Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

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AUSTRALIAN PSYCHEDELIC SOCIETY

ABN: 88 339 353 063
www.psychedelicsociety.org.au
info@psychedelicsociety.org.au
/AustralianPsychedelicSociety
twitter.com/AusPsychedelic

The Australian Psychedelic Society Inc.
info@psychedelicsociety.org.au
ABN 88 339 353 063

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Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Submission Regarding the *POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2023*

Submitted by Dr Samuel Douglas, on behalf of The Australian Psychedelic Society Inc., as authorised by the National Executive Committee.

Position Summary

The Australian Psychedelic Society (APS) supports in principle the Policy Objectives outlined under the section titled "*Expansion of police drug diversion program*" in the Explanatory Notes accompanying the ***POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2023*** *(*"the *Bill"*).

We believe, however, that the most effective way to bring the response to the personal use of drugs in line with a health focussed, harm reduction approach is to legislate so that both the possession and use of any amount of a dangerous drug or controlled substance, or things/implements associated with the use of such a substance, is not a criminal offence. This would involve changing several sections of relevant acts, particularly the omission of section 9 of the *Drug Misuse Act 1986*.

We believe that amounts possessed should not be used to determine whether possession of a drug or substance is a criminal offence. We believe that offences for supply or trafficking can be enforced based on evidence of such activities, irrespective of the amount possessed.

If the amount of a dangerous drug or controlled substance possessed is used to determine whether the drug or substance is for personal use, those amounts should be determined in consultation with alcohol and other drug health experts and people who use drugs. We believe the quantities specified in Schedule 3 of the *Drug Misuse Regulation 1987* are too low for most commonly used dangerous drugs for these amounts to be considered a reasonable prescribed quantity for determining whether possession of those substances is considered a minor drug offence. Failing to ensure that the prescribed quantities are

reasonable with relation to typical patterns of use of these substances will mean the proposed amendments will not achieve the stated policy objectives. Determining the prescribed quantities to be used to determine a minor drug offence should be done in consultation with alcohol and other drug health experts and people who use drugs.

These recommendations are in keeping with the recommendations of the NSW Government's *Special Commission of Inquiry into the crystal methamphetamine and other amphetamine type stimulants*[1]

In this submission we will outline some points of the *Bill* which we believe should be amended before the *Bill* is accepted and enacted:

1. There should not be a limit to the number of Drug Diversion Warnings a person must be offered under s378C of the *Police Powers and Responsibilities Act 2000* (henceforth referred to as "the *PPRA 2000"*). s378(1) should be omitted. Any person issued a drug diversion warning under this section should be offered a voluntary referral to a publicly funded alcohol and other drug treatment referral service, Drug Diversion Assessment Program or another approved drug education or treatment program.
2. Where the above is not implemented, there should not be a limit to the number of Drug Diversion Assessment Program referrals that must be offered to an individual by police under Division 5, s379. Section 379AA should be omitted entirely. s379(1)(b) should be omitted.
3. Where the above is not implemented, a court should be able to offer a drug diversion assessment program to an individual who has previously been offered or attended or participated in such a program. s122A(3A)(b) of the *Drug Misuse Act 1986* should be amended as such: "sections 379(1)(a), 379(1)(b) and (4) and 379AA(4) of that Act do not apply."
4. Where points 1 or 2 are not implemented, failing to attend or participate in a drug diversion assessment program should not itself be a criminal offence. s791 of the *PPRA 2000* should be amended accordingly, and s379AB(3)(b) should be omitted.
5. Those previously imprisoned for an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9D should not be excluded from the application of Division 5 of the *PPRA 2000*. s378A(1)(c) should be omitted.

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/AustralianPsychedelicSociety
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6. An admission of guilt should not be required for s122A of the *Drug Misuse Act 1986* to apply. s122A(2) should be omitted.
7. The possession of a thing used or intended to be used in connection with the use of a dangerous drug or restricted substance should not be a criminal offence. s10(2) of the *Drug Misuse Act 1986* should be omitted. s10(1) and s10A(1) should be amended to specify that the possession of such things is not covered by these sections. s378B(1)(b) of the *PPRA 2000* should be amended to remove reference to the above sections of the *Drug Misuse Act 1986*.
8. s378B of the *PPRA 2000* should be amended to clarify that where multiple dangerous drugs or restricted substances are possessed in amounts less than the prescribed amount, only a single minor drug offence is committed. Police should be specifically instructed on this point.
9. The matter that is the subject of the minor drug offence should not be forfeited to the State. This increases the financial burden on people who use drugs and increases the risk of harm to those individuals who may engage in high risk activities to replace the matter forfeited. Enacting this change requires amendments to several sections of the relevant legislation.
10. We do not support increasing the maximum possible sentence for a trafficking offence to life imprisonment.

Additionally we have some comments around the implementation of the *Bill* and other related matters:

1. Police should be directed to utilise all possible options to avoid laying charges against a youth for a minor drug offence, regardless of the youth's history of previous minor drug or other offences. Youth specific alcohol and other drug interventions should be offered to any youth who has committed a minor drug offence.
2. If the possession of a certain quantity of a dangerous drug or restricted substance remains a criminal offence, the maximum penalty for possession of drugs where supply or trafficking offences do not apply should be significantly reduced from the maximum penalties outlined in s9 of the *Drug Misuse Act 1986*. Custodial sentences should not be considered an appropriate response to possession of a dangerous

drug or restricted substance, and such responses are not supported by the majority of Australians surveyed in the 2019 National Drug Strategy Household Survey[2].

3. Permitting drug use to occur on a premises, where such use of the premises is not done for a profit to the occupier or those concerned in the management of the premises, should not be a criminal offence. If the possession and use of dangerous drugs and restricted substances remains a criminal offence under s9 of the *Drug Misuse Act 1986,* s11 should be amended to exclude offences under s9 of the *Act* unless such use of the premises was for the profit of the occupier or those concerned in the management of the premises. Doing so would not remove criminal penalties for permitting the use of a place for supply, trafficking or manufacturing of dangerous drugs or restricted substances.
4. Abolish the separation of schedule 1 and schedule 2 substances in the *Drug Misuse Regulation 1987*. This separation is not evidence based and adds unnecessary complexity to the law.
5. No out of pocket cost should be associated with participating in drug diversion assessment programs.
6. A suspicion of drug possession or use should not be considered a legal justification to question or search an individual where no reasonable suspicion of supply or trafficking offences exists.
7. It should not be an offence for a person to supply another person with a thing, including a hypodermic needle or syringe, intended to be used for the administration or smoking of a dangerous drug or restricted substance. s10(3) of the *Drug Misuse Act 1986* should be omitted and any other relevant legislation or regulation amended. Those found to have supplied a hypodermic needle or syringe without regard to the health and safety of others (e.g supplying a used needle) would still be committing an offence under s10(4) and/or s10(4A).

References

[1]Howard, D. (2020). *Special Commission of Inquiry into the crystal methamphetamine and other amphetamine type stimulants*. Retrieved from https://www.dpc.nsw.gov.au/publications/special-commissions-of-inquiry/the-special-commission-of-inquiry-into-the-drug-ice/

[2]Australian Institute of Health and Welfare (2020). *National Drug Strategy Household Survey 2019*. Drug Statistics series no. 32. PHE 270. Canberra AIHW. Retrieved from https://www.aihw.gov.au/about-our-data/our-data-collections/national-drug-strategy-household-survey/2019-ndshs