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## Drug use at music festivals

by Tom Gotsis

### 1. Introduction

Drug use at music festivals has become a public safety concern in NSW, one that has led to a number of fatalities in recent years. The latest death occurred after a 19 year old man attended the Knockout Games of Destiny music festival on 7 December 2018.<sup>1</sup> That music festival also saw three people taken to hospital in a critical condition; 13 people taken to hospital for treatment and 130 people seeking medical treatment during the event.<sup>2</sup>

This e-brief provides an overview of the main recommendations of the Expert Panel report entitled [Keeping People Safe at Music Festivals](#), released by the NSW Government on 23 October 2018. Those reforms, all of which were accepted by the NSW Government in principle,<sup>3</sup> embrace a multifaceted approach of regulatory reform, increased criminal law deterrence and harm reduction. The recommendations relating to deterrence include a new on-the-spot fine for drug possession at music festivals and a new offence of supply drug causing death. Those two reforms are examined in detail. In light of ongoing calls for a trial of pill testing at music festivals, this e-brief also presents recent evidence on the efficacy of pill testing.

### 2. Background

On 15 September 2018 approximately 30,000 people attended the Defqon.1 music festival. Police presence was high, with 180 uniformed and undercover police officers at the event.<sup>4</sup> Almost 20% of people searched (69 of 355) were found to be in possession of drugs, including 10 persons who were charged with supply offences.<sup>5</sup> Two people attending the music festival died, another three were hospitalised in a critical condition and “hundreds of others fell ill”.<sup>6</sup>

In the immediate aftermath of these tragic events, the NSW Government said it would shut down Defqon.1.<sup>7</sup> On 18 September 2018 the Government announced it would establish an Expert Panel to report on reducing illegal drug related fatalities and incidents at music festivals.<sup>8</sup> The Expert Panel comprised the NSW Police Commissioner, Mick Fuller APM, the NSW Chief Health Officer, Dr Kerry Chant, and the Chair of the Independent Liquor and Gaming Authority, Mr Philip Crawford.<sup>9</sup> Despite calls for a trial of pill testing from the Australian Medical Association and other stakeholders,<sup>10</sup> pill testing is opposed by the NSW Government on the grounds that it encourages drug use and

creates a false sense of safety.<sup>11</sup> Accordingly, pill testing remained outside the terms of reference of the Expert Panel.<sup>12</sup>

### 3. Regulatory reform

The Expert Panel noted that music festival regulation in NSW is often determined at a local council level<sup>13</sup> and therefore dependent on the location of a proposed festival.<sup>14</sup> Moreover:

There is no common mechanism to facilitate consideration and planning around drug risk management. Operational arrangements to mitigate drug risk are often addressed within other event plans, such as medical and security plans.<sup>15</sup>

In order to address these concerns, the Expert Panel recommended that the NSW Government:

- 1: Develop a consistent approach to the regulation of music festivals. This could be through the introduction of a new category of liquor licence specific to music festivals.
- 2: Require organisers to develop and adhere to a Safety Management Plan for their event, supported by a two-tiered system of risk, with variable regulatory conditions.
- 3: Consider establishing an interagency committee to assess and manage an event organiser's approach to event risk.<sup>16</sup>

The Expert Panel stated that music festivals entail, to varying degrees, an inherent risk of drug related harm.<sup>17</sup> It recommended that the risk of drug related harm posed by a music festival should be assessed in light of the factors set out in Table 1.<sup>18</sup>

**Table 1: Guide to assessing the risk of drug related harm at music festivals**

**Indicative risk factor:**

The event targets people aged 18-29 years.

Attendee numbers are high relative to available services at the location.

The event is held over a long time (eg. six hours or more) and/or extends past midnight.

Anticipated weather conditions, in particular heat.

The event has limited access to acute hospital services.

The event operator/organiser is inexperienced.

**Events by organiser or landholder in previous three years have seen:**

A death or serious medical presentation as a result of alcohol or other drug use, crowd behaviour or improper safety management.

A high rate of drug or alcohol-related presentations.\*

A high rate or probability of illicit drug supply or use.

\* The Expert Panel noted that early identification and rapid transfer to hospital of patients with drug related illness should be encouraged. Requests for ambulance transfer should not be considered an adverse performance outcome. Source: [Keeping People Safe at Music Festivals: Expert Panel Report](#), p 9.

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All music festivals would be accorded a base level of risk and required to comply with a Tier 1 Safety Management Plan as a condition of the new music festival liquor licence.<sup>19</sup> Music festivals assessed as posing a higher risk of drug related harm would be required to comply with a Tier 2 Safety Management Plan, which would entail stricter safety requirements (for example, additional on-site medical services).<sup>20</sup>

### 4. Harm reduction

The Expert Panel recommended the NSW Government:

4. Strengthen drug and alcohol harm reduction programs for music festival attendees.
5. Develop best practice guidelines for event organisers on harm reduction approaches and messages.<sup>21</sup>

Table 2 sets out initiatives that the Expert Panel indicated could promote harm reduction.

