



**SUBMISSION TO THE SELECT COMMITTEE
INTO ALTERNATIVE APPROACHES TO
REDUCING ILLICIT DRUG USE AND ITS
EFFECTS ON THE COMMUNITY**

Legal Aid WA

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INTRODUCTION

1. Legal Aid WA provides legal services throughout Western Australia.
2. Illicit drug usage is a factor often relevant to the criminal law, child protection and family law cases that are worked on.
3. The justice system is a key point for identifying and addressing the problem of illicit drug usage, through police diversion and court based programs where users are provided with drug education, counselling and rehabilitation.

ADDRESSING THE UNDERLYING REASONS FOR ILLICIT DRUG USE

4. The Methamphetamine Action Plan Taskforce has identified common themes in relation to addressing the problem of methylamphetamine addiction:
 - a. the need to treat substance addiction as a health issue and address the underlying reasons for addiction;
 - b. the need to provide timely support when an addict seeks help;¹ and
 - a. that addicts are often dealing with emotional gaps or trauma and consequently an integrated approach is needed to address co-occurring mental health and drug problems.²
5. The correlation between illicit drug usage and mental illness makes investment in mental health services a key part of the strategy in reducing illicit drug use and associated crime.

¹ Methamphetamine Action Plan Taskforce, *What the Taskforce Heard* (June 2018) pp 6-7. Methamphetamine Action Plan Taskforce, *Final Report* August 2018, p33, p140

² Methamphetamine Action Plan Taskforce, *What the Taskforce Heard* (June 2018) p7. Methamphetamine Action Plan Taskforce, *Final Report* August 2018, p125.

TIMELY AND ACCESSIBLE SUPPORT

6. Ensuring the availability of residential drug rehabilitation beds for both young people and adults in a timely, culturally appropriate and accessible manner is an important measure to address illicit drug usage.
7. The availability of services near where users are in the suburbs and in regional areas promotes engagement with services.
8. In family law proceedings drug and alcohol usage has been identified as a risk factor for children in 73.3% of parenting matters referred for risk assessment.³
9. Illicit drug usage is often a factor in children going into the care of the State. Early access to effective treatment and support services is of key importance to ensuring the safety and wellbeing of children in their families and, where children have been taken into care, their reunification with their families.
10. Access to adequate services at an early stage may also assist parents to avoid their children being taken into care and assist young and adult offenders to avoid becoming entrenched in drug related offending.
11. Often residential rehabilitation is a pre-requisite for the return of the children and some parents have experienced delay in accessing counselling and residential rehabilitation due to waiting lists.
12. Evidence based programs that are successful such as the Saranna Program at Cyrenian House where mothers have their children with them with monitoring by the Department⁴ need to be replicated to increase accessibility.

THE PORTUGUESE APPROACH

13. It is noted that the terms of reference specifically refer to the approach taken in Portugal to reducing harm from illicit drug use.

³ Family Court of WA *Annual Review 2017*, p8.

⁴ <http://www.cyrenianhouse.com/services/therapeutic/saranna-women-and-childrens-program/>

14. Portugal decriminalised the use and possession for personal use of all illicit drugs on 1 July 2001 with users being referred to a Commission for the Dissuasion of Drug Addiction, a panel comprised of a social worker, a medical professional and a lawyer, who consider the motivation for the usage, potential treatments and sanctions.
15. The result of the reform has been small increases in reported illicit drug use amongst adults and reduced illicit drug use among problematic drug users and adolescents.⁵
16. There has been a reduced burden on the criminal justice system and an increase in the uptake of drug treatments, a reduction in opiate-related deaths and infectious diseases, and increases in the amounts of drugs seized by the authorities and a reduction in the price paid for drugs.⁶
18. Researchers have noted that the way in which decriminalisation is implemented is very important,⁷ and if implemented properly:
 - decriminalisation will not lead to increases in crime;
 - people who do not receive a criminal record are much less likely to engage in future crime or have subsequent contact with the criminal justice system, even when their previous offending history is considered;
 - there is no evidence that decriminalisation will lead to other types of crimes, such as supply or drug-related crime.⁸
19. There are two forms of decriminalisation: *de jure* decriminalisation (the result of changes to legislation) and *de facto* decriminalisation (where legislation may prohibit an illicit substance, but the relevant laws are not enforced in practice).⁹

De jure decriminalisation can occur through:

- removing criminal penalties;

⁵ Caitlin Hughes and Alex Stevens, 'What can we learn from the Portuguese decriminalisation of illicit drugs?' *British Journal of Criminology* (2010) 50, 999, 1006.

⁶ *Ibid.*, 1017.

⁷ NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 3.

⁸ *Ibid.*

⁹ Peter Homel and Rick Brown, *Marijuana legislation in the United States: An Australian perspective*, Trends & issues in crime and criminal justice, No. 535, June 2017, AIC, p. 2, http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi535.pdf (accessed 4 August 2017).

