

Professor Dan Howard SC Commissioner of the Inquiry Special Commission of Inquiry into the Drug 'Ice', GPO Box 5341 Sydney NSW 2001 inquiry@iceinquiry.nsw.gov.au



Re: Submission into the Special Commission of Inquiry into the Drug 'Ice'.

Dear Professor Dan Howard SC,

Positive Life NSW (Positive Life) and the HIV/AIDS Legal Centre (HALC) welcome the opportunity to provide a submission into the Special Commission of Inquiry into the Drug 'Ice'.

Positive Life is the state-wide peer based non-profit organisation that speaks for and on behalf of people living with and affected by HIV (PLHIV) in NSW. We provide leadership and advocacy in advancing the human rights and quality of life of all PLHIV, and to change systems and practices that discriminate against PLHIV, our friends, family and carers in NSW.

The HIV/AIDS Legal Centre (HALC) is a not-for-profit, specialist community legal centre. We are funded to provide free and comprehensive legal assistance to financially disadvantaged people in NSW with HIV or Hepatitis-related legal matters, including law reform and community legal education. HALC delivers services to people from vulnerable social and cultural backgrounds, including people from the LGBTQI community, people suffering from mental illness, sex workers, injecting drug users and culturally and linguistically diverse (CALD) communities. HALC is the only full time funded HIV/AIDS specialist legal centre in Australia.

Background: In 2018, the Governor of NSW established the Special Commission of Inquiry into Crystal Methamphetamine ('Ice') and appointed Professor Dan Howard SC as the Commissioner of the inquiry. The Commissioner was asked to inquire and report on 1) the nature, prevalence and impact of crystal methamphetamine ('Ice') and other illicit amphetamine type stimulants (ATS); 2) The adequacy of existing measures to target Ice and illicit ATS in NSW; and 3) Options to strengthen NSW's response to Ice and illicit ATS, including law enforcement, education, treatment and rehabilitation responses.

Substance use, in particular crystal methamphetamine and illicit ATS, remains common among gay men, gay men living with HIV and other PLHIV in NSW. At Positive Life and HALC we acknowledge HIV-positive men are disproportionately more likely to report using crystal methamphetamine compared with HIV-negative men (27.4% vs. 8.7% in 2018) and any injecting drug use (15.4% vs. 2.5%). The prevalence of HIV and hepatitis C (HCV) co-infection in Australia is estimated to be 13.1%, with approximately 1,400 PLHIV co-infected in NSW with HIV/HCV in 2014. As Hepatitis NSW stated in their 2015 submission, "in Australia, the primary means of transmission for HCV remains sharing equipment which is used to inject drugs." The Commonwealth government has significantly invested in the elimination of HCV, which indicated co-infection rates in Australia has been reduced over recent years. 'People who inject drugs are a key population for hepatitis C treatment and prevention, and related Kirby Institute research has shown that prevalence of active hepatitis

¹ Broady, T., Mao, L., Lee, E., Bavinton, B., Keen, P., Bambridge, C., Mackie, B., Duck, T., Cooper, C., Prestage, G., & Holt, M., 2018, 'Gay Community Periodic Survey: Sydney 2018. Sydney: Centre for Social Research in Health', UNSW Sydney, p. 5.

² Lincoln D et al, 2003, HIV/HBV and HIV/HCV co-infection, and outcomes following highly active antiretroviral therapy, *HIV Medicine*. http://onlinelibrary.wiley.com/doi/10.1046/j.1468-1293.2003.00152.x/full.

³ Hepatitis NSW, Submission 38 re: Inquiry into crystal methamphetamine (Ice), p. 3.

C infection among this group [stage of liver disease or injecting drug use behaviours] declined from 43% to 25% between 2015 to $2017'^4$.

Recent research has shown that stimulant use, including methamphetamines, has less of a negative effect on health outcomes for PLHIV than previously thought. In fact, "findings showed no significant association of any level of stimulant use with all-cause mortality"⁵, and only a modest association between high frequency stimulant use and the combined outcomes of mortality and progression to AIDS.