<b>Peer education</b>	Peer educators deliver drug and alcohol education and assist music festival attendees get to medical tents.
<b>Chill out spaces</b>	Music festival attendees can rest and be monitored if unwell, or taken to a medical space.
<b>Training for non-health professionals</b>	Event, security and bar staff can better identify at-risk music festival attendees, support them and refer them to health services.
<b>On-site medical services</b>	Medical services at point of need. Must be highly visible and not be routinely patrolled by police.
<b>Secure medical waste bins</b>	Secure waste bins in medical tents allow drug users to safely dispose of unwanted drugs or drugs they have found.
<b>Better care of intoxicated attendees</b>	Assess whether intoxicated attendees should be transferred to a medical tent or chill out space, rather than be ejected from the festival.
<b>Provide alcohol and drug treatment advice and referral services</b>	Facilitate motivated music festival attendees to change their behaviour.
<b>Harm reduction and health promotion messages</b>	<p>Messages provided to encourage attendees to: pace themselves; rest; stay hydrated by using freely available water; and look after friends.</p> <p>Messages to be provided before, at and after events in a number of locations and using social media.</p> <p>Online training could become a condition of ticket purchase or linked to VIP opportunities.</p>

Source: [Keeping People Safe at Music Festivals: Expert Panel Report](#), p 11-12

## 5. Deterrence

In order to deter drug use at music festivals, the Expert Panel recommended the NSW Government:

6. Trial the use of Criminal Infringement Notices (on-the-spot fines) instead of Court Attendance Notices for drug possession offences at or in the vicinity of music festivals.
7. Investigate introducing a new offence for those who supply illegal drugs, for financial or material gain, to people who then self-administer the drugs and die as a result.<sup>22</sup>

### 5.1 On-the-spot fines (Criminal Infringement or Penalty Notices)<sup>23</sup>

Music festival attendees who possess illegal drugs commit an offence against [section 10\(1\)](#) of the *Drugs Misuse and Trafficking Act 1985*; which carries a maximum penalty of 20 penalty units (\$2,200) or 2 years imprisonment, or both.<sup>24</sup> Currently, police can deal with an alleged offence of drug possession by issuing a warning;<sup>25</sup> issuing a Court Attendance Notice or arresting the alleged offender.<sup>26</sup> The proposed trial of on-the-spot fines would also enable police officers to issue a fine to musical festival attendees who possess prohibited drugs.<sup>27</sup>

There are “over 7000 penalty notice offences covered in 110 different statutes” in NSW.<sup>28</sup> This includes the Criminal Infringement Notice Scheme established under [Chapter 7, Part 3](#) of the *Criminal Procedure Act 1986*.<sup>29</sup> A penalty notice must not be issued under this scheme to a person under the age of 18 years.<sup>30</sup>

#### 5.1.1 De facto decriminalisation or “net widening”?

Payment of an on-the-spot fine resolves the matter without the need for court proceedings.<sup>31</sup> This enables offenders to avoid being convicted and sentenced by a court,<sup>32</sup> and provides efficiency gains in the use of police and court resources.<sup>33</sup> Some stakeholders<sup>34</sup> have suggested that, by enabling offenders to avoid being convicted and sentenced by a court, the use of on-the-spot fines for drug offences may be a form of de facto decriminalisation (or depenalisation, as it is also known).<sup>35</sup>

While on-the-spot fines enable offenders to avoid being convicted and sentenced by a court, a penalty is not avoided. Moreover, as indicated by the latest available sentencing data from the Judicial Commission of NSW (set out in Table 3), in almost 28% of cases where the principal offence was possessing a prohibited drug, the NSW Local Court did not convict the offender and either dismissed the charge or conditionally discharged the offender. Where only defendants with no prior records are considered, the equivalent figure rises to 66.7%. In respect of these offenders, on-the-spot fines may therefore have a net widening effect,<sup>36</sup> as they represent a harsher criminal law response than proceeding to court.<sup>37</sup>

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**Table 3: Penalties imposed for the offence of possess prohibited drug  
Section 10(1) of the *Drug Misuse and Trafficking Act 1985*  
NSW Local Court 1 April 2014 – 30 March 2018**

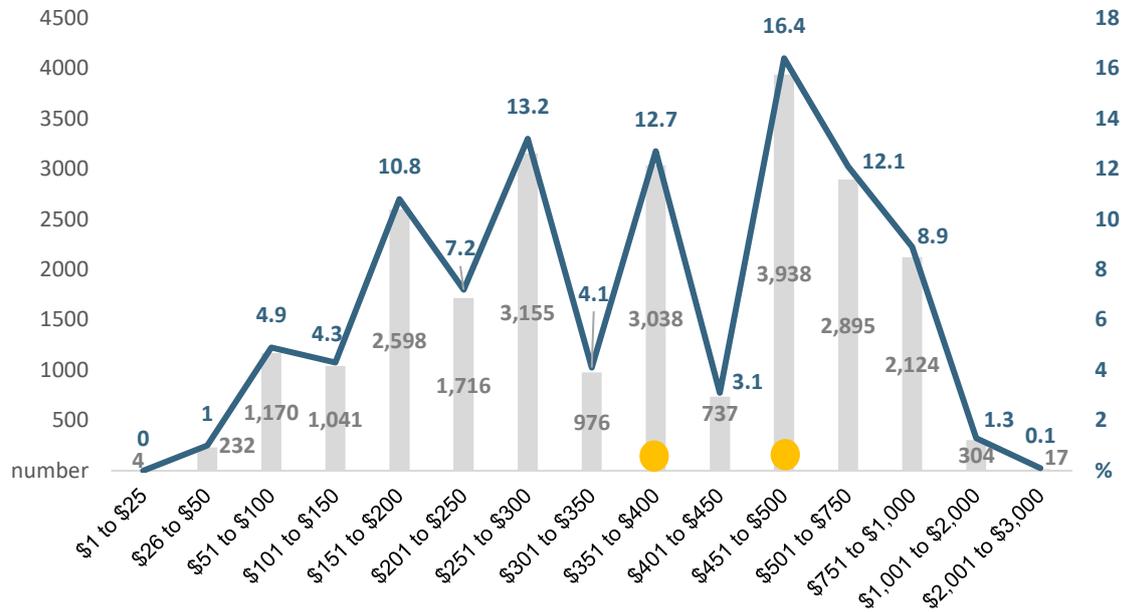
Penalty Type*	Cases		Percentage	
	All offenders	No Priors	All offenders	No Priors
Section 10(1)(a) Dismissal	2,977	2,067	7	15.3
Section 10(1)(b)&(c) Bond	8,833	6,952	20.7	51.4
Section 10A No other penalty	1,666	116	3.9	0.9
Rising of the court	5	0	0	0
Fine only	23,948	4,147	56.2	30.7
Section 9 Bond	4,004	226	9.4	1.7
Community Service Order	126	8	0.3	0.1
Section 12 suspended sentence	286	7	0.7	0.1
Intensive Correction Order	26	0	0.1	0
Home detention	4	0	0	0
Imprisonment	773	7	1.8	0.1
	<b>42,648</b>	<b>13,530</b>	<b>100</b>	<b>100</b>

