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Drugs, crime and the law in Australia

Ian Warren

Although prohibition is the dominant approach to regulating illicit drugs throughout much of the Western world, the criminal justice system is limited in minimising illegal drug supply and use. After outlining current Australian law enforcement statistics on illicit drug seizures, this chapter reviews a sample of cases decided between January and June 2010 to illustrate how criminal courts determine legal responsibility and sentences for drug trafficking and related activities. The case analysis highlights how a dominant focus on retribution and deterrence overrides the effects of various individual factors that contribute to many low-level trafficking offences. Although this emphasis might justify a criminal conviction and punishment, an alternative evidence-based strategy that aims to reduce drug-related harm appears to be more appropriate, particularly for low-level suppliers who also use illegal drugs. The supervised provision of cannabis or heroin to registered users will not necessarily eliminate all problems associated with illicit drug supply. However, these harm reduction methods can help contain the effects of questionable legal principles, harsh sentencing and law enforcement corruption under the criminal law and prohibitionist philosophy.

Trends in contemporary drug law enforcement

Since the late 1990s Australia’s ‘zero tolerance’ policies have usually been examined in relation to the use of illicit drugs rather than the more complex
issues associated with their supply.¹ The evils of drug trafficking appear beyond question, and calls for more intensive law enforcement activity and harsher criminal punishments aimed at those who 'prey on our children' or 'peddle death' frequently appear in the Australian media.² However, several intricate problems emerge when assessing whether current law enforcement strategies, court processes and criminal punishments genuinely reduce drug-related harm or the scale of the illegal drug trade.

Conservative estimates suggest the range of federal, state and customs drug law enforcement initiatives cost Australian taxpayers around $1.9 billion per annum.³ The influence of these interventions is generally assessed by comparing the quantities of drugs seized by police or the number of charges laid for drug trafficking offences with estimates of the scale of illicit drug use throughout the community.⁴ However, variations in data from different sources make it difficult to identify the extent of illegal drug supply or the availability and use of most illicit drugs at street-level.

Between June 2008 and June 2010 there was a slight decline in the number of prosecutions for cultivating, manufacturing and trafficking illicit drugs in the state of Victoria. Nevertheless, prosecution rates are relatively stable, with around 4300 offences being detected each year.⁵ This contrasts with around 10000 annual prosecutions for the possession and use of illegal drugs. Between June 2008 and 2009 the Australian Federal Police recorded 47 major seizures of illegal precursor chemicals, commonly used to manufacture various drugs including speed, weighing a total of 1816.7 kilograms. However, during the equivalent period in 2009 and 2010, only 343.2 kilograms of precursors were seized in 58 operations. The variable trend with illegal sedatives is more striking, with 53 seizures involving 3335.1 kilograms being detected between June 2008 and 2009, compared to 62 seizures involving 97.0 kilograms in June 2009-10.⁶ During the same two-year period, heroin seizures increased from 327 cases involving 229.1 kilograms in 2008-09 to 392 cases involving 392.6 kilograms in 2009-10.

According to the Australian Customs and Border Protection Service,⁷ more sophisticated methods of screening luggage and cargo, along with improved strategic cooperation between state, federal and overseas law enforcement agencies,⁸ have resulted in greater numbers of people being detected while attempting to traffic smaller quantities of illegal drugs into Australia. Greater international vigilance in curbing the global production and distribution of different illegal drugs,⁹ or targeted crackdowns on specific drugs considered to warrant closer attention by Australian law enforcement agencies, could also help explain these annual fluctuations in reported illicit drug seizures.

Despite these supply-reduction efforts, available research demonstrates that illegal drug distribution networks are highly resilient, evasive and persistent. Illicit drug use in Australia remains widespread, particularly among men and women aged between 15 and 29 years of age.¹⁰ The street-level price
and purity of most substances has also barely altered in the past decade. When police target 'hot-spots' where drugs are sold or consumed, the market generally adapts by employing more 'careful and consistent' distribution and consumption methods or relocating to other geographic regions. When changes in price, purity and availability occur, such as the 2001 Australian heroin drought, suppliers and users commonly resort to other drugs such as cocaine. These market shifts can generate short-term increases in violent crime, while the range of illicit drugs often diversifies once the drought subsides. Law enforcement agencies are also concerned about the influence of prohibition on their integrity. Considerable time and expenditure is devoted to specialist investigations directed at police, given potential incentives for the selective non-enforcement or outright contravention of drug laws. Questions also emerge over the storage and destruction of illicit drugs once they have been seized by police and used as evidence in trafficking prosecutions.