We agree with Alex Wodak that "there is increasing acknowledgement that drug policy in Australia, like in most other countries, has failed comprehensively." It is apparent that the National Drug Strategy 2017—2026 (NDS) and the National Ice Action Strategy 2015 (NIAS) which provide the framework for the NSW Government's response to crystal methamphetamine and ATS, following the guiding principle of harm minimisation is too heavily focused on supply reduction and demand reduction, to the detriment of harm reduction. Consequently, the strategies do not effectively translate to achieved outcomes and objectives. This inability to meet the objectives of the strategies may be due to a variety of factors, including broad social and community-based influences. Notwithstanding, the Special Commission of Inquiry into Crystal Methamphetamine ('Ice') review of NSW's response to Ice and illicit ATS is an apt opportunity to reform the existing measures to achieve a more balanced harm minimisation outcome for all persons affected by Ice and other ATS use.

Stigma and Discrimination in Service Delivery and Communications: Positive Life and HALC believes facts not moralism on Ice and ATS use should guide any government response. Additionally, any strategies and implementation plans should be significantly guided by the direction and inclusion of people affected by Ice and other ATS use.

Positive Life and HALC has concerns around the way ATS use is stigmatised within public media reports and commonly described using language such as "deviant", "highly addictive" and a "wrecker of lives". As acknowledged in Issues Paper 3: "despite an overall decline in the use of crystal methamphetamine (see Issues Paper 1: Use, Prevalence and Policy Framework) the perception that it is causing social and criminal problems has increased. In 2016 meth/amphetamines overtook alcohol as the drug most people were concerned about with media coverage cited as a key factor contributing to this shift in perception. This media coverage only portray one side of a very complex issue and are inconsistent with a body of research and evidence suggesting that many PLHIV who are ATS users, do so in an informed, controlled and strategic way.

For most people their use of Ice is not on a daily basis. It is part of culture and pursuit of pleasure. To pathologise drug use puts up obstacles for people seeking resources and support. Positive Life and HALC acknowledges:

- the self-determination and the right of PLHIV to embrace their sexuality and pursue pleasure without limitations, beyond an emphasis on informed consent and not harming themselves and others
- That drug use occurs across a continuum, ranging from occasional use to dependent use
- The rights of individuals to make informed choices about the responsible and personal use of drugs including but not limited to the use of Ice, which assists individuals and populations to maintain health, wellbeing and quality of life.

⁴ Affordable treatment leads to fewer deaths from hepatitis C, https://kirby.unsw.edu.au/news/affordable-treatment-leads-fewer-deaths-hepatitis-c%20

⁵ Carrico AW, Shoptaw S, Cox C, Stall R, Li X, Ostrow DG, Vlahov D, Plankey MW, 2015, 'Stimulant use and progression to AIDS or mortality after the initiation of highly active antiretroviral therapy', *Journal of Acquired Immunodeficiency Syndromes*. https://www.ncbi.nlm.nih.gov/pubmed/25271387.

⁶ Alex Wodak, Submission 79 re: Inquiry into crystal methamphetamine (Ice), p. 1.

⁷ Special Commission of Inquiry into the Drug 'Ice', Issues Paper 3 Health and Community, 2019, p. 24.

⁸ Commonwealth Parliamentary Joint Committee on Law Enforcement, Inquiry into crystal methamphetamine (ice) (First Report, September 2017) 12 https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/First_report.

The current public portrayal of ATS users contributes to stigma-based barriers for people who may be seeking assistance and to access support. It also undermines the harm reduction strategies employed as part of a wider public health model in which drug use is seen as an interaction between the drug, the individual and the environment. Stigmatising injecting drug use (including ATS use) will inevitably lead to increased community isolation, silence and non-disclosure of sero-status, ATS use and injecting. The alienation and marginalisation of ATS users as a result of increasing stigma will continue to drive ATS use further underground and make it even harder for those with problematic use to seek information, support and access to sterile injecting equipment.

Additionally, injecting drug use and HCV infection remains highly stigmatised in gay social scenes and is largely hidden and not openly discussed. This poses challenges for harm reduction educational initiatives and creates barriers to access of sterile injecting equipment via Needle and Syringe Programs (NSP). As a result, many gay men, who inject methamphetamine and other drugs during sex, may not be exposed to harm reduction and peer education provided by NSPs as they do not identify culturally with these messages.