\*Section numbers refer to the *Crimes (Sentencing Procedure) Act 1999*, as at August 2018  
Source: Judicial Commission of NSW, Judicial Information Research System

### 5.1.2 The fine amount

The Expert Panel considered that the NSW Government should have regard to existing Criminal Infringement Notice penalties when setting the amount of the proposed on-the-spot fine.<sup>38</sup> Currently, those penalties range from \$200 to \$1,100.<sup>39</sup> It has been reported that the proposed on-the-spot fine will be “up to” \$500.<sup>40</sup> As set out in Figure 1, an on-the-spot fine of \$450–\$500 would accord with the fine amount most frequently imposed by the Local Court, but would be higher than the fine amount imposed in 61.3% of cases. A \$400 on-the-spot fine would be higher than the fine amount imposed by the Local Court in 45.5% of cases.

**Figure 1: Fine amounts imposed by the NSW Local Court for offences against section 10(1) of the *Drug Misuse and Trafficking Act 1985*, 1 April 2014–30 March 2018, by number and percentage of cases, all offenders.**



Notes: Orange circles indicate possible amounts of the on-the-spot fines. In 3 cases the fine amount was not able to be displayed. Source of data: Judicial Commission of NSW, Judicial Information Research System.

### 5.1.3 Deterrent effect

The Expert Panel determined that on-the-spot fines for drug possession, together with high visibility policing, will provide a “strong message” of deterrence to music festival attendees.<sup>41</sup> It also stated that “a trial of this approach in the music festival context may provide a good proving ground for further application.”<sup>42</sup> As noted above (at 2), approximately 20% of people searched at the Defqon.1 music festival were found to be in possession of prohibited drugs. Subject to the effects of any confounding variables, if on-the-spot fines do have an independent deterrent effect, the percentage of music festival attendees found in possession of prohibited drugs should decrease at future events where they are trialled.

### 5.2 Drug supply causing death

In order to deter drug dealers from targeting music festivals, the Expert Panel recommend that the NSW Government investigate introducing a new offence of drug supply causing death, one that is:

... targeted towards drug dealers rather than the ‘young friends’ scenario (in this scenario, one friend is tasked with obtaining or sourcing drugs for a group of friends, and is then reimbursed, rather than seeking profit).<sup>43</sup>

On 13 November 2018 the NSW Government introduced the [Community Protection Legislation Amendment Bill 2018](#) into the Legislative Assembly. The Bill passed the Legislative Assembly on 20 November 2018 and the Legislative Council on the following day. Schedule 2.1 of the Bill inserts section 25C into the *Crimes Act 1900* in order to enact the recommended offence of supply drugs causing death. The substantive offence is found in section 25C(1), which states:

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(1) A person is guilty of an offence under this section if:

- (a) the person supplies a prohibited drug to another person for financial or material gain, and
- (b) the drug is self-administered by another person (whether or not the person to whom the drug was supplied), and
- (c) the self-administration of the drug causes or substantially causes the death of that other person.

Maximum penalty: Imprisonment for 20 years.

For the purpose of section 25C(1), “prohibited drug” means any substance specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985*, except for prohibited plants.<sup>44</sup>

### 5.2.1 Limitations on the scope of the offence

**Intent of financial or material gain:** The requirement in section 25C(1)(a) to prove that the supply was for financial or material gain is designed to exclude the “young friends scenario”. That requirement represents a departure from existing drug law, where “social supply” (one person simply giving a drug to another) can constitute supplying a prohibited drug contrary to [section 25](#) of the *Drug Misuse and Trafficking Act 1985*.<sup>45</sup>

**Significant risk of death:** Section 25C(2) also circumscribes the scope of the offence, as it requires the prosecution to prove that:

the accused knew, or ought reasonably to have known, that supplying the prohibited drug would expose another person (whether or not the person to whom the drug was supplied) to a significant risk of death as a result of the self-administration of the drug.

In the Bill’s [Second Reading](#) speech the, Attorney General noted that:

[t]he “ought reasonably to have known” aspect of new section 25C(2) in the new offence imports a reasonable person test. For example, this test would not allow a finder of fact to consider an accused person’s self-induced intoxication and transitory emotional states.<sup>46</sup>

How section 25C(2) will be applied in practice remains for the courts to determine on a case-by-case basis. In the context of music festivals, the application of section 25C(2) may be informed by what the accused knew, or ought reasonably to have known, about such variables as:

- the manner and ingredients used to manufacture the supplied drugs;
- the extent of polysubstance use (whether multiple drugs or a combination of drugs and alcohol have been used by a music festival attendee);
- the underlying health of a music festival attendee; and
- the prevailing weather conditions (especially high temperatures).

