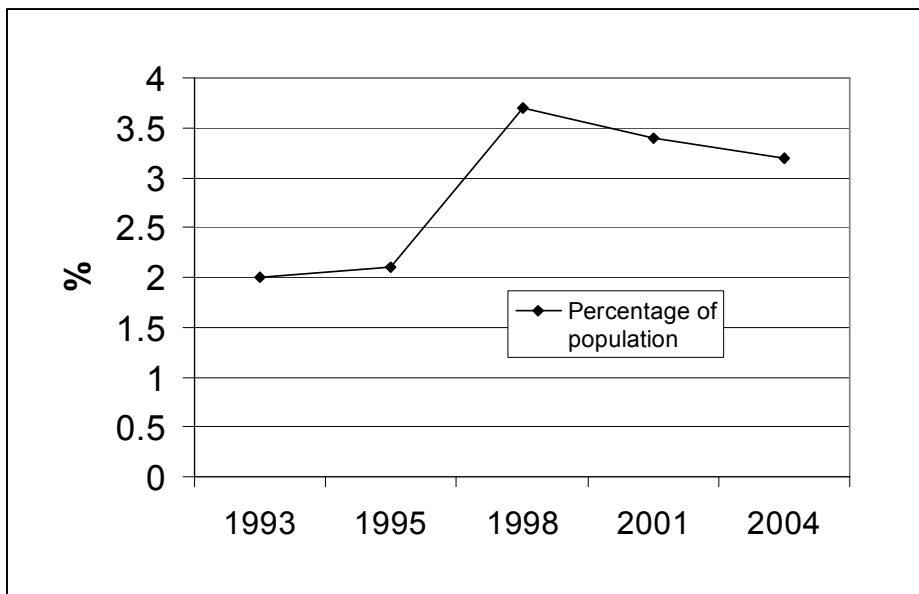
Figure 7: Percentage of population 14 years and over who used cannabis in past 12 months



SOURCE: AIHW 2005 Table 2.1, p. 3.

9. The foregoing graph shows a distinct rise and decline in recent usage of cannabis. Even so, cannabis is still used by a large proportion of the Australian population. The following graph concerning amphetamine-type stimulants is probably a less accurate indicator in that it embraces both old forms of amphetamine powder and the newer, much more potent methamphetamines.

Figure 8: Percentage of population 14 years and over who used

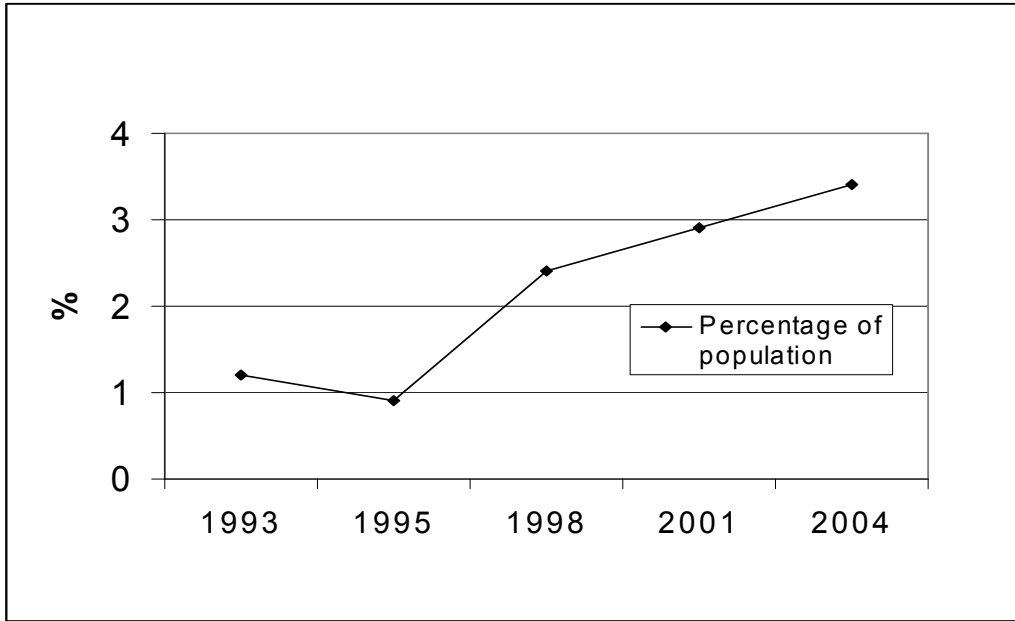


meth/amphetamine (speed) in past 12 months

SOURCE: AIHW 2005 Table 2.1, p. 3.

