



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

12th Assembly

'Ice' Select Committee

Public Hearing Transcript

10.15 am – 10.45 am, Friday, 19 June 2015

Litchfield Room, Level 3, Parliament House

Members:

Mr Nathan Barrett, MLA, Chair, Member for Blain
Ms Lauren Moss, MLA, Deputy Chair, Member for Casuarina
Mr Francis Kurrupuwu, MLA, Member for Arafura
Mr Gerry Wood, MLA, Member for Nelson

Department of The Attorney-General and Justice

Witnesses:

Meredith Day: Deputy Chief Executive Officer
Jenni Daniel-Yee: Acting Director, Legal Policy Unit
Carolyn Whyte: Director Criminal Justice Research and Statistics Unit
William McNeil: Lawyer – Legal Policy, Legal Services Unit

Mr CHAIR: On behalf of the committee, I welcome everyone to this public hearing into the prevalence, impacts and government responses to the illicit use of ice in the Northern Territory. I welcome to the table to give evidence to the committee from the Department of the Attorney-General and Justice, Meredith Day, Deputy Chief Executive Officer; Jenni Daniel-Yee, Acting Director, Legal Police Unit; Carolyn Whyte, Director Criminal Justice Research and Statistics Unit; and William McNeil, Legal Policy, Legal Services Division.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go into a closed session and take your evidence in private.

I will ask each of you to state your name for the record and the capacity in which you are appearing. I will then ask you to make a brief opening statement before proceeding to the committee's questions. Could you please each state your name and the capacity in which you are appearing.

Ms DAY: Thank you very much for the opportunity to be here this morning, Mr Chair. My name is Meredith Day and I am the Deputy Chief Executive Officer of the Department of the Attorney-General and Justice.

Ms DANIEL-YEE: I am Jenni Daniel-Yee, Acting Director of Legal Policy Unit, Department of the Attorney-General and Justice.

Ms WHYTE: Carolyn Whyte, Director of Criminal Justice Research and Statistics Unit, Department of the Attorney-General and Justice.

Mr McNEIL: Will McNeil, Lawyer, Legal Policy, Department of the Attorney-General and Justice.

Mr CHAIR: I think the data you have in your submission has probably turned the heads of a lot of us here because data seems to be one of the big problems across this issue.

Sorry, do you have an opening statement?

Ms DAY: No, Mr Chair. Given the shortness of time we rely upon our submission and we invite your questions.

Mr CHAIR: I am looking at the methamphetamine offences charged by Indigenous status and sex of defendants and the number of offences charged by category. I see a big spike from 2014-15. We also see a trend from about 2008, which seem to be on a neat trajectory upwards.

Looking at this in isolation, it looks bad. Are you seeing a lessening in offences in other drug areas? Do you think this is a substitution from one class of offence to another class, or is this something new happening and this is, all together, an increase in the amount of drug offences happening?

Ms WHYTE: Mr Chair, when we look at the total number of offences coming from the police system, there are many more offences recorded than are charged in the IJIS system. This is just offences charged. When you look at the total number of offences in the police system, cannabis is still a large majority of the offences listed as occurring but many fewer of those are charged.

It is difficult to tell if substitution is happening because the offences we can identify as methamphetamine are still a very low proportion of the total offences listed by police as occurring in the Territory. It is hard to see if there is a substitution at this point.

Mr CHAIR: As a statistician, having had to look at this for this inquiry, is there any comment you can make in regard to the trends?

Ms WHYTE: I note you can see the *Misuse of Drugs Amendment Act* came in in late 2013, and after that we saw a large increase in the number of offences charged and also the number of people charged. Will you be able to comment on what led to that as he was involved in the drafting of that legislation.

Mr McNEIL: One of the main issues with the stats is whether our police are focusing on it. It was certainly one of the matters raised with me prior to the methamphetamines legislation coming in in 2013 - that police were going to focus a bit more on methamphetamine manufacture and supply. That may explain why the stats have increased as they have. It is probably a matter for our police to discuss, but it was certainly a matter that was raised with me. It was one of the main justifications for other methamphetamines legislation coming in - there would be a little more focus from police on methamphetamine manufacture and supply in the NT. That may also explain why the stats went up as significantly as they did. That is probably a matter for police to give you more information on.