**Lawful supply of drugs:** Section 25C(3) provides that the offence created by section 25C(1) does not encompass drugs lawfully supplied under the *Poisons and Therapeutic Goods Act 1966*.

**Approval of the Director of Public Prosecutions:** Section 25C(4) provides that proceedings for an offence under section 25C(1) may only be instituted by or with the approval of the Director of Public Prosecutions.

### 5.2.2 Causation

The established position at criminal law is that, for one person to be liable for the death of another, there must be a causal connection between the person's action and the death of the deceased.<sup>47</sup> A drug supplier has not been criminally liable for the death of a drug user because the user's voluntary act of self-administering the drugs has been interpreted as breaking any causal connection between the supply and the death.<sup>48</sup> As the High Court (by majority) said in *Burns v The Queen*:

The Crown's concession that the unlawful supply of methadone was not an act capable of founding liability for manslaughter should be accepted. The supply of the methadone was not an act that carried an appreciable risk of serious injury. That risk arose when the drug was consumed. The cause of the death of the deceased in law was the consumption of the methadone and not the anterior act of supply of the drug.<sup>49</sup>

Section 25C(1)(b) and (c) disregards that break in causation by making the drug supplier criminally liable for the act and consequences of self-administration of a drug by another person (whether or not that person is the person to whom the drug was initially supplied). This aspect of section 25C was commented upon by Members in the Second Reading Debate. For instance, Paul Lynch MP quoted the concerns of the NSW Bar Association, which said:

The New South Wales Bar Association strongly opposes the proposed amendment for the following reasons. ... [T]he proposed provision breaches a fundamental principle of the criminal law in this country and around the common law world that an accused person should only be held criminally responsible for events that the accused caused. ...

So far as the Bar Association is aware, it has never been the law in this country or in other common law countries that a person can be made criminally responsible for a homicide where no such causal relationship can be established. This is because, for all offences involving prohibited results, it is a fundamental principle that a causal relationship between the actions of the accused and the occurrence of the event must be established. ...

This legislation holds another individual responsible for the choice and act of self-administration of the second person in circumstances where there is knowledge of exposure of the other person to a significant risk of death should the second person take the drug. ..<sup>50</sup>

Responding to those concerns, the Attorney General, Mark Speakman SC MP, said:

This offence introduced by this bill addresses a gap in the criminal law in New South Wales. Currently, drug dealers who supply prohibited drugs for profit can

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avoid responsibility for the deaths of people in our community caused by the self-administration of the drugs that they have supplied.

Reference has been made in debate to the Burns case in the High Court. There, a five judge majority referred to the affront of morality that the supplier of a prohibited drug should not bear responsibility for the callous disregard for the life of the drug user. It also referred to the desirability of making drug suppliers responsible for the deaths of drug users and said it was open to the legislature to enact a statutory offence. The court raised the possibility of a different one to the one proposed in this bill. The Chief Justice in the High Court separately also explicitly said there may be a cause for specific legislation to cover culpable drug-induced homicide. ....<sup>51</sup>

### 5.2.3 Review

In the Bill's Second Reading speech the Attorney General stated that, in light of concerns expressed about section 25C, the Department of Justice and the New South Wales Government "will keep the operation of the offence under close and regular review."<sup>52</sup>

### 6. Pill testing

Pill testing enables music festival attendees to have drugs tested at music festivals without fear of being fined or charged for drug possession. On-site drug education, counselling and health service referrals are typically provided to service users when the results of the tests are provided to them.<sup>53</sup>

Pill testing technology ranges from simple colorimetric reagent kits, to gas chromatography and various forms of spectroscopy.<sup>54</sup> Pill testing requires accurate and timely identification of minute quantities of drugs, contaminants and new synthetic drugs, which has led some stakeholders to caution that pill testing "is far from the silver bullet that proponents claim".<sup>55</sup> This is because:

The detection and quantification of unknown compounds presents a technical problem, requiring state-of-the-art analytical equipment and software. More important is the challenge of communicating the results of tests of new substances with unknown effects.<sup>56</sup>

As discussed in a 2016 NSW Parliamentary Research Service briefing paper, [\*Illegal drug use and possession: Current policy and debates\*](#), the objective of pill testing is to promote harm reduction.<sup>57</sup> Stakeholders opposed to pill testing argue that, rather than promoting harm reduction, pill testing puts the lives of music festival attendees at risk by implicitly encouraging drug use and falsely suggesting that inherently dangerous substances are safe to consume.<sup>58</sup> This concern was expressed by Police Minister Troy Grant MP when he said:

The number one problem is that what they are proposing is some sort of quality assurance measure for an illegal drug, for drug traffickers, to be conducted by police and the New South Wales Government. ... It gives people a false sense of security that they pill test and somehow know the contents of it and it's okay to consume. The clear message is it isn't. It's an illegal drug because it is dangerous, it is likely to kill you or cause irreversible harm.<sup>59</sup>

This concern was also expressed by Premier Gladys Berejiklian in response to the calls for pill testing after the fatalities at Defqon.1:

Anyone who advocates pill-testing is giving the green light to drugs. There is no such thing as a safe drug and unfortunately when young people think there is, it has tragic consequences.<sup>60</sup>

In its *Global review of drug checking services operating in 2017*, the National Drug and Alcohol Research Centre found widespread use of pill testing internationally.<sup>61</sup> As noted by the Expert Panel, domestically pill testing is supported by a range drug law reform stakeholders.<sup>62</sup> One survey found that pill testing is also supported by 57% of NSW voters.<sup>63</sup> An articulation of this support for pill testing is found in the following statement from academic Dr Andrew Groves:

... unambiguous, zero-tolerance messages are unrealistic and disregard contemporary patterns of youth drug use. In contrast, pill testing offers an alternative message; that drug use *is* dangerous, and informing users about what they are taking and the risks not only demonstrates social responsibility for this marginalised group but also that young people have the capacity for rational decision-making and may desist from drug use because they see the risks for the first time.<sup>64</sup>

Mr Matt Noffs, Chief Executive Officer of the Ted Noffs Foundation, put the issue in the following terms:

Those who oppose pill testing claim ... that we are condoning it. But I say to them — the antithesis of ‘just say no’ is not ‘just say yes’.