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Figure 9: Percentage of population 14 years and over who used ecstasy in past 12 months



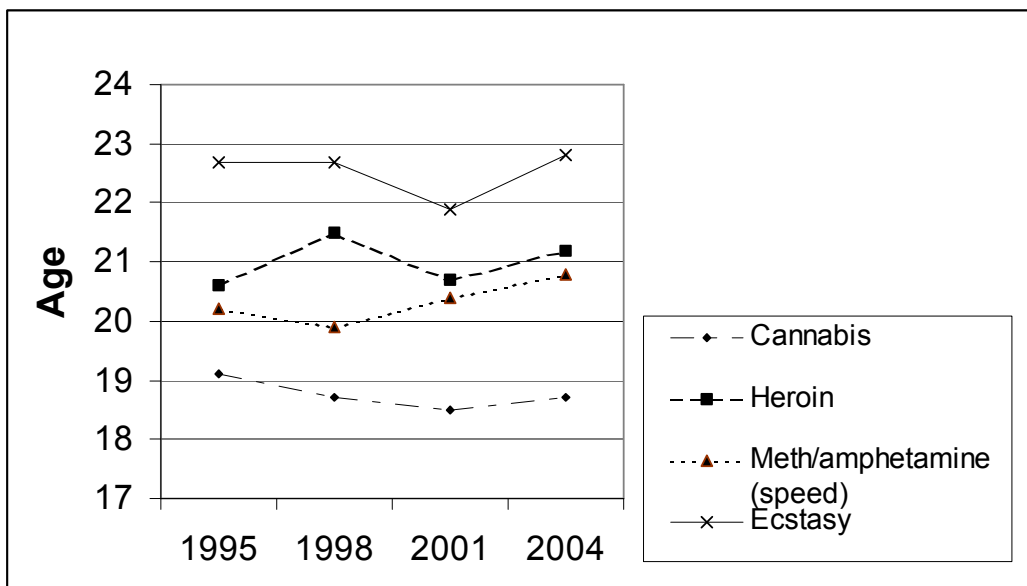
SOURCE: AIHW 2005 Table 2.1, p. 3.

10. The steady increase in ecstasy would be accounted for in part by greater use of methamphetamine or amphetamines because many tablets sold as ecstasy contain these other ingredients in whole or in part.

Age of initiation of drug use

11. The periodical household surveys also cover the age of first use of illicit drugs. It is most important to have drug strategies that effectively discourages the uptake of drugs by children in their early teens. In conjunction with other indicators, an increase in the mean age of first use may reflect the implementation of effective supply reduction strategies and a reduction may suggest ineffective strategies. To determine whether this is so or whether a change results from other factors such as the suppression of demand will depend on an assessment of all indicators.

Figure 10: Mean age of initiation of lifetime drug use 1995-2004



SOURCE: AIHW 2005 Table 2.3, p. 5.

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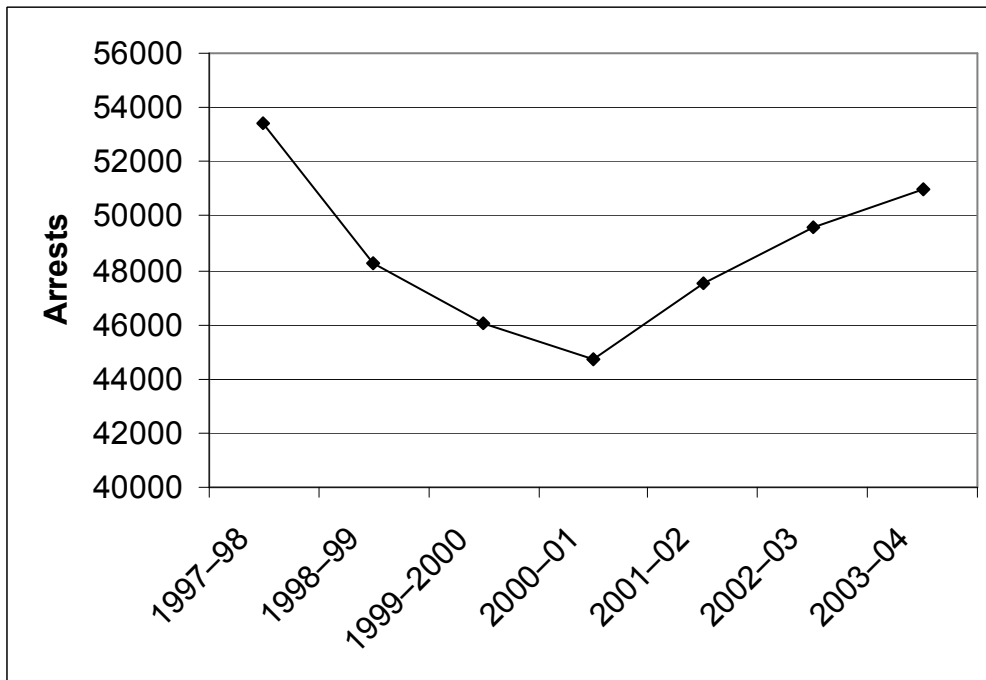
MEASURES OF LAW ENFORCEMENT