Mr CHAIR: In your submission you say the department is currently considering a number of amendments to the *Misuse of Drugs Act* such as: should they be Schedule 1 drugs and should different things be classed? Can you talk us through what you are doing there and how you are hoping to affect demand, supply or harm reduction?

Mr McNEIL: A number of amendments were made to the *Misuse of Drugs Act* in 2014 and one of the main ones was an amendment that allows us to move drugs from Schedule 2 to Schedule 1 by regulation rather than by passing legislation. With the *Misuse of Drugs Amendment (Methamphetamine) Act 2013*, the only way we could move the reference to methamphetamine from Schedule 2 to Schedule 1 was to pass an Act. An Act passed in 2014 allows us to move drug references from Schedule 2 to Schedule 1.

What it is currently afoot is I received a submission from the Northern Territory Police asking that amphetamine plus a number of other drug references, where the drugs are very similar in nature to methamphetamine, be moved from Schedule 2 to Schedule 1. We can do that by regulation. There are a number of current Schedule 2 drugs that will be moved over, and amphetamine is the main one. There are also a number of other ones such as MDMA, MDA, ketamine, plus a number of synthetic methamphetamine compounds, as well.

What moving the drugs from other schedules entails is the penalty structure under the *Misuse of Drugs Act* is dependent on what schedule the drug is listed in. The maximum penalties for Schedule 1 drugs are far higher than they are for Schedules 2 drugs. We moved methamphetamine over in November 2013, and we are in the process of moving a number of other drugs that have very similar compounds, and amphetamine is the main one. The chemist lab with Northern Territory Police, a lot of the time, find it difficult to differentiate between methamphetamine and amphetamine, which is the main reason they have asked us to move it over. That is happening at the moment and will hopefully occur within the next few months. There are also a number of synthetic drug compounds we will be adding into Schedule 2.

Mr WOOD: Regulations are an easy way to shift things, but the change is a very serious one. I am not downplaying the drug issue at all, but if you move from Schedule 2 - for trafficable possession in a public place where there is no penalty stated for something in Schedule 2 - move it to Schedule 1 and you go for 14 years. If you go to commercial manufacturer or production of a dangerous drug, Schedule 2, it is 25 years or goes to life imprisonment. I would be concerned if those moves were made through regulation because not only is it a serious issue concerning drugs, it is a serious change in the punishment.

Mr McNEIL: Correct.

Mr WOOD: We are not talking about car parking fines. Do you think these changes should go through the Act rather than the regulations?

Mr McNEIL: They can. The main reason we put the amendment in the Misuse of Drugs Amendment Bill back in 2014 was it is a very time-consuming process. The methamphetamine legislation, from when I was asked to do it to when it was passed, took six months, roughly, to effectively change a word in the Act. We certainly will not be using the regulation-making power a lot with it. When we were doing the methamphetamine legislation these matters were also brought to our attention, but police were happy with just other methamphetamine references being moved over.

The other issue we have is the drugs we are moving from Schedule 2 to Schedule 1 are Schedule 1 in every other jurisdiction apart from here. We have a very limited number of Schedule 1 drugs. A number of other jurisdictions have extensive references in Schedule 1, and as far as the other jurisdictions go we are the odd one out, particularly with amphetamine, particularly with the other methamphetamine-type drugs of MDMA, ecstasy, ketamine and various other drugs. They are Schedule 1 drugs everywhere else apart from here. You are right, moving them from Schedule 2 out of Schedule 1 increases the maximum penalties for a number of the offences significantly.

There is parliamentary scrutiny through various committees and the regulations can be disallowed. Executive Council is briefed on it so there is some scrutiny that way. It is not as if we are pulling the wool over everyone's eyes with it. We are certainly not putting into place anything that is not already in place in other jurisdictions.

Ms MOSS: I also had a question around the proposed changes to legislation. In particular, part of your submission was you are currently considering an amendment to Division 1A of the *Misuse of Drugs Act* around notice of a drug house and that following a person. I am just interested in what the complexities of that are? I am assuming where you have issued a notice to a drug house and there are multiple people in the home it might present some complexities.