It is debatable whether current prohibitions on drug trafficking sufficiently deter, prevent or eliminate the demand for illicit drugs in Australia. It is also questionable whether the criminal justice system is a cost-efficient way of protecting the community from drug-related harm while respecting the rights of people suspected of drug trafficking. Some Australian states recognise these problems and decriminalise minor 'personal-scale' offences or adopt infringement penalty schemes to regulate the possession and use of illegal substances. Others offer various therapeutic treatment options administered independently of the criminal justice system. These initiatives recognise that illicit drug users are often not deterred by criminal punishments. However, such alternatives to criminal prosecution do not extend to those charged with drug trafficking, even if they have an extensive history of drug abuse. The remainder of this chapter outlines how Australian courts balance competing individual and social tensions when imposing a criminal conviction for drug trafficking or allied behaviour and determining appropriate punishments once a conviction has been recorded.

Method

LexisNexis Australia is the most systematic database of Australian intermediate and higher court rulings. As part of a broader study examining trends in imposing legal liability and criminal punishments in Australian drug trafficking cases, this chapter outlines the most significant rulings from a larger sample of 28 decisions handed down between 1 January and 30 June 2010. Each ruling was located using the key search term 'drug trafficking'. The judicial narratives reveal the background facts, enforcement strategies and legal arguments raised in each case. The depiction of these issues below
illustrates how criminal responsibility and sentences are determined under current Australian drug trafficking laws and how the context of each offence is framed in light of the broader prohibitionist philosophies that underpin contemporary drug regulation.

**Liabilities for drug trafficking and allied crimes**

Ten cases in the 2010 LexisNexis sample outline the requirements for imposing criminal responsibility for drug trafficking and related crimes. These include two applications for bail pending a forthcoming trial or sentencing review (*DPP v. Theodorelos*, 2010; *Re Marijancevic*, 2010), two alleged wrongful convictions linked to suspected police corruption (*Waldron v. WA*, 2010; *R. v. ElMoustafa*, 2010) and an application to confiscate property acquired from the profits of illegal drug trafficking (*Pellew v. State of Western Australia*, 2010). All verdicts demonstrate how judges determine legal liabilities for the primary and secondary legacies of serious drug crime. Two cases documented in this section examine the contentious ‘deemed possession’ rule, which modifies the degree of proof required to support a conviction against people loosely associated with the illicit drug trade. The final case highlights the collateral risks of prohibition on the integrity of police investigations.

**Momcilovic (2010)**

Vera Momcilovic owned and lived in an apartment in the Melbourne Central Business District. Her boyfriend, Velmir Markovski, confessed to organising regular methamphetamine sales from Momcilovic’s home. A police search revealed 394 grams of speed in a bar fridge and freezer located in the kitchen. Police also discovered a shoebox in Momcilovic’s wardrobe containing $169,000 in cash, a set of digital scales and several plastic bags. Throughout, Momcilovic claimed no knowledge of the drugs or the use of her home ‘as a base’ for illegal drug supply. Markovski supported these claims and pleaded guilty to two counts of trafficking. His sentencing hearing indicated that he developed extensive gambling, health, financial and alcohol problems after a serious car accident in 1984. Markovski was also convicted for trafficking heroin and possessing a drug of dependence in 1996.

Despite her denials, Momcilovic was also convicted by a County Court jury of one count of trafficking under Victoria’s ‘deemed possession’ laws. This was because the large quantities of drugs found on her property raised a legal presumption that she was directly involved in drug trafficking. Her appeal challenged the very legality of the deemed possession law, which appears to contradict established principles of fairness embedded in criminal law philosophy.
Under section 25(1) of the Victorian Charter of Human Rights and Responsibilities Act (2006), all laws must ensure that people accused of a crime are ‘presumed innocent until proven guilty according to law’. The deemed possession law reverses this requirement because, ‘unless the person satisfies the court to the contrary’, they are ‘deemed’ by the law to possess any trafficable quantities of illegal drugs found on their property. This means that a person can be guilty of trafficking even if there is no evidence to prove they were aware the drugs were on their property or they intended to possess and supply them. Supporters of this law consider it a ‘reasonable and proportionate’ requirement to counter ‘the evil of drug trafficking’.27