12. The following are examples of law enforcement “catch” indicators that are methodically collected namely, drug arrests, clandestine laboratories detected and the quantity of drugs seized.

Arrests

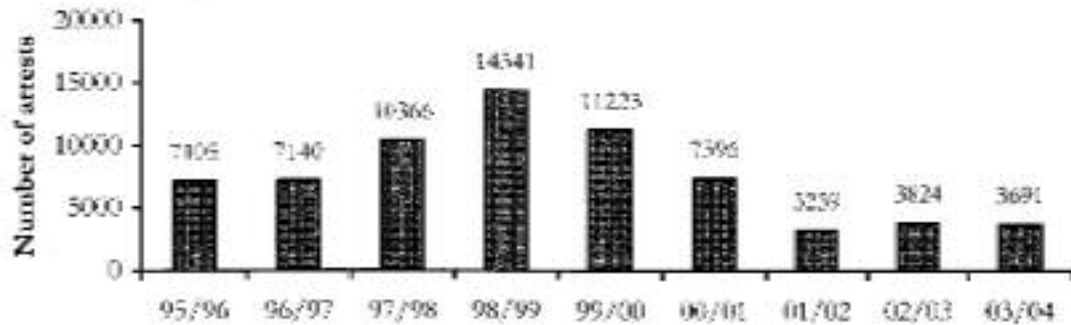
13. Statistics on arrests from law enforcement agencies across Australia are regularly collated by the Australian Crime Commission (e.g. IDDR 2003-04 tables, tables 17 ff p. 2 ff). The vast majority of these concern users who are caught for possession or for dealing in small quantities to finance their habit. The statistics thus reflect law enforcement activity at the retail level. If that level of activity remains constant the number of arrests is likely to reflect the level of use of the drug. Consistently with its status as the most used illicit drug, cannabis arrests as shown in the following graph outnumber all other drug arrests. This is followed by a graph of heroin arrests. Whereas cannabis arrests declined and now have rebounded, heroin arrests rose from 1996-97 to 1998-99 and then declined to 2001-02. In this sense the arrest numbers reflect opposite trends in law enforcement activity for each of these drugs.

Figure 11: Cannabis arrests 1997-98 to 2003-04



SOURCE: IDDR 2003-04 cannabis table 9, p. 6.

Figure 12: Total number of heroin and other opioid consumer and provider arrests, 1995/96 – 2003/04



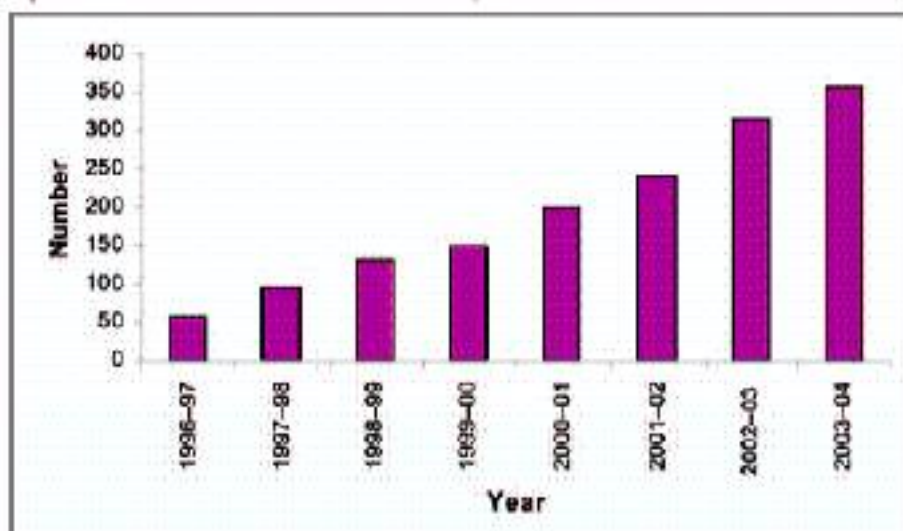
SOURCE: IDRS 2004 33 based on ABCI, 95-01 & ACC 01-04.