Mr McNEIL: Yes, that is right. The way the drug house notice structure works at the moment is the drug house notice is strictly attached to the house. Police have to display the fact that it is a drug house notice and I understand it is a big, bright green sign they put out the front of the house. The issue police have raised with me is that the drug house notice only applies to the house. If a drug supplier is a resident at that house and they leave, the drug house notice continues to be attached to the premises rather than follow the drug supplier wherever they move to.

As far as drug house notices following a person there are a number of complexities, particularly when they move into a share house, for example, and at the moment the drug house notice legislation gives police very substantial powers in relation to entry and search. They can enter and search without warrant. There are no reasonable foreseeability requirements, so it is an extremely broad power they have at the moment. We are working through, with police, the complexities of notifying other tenants and other residents of the house. If the drug notice follows a particular person, the other residents of the house will have to be made aware that notice exists and will also have to be made aware of other powers police have.

That is a significant issue which will need to be sorted out because if someone is the subject of a drug house notice and is now living alone in a house and moves to a share house, for example, the residents have no idea that police have very broad search and entry powers for dangerous drugs unless they are made aware of it. That is a significant issue we will have to work through. There will have to be notification requirements. We are still working through it at the moment, whether it will be a stand-alone order or whether it will be incorporated into the current drug house notice. We are basically working through whether it should be a stand-alone order. They are court issued orders so not issued by police, and the court has to be satisfied with the drug house notices that drug offences have occurred at the house. It will be the same structure if they are to follow other persons – they will have to be made by a court. However, there are a number of notification requirements we will have to sort through before that amendment gets up.

Ms DANIEL-YEE: Can I just caution that these issues are still being considered at a departmental level. No decision has been made as to whether they will proceed and they have not been to Cabinet.

Mr WOOD: The key points in your submission - methamphetamine drug offences can be reliably identified from the point at which the person is charged with the offence. Obviously, that means if you find someone in possession you know they have possession. The next one is identification of drug offences, including methamphetamine, requires both coded data and text searches although the combination expects to be reasonably complete. That again means you have it in your possession, but the next one is offences committed by a person under the influence of methamphetamine cannot currently be identified. You do not have a method of knowing, when someone is arrested for a driving offence or they smashed a window, if they were under the influence of that drug when they committed that offence. Is that what you are saying?

Ms WHYTE: That is correct, yes. There is no routine testing, when a person is apprehended for offences, if they are under the influence of particular types of substances. There is a field in which the officer can record whether they were under the influence of alcohol, drugs or another substance or nothing, but it is just a one letter field and usually it is alcohol or something else.

Mr WOOD: If you have ingested a drug is it offence for it to be within your body?

Mr McNEIL: Yes, it is. The *Misuse of Drugs Act* criminalises the use of dangerous drugs. I daresay there is probably no better evidence to show use than a positive test. You could always argue that drinks are spiked and various things like that, but it is an offence under the *Misuse of Drugs Act* to use a dangerous drug.

Mr WOOD: Would you say you cannot currently identify methamphetamines so you cannot prove someone was driving with that drug in their system?

Mr McNEIL: If, for example, someone is pulled over for a traffic stop and they do the alcohol test on them and they come back negative for alcohol but police have a reasonable suspicion they might be under the influence of another type of drug, the only way they can prove that is if they go through a testing procedure. If they test positive to methamphetamine they have the option of charging them with using, but we do not have any particular offence regime here for assaults where it is an aggravating circumstance to be under the influence of a drug. The only real offence provisions we have in relation to use are in the *Misuse of Drugs Act*, and that requires evidence that you have used. Whether that is a syringe in your arm or a positive test, they need that evidence to prove you have used it.

Mr WOOD: What does that key point of offences committed under the influence of methamphetamine cannot currently be identified mean? Are you saying if someone has a crash you cannot do it?

Ms WHYTE: It means there is no routine testing in all cases of arrest, and there is no recording of that information against the arrest even if the test was done. It is not data that is routinely captured.

Ms DAY: It is about a data set rather than whether you could possibly identify it, is that right?