A significant source of the stigmatisation that ATS users face, arises from specific police policy and tactics (a result of criminalisation) in addressing ATS in the community. There has been dramatic surge of strip searches by NSW police, partly in response to drug use at music festivals, equivalent to a doubling of strip searches from 2016 to 2017⁹. It represents a significant high-visibility local and front-line policing tactic.

This invasive procedure requires individuals to be stripped searched, including children as young as 11 years old, and at times this has been conducted in full view of the public, in front of police officers of another gender, at alarming rates in Aboriginal and Torres Strait Islander communities with 735 strip searches recorded in the first 5 months of 2018 compared to a total of 560 for the year 2016 ¹⁰ Crucially, they are not found to be effective, with a reported 64% of strip searches resulting in nothing found. ¹¹ It is not clear whether the remaining percentage of strip searches resulted in any *significant* findings, or resulted in a criminal conviction. The common reason for Police to conduct such searches is to search a person for drugs.

People who have been stripped searched for drugs have reportedly been 'reduced to tears after being made to feel humiliated, overpowered and downright scared.' While this highlights the specific policy of NSW Police, it reflects broader issues with both state and federal criminalisation and over-policing of ATS users.

Over-policing and the use of strip-searches significantly contributes to the stigmatisation of ATS use, both by presenting a 'hard-line' approach from the police, which effects the general communities attitudes, increases self-stigmatisation, and by creating significant fear and distrust of the police in ATS using communities, which would then impact a fear and distrust of other government organisations and health services, ultimately reducing the effectiveness of harm minimisation efforts.

The criminalisation, and prioritisation of ATS use, especially the charge of possession of small amounts of ATS and other drugs increases stigmatisation and harm to users, takes up a significant amount of police time and resources, exposes vulnerable people including children and Aboriginal and Torres Strait Islander communities to over-policing and strip searches in public spaces, erodes trust between young people and ATS users the police, and does not represent an efficient or ethical use of resources to reduce harm.

⁹ ABC News, Nov 2018, 'Number of strip searches in NSW doubles in a year, triggering Law Commission inquiry', Hagar Cohen. https://www.abc.net.au/news/2018-11-13/nsw-police-strip-search-rise-triggers-law-commission-inquiry/10491032

¹¹ Sydney Morning Herald, Feb 2019, 'Rise in strip searches in NSW damaging the credibility of police', Samantha Lee, https://www.smh.com.au/national/nsw/rise-in-strip-searches-in-nsw-damaging-the-credibility-of-police-20190213-p50xew.html 12 lbid.

We agree with and commend the Parliamentary Joint Committee on Law Enforcement's comment that - "instead of governments and the media using stigmatised messaging to deter illicit drug use, the committee supports an approach that engenders compassion towards drug users, and is targeted at and informs those people with the objective of encouraging them to seek treatment and support". We support the measures suggested by the Committee to:

- Provide general reporting guidelines on issues relating to drug use, measures to improve the public's understanding of why people use drugs, deterrence initiatives and support for families, friend and communities;
- Restrict media reporting that sensationalises, glamorises or trivialises drug use, and require reporting that does not stigmatise people who use drugs;
- Target at-risk individuals and communities; and
- Require media reporting of drug use and related issues to be accompanied by information about AOD treatment services.¹⁴

Reducing stigma would involve increasing messaging to realistically portray ATS use both at a population level but also to key service providers, particularly GPs and EDs which are often the first port of call for users experiencing issues. This could be through targeted campaigns for people who use ATS substances, based on health and wellbeing issues. Education of the "real" ATS user experience; include the fact that not all people are aggressive, in psychosis or a danger to their family and friends. A key point of reducing stigma is decriminalising use and treating it as a medical issue when use becomes problematic, not a moral issue.