Clandestine laboratories detected

14. Estimates in source countries of opium and cocaine crops both eradicated and detected are regularly reported by international and other agencies but there appears to be no standard practice in Australia of estimating cannabis eradications in Australia - the only illicit drug cultivated here in any significant quantity.

15. Laboratories detected constitute the equivalent measure for synthetic drugs – principally of amphetamine-type substances. Statistics of detections of these are gathered. The following graph of detections over the past eight years shows a steady increase.

Figure 13: Total national clandestine laboratory detections, 1996–97 to 2003–04



SOURCE: IDDR 2003-04 amphetamines, table 6, p. 10.

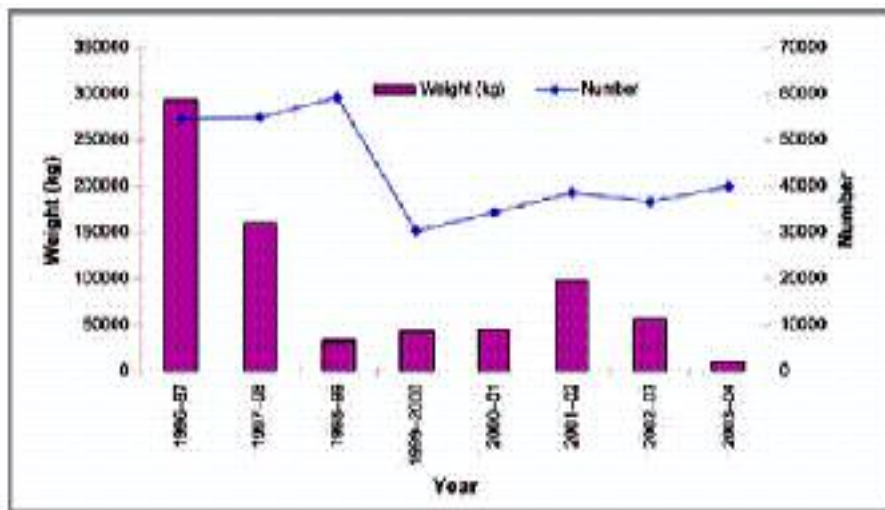
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Drugs seized

16. The quantity of drugs seized by law enforcement agencies is the most cited example of law enforcement success against illicit drugs. Large seizures of imported drugs such as heroin and cocaine are made at the border just as the largest quantities of domestically produced illicit drugs such as cannabis are made within Australia. For drugs produced in big quantities both overseas and domestically, the changing balance between domestic and border seizures can reveal changing patterns. This is particularly so for synthetic drugs – amphetamine type substances and drugs marketed as ecstasy.

17. Comparison between different catch indicators can also be revealing. The following graph of cannabis seizures shows a huge reduction since the mid-1990s in the quantities seized and a smaller reduction in the number of seizures. This differs markedly from the large decline followed by a large rise over the same period in the number of cannabis arrests in Figure 11 at p. 32.