This is not a binary problem. There is a path between where we can educate our children, a path where we can build trusting relationships, a path where we can weave a stronger safety net for future generations.

So if, God forbid, our children decide to experiment — like a majority of young Australians — parents’ choices are not simply, ‘Just say no or yes,’ but rather, ‘If you decide you’re going to experiment, please take it to get it tested and, if you see a policeman at a festival, that they’re there to help you, not harm you’. That they want you to be safe and healthy.<sup>65</sup>

Over time, the merits of the respective perspectives on pill testing will be increasingly informed by a growing body of empirical evidence. This general principle was recognised by the Expert Panel when it stated: “drug policy is an evolving space” and “policy makers may have regard to any evidence as it arises”.<sup>66</sup> Recent empirical reports on pill testing are considered below. This summary includes the report on the use of pill testing at a 2018 music festival in Canberra, which was conducted with the support of the Australian Capital Territory.

### 6.1 European Monitoring Centre for Drugs and Drug Addiction Report (2017)

#### 6.1.1 Pill tests do not necessarily encourage drug use

In a 2017 report entitled *Drug checking as a harm reduction tool for recreational drug users: opportunities and challenges*,<sup>67</sup> the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) discussed evidence on whether pill testing condones, and therefore encourages, drug use. Referring to three separate studies, the EMCDDA stated:

Another common criticism is that drug testing encourages young people to take drugs, or to take more drugs than they would if such services were not available. This criticism appears to be unfounded, and, in fact, it has been shown that drug use does not increase following the introduction of a drug-

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testing service in a country (Bücheli et al., 2010).<sup>[68]</sup> In addition, the prevalence of drug use does not seem to be higher in countries that have drug-checking systems in place (EMCDDA, 2016).<sup>[69]</sup>

In addition, previous research has shown that drug users who use testing services do not use more drugs than drug users who do not do so (Benschop et al., 2002).<sup>[70]</sup> In fact, the same study also found that the presence of drug-checking services did not encourage those who do not use drugs to begin drug use.<sup>71</sup>

### 6.1.2 Pill tests can facilitate timely public warnings

The EMCDDA gave an example of how pill tests can facilitate timely public warnings and save lives:

For example, [it was] recently reported that each of a batch of pink pills bearing a Superman logo contained 170 mg of PMMA (para-methoxymetamphetamine [sic]), an unpredictable compound, and one much more toxic ... than MDMA. In the Netherlands and Belgium, this immediately led to national mass media warning campaigns that included national radio and television broadcasts, posts on social media and on the internet, and flyers and posters at large dance events ... The Healthy Nightlife Network (prevention professionals, peer coaches) and first aid professionals were also informed. In the United Kingdom, however, where no drug-checking system was in place at the time, the same pills caused the death of four young people ...<sup>72</sup>

### 6.1.3 Further study required

The EMCDDA noted that the efficacy of pill testing has not as yet been conclusively established. Moreover, pill testing can only form one part of a multifaceted attempt to reduce the harms arising from a complex social problem:

Pharmacovigilance in the form of drug-checking systems has resulted in timely warning campaigns specifically directed at groups at risk, conveying a level of professionalism that is appreciated by recreational drug users. Such an approach creates more awareness about the specific drugs that are consumed and the options for drug checking. By no means should these arguments in favour of drug testing be considered scientific evidence of its efficacy, but such considerations might be helpful for stakeholders deliberating whether or not to introduce drug testing. Complemented by other activities implemented in nightlife settings, such as chill-out rooms, the provision of factual and trustworthy information, counselling, good ventilation and other precautionary safety measures, drug checking can serve as an extension of prevention and harm reduction interventions, potentially saving lives.<sup>73</sup>

## 6.2 Cross sectional survey of Australian music festival (2018)

The results of a survey of 642 attendees at a large Australian music festival in 2016 were presented in a 2018 study,<sup>74</sup> which found:

- Nearly three-quarters (73.4%) of survey participants reported using illicit drugs in the past 12 months, most commonly cannabis (63.9%) and ecstasy (59.8%).
- Over one-third (37.2%) of survey participants who reported using drugs “never” attempted to find out about drug purity and a further 29% did so “occasionally”.
- A large majority (86.2%) of survey participants indicated “somewhat” or “a lot” that pill testing services should be provided for free at music

festivals. If the pill testing service was provided at cost, the equivalent figure was 67.5%.