Needle and Syringe Programs (NSPs) and Medically Supervised Injecting Centres (MSICs): Positive Life agrees with Hepatitis NSW's assertion that "any Government response to issues surrounding crystal methamphetamine use must include recognition that, for many people it is injected, and therefore the prevention of additional hepatitis C transmissions must be one of its highest priorities." ¹⁵

NSPs are recognised as the most effective harm reduction measure for people who use crystal methamphetamine. NSPs have been highly effective in reaching injecting drug user communities and reducing HIV transmission and other blood borne viruses (BBVs). In 2018, less than 2% of newly diagnosed HIV infections were via injecting drug use. Positive Life supports NSPs as a vital harm reduction intervention that reduces the transmission and/or co-infection of BBVs. We believe further public health outcomes will be achieved by expanding NSP locations in areas of higher ATS use including permitting NSPs programs within Australian incarcerations settings. In 2017 there was a marked increase, 62%, in the number of HCV notifications amongst males aged between 20 and 24 years and most of the increase in notifications amongst people aged 15-24 years occurred in Justice Health.

As ACON stated in their submission: "the need for safe injecting equipment is particularly clear in custodial settings with increasing rates of hepatitis C, particularly among Aboriginal and Torres Strait Islander people (The National Hepatitis C Strategy notes that 43% of Aboriginal and Torres Strait Islander people in custody are living with hepatitis C). There are currently no NSPs operating in any Australian prisons, despite growing evidence they are 'safe, beneficial and cost-effective' (Duvnjak, Wiggins and Crawford, 2016)." ¹⁹

¹³ Parliamentary Joint Committee on Law Enforcement, 2018, 'Inquiry into crystal methamphetamine (Ice) Final Report', Commonwealth of Australia, March, p. 84.

¹⁴ Parliamentary Joint Committee on Law Enforcement, 2018, 'Inquiry into crystal methamphetamine (Ice) Final Report', *Commonwealth of Australia*, March, p. 84-85.

¹⁵ Hepatitis NSW, Submission 38 re: Inquiry into crystal methamphetamine (Ice), p. 3.

¹⁶ Law Reform, Drugs and Crime Prevention Committee, Victorian Parliament, Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria (Final Report, September 2014) vol 2, p. 605

 $< https://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_02.pdf>.$

¹⁷ NSW Ministry of Health, 2018, NSW HIV Strategy 2016 – 2020 Data Report: Quarter 4 & Annual 2018, p. 8.

NSW Hepatitis B and C Strategies 2014-2020 Data Report, https://www.health.nsw.gov.au/hepatitis/Documents/2017-annual-data-report.pdf, p.8.

¹⁹ AIDS Council of NSW (ACON), Submission 102 re: Inquiry into crystal methamphetamine (Ice), p. 5.

As a peer-based organisation, Positive Life supports the value and centrality of the peer voice in educating and upskilling our own communities. We believe suitably trained and supervised peers are best equipped to provide harm reduction education and should be granted legal exemption to possess and exchange sterile injecting equipment amongst community members.

As stated in Issues Paper 3: "currently, only one MSIC is permitted to operate in NSW despite evaluations demonstrating its effectiveness as a harm reduction initiative. Since 2001, the MSIC has managed over 7,438 overdose events with no deaths." Positive Life supports MSICs in Australia in addition to NSPs and recommends a further expansion of these centres throughout NSW and Australia.

Decriminalisation and Harm Reduction: We agree with the NDARC which noted that research in a number of countries that have implemented decriminalisation policies has "consistently found that decriminalisation is not associated with significant increases in drug use. And in instances where just cannabis has been decriminalised it has not led to increases in use of other drugs such as ecstasy or heroin." However, along with decriminalisation comes the imperative for significant investment in public health, social services, harm reduction, and treatment services.

Positive Life agrees with the National Association for People with HIV's (NAPWHA) assertion that the Australian government's 'war on drugs' has unequivocally failed^{22,23,24}, and continuing to treat substance use and misuse as a criminal matter under law enforcement provisions is neglecting vitally important and more effective harm reduction, treatment and support services, programs and initiatives.²⁵ Positive Life asserts that a community discourse, engagement and risk reduction approach to ATS use and injecting drug use in general is a sensible and evidence-based strategy that aims to protect the health and quality of life of PLHIV, their partners, and other people affected by Ice or other ATS use.