Although Momcilovic’s argument seems compelling, the Victorian Supreme Court upheld her conviction and the legality of the deemed possession rule. This indicates that state courts are reluctant to overturn guilty verdicts in jury trials and valid laws enacted by state parliaments. It remains to be seen whether a forthcoming High Court appeal will take a different approach. However, the Supreme Court did question whether the deemed possession law increased Momcilovic’s likelihood of conviction, or promotes fairness under a system normally requiring the prosecution to prove allegations of guilt ‘beyond reasonable doubt’:

... [T]here is no reasonable justification, let alone any ‘demonstrable’ justification, for reversing the onus of proof in connection with the possession offence... [The effect of the ‘deemed possession’ law] is to presume a person guilty of the offence of possession unless he/she proves to the contrary. That is not so much an infringement of the presumption of innocence as a wholesale subversion of it.28

Deemed possession laws enable people who associate with drug traffickers to be guilty of a crime, regardless of their actual knowledge of or involvement in illegal drug distribution. Appeal courts can reshape these principles in individual cases, but appear reluctant to overturn these laws to promote fairness. Therefore, the ‘evils of drug trafficking’ supersede any countervailing due process requirements embedded in the conventional criminal law. Further, the dominant aim of suppressing the social harms and financial profits associated with illicit drug trafficking completely silence the complex gender and power issues in Momcilovic’s relationship with Markovski. This raises further doubts over the fairness of this guilty verdict.

Dixon (2010)

Shell Dixon was convicted of two counts of trafficking that were upheld on appeal.29 As with Momcilovic (2010), there was doubt over which cohabiting partner organised the illegal transactions. The only evidence found during a police raid on Dixon’s property, where she lived with her two daughters, were three text messages on a mobile phone from people wishing to buy cannabis
and other prescription medications from either Dixon or her partner Dale, who had moved out a week earlier. One of these text messages was reproduced in the verdict: ‘Hi shelly, daz was wondering if mite b able 2 get any things… ds or rs? – cash and bit smoko also if u camm [sic] help me… at hagley but b bak l8r or morn.’

Most remaining phone correspondence was anonymous, making it difficult to pinpoint the identity of each sender or the intended recipient. However, various secondary factors indicated that Dixon was actively engaged in illegal drug trafficking. She was unwilling to explain small quantities of drugs and several syringes found in her bedroom, but admitted that two bags of cannabis and a smoking pipe discovered by police were hers. She was also undergoing methadone treatment at the time of the raid.

The three mobile phone transactions involved willing consumers actively wishing to buy illegal drugs. However, the social ills and personal gains associated with drug trafficking superseded the impact of Dixon’s illicit drug use. As with Momcilovic (2010), the silenced gender relations between Dixon and Dale raise further doubts about the appropriateness of this circumstantial conviction or any likely deterrent effects of Dixon’s punishment. This reinforces the limits of criminal prohibition in dealing with low-level drug trafficking, particularly where any financial gains are only likely to be enough to subsidise a problematic drug habit.

**Buckskin (2010)**

The illegal drug economy is a common source of police corruption. Buckskin (2010) illustrates how a seemingly innocent association between a police officer and drug trafficker can undermine public confidence in the integrity of policing activities:

> During submissions I referred to you as a corrupt police officer. That is an accurate statement. You disgrace the many honourable men and women who serve in SAPOL [the South Australia Police]… you… had a complete disregard for the ethics and responsibilities of the position that you had sworn to uphold… it is vital that the community in South Australia has confidence in the integrity of the police department and members of that department. Your behaviour has eroded that confidence.

Debra Buckskin was charged with unlawfully accessing confidential vehicle registration details from the South Australia Police computer system. This information was forwarded to a known drug trafficker who provided Buckskin with personal support during her volatile marriage separation. The leaked information posed a significant danger to witnesses involved in subsequent drug trials. However, a broader series of ethical questions associated with drug law enforcement emerged during an anti-corruption investigation into Buckskin’s misconduct.
The information obtained by Buckskin was enmeshed in a broader feud involving two rival motorcycle gangs operating in South Australia. One of these gangs was declared an ‘outlaw organisation’ under anti-organised crime laws. A separate investigation under these laws targeting a member of the outlawed gang revealed several documents with the photographs and addresses of up to nine rival gang members. These documents were linked to Buckskin.