- Just over one-half (54.4%) of survey participants indicated that they would be “highly likely” to utilise free pill testing services at music festivals. A further 32.7% of survey participants indicated that they would be “somewhat likely” to utilise free pill testing services at music festivals.
- Two-thirds of survey participants (68.6%) agreed “somewhat” or “a lot” that drug manufacturers and suppliers may use pill testing services as a “quality control mechanism”.
- Whether the results of the drug testing would influence the drug use behaviour of survey participants varied according to drug type. For instance, 65.1% of survey participants indicated that they would not take a drug if testing showed it contained Methamphetamine. In contrast, 17.8% of survey participants indicated that they would not take a drug if testing showed it contained Ecstasy/MDMA.
- A need for ongoing drug education, given that some survey participants indicated they ‘did not know’ if they would still take a drug if pill testing indicated the presence of an unintended substance (ranging from 12.6% for ecstasy to 38.9% for Butylone).<sup>75</sup>

### 6.3 Australian Capital Territory (ACT) pilot (2018)

In April 2018, with the “strong and publicly announced support of the ACT Government”, the Safety Testing Advisory Service At Festivals and Events (STA-SAFE) consortium conducted a pilot study of pill testing at a music festival in Canberra.<sup>76</sup> The pill testing site was located and accessed by 129 persons. This pilot resulted in the undertaking of 83 drug tests and the collection of 74 post-test questionnaires.<sup>77</sup> The pill testing revealed a range of chemical substances; including, in one case, *N*-Ethylpentylone, a drug that has caused multiple deaths and hospitalisations.<sup>78</sup>

Illustrating the evolving nature of pill testing and its potential for harm reduction, the ACT pill testing pilot used a unique wristband designed to track the medical outcomes of pill testing participants:

The patron who was handling the drugs was given a hospital identification (ID) wristband with the tested sample’s unique identifier number written on it. The wristbands were of soft vinyl dual-laminate material with tamper resistant clips in orange colours. Patrons were advised that they could discard the wristband or store it in their pocket or bag, however if they wore it and had an adverse reaction later on, the ID would inform the ambulance or hospital that they wanted their test results to be accessed to assist in treatment.

Overwhelmingly, patrons responded positively and many choose to keep them in their pockets. None of the wrist band were rejected; it is not known if they were later thrown away. The ACT hospitals and ambulance staff were advised of the wristbands and did not report on any patrons with wristbands presenting at hospitals or requiring ambulance services during or immediately after the festival.<sup>79</sup>

Regarding the capacity of the pill testing to influence drug taking behaviour, the evaluation report stated that, after the results of the pill testing became available:

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- 58% of participants said they would use the drugs as planned;
- 12% said they would use less;
- 5% said they would not use the tested drug but would use another drug;
- 7% were undecided; and
- 18% said they would not use illicit drugs.<sup>80</sup>

Additionally, over half (66%) of participants reported they knew of other persons using the same drug and almost 90% of those participants indicated they would inform the other persons of the results of their pill tests.<sup>81</sup> The STA-SAFE report notes:

This is a very high number and represents a number of other people being informed of the testing results and the dissemination of information well beyond those that presented to the service. ... If these people in turn speak with other people, the reach of the information becomes very high and potentially very quickly.<sup>82</sup>

### 7. Conclusion

The NSW Government has announced a range of reforms designed to deter drug use at music festivals and reduce drug related harm. Those reforms include stricter regulatory requirements for event organisers, additional harm reduction measures, on-the-spot fines for drug possession and an offence of supply causing death. Pill testing has not been considered because of concerns that it condones drug taking and falsely implies that consuming prohibited drugs is inherently safe. As recognised by the multifaceted approach adopted by the NSW Government, drug taking at music festivals remains a social problem that affords no simple solution. Any policy reforms will therefore require ongoing evaluation in light of emerging evidence.

- <sup>1</sup> Rawsthorne S, [One dead, 16 hospitalised after suspected music festival overdoses](#), *Sydney Morning Herald*, 9 December 2018; and Mayers L and Kontominas B, [One dead after suspected drug overdose at Knockout Games of Destiny dance festival](#), *ABC News*, 9 December 2018.
- <sup>2</sup> Rawsthorne S, [One dead, 16 hospitalised after suspected music festival overdoses](#), *Sydney Morning Herald*, 9 December 2018; and Mayers L and Kontominas B, [One dead after suspected drug overdose at Knockout Games of Destiny dance festival](#), *ABC News*, 9 December 2018.
- <sup>3</sup> Berejiklian G, [Safety at music festivals to be improved](#), Media Release, 23 October 2018.
- <sup>4</sup> Kontominas B, [Defqon.1: NSW Premier vows to shut down festival after suspected overdose deaths](#), *ABC News*, 17 September 2018.
- <sup>5</sup> *Ibid.*
- <sup>6</sup> Rabe T, [New panel after NSW festival drug deaths](#), *Newcastle Herald*, 18 September 2018.
- <sup>7</sup> Reid P, [NSW Premier Gladys Berejiklian wants to shut down Defqon.1 and the push for pill testing](#), *The Industry Observer*, 17 September 2018. See also: Williams T, [Aussie Festivals & Musicians Urge NSW Premier Not To Shut Down Events, Following Defqon.1 Deaths](#), *Music Feeds*, 24 September 2018.
- <sup>8</sup> Berejiklian G, [Ensuring safety at music festivals](#), Media Release, 18 September 2018.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> See, for instance: [AMA would like to see pill testing at festivals](#), Australian Medical Association, 27 September 2018; and Wolfe N, [‘How many more people have to die?’: Calls to fix Australia’s music festival culture](#), *News.com*, 17 September 2018.
- <sup>11</sup> See, for instance: [NSW Premier “aghast” at festivals deaths but rejects calls for pill testing](#), *SBS News*, 16 September 2018; Wolfe N, [“Standing still is not an option”: Calls to introduce pill testing at Australian music festivals](#), *news.com.au*, 25 September 2018; Rabe T, [New panel after NSW festival drug deaths](#), *Newcastle Herald*, 18 September 2018; and Duncan A, [Premier Gladys Berejiklian vows to shut down “unsafe” Defqon1 Festival](#), *Pedestrian*, 16 September 2018.
- <sup>12</sup> Fuller M, Chant K, Crawford P, [Keeping People Safe at Music Festivals: Expert Panel Report](#), October 2018, p 1.
- <sup>13</sup> *Ibid.*, p 8.
- <sup>14</sup> *Ibid.*, p 8.
- <sup>15</sup> *Ibid.*, p 5.
- <sup>16</sup> *Ibid.*, p 8.
- <sup>17</sup> *Ibid.*, p 9.
- <sup>18</sup> *Ibid.*, p 9.
- <sup>19</sup> *Ibid.*, p 9.
- <sup>20</sup> *Ibid.*, p 10.
- <sup>21</sup> *Ibid.*, p 10 and 11.
- <sup>22</sup> *Ibid.*, p 12.
- <sup>23</sup> The NSW Law Reform Commission describes the term Criminal Infringement Notice as a type of penalty notice; one which has been issued in respect of “offences that have usually been dealt with through a prosecution process in the courts; in particular, offences relating to public order and anti-social behaviour”: [Penalty Notices: Consultation Paper 10](#), September 2010, p 141.
- <sup>24</sup> The maximum penalty for an offence against section 10 is set out in [section 21](#) of the *Drug Misuse and Trafficking Act 1985*. Currently, one penalty unit is equal to \$110: [section 17](#) of the *Crimes (Sentencing Procedure) Act 1999*.
- <sup>25</sup> [Sections 107](#) of the *Law Enforcement (Powers and Responsibilities) Act 2002*.
- <sup>26</sup> [Sections 99](#) and [105](#) of the *Law Enforcement (Powers and Responsibilities) Act 2002*.
- <sup>27</sup> [Section 342](#) of the *Criminal Procedure Act 1986*.
- <sup>28</sup> Brown DB, Cunneen C and Russel S, [It’s all about the Benjamins: Infringement Notices and Young People in New South Wales](#), (2017) 42(2) *Alternative Law Journal* 253.
- <sup>29</sup> The offences to which these provisions currently apply are larceny (if the value of property or amount does not exceed \$300), unlawful possession of property, offensive conduct, offensive language, obstructing traffic, unauthorised entry of vehicle or boat, continuation of intoxicated and disorderly behaviour following a move on direction: [Schedule 4, Criminal Procedure Regulation 2017](#). See also: Iemma M, [Criminal Infringement Notice Scheme](#), *NSW Hansard*, 23 October 2007; NSW Ombudsman, [On The Spot Justice? The Trial of Criminal Infringement Notices by NSW Police](#), 2005.
- <sup>30</sup> [Section 335\(1\)](#) of the *Criminal Procedure Act 1986*.
- <sup>31</sup> See, for instance, [section 338](#) of the *Criminal Procedure Act 1986*.