Figure 14: National cannabis seizures by weight and number, 1996-97 to 2003-04

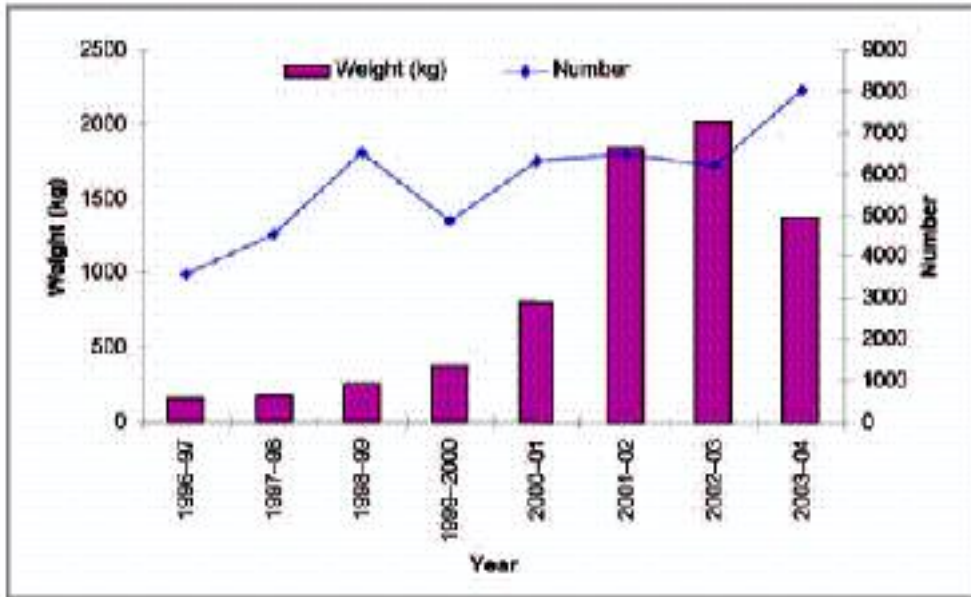


SOURCE: IDDR 2003-04 cannabis, figure 13, p. 5.

18. The following table shows the aggregation of seizures within states. It includes phenethylamines (principally ecstasy) because not all jurisdictions identify these separately. The increase in seizures of these drugs corresponds with the increase in detections of clandestine laboratories shown in figure 13 at p. 33.

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Figure 15: Amphetamine-type stimulants (including phenethylamines) seizures, by weight and number

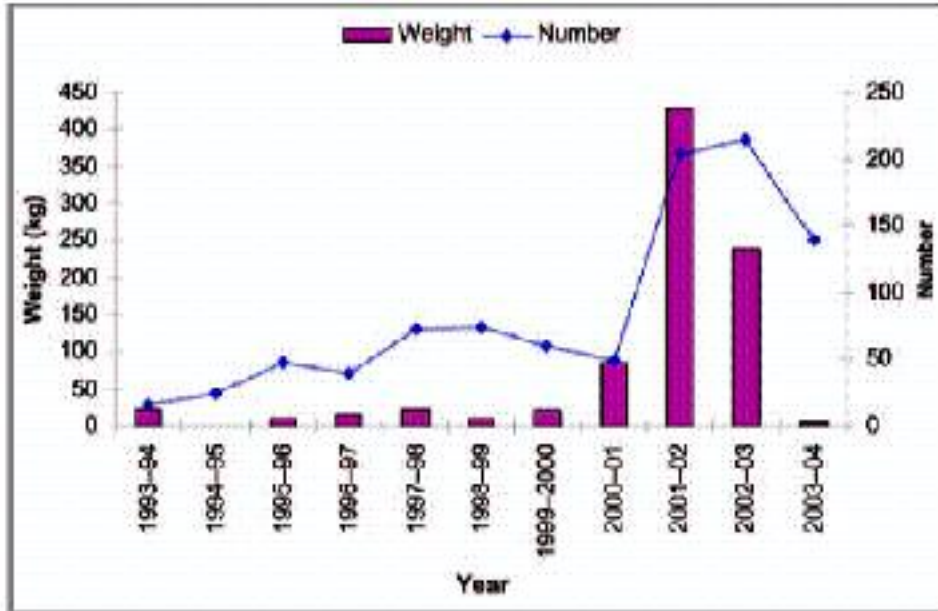


SOURCE: IDDR 2003-04 amphetamines, table 7, p. 13.

19. In contrast to the increase in detections of methamphetamine-type stimulants domestically, the following graph shows a dramatic increase and then decline in the amount of these drugs seized at the border over the past four years. The one of that (figure 17 at p. 36) does not show a decline over the past two years in the quantity of phenethylamines seized at the border.