Understandably, the dominant emphasis situates Buckskin’s activities within the broader mandate of public trust associated with police behaviour. Nevertheless, the collateral value of confidential information involving police investigations into drug-related activity feeds a broader problem of underground criminal organisations protecting their turf, at times through intimidation and violence, despite the objectives of criminal prohibition. Therefore, Buckskin’s activities were considered an intolerable compromise in the broader police ‘war’ against drugs. However, as with both Momicilovic and Dixon, an important gender dimension is overridden by the need to uphold the integrity of complex police anti-drug and organised crime investigations.

**Sentencing rulings**

Sentencing appeals replicate the contest embedded in the criminal trial. When determining an appropriate penalty, courts must balance the diverse range of personal factors leading to each offence against the broader social impact of the crime. Organisations such as the Victorian Sentencing Advisory Council monitor trends in the age and sex of those convicted for possession and trafficking offences, as well as the type of drug involved and the frequency and length of each penalty. The weighting of these issues in such a wide variety of trafficking cases makes it extremely difficult to achieve proportionality and consistency in sentencing.

Sixty-four per cent of rulings in the current sample involve sentencing appeals. These rulings contain useful information about the personal histories of drug offenders before and at the time of the offence, including their prior criminal histories and degrees of cooperation with justice authorities. The types, quantities and purity of drugs involved, any links to violence or large-scale criminal conspiracies, the extent of illegal profits, as well as the methods employed by police to detect clandestine drug distribution, usually through authorised undercover sales, phone taps and organised raids, are also documented. These issues are the key ‘signs’ or ‘signals’ of the actual and symbolic power of the courts to formally punish a convicted offender. The nature and length of each punishment is therefore determined by balancing the specific circumstances of each case against broader notions of deterrence and public safety.
Power (2010)

In April 2007 Michael Power's home was searched during an investigation targeting two other people. Police found 4.7 grams of methamphetamine powder at 10 per cent purity and 8 grams of cannabis. Power readily admitted that these drugs were for personal use. Police also discovered a samurai sword, a loaded handgun and 2917 ecstasy tablets, analysed at 30 per cent purity and weighing 219.8 grams more than the 500-gram minimum for an illegal commercial quantity of ecstasy under Victorian law. Between 3 and 499 grams is classified as a non-commercial quantity that carries a lower imprisonment penalty.

Power pleaded guilty to possessing an unregistered firearm and the trafficking offence under the 'deemed possession' law. However, he claimed that a friend left these items at his home several days before the raid. He appealed his four-year-and-two-month sentence of imprisonment, arguing that the penalty for trafficking was manifestly excessive.

The appeal was partially upheld, and Power's minimum jail term was reduced from three to two years. This was due to his lack of prior convictions, his guilty plea, his good prospects for rehabilitation and lack of proof that he was directly responsible for trafficking the ecstasy tablets. The court noted that imprisonment is an appropriate punishment in serious drug trafficking cases to promote 'general deterrence, denunciation and protection of the public'. However, the deemed possession law also suggested that Power did not own or intend to sell the drugs, would not profit from their sale and was not continuously involved in the 'business of trafficking' ecstasy. Despite his guilty plea, the court indicated that Power's involvement in drug trafficking was a circumstantial by-product of his troubled personal history:

'The appellant was a slow developer who did not do well at school, was diagnosed with ADHD in 1985 and left school at the Year 9 level aged 15... [when] he commenced a drug habit which had dictated the course of his life since. Soon after leaving school he left the family home in Canberra and went to a youth refuge where he was assaulted and returned home for six months but then left again. At age 17 he resumed his education and completed Year 11 but gave up Year 12 halfway through. In 1995 the applicant came to Melbourne and kept in work despite his drug addiction. In December 2002, his partner of two years died of an asthma attack which was not drug-related and which led to a worsening of the appellant's drug-taking.'