## Drug use at music festivals

- <sup>32</sup> NSW Law Reform Commission, [Penalty Notices: Report 132](#), 2012, p 11.
- <sup>33</sup> *Ibid*, p 289-290.
- <sup>34</sup> Lefevre J, [The NSW Government's New Drugs Policy Might Actually Be a Form of Decriminalisation](#), *Junkee*, 24 October 2018.
- <sup>35</sup> For a discussion of the four main legal models that can apply to recreational drug use and possession (prohibition, depenalisation, decriminalisation and legalisation) see: Gotsis T, Angus C and Roth L, [Illegal drug use and possession: Current policy and debates](#), NSW Parliamentary Research Service, 2016, p 66.
- <sup>36</sup> NSW Law Reform Commission, [Penalty Notices: Report 132](#), 2012, p 19, 289, 293-296.
- <sup>37</sup> See MacKenzie B and White L, [Splendour in the Grass: Greens push for 'police discretion' as drug-takers avoid criminal record](#), *ABC News*, 11 September 2018.
- <sup>38</sup> Fuller M, Chant K, Crawford P, [Keeping People Safe at Music Festivals: Expert Panel Report](#), October 2018, p 13.
- <sup>39</sup> [Schedule 4, Criminal Procedure Regulation 2017](#).
- <sup>40</sup> Gerathy S, [Drug dealers to be held criminally responsible for any deaths under new charge in NSW](#), *ABC News*, 23 October 2018. See also: [NSW to introduce tougher drug penalties, but no pill testing, after festival deaths](#), *The Guardian*, 23 October 2018.
- <sup>41</sup> Fuller M, Chant K, Crawford P, [Keeping People Safe at Music Festivals: Expert Panel Report](#), October 2018, p 12.
- <sup>42</sup> *Ibid*, p 13.
- <sup>43</sup> *Ibid*, p 13. A maximum penalty for the proposed offence was not recommended.
- <sup>44</sup> Section 25C(6), *Crimes Act 1900*.
- <sup>45</sup> See, for instance, [R v Wilhelm \[2010\] NSWSC 378](#) at [11]–[12]; and [Nair v R \[2013\] NSWCCA 79](#). See also [section 3](#) of the *Drug Misuse and Trafficking Act 1985*, which defines “supply” to include both “sell” and “distribute”.
- <sup>46</sup> Speakman M, [Community Protection Legislation Amendment Bill 2018](#), *NSW Hansard*, 13 November 2018, p 51.
- <sup>47</sup> See [section 18](#) of the *Crimes Act 1900* (which defines murder and manslaughter) and [Royall v The Queen \[1991\] HCA 27, \(1991\) 172 CLR 378](#). See also section 25C(5), which states that section 18 of the *Crimes Act 1900* does not apply to an offence under section 25C.
- <sup>48</sup> [Burns v The Queen \[2012\] HCA 35, \(2012\) 246 CLR 334](#) at [88].
- <sup>49</sup> [Burns v The Queen \[2012\] HCA 35, \(2012\) 217 A Crim R 501, \(2012\) 246 CLR 334](#), at [88], per Gummow, Hayne, Crennan, Kiefel and Bell JJ.
- <sup>50</sup> Lynch P, [Community Protection Legislation Amendment Bill 2018](#), *NSW Hansard*, 20 November 2018, p 82.
- <sup>51</sup> Speakman M, [Community Protection Legislation Amendment Bill 2018](#), *NSW Hansard*, 20 November 2018, p 87-88. The case referred to is: [Burns v The Queen \[2012\] HCA 35, \(2012\) 217 A Crim R 501, \(2012\) 246 CLR 334](#).
- <sup>52</sup> Speakman M, [Community Protection Legislation Amendment Bill 2018](#), *NSW Hansard*, 13 November 2018, p 51.
- <sup>53</sup> Fisher H and Measham F, [Night Lives: Reducing drug related harm in the Night Time Economy](#), 2018, p 32 and 34.
- <sup>54</sup> For a discussion of pill testing technology, see: [Parliament of Victoria, Inquiry into Drug Law Reform](#), 2018, p 497-500.
- <sup>55</sup> Leibie A, [Pill testing sounds like a great idea, but there's a catch](#), *Sydney Morning Herald*, 20 January 2017. See also: Brunt T, [Drug checking as a harm reduction tool for recreational drug users: opportunities and challenges](#), European Monitoring Centre for Drugs and Drug Addiction, 2017, p 11-12 and 15-16.
- <sup>56</sup> Brunt T, [Drug checking as a harm reduction tool for recreational drug users: opportunities and challenges](#), European Monitoring Centre for Drugs and Drug Addiction, 2017, p 13.
- <sup>57</sup> Gotsis T, Angus C and Roth L, [Illegal drug use and possession: Current policy and debates](#), NSW Parliamentary Research Service, 2016, p 53-61.
- <sup>58</sup> For a detailed discussion of the criticisms of pill testing, see: Brunt T, [Drug checking as a harm reduction tool for recreational drug users: opportunities and challenges](#), European Monitoring Centre for Drugs and Drug Addiction, 2017, p 11-12.
- <sup>59</sup> Jolly N, [NSW Police Minister Says Pill Testing At Festivals "Won't Happen"](#), *Tone Deaf*, 4 January 2017.
- <sup>60</sup> Duncan A, [Premier Gladys Berejiklian Vows to Shut Down "Unsafe" Defqon1 Festival, Pedestrian TV](#), 16 September 2018. See also: Clun R, [NSW Premier rejects pill testing after music festival death](#), *Sydney Morning Herald*, 10 December 2018.
- <sup>61</sup> Barratt MJ, Kowalski M, Maier LJ, and Ritter A, [Global review of drug checking services operating in 2017](#), *Drug Policy Modelling Program Bulletin No. 24*, National Drug and Alcohol Research Centre, UNSW Sydney, 2018, p 2 and 10-11.