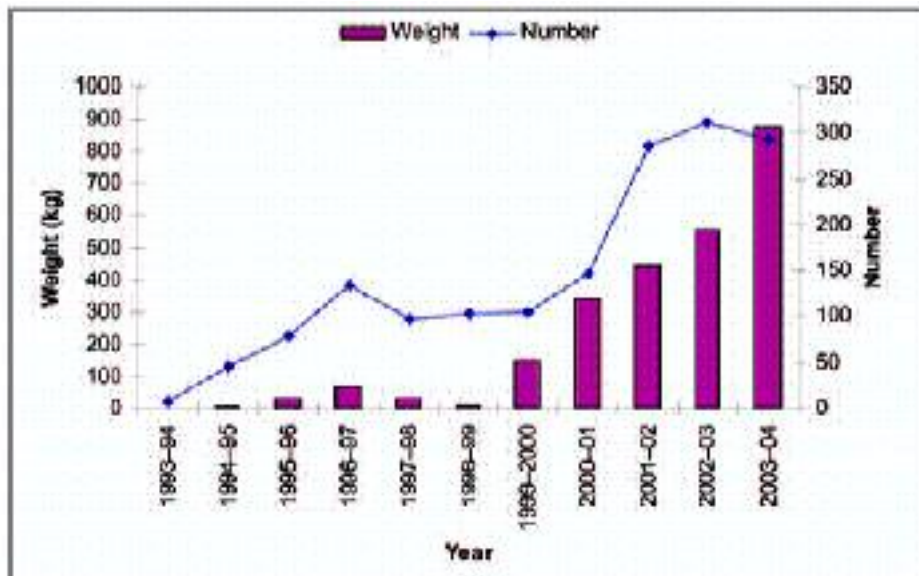
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Figure 16: Number and weight of detections of amphetamine-type stimulants (excluding phenethylamines) at the Australian border 1993–94 to 2003–04 (Australian Customs Service)



SOURCE: IDDR 2003-04 amphetamines, figure 1, p. 4.

Figure 17: Number and weight of detections of phenethylamines at the Australian border, 1993–94 to 2003–04 (Australian Customs Service)



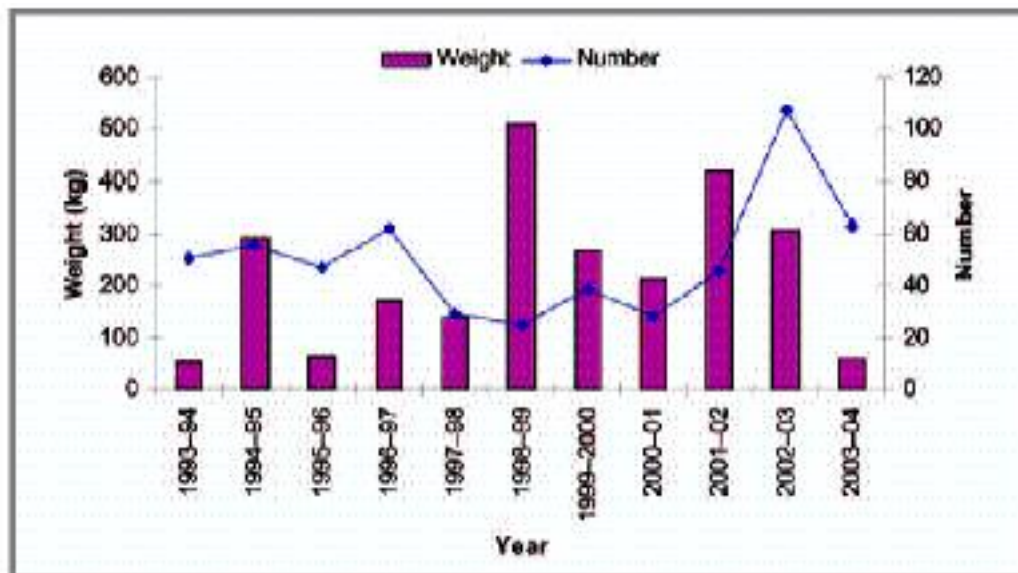
SOURCE: IDDR 2003-04 phenethylamines, figure 8, p. 6.

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20. For practical purposes, heroin is all imported. The level of border seizures shows a different pattern to the level of seizures of other drugs with large variations over a longer period. Substantial levels of heroin seized during the heroin drought from the beginning of 2001 are likely to have had a bigger impact on the market than the same level when heroin was, according to other indicators, in plentiful supply.

21. The following table of border seizures of heroin shows considerable fluctuation. The heroin drought was most intense in the first half of 2001. Relatively high levels of seizure continued for the two years from July 2001 but in the year from July 2003 there was a very sharp reduction.

Figure 18: Number and weight of detections of heroin at the Australian border, 1993–94 to 2003–04 (Australian Customs Service)



SOURCE: IDDR 2003-04 heroin, figure 14, p. 4.

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APPENDIX 2

GLOSSARY AND REFERENCES

GLOSSARY

ACC	Australian Crime Commission
AFP	Australian Federal Police
IDDR	Illicit drug data report
IDRS	Illicit Drug Reporting System
NCA	National Crime Authority
PDI	Party Drugs Initiative

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