Despite his guilty plea, the court indicated that Power's involvement in drug trafficking was a circumstantial by-product of his troubled personal history:

Michael Power's drug use gradually exposed him to higher levels of the illicit drug trade. However, Power remained a fringe player with good rehabilitation prospects, a relatively stable employment history and strong family support. He also successfully completed a detoxification program before sentencing. Nevertheless, this range of mitigating factors and the operation of the 'deemed possession' law could not displace the dominant emphasis on
deterring others and denouncing the social harms of drug trafficking, which led to a significant prison term.


When read in conjunction, this series of separate rulings illustrates the workings of a semi-organised drug trafficking network. Each narrative implicates George Cancer as the 'go-to' person, but no formal record of his apprehension or trial is available in current legal sources. All four defendants pleaded guilty to various degrees of commercial trafficking after police investigations using legal phone taps and coordinated property searches. The charges against each defendant documented in Table 1 show a clear gradation of lower- and higher-end offending. Minor adjustments to all bar Velevski’s sentence demonstrate how courts balance specific aggravating and mitigating factors when multiple charges and imprecise estimates of persistent illegal activity characterise drug trafficking prosecutions.

Duncan (2010) rests at the lower end of the trafficking spectrum. Police intercepted a telephone call from Duncan to Cancer, requesting the sale of 4000 ecstasy tablets at $15 each to be on-sold for $15.50 each. Cancer provided Duncan with 1000 additional tablets on credit. When Duncan was arrested, police discovered 5026 ecstasy tablets, more than $11,000 in cash, a fake driver's license, two mobile telephones and a small amount of methylamphetamine for personal use.

Duncan managed to cease all drug taking and obtained full-time employment while on bail. These mitigating factors reduced his sentence for methylamphetamine possession. However, although the court viewed Duncan’s transaction as an ‘isolated episode’ compared to Cancer’s more systematic activities, the quantities of drugs and money involved warranted a lengthy aggregate jail term, which also sought to deter others from similar behaviour.

In no way could you be described as a Mr Big of the drug trade... the potential profit, if indeed there was any profit at all, was to be modest. However, the offence seriousness remains high and the sentence imposed must be such as will send a loud and clear message to those who may be tempted as you were to deal in a large commercial quantity of a drug of dependence and that stern punishment is a likely consequence when apprehended.

Telephone intercepts and other police surveillance indicated that Pepe Velevski engaged in several transactions involving unspecified quantities of ecstasy during a three-month period in 2005. The court examined Velevski’s ‘loose arrangement’ with Cancer, who supplied the drugs and received payment once they were on-sold. Phone communications indicated that at one stage Velevski owed Cancer up to $50,000 for outstanding sales, but each transaction usually involved between $2000 and $5000.
Table 1: Summaries of charges in Duncan (2010), Velevski (2010), Skubevski (2010) and Vasic (2010)