Harm reduction is described as: "an approach rooted in public health and human rights. It aims to improve the lives of people who are affected by drugs or drug policies through evidence-based programming and approaches, ideally that are developed in partnership with people who use drugs." Evidence suggests that harm reduction is both effective and cost-effective, with estimates that for every \$1 invested in needle and syringe programs between \$4 and \$27 is saved by the community in healthcare and other costs. It is apparent that supply and demand reduction from a law enforcement perspective are the current focus of the Australian government, financially accounting for approximately two thirds of government expenditure in response to illicit drugs allocated to law enforcement including police at the expense of proven harm reduction strategies. As cited in Issues Paper 3, in 2016, the National Drug Research Institute estimated that there were over \$5 billion in societal costs attributable to methamphetamine use in 2013/14. The vast majority (\$3.2 billion) of these costs were found to be related to crime (including police, courts, prisons and victim costs), with other costs attributed to health care (\$200 million from hospitals, GPs and ambulance), child maltreatment and protection (\$260 million) and road accidents (\$125 million).

By way of example, as stated in Issues Paper 3: "the NGO sector is the largest provider of residential rehabilitation in NSW and offers a range of outreach, counselling, community and harm prevention

²⁰ Special Commission of Inquiry into the Drug 'Ice', Issues Paper 3 Health and Community, 2019, p. 32.

²¹ Professor Ritter, Decriminalisation or legalisation: injecting evidence in the drug law reform debate, NDARC, 22 April 2016.

²² Branson, R, 2015, 'The war on drugs has failed', *Virgin*, n.d. http://www.virgin.com.

²³ Clegg, N, Branson, R, 2015, 'We have been losing the war on drugs for four decades – end it now', *The Guardian*, 4 March. http://www.theguardian.com.

²⁴ Brown, R, 2014, 'Australia losing its war on drugs', *Australian Broadcasting Corporation*, 29 April. http://www.abc.net.au.

²⁵ National Association for People with HIV Australia, Submission 29 re: Inquiry into crystal methamphetamine (Ice), p. 2.

 $^{^{26}}$ Cohealth, Submission 110 re: Inquiry into crystal methamphetamine (Ice), p. 4.

²⁷ Western Australian Network of Alcohol and other Drug Agencies (WANADA), Submission 107 re: Inquiry into crystal methamphetamine (Ice), p. 7.

²⁸ Steve Whetton et al, The social costs of methamphetamine in Australia 2013/14 (Report, National Drug Research Institute, Curtin University, July 2016) 5 https://ndri.curtin.edu.au/ndri/media/documents/publications/T246.pdf.

²⁹ Steve Whetton et al, The social costs of methamphetamine in Australia 2013/14 (Report, National Drug Research Institute, Curtin University, July 2016) 5 https://ndri.curtin.edu.au/ndri/media/documents/publications/T246.pdf>.

programs. NSW Health has published service specifications which aim to provide guidance on the principles and elements of AOD treatment delivered by the NGO sector. In 2015, the NSW Government committed \$4 million over four years for NGO treatment services to tackle methamphetamine use in rural and regional NSW and the establishment of new services in three regional areas: Goulburn and surrounds, Dubbo/Wellington, and Wagga/Griffith."³⁰ This financial allocation over three years is in stark contrast to the billions allocated annually for law enforcement purposes.

The Mental Health (Forensic Provisions) Act 1990 (NSW) provides a mechanism for magistrates to deal with persons with mental health disorders, cognitive impairments and intellectual disabilities otherwise than in accordance with law. These provisions only apply to smaller charges – such as summary offences. An example of such a summary offence being possession of a small amount of methamphetamine or other illicit substance. Often the outcome is for the person charged to follow a mental health plan, undergo further psychological assessment or to receive support from a suitable community medical or disability center.

For people who use stimulants and have a relevant cognitive impairment, mental health disorder or intellectual disability, access to health and AOD services that will support them is crucial to successfully making an application under the Act. This diverts someone, who the court recognises needs medical and psychological assistance and support from being dealt with at law. For people who use stimulants, accessing the relevant services can be incredibly complex, as services which can appropriately deal with intellectual disability; mental health and stimulant use are few and far between. Many services are specialist, focusing on providing disability care or mental health services or AOD services but unable to assist people who need assistance with both. ³¹

The dearth of funding both at Federal and State level for specialist services which are able to assist people who use stimulants and have other health issues simultaneously is an absolute barrier to the application of the Act. The lack of funding for these services is tantamount to the denial of justice. If an applicant, who has demonstrated that they have a relevant mental health disorder, intellectual disability or cognitive impairment, but cannot demonstrate that they will have sufficient *access* to specialist health, they will not be granted the reprieve that the court would otherwise allow.