Ms WHYTE: At this point, if you were to ask how many assaults were committed under the influence of methamphetamine, we do not know. That data is not captured and is not recorded.

Mr WOOD: Should the government make sure you can collect that data? Is there a good reason to have that data?

Ms WHYTE: That was one of the points we mentioned should be considered. Under 'Current Matters' on Page 7 - investigating options for determining whether it is feasible to capture and record that information. I believe the Department of Correctional Services has some ideas about that.

Mr WOOD: We probably keep stats on how many people drink drive. Do we keep those stats? Is it recorded somewhere that there were X number of driving offences where people were under the influence?

Ms WHYTE: Yes. That is a specific type of offence and is recorded. There is a code we can search for to get that information, but there is not a record of whether the person, at the point, was tested for methamphetamine use while they were driving.

Mr CHAIR: I am impressed you guys seem to be in front of the kerb by miles. You are not being reactionary to it. This has become an issue and now everybody is working out what they can do. We would ask what we can do to make this drug more risky for people to deal with, from a criminal perspective. What happens if you get caught has become a lot worse. I am concerned that does not seem to have changed behaviour. We have moved it to a Schedule I drug. Looking at the statistical data, would you say that since the introduction of this drug it has had any effect on behaviour?

Ms WHYTE: I do not think we should interpret the justice system data as being representative of behaviour. The number of people charged in the Barkly and Tennant Creek area did not mesh with what they were seeing on the ground. This is the data we have from the criminal justice system. Other things, such as police activity, will affect this data. If police are focusing on it we would expect it to go up. That means it will not necessarily reflect behaviour. It is what we are seeing in the criminal justice system but would need to be augmented by data from other sources.

Mr CHAIR: I understand what you are saying. The Attorney-General frequently says that since we have really cracked down, particularly on DCF issues, we suddenly have so many more DCF issues to deal with. It is not necessarily because it is worse but because we are capturing it. I do not know which is which, and I would like to – is there any way we can ascertain – I suppose this is beyond the purview of just your department because your department looks at this within the walls of what you do, but we have to look at this broadly. Given the anecdotal data and some of the data we have that the use of methamphetamine is getting worse, I would have assumed before looking at this we need to toughen up on what we do with the results of this, but it seems you already did that years ago.

Mr McNEIL: One of the main issues is methamphetamine manufacture and supply in the Territory is extremely profitable and I am not sure how you would change that. The stats I received from police when I was doing the methamphetamine bill was a gram of methamphetamine in the Territory sells for between \$1000 and \$1800, which is far more than in any other jurisdiction. The people who manufacture and supply methamphetamine are not doing it as a community service. They are doing it to make money, and when

the profits are so high I doubt there is a penalty high enough to stop that because it is so profitable for them. They move to where they can make the most profit from the drugs and that is extremely hard to stop. Police might have views on it but I am not sure how you would drop the price.

Mr CHAIR: It has dropped; it is down to \$1000.

Mr McNEIL: Yes, it is still extremely profitable when you consider a commercial quantity of methamphetamine is 40 grams and that is \$40 000 at a minimum. There is a lot of money to be made out of it, far more than there is out of a number of the other Schedule 1 drugs. It is extremely expensive in the Territory and that is why they have moved here.

Mr CHAIR: Even though we have upped the risk, the reward has probably jumped higher than the risk. The risk/reward payoff is in favour of doing it.

Mr McNEIL: Yes. Drug manufacturers and drug suppliers are in it to make money and move to where they can make the most money. They do not care who they have to step on or the consequences for users. They go where it is most profitable, and if anyone has any ideas on how to change that mentality we are all ears.

Mr CHAIR: That is what we are working on.

Moving to a different sets of issues, in the way the justice system deals with people in court and somebody saying, 'I'm an addict,' compared to somebody saying, 'I was dealing because I'm an addict,' as opposed to, 'I'm a dealer,' what is different in the way they are treated?