<table>
<thead>
<tr>
<th>Case</th>
<th>Charges</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>Duncan</td>
<td>1 Trafficking 1561 grams of ecstasy (6 years)</td>
<td>Total sentence of 6.5 years with 3-year minimum retained but Count 2 reduced from 6 to 2 months</td>
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<td></td>
<td>2 Possession of 2.75 grams of methylamphetamine (6 months)</td>
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<td></td>
<td>3 Using false documents to open a bank account (12 months)</td>
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<tr>
<td></td>
<td>4 Obtaining financial advantage by using a banking facility under a false name (12 months)</td>
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<tr>
<td>Velevski</td>
<td>1 Trafficking a commercial quantity of ecstasy – precise amounts unquantifiable but 612 tablets and 23.7 grams of MDMA seized (4.5 years)</td>
<td>Total sentence of 7 years imprisonment with 3.5 minimum reduced to 6 years with a 3-year minimum</td>
</tr>
<tr>
<td></td>
<td>2 Trafficking a commercial quantity of pseudoephedrine – 8950 tablets or 525 grams (4.5 years)</td>
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<tr>
<td></td>
<td>3 Trafficking a commercial quantity of methylamphetamine – precise quantities undetermined; 5.6 grams seized on arrest and admitted to trafficking over a four-month period (2 years)</td>
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<tr>
<td>Skubevski</td>
<td>1 Trafficking a large commercial quantity of ecstasy – precise amounts undetermined, but police seized large quantities of drugs, cash and other equipment including scales – (8 years)</td>
<td>Total sentence of 10 years with 6.5 minimum reduced to 9.5 years with a 6-year minimum</td>
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<tr>
<td></td>
<td>2 Trafficking a large commercial quantity of methylamphetamine (5 years)</td>
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<tr>
<td></td>
<td>3 Trafficking methylamphetamine (1.5 years)</td>
<td></td>
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<tr>
<td></td>
<td>4 Trafficking ecstasy – 3.5 grams (12 months)</td>
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<tr>
<td></td>
<td>5 Possession of ecstasy (9 months)</td>
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<td></td>
<td>6 Possession of methylamphetamine – several small bags seized during police raid – (6 months)</td>
<td></td>
</tr>
<tr>
<td>Vasic</td>
<td>1 Trafficking a large commercial quantity of ecstasy – precise amounts undetermined – (9 years)</td>
<td>Appeal refused and total sentence of 14 years with 9-year minimum retained</td>
</tr>
<tr>
<td></td>
<td>2 Trafficking methylamphetamine – 17.8 g (2 years)</td>
<td></td>
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<tr>
<td></td>
<td>3 Trafficking a large commercial quantity of cocaine – precise amounts undetermined but estimated in excess of 1 kg – (12 years)</td>
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</table>
Velevski routinely participated in the ‘nightclub scene’ where he distributed the drugs and consumed up to ‘a gram of ice’ and ‘30 to 40 ice tablets per day’. However, he demonstrated good rehabilitation prospects by stopping all drug use, abandoning the nightclub scene and participating in several community activities while on bail:

You were described ... as a gofer or a sales agent for Mr Cancer. It would appear that you received no great individual profit from your operations apart from your own ability to consume drugs. You have not ... acquired any great assets as happens sometimes to those higher up the chain. You were designated ... essentially of one level up from street level.41

As with Duncan, Velevski’s sentence was reduced on appeal to reflect his lower status within the illegal network. The initial sentence was considered too harsh because it gave insufficient weight to the limited financial gains associated with Velevski’s ‘gofer’ role and wrongly equated his activities with the severity and persistence of Cancer’s.

Bill Skubevski was linked to a separate distribution network that mailed large quantities of amphetamines and ecstasy from Melbourne to Tasmania, although his precise relationship with George Cancer is never clearly stated in his sentencing ruling. All charges against Skubevski arose after several raids on his property over a three-year period. Each search produced various trafficable quantities of drugs, which were hidden in his house and car. Evidence also supplemented telephone intercepts which indicated that Skubevski was a persistent trafficker who was caught ‘red-handed’. He testified that most illegal profits subsidised his extensive drug and gambling habits:

The police executed a number of search warrants [and] ... located two clear plastic bags containing amphetamine which had fallen out of his girlfriend’s pyjama pants ... [and] about 2000 ecstasy tablets and 220g of amphetamine located in a bread box in the kitchen. In addition, inside hollow shelving on the wall of the study police located $16 200 in cash, approximately 427g of amphetamine and approximately 21 000 ecstasy tablets. Also located during the search was another $1150 in cash, six mobile phones, a large rear hydraulic meal press, digital scales and a vacuum sealer.42

Alexander Vasic was a major supplier at the high-end of the distribution chain who provided Cancer with significant amounts of ecstasy, cocaine and speed for on-selling to the likes of Duncan and Velevski. Vasic was exposed to drugs while working as a nightclub security guard, where he developed a cocaine habit costing ‘between $12 000 and $16 000 per month’. He was apprehended after police surveillance involving ‘about 40 000 legally intercepted telephone calls’,43 which identified numerous transactions with Cancer between March and August 2005. Vasic was also charged for arranging to purchase 10 ounces of cocaine for $100 000 in a separate operation targeting 16 other suppliers. While the true extent of Vasic’s dealings with
Cancer remain unclear, the following quotation indicates the scale of his activities:

On 22 March 2005, in a telephone conversation, Mr Vasic and Mr Cancer talked about the sale of packages of some 2500 ecstasy tablets. On the next day, in another telephone conversation, Mr Vasic told Mr Cancer that he would have 40,000 ecstasy tablets by Friday. Later that night Mr Vasic telephoned Mr Cancer and asked him whether he could get together $100,000 in one hour... On 7 April 2005, the two discussed by telephone the price of ecstasy tablets. That evening, Mr Vasic telephoned Mr Cancer and informed him that the best price his supplier would sell the tablets for was $150,000 for 10,000 tablets and Mr Cancer agreed to purchase the tablets at that price.44

