



21 December 2018

The Hon Alison Xamon  
Chair  
c/- Tracey Sharpe, Committee Clerk  
Select Committee into Alternate Approaches  
to Reducing Illicit Drug Use  
and its Effects on the Community  
Legislative Council Committee Office  
Parliament House, GPO Box A11  
PERTH WA 6837

Dear Ms Xamon

Thank you for your invitation to provide a submission for consideration by the Select Committee into Alternate Approaches to Reducing Illicit Drug Use and its Effects on the Community.

The WA Bar Association is a voluntary professional association of independent barristers in Western Australia. Its objectives include advancing the public interest by:

1. advocating adherence to and respect for the rule of law;
2. supporting and promoting the fair and proper administration of justice;
3. advocating the importance of access to justice to all members of the community;
4. liaising and working with community groups and the courts to provide pro bono legal advice and representation;
5. promoting equality before and within the law; and
6. facilitating valuable dialogue with governments and the courts.

The WA Bar Association supports the consideration of alternative approaches to addressing drug use in Western Australia.

Many of the WA Bar Association's members practice in criminal law and have direct experience of the interaction between the justice system and drug users or drug-related crime. Other members of the Association have professional and personal experience of the effect of drugs in the community.

The WA Bar Association recognises the challenge for government in reducing illicit drug use and addressing its harmful effects on the community, particularly as those challenges remain clearly observable, despite the resolute prosecution over a very long period, by numerous governments on both sides of the political spectrum, of an approach based on the traditional and longstanding policy setting on the issue, namely prohibition and criminal sanction for breach of the prohibition.

It is within that context that the WA Bar Association expresses its concerns as to the effectiveness of criminal penalties for drug offences as a tool to reduce drug use.

The experience of our members is that most people charged with drug offences have little knowledge of the applicable penalties and the message behind the principle of general deterrence in sentencing rarely reaches its intended audience.

The criminal justice system is a crude instrument to address the health and social repercussions of drug use. While programmes such as the Drug Court have proved to be a successful step towards intervention, our members report that more of this type of initiatives should be developed and implemented.

The WA Bar Association is also concerned as to the public cost of investigating, prosecuting and administering justice relating to drug use, in circumstances when those public funds could be used in different and better ways to address the problem.

An approach that warrants consideration is to address possession of small quantities of drugs as a health issue and an opportunity for intervention not punishment, such as occurs in Portugal.

As the Committee is no doubt aware, Portugal's drug policy has changed radically in recent years.<sup>1</sup> The first limb of the policy redefines drug offences and, in simple terms, requires that a person caught in possession of small quantities of illicit drugs be evaluated by a team consisting of a lawyer, a doctor and a social worker who work to promote recovery from addiction. Drug trafficking is still a crime that can lead to imprisonment, however, consideration is given to those who are selling to support their own addiction.

The second and important limb to Portugal's policy is the use of age and demographic based information to provide education about the risks of drug use and possible rehabilitation methods. Healthcare services for drug users are provided for no charge and range in intensity from primary to specialised care. Prison drug control is bolstered by encouraged rehabilitation, assessment of individual inmate's psychological and physical needs and yearly prison-wide drug reformation plans. Portugal has also increased research into addiction and drug use to allow innovation in that area.

While such a scheme may need to be tailored to suit Western Australia, and the nature of the Australian Federation, the WA Bar Association invites the Committee to consider schemes like Portugal's and other international alternative approaches.

Such a scheme might encompass consideration of supervised injecting facilities such as those found in Sydney, many European countries and now proposed in Melbourne which serve two purposes: to ensure that those taking substances within the centres are cared for as much as possible; and to give the users an opportunity to seek healthcare alternatives in a place where they are comfortable. This method allows a route to voluntary treatment that is less intrusive from the user's perspective and allows the health centres to make a difference in the community.

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<sup>1</sup> See, for example, European Monitoring Centre for Drugs and Drug Addiction publication entitled "Portugal's Country Drug Report 2017". The WA Bar Association recognises that as part of its consultation the Committee will have regard to a wide range of expert publications and evidence-based research.

In short, the WA Bar Association supports the consideration by the Select Committee of all alternative approaches to illicit drug use and its effects on the community.

Yours sincerely

A handwritten signature in black ink, appearing to be 'SM Davies SC', written in a cursive style.

SM Davies SC  
President