- replacing criminal penalties with infringements and criminal penalties may be applied if a person fails to comply with the infringement; and
- replacing criminal penalties with administrative penalties (such as a ban on attending a designated site).¹⁰

De facto decriminalisation can occur through:

- non-enforcement of the law (through police discretion or police prosecution guidelines); and
- referral of offenders to education/treatment instead of court (eligibility tends to be subject to criteria: such as that this be a first or second offence and criminal penalties may be enforced for non-compliance).¹¹

JUSTICE SYSTEM RESPONSES TO DRUG USE

20. Western Australia currently has police diversion to drug education and treatment and court based programs.
21. Similar approaches have been taken around Australia.¹²

Cannabis Intervention Requirement ('CIR') Scheme

22. In Western Australia, possession and use of cannabis in any amount is still illegal, but if a person is found by police to be in possession of:
 - 10 grams or less of cannabis (or cannabis seeds) for personal use; and/or
 - a smoking implement with traces of cannabis,

¹⁰ NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 2.

¹¹ *Ibid.*

¹² South Australia has police drug diversion, Drug Assessment Panels, a Court Assessment and Referral Drug Scheme program and Drug Court programs. In Victoria there is police cautioning, a Criminal Justice Diversion Program in Victoria is authorised under s 59 of the *Criminal Procedure Act 2009* (Vic) and Drug Court programs. In New South Wales there is a cautioning scheme, an early referral scheme by Magistrates into treatment (Magistrate Early Referral into Treatment program), whereby participants are case managed throughout their bail period by health professionals, and Drug Court programs. In the Northern Territory infringements may be issued by the police if the relevant criteria are met and there is also a youth warning scheme. The Australian Capital Territory has an infringement notice scheme, a police drug diversion scheme and a Court Alcohol and Drug Assessment Service engaging people in case managed treatment. Tasmania has a system of court based diversion supervised by a Magistrate while a person is on a Drug Treatment Order. In Queensland there is a police diversion scheme operating under s 379 of the *Police Powers and Responsibilities Act 2000* (Qld).

then the police officer may issue a CIR to that person.¹³

23. The CIR can be resolved by completing a Cannabis Intervention Session ('CIS') within 28 days of a CIR being imposed by a police officer.
24. Approved drug counsellors conduct the CIS.
25. The session aims to increase awareness of the laws and health effects relating to cannabis and to enhance motivation to make behavioural changes by providing a non-judgemental environment in which open discussion will be encouraged.
26. If a person fails to attend the CIS then the alleged offence will be prosecuted by the officer who issued the CIR.
27. The CIR scheme applies to anyone aged 14 years and over.

Other Drug Intervention Requirement ('ODIR')

28. The ODIR Scheme is a police diversion initiative that operates State wide and aims to divert eligible adults charged with simple possession or use of drug offences or possession of utensils, into treatment.¹⁴
29. The criteria for ODIR are that the person has had no prior conviction for drug dealing or serious violence or sexual offences, the quantities of the drug involved are below the ranges specified in police policy, the drug must be for personal use and the person must not have previously have been given an ODIR.
30. If issued an ODIR by the police there is a requirement for the person to complete three Other Drug Intervention Sessions ('ODIS') within a 42-day period.

¹³ Retrieved from:

<https://www.police.wa.gov.au/Your%20Safety/Alcohol%20and%20drugs/Illicit%20drugs%20and%20the%20law>

¹⁴ Retrieved from:

<https://www.mhc.wa.gov.au/getting-help/diversion-support-programs/other-drug-intervention-requirement-odir/>

31. ODIS are three individually focused, 60-minute sessions with a trained alcohol and drug counsellor.
32. Legal Aid WA does not see people who have been diverted by the police from the court system and so we are not aware of the extent to which police diversion is used.

Court based diversion and treatment

33. There are court based programs in Western Australia aimed at addressing illicit drug with varying requirements based on the level of seriousness of the offending, including:
 - the Pre-sentence Opportunity Program ('POP') for relatively less serious offences that would not typically result in imprisonment; and
 - Supervised Treatment Investigation Regime ('STIR') for relatively more serious offending.
34. The Perth Magistrates Court and the Perth Children's Court provide more intensive monitoring of the rehabilitation of offenders with addiction through Drug Court programs.

CONCLUSION

17. Services to address illicit drug usage need to be accessible in suburban and rural contexts and there should be a co-ordinated approach to dealing with people who have co-occurring drug addiction and mental health problems.
18. The additional investment in residential rehabilitation including the south west residential rehabilitation service is welcomed.
19. Police diversion and court based programs are key referral points to drug education, counselling and treatment.
20. It would be useful if research was conducted on the levels of police diversion using the CIR and ODIR.

21. Such research could consider the benefits of expanding diversion such as through the ODIR program allowing illicit drug users to be again diverted after a previous ODIR with more intensive counselling or residential rehabilitation.
22. Consideration should also be given to the expansion and availability of alternatives to court based sanctions.
23. Further research should be undertaken in relation to adopting the Portuguese approach in a Western Australian environment.