The quantity of illicit drugs and sums of money involved highlight the seriousness of this case. These factors were magnified by the separate cocaine deal, which was arranged while Vasic was on bail for supplying ecstasy to Cancer. Any breach of a formal court order will negate the mitigating effects of a guilty plea or an extensive history of drug use. However, Vasic remains in the ‘mid-range’ for large-scale commercial trafficking, with the aggregate 14-year sentence being well within the statutory maximum of life imprisonment. In fact, the volume of ecstasy and cocaine in Vasic is extremely low compared to an organised shipment seized by federal authorities in July 2010, in which up to 240 kilograms of cocaine were hidden in paving stones imported from Mexico.45 This case is more likely to attract a penalty of life imprisonment under current Australian state or federal laws.46

The discourses of drug trafficking

The criminal law aims to promote social cohesion by eliminating undesirable behaviour. However, the highly selective, reactive and inherently retrospective application of the criminal justice system limits its capacity to prevent or reduce social harm. Those who are easier to detect, usually because they have a visible street presence, are the main subjects of police attention.47 Once a person is processed through the criminal courts, the state is entitled to impose a penalty if guilt is established. Criminal punishments are commonly justified as society’s ‘retribution’ for the harms caused by the offence. Both individual and general deterrence is supposedly achieved by incapacitating convicted offenders. A term of imprisonment imposed in one case arguably sends a message to others that similar behaviour, if detected, will attract the same consequences.48

Cases involving the consumption of drugs have always created problems under this approach. As drug use erodes a person’s ‘vicious’ or ‘free use of their will’, it is often difficult to prove the central requirement of intention to
establish criminal responsibility. This reasoning has been a central element of criminal law philosophy since the mid-nineteenth century: ‘In intoxication, where he has been deprived of... [free will] by the transient influence of a visible cause: such as the use of wine, or opium, or other drugs, that act... on the nervous system: which condition is indeed neither more nor less than a temporary insanity produced by an assignable cause.”

In recent decades Australian laws and policies associated with illegal drugs have become more punitive. For Bessant, this is due to confrontational language that frames illegal drug use as a social, moral and criminal ‘problem’. This language often uses metaphors that highlight the ‘threat and danger’ of illicit drug use to justify zero tolerance responses that target the real or imagined harms associated with drug taking. These zero tolerance discourses are extended in drug trafficking cases. Questionable principles of legal responsibility, such as the deemed possession law or convictions with circumstantial evidence, and lengthy retributive and deterrence-based punishments, are validated by a dominant focus on vague notions of social harm and the extensive profits associated with illicit drug distribution.

Each case presented in this chapter indicates that it is often difficult to separate problematic drug use from involvement in illicit drug supply. The legal separation of these issues is particularly harsh on those at the bottom of the distribution chain, such as Shell Dixon, Michael Power and Paul Duncan. The limited profits from their activities simply magnify their precarious lifestyles, by subsidising their illicit drug use and increasing their exposure to police surveillance. However, the scale, persistence and profits higher up the distribution chain in Markovski, Velevski, Skubevski and Vasic are more difficult to excuse. These cases demonstrate a clear gradation of sentences based on the scale, economic value and persistence of their illegal activities. Despite varied background circumstances, the quantity and value of illicit drugs seized provides a strong foundation for ensuring consistency in the sentencing process. The parity between Power and Duncan is particularly striking, producing only a 5.5 per cent difference between the amount of ecstasy tablets seized and the length of sentence imposed for their respective trafficking offences.

The deemed possession law and the circumstantial conviction in Dixon illustrate how low requirements of proof widen the punitive criminal justice net in drug trafficking cases. Even though there might be doubt over the credibility of their stories, Momcilovic and Power were also convicted with little evidence to establish their direct or persistent involvement in illegal drug trafficking. More challenging are the complex gender relationships in Momcilovic, Dixon and Buckskin, which remain suppressed by the prevailing focus on the evils of drug trafficking. This is extremely problematic in Buckskin, where tighter supervision or greater personal support from within the police organisation might have altered her behaviour. Invariably, the dominant
emphasis on greed, profit, social harm or enforcement corruption outweighs the influence of any coercion, addiction, personal vulnerability or the need for drug or psychological treatment that underpins each of these cases. The consequences of a drug trafficking conviction are no doubt extremely damaging for these three women.