Further, this pathway does not fully allow the courts to recognize that for people with a relevant cognitive impairment, mental health disorder or intellectual disability, and who use stimulants, in that there may be multiple factors attributing to offending, such as safe and secure housing, chronic illnesses (including chronic pain), which may need to be addressed first. For people who use stimulants their drug use or other health issue may not be a priority, especially in regards to deterring future offending.

Redefining drug use as a health and social issue, rather than a law enforcement issue, will provide greater effectiveness of interventions as well as cost-effectiveness. Decriminalising the personal possession and use of illicit drugs such as Ice and other ATS would see a significant improvement in harm reduction and destigmatisation and would assist in funneling people for whom use is problematic into treatment and support programs. Australia's low rates of HIV have been primarily due to community engagement and mobilisation in delivering education and harm reduction programs. Australia must avoid the criminalisation of personal drug use and possession of equipment for administering drugs and strengthen diversion of people with drug misuse issues into supportive health and social programs.

Positive Life believes services and programs aimed at assisting people who use drugs should be designed and delivered by organisations that understand the unique issues of drug users and other target populations. Services and service options are currently limited, involve fragmented care, long wait lists, and the way

³⁰ Special Commission of Inquiry into the Drug 'Ice', Issues Paper 3 Health and Community, 2019, p. 22.

NSW Law Reform, June 2012, 'People with cognitive and mental health impairments in the criminal justice system: diversion', para 9.57-9.59, 9.61, http://www8.austlii.edu.au/au/other/lawreform/NSWLRC/2012/135.pdf,

services are delivered can be stigmatising. Research has clearly shown that support of users is more effective than a punitive approach: health services must have an open-door policy; zero tolerance on judgement, discrimination and stigma; wrap-around and follow-up services; be rooted in peer-based and evidence-informed best practices; accessible; and culturally appropriate.

Conclusion

Positive Life and HALC supports:

- Balanced harm reduction strategies (with adequate and proportionate funding) which aim to reduce drug related harm to individuals and communities as part of a comprehensive approach to both licit and illicit drugs supported by the National Drug Strategy, within the context of decriminalisation personal drug use, possession and equipment possession;
- PLHIV and other affected persons being informed about BBV transmission risk, poly substance use, safe
 injecting practices and other harm and risk reduction strategies in an intersectionally directed and
 culturally appropriate way;
- 24/7 access to sterile injecting equipment, broader access to NSPs and MSICs, and NSPs in incarcerations settings;
- 24/7 access to support (by trained peers) for those with problematic use; and
- Access to non-stigmatising and non-discriminatory clinical services, resources, campaigns and community messaging.

We believe that adopting more balanced harm minimisation strategy, focusing more on harm reduction, will prevent drug related harms, maintain peoples use at social and occasional use levels and facilitate a shift toward less problematic drug use. Maintaining peoples engagement in health and enabling them to achieve their desired health outcomes. Strategy and policy change alone, however, will not effectively change community attitudes towards drug use and misuse, and must be paired with thorough community education and changes to the criminal justice system. This is particularly important for those individuals who are part of marginalised or intersectionally oppressed populations within NSW, such as people living with HIV and/or HCV, Aboriginal and/or Torres Strait Islander people, people from culturally and linguistically diverse cultures, people who identify as LGBTQIA+, and sex workers, among others.

Positive Life and HALC would like to commend the Special Commission of Inquiry into Crystal Methamphetamine ('Ice') in their dedicated and thorough research and consultation process with the aim of strengthening NSW's response to Ice and illicit ATS to make it as effective as possible for all people living with HIV, people who use drugs, and other stakeholders.

If this submission requires additional information or clarification, we can be contacted at craigc@positivelife.org.au or on 0422 509 200, or alexs@halc.org.au or on 02 9206 2060

Yours respectfully,

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Alexandra Stratigos

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7 May 2019