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- <sup>62</sup> Fuller M, Chant K, Crawford P, [Keeping People Safe at Music Festivals: Expert Panel Report](#), October 2018, p 1.
- <sup>63</sup> Smith A, [Voters back pill testing despite government's opposition](#), *Sydney Morning Herald*, 23 September 2018. Based on ReachTel polling of 1,627 voters.
- <sup>64</sup> Groves A, ["Worth the test?" Pragmatism, pill testing and drug policy in Australia](#), *Harm Reduction Journal*, 2018, 15:12.
- <sup>65</sup> Wolfe N, ['Standing still is not an option': Calls to introduce pill testing at Australian music festivals](#), *News.com*, 25 September 2018.
- <sup>66</sup> Fuller M, Chant K, Crawford P, [Keeping People Safe at Music Festivals: Expert Panel Report](#), October 2018, p 1.
- <sup>67</sup> Brunt T, [Drug checking as a harm reduction tool for recreational drug users: opportunities and challenges](#), European Monitoring Centre for Drugs and Drug Addiction, 2017.
- <sup>68</sup> Bücheli, A., Quinteros–Hungerbühler, I. and Schaub, M. (2010), Evaluation of party drug prevention in the city of Zurich, *Suchtmagazin* 5, p 41-49.
- <sup>69</sup> European Monitoring Centre for Drugs and Drug Addiction, [European Drug Report 2016: Trends and Developments](#), 2016.
- <sup>70</sup> Benschop, A., Rabes, M., Korf, D. J., Eggerth, A., Ivan, I., Jamin, J., Kelting, M. et al, [Pill testing, ecstasy & prevention: a scientific evaluation in three European cities](#), 2002.
- <sup>71</sup> Brunt T, [Drug checking as a harm reduction tool for recreational drug users: opportunities and challenges](#), European Monitoring Centre for Drugs and Drug Addiction, 2017, p 12.
- <sup>72</sup> Ibid, p 13.
- <sup>73</sup> Ibid, p 17.
- <sup>74</sup> Day N, Criss J, Griffiths B, Gurjal SK, John-Leader F, Johnston J, Pit S, [Music festival attendees' illicit drug use, knowledge and practices regarding drug content and purity: a cross sectional survey](#), 2018, *Harm Reduction Journal*, 15(1).
- <sup>75</sup> Ibid, p 1, 3, 4 and 5.
- <sup>76</sup> Safety Testing Advisory Service At Festivals and Events (STA-SAFE) Consortium, [Report on the ACT GTM Pill Testing Pilot: a Harm Reduction Service](#), June 2018, p 1.
- <sup>77</sup> Ibid, p 21.
- <sup>78</sup> Ibid, p 23.
- <sup>79</sup> Ibid, p 9-10.
- <sup>80</sup> Ibid, p 25.
- <sup>81</sup> Ibid, p 26-27.
- <sup>82</sup> Ibid, p 26-27.