**Alternative regulatory models**

Each year Australian courts examine thousands of criminal cases involving illicit drug use, possession and trafficking. While much attention has been devoted to developing alternative ways of regulating illicit drug use, new approaches to 'managing' illicit drug supply remain at the fringes of contemporary Australian regulatory discourse. Further, despite the persistence of underground drug supply markets involving people with extensive histories of drug use, those charged with trafficking offences are generally ineligible for most current alternatives to criminal prosecution.

Therapeutic jurisprudence enables individual users to undergo intensive non-custodial treatment penalties if they plead guilty to a restricted range of non-violent offences that attract no more than a 12-month prison term. Rather than imposing a formal conviction and potential imprisonment term, these orders aim to promote desistance from both drug use and crime through intensive supervision, counselling, court visits and periodic urine testing. Similarly, partial decriminalisation allows users to possess or cultivate limited quantities of cannabis for 'personal consumption'. However, its influence in restricting illegal cannabis supply remains to be examined.

Ultimately, these regimes focus solely on managing illicit drug use, which inadvertently reinforces the dominance of prohibition as the prevailing method of managing illegal drug supply. While alternative models that simultaneously aim to reduce the harms from illicit drug use and supply will not eliminate illegal drug trafficking, they can contain its effects in ways that prohibition struggles to achieve. The 'compassionate laws' operating in 12 jurisdictions of the United States work in tandem with criminal prohibition, by allowing the medical prescription of cannabis to treat certain illnesses. Local governments can establish dispensaries to legally distribute cannabis to qualified patients, while criminal prohibitions against cultivation can be waived for authorised suppliers and primary caregivers. The conventional criminal law still technically applies to all acts of supply and consumption occurring outside this model. However, public regulatory oversight has tempered the size of the criminal economy since the introduction of these laws.

Perhaps the most radical alternative involves the medically supervised administration of heroin to registered addicts. Since the late 1990s several
clinical trials throughout Europe have demonstrated that this model can have considerable individual and social benefits. Addicts receiving heroin under supervision are more likely to complete their treatment and report improved personal health, housing and employment stability. Most significantly, research from Switzerland indicates that almost 70 per cent of addicts undergoing supervised treatment lose their dependence on the criminal economy for day-to-day subsistence. The longer an addict stays in supervised treatment, the less likely it is that she or he will re-enter the illegal drug scene.

Despite these impressive findings, political support for heroin-assisted treatments in most jurisdictions throughout the world remains limited. The possible extension of any state-sanctioned approach to other illicit recreational drugs, such as speed or ecstasy, also appears politically unthinkable. However, state-supervised supply goes beyond partial decriminalisation or offering treatment as an alternative to criminal punishment, by actively challenging the financial monopoly of underground drug supply networks. Therefore, any future legal strategies that seek to produce meaningful reductions in drug-related harm must simultaneously target the interconnected economic, health and social factors associated with both illicit drug supply and use.

**Conclusion**

The prevailing discourses associated with the prohibition of drug trafficking aim to punish an ill-defined series of social harms and illegal financial gains. This approach endorses the suspension of many conventional due process requirements under the criminal law, in a dubious ‘war’ on drugs that is mainly fought with increased law enforcement resources and harsher punishments. However, those prosecuted and convicted of drug trafficking often have extensive drug problems, gain limited financial benefit or have little direct involvement in the illicit drug trade. While court decisions recognise many important background factors when determining legal liabilities and sentences for trafficking offences, dominant discourses that continually highlight the evils of illicit drug trafficking invariably prevail. The extent to which this approach substantively limits illicit drug supply in Australia remains questionable. Arguably, these problems can be minimised only through a major shift in regulatory philosophy which recognises that many who engage in drug trafficking often do so to subsidise their own extensive drug use and are more responsive to treatment than to punishment. Further research into the power and limits of these dominant legal and enforcement discourses and how alternative regulatory models might help to offset or contain these problems is clearly necessary.
Notes

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