Mr McNEIL: Our *Misuse of Drugs Act* section 37(2) has a mandatory sentencing regime for drug offences and that is strictly attached to what offence they are charged with. If the particular offence they are convicted of has a maximum penalty of seven years or more there is mandatory imprisonment of 28 days. If the offence they are convicted of has a maximum penalty of less than seven years, imprisonment of 28 days only applies if there is a circumstance of aggravation proven. The Act contains a very wide number of aggravating circumstances for it. It basically depends on what they are charged with. If police can only prove use or can only prove possession then they are charged with those particular offences.

The manufacture and supply – it is really dependent on what they are charged with. It is remarkable how many manufacturers claim to manufacture for their own use, and that undoubtedly happens and is essentially why we have the trafficable quantity and the commercial quantities under the Act and the maximum penalties vary. It is basically dependent on what they are charged with.

The *Bail Act* has presumptions against bail which conform with the mandatory sentencing regime under the *Misuse of Drugs Act* as well. There is a presumption against bail for any offence in the Act that has a maximum penalty of seven years or more. The justice system will judge the person on what they are charged with, but there is a mandatory sentencing regime under the Act and there is also a presumption against bail under the *Bail Act*.

That is really all I can say about how the justice system responds to it.

Ms MOSS: We heard this morning that we cannot arrest ourselves out of this issue, and that has been echoed by a number of different people. I am interested in any consideration your department has had around therapeutic justice strategies or any research into decriminalisation penalising of drug users and the associated criminal issues?

Ms DAY: I am not aware if that is a current agenda item. Jenni, are you able to comment on that?

Ms DANIEL-YEE: No.

Ms DAY: No, we are not currently undertaking any work in that area that I am aware of.

Mr KURRUPUWU: I represent my electorate of Arafura and speak on behalf of all Territorians in Indigenous remote communities. Is there a process or inquiry in place regarding ice and drugs?

Mr McNEIL: There is currently an inquiry at the national level and I understand the Department of the Chief Minister is the NT department on the Commonwealth inquiry. It is trying to set up a national ice strategy and we are taking part in that. It is at its very early stages. From what I understand it was at the start of this year. Some matters are being looked at through the Law, Crime and Community Safety Council as well

which is the meeting of Attorneys-General and police ministers. They are currently looking at the regulation of precursor chemicals, which are the chemicals used in the manufacture of methamphetamine.

A number of other jurisdictions in Australia do not regulate precursors. We do, and we have a very significant precursor chemical offence regime and they are listed in the Misuse of Drugs Regulations as well. The LCCSC is looking at some national uniform strategies in relation to the regulation of precursors, the chemicals that are used to manufacture methamphetamine as well as a number of other drugs.

Yes, the national ice committee is at a very early stage and the next LCCSC meeting is in October. I think at that meeting the attorneys and the police ministers will be asked to agree to a national uniform regime for the regulation of precursor chemicals.

The issue we have at the moment is a lot of the methamphetamine is brought into the Territory and a number of the larger jurisdictions do not regulate precursor chemicals at all and that is a significant problem.

Mr KURRUPUWU: Is there a time frame?

Mr McNEIL: I do not think there is a time frame in relation to the national ice strategy. As far as other precursors go, there will not be a hell of a lot of work for us in that area because we already have it. I am not sure what the other jurisdictions will agree to in relation to a time frame for that. The Commonwealth is also involved in other precursors because you can purchase a lot of them online from overseas and bring them in. I am not sure what the time frame for it is, but there will not be any work as far as we are concerned in other precursor area.

Ms MOSS: I have a question around diversion away from the justice system, which is obviously something we would all love to be a priority. I am interested in your views on the diversionary options that already exist and whether you believe we could be doing more to divert people away from the system?

Mr McNEIL: It is probably more of a matter for police and how they handle it. It is really a matter for police when they come across someone who is addicted to ice as to whether they go down a criminal justice path or refer them off. It is probably more of a question for police and Correctional Services. The legislation we have control of is punitive you could say. We are not really involved in the NGO and counselling services. It is probably more a matter for police and corrections to answer that.

Mr CHAIR: We have to end it there. The Department of Correctional Services is here and we have gone a little over time.

Thank you for your indulgence and staying for those extra questions. Are we able to provide questions to you as a department on specific things and get some responses if people have further follow-ups?

Ms DAY: Yes, certainly. Thank you for your time this morning.

Mr CHAIR: Thank you very much.