



THE LAW SOCIETY
OF NEW SOUTH WALES

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Ms Carmel Tebbutt and Mr John Brogden AM
Co-chairs
NSW Drug Summit 2024

By email: MOH-NSWDS2024@health.nsw.gov.au

Dear Co-chairs,

NSW Drug Summit 2024

The Law Society commends the NSW Government for its commitment to improving health outcomes for people impacted by drug use, and for its consultative approach to reform through the NSW Drug Summit 2024. We welcome the opportunity to provide a submission to inform the NSW Drug Summit 2024. The Law Society's Criminal Law, Children's Legal Issues, Indigenous Issues and Human Rights Committees contributed to this submission.

We consider drug misuse to be a health and social issue. In our view, the current criminal law requires reform to more appropriately balance community safety, effective use of law enforcement and criminal justice resources and the protection of vulnerable groups including children and young people from the effects of drug use.

We are also concerned that inappropriate approaches to managing the misuse of alcohol and other drugs disproportionately harm Indigenous people and communities, and contributes to the health gap between Indigenous and non-Indigenous people in Australia.¹ In our view, meaningful action by the NSW Government, including criminal law reform and investment in health and rehabilitation services, is essential to support improved health and safety outcomes for Indigenous people and to ensure targets under the National Agreement on Closing the Gap are met, in addition to improving outcomes for the broader community.

Our submission identifies priority recommendations made by previous reports for attention and provides information to support targeted reform of law and approaches to children and young people with drug health needs. We restate our views that greater investment in better and different forms of rehabilitation resources will have the most impact in addressing the health and safety needs of individuals and communities. We offer the following comments for your consideration and look forward to further opportunities to contribute to the development of comprehensive and meaningful law reform arising from the NSW Drug Summit 2024.

¹ Australian Institute of Health and Welfare, *Alcohol, tobacco and other drugs in Australia - Aboriginal and Torres Strait Islander people (2021)* online: <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/aboriginal-and-torres-strait-islander-people>.

Recommendations of the First Report on the Impact of the regulatory framework for cannabis in NSW

The Law Society broadly supports the recommendations of the NSW Parliament Legislative Council Portfolio Committee No 1 – Premier and Finance set out in Report no. 65 ‘Impact of the regulatory framework for cannabis in NSW’ (October 2024). We note that Committee’s overarching view that:

...law reform regarding the regulation of cannabis in New South Wales is not only urgently needed but is also the only rational course of action. The committee has been persuaded that the current penal approach to cannabis is unduly punitive, inflicting significant social harm with no corresponding social benefit, and creating an enormous economic burden on the people of New South Wales. The data points unequivocally to the fact that ultimately complete legalisation of adult use cannabis is the clearest and most effective option moving forward.²

We consider the following recommendations made by that Committee to be priority matters for the NSW Government to consider as part of the NSW Drug Summit.

Reconsideration of the amount classifications in Schedule 1 of the *Drug Misuse and Trafficking Act 1985* (NSW) in respect of cannabis generally and particularly what amounts of cannabis should be considered a ‘small quantity’ and a ‘traffickable quantity’ noting the committee is of the view the threshold for these quantities may be too low.

We support this recommendation, and in addition, would also support broader review of threshold amounts for quantities of other prohibited drugs contained under Schedule 1.

In addition, we suggest that the NSW Government also consider ways to address related difficulties arising from the quantity-based approach to categorisation and criminalisation, including injustice arising from the operation of admixture provisions.

We note that due to admixture provisions, the gross quantity of the substance (which is the relevant amount in NSW) may bear no correlation to the actual amount of the relevant drug contained in the substance. This results in irregular and disproportionate outcomes, as depending on the threshold amount for quantities of a particular drug, a defendant may be open to a maximum penalty of life imprisonment for possessing a substance that is predominantly admixture.

We suggest that the NSW Government review and reform these provisions.

Removal of deemed supply measures that reverse the onus of proof such as section 29 of the *Drug Misuse and Trafficking Act 1985*, in respect of cannabis possession.

We are of the view that it is appropriate for evidence of supply, or intention to supply, to be required to substantiate drug supply charges, noting that the reverse onus of proof currently active under deeming provisions is inconsistent with the rule of law. We would support reform to this effect in respect of all prohibited drugs.

² NSW Parliament Legislative Council Portfolio Committee No 1 – Premier and Finance, Report no. 65 ‘Impact of the regulatory framework for cannabis in NSW’ (October 2024), p. viii, online: <https://www.parliament.nsw.gov.au/tp/files/189762/Report%2065%20-%20Impact%20of%20the%20regulatory%20framework%20for%20cannabis%20in%20NSW%20-%20First%20Report%20-%2031%20October%202024.pdf>. We discuss the issue of decriminalisation more fully in the context of the recommendations of the *Special Commission of Inquiry into the Drug ‘Ice’* below.

A medicinal use defence to the offence of drive with 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence in respect of cannabis such as is legislated for in Tasmania but ensuring that the mixing of cannabis and alcohol is the express subject of an aggravating factor of the relevant criminal offence.

We are concerned about the injustice currently arising from the absence of defences available to charges under section 111 of the *Road Transport Act 2013* (NSW), including in respect of medicinal cannabis patients.

We note that a person may be charged with an offence under this section in circumstances where there is no real risk to road safety, including where the person was not impaired and where a significant length of time has passed since the drug was taken. We also note that the level or amount of cannabis present in a person's system is not tested and there is no requirement for any level of impairment. Notwithstanding these conditions, a person charged under this section is exposed to the same licence disqualification periods and maximum penalties as a person charged with prescribed concentration of alcohol offences.

Combined with the operation of section 203 of the *Road Transport Act 2013* (NSW), which restricts the Court's ability to impose section 10 (dismissal, no conviction) under the *Crimes Sentencing Procedure Act 1999* (NSW), section 111 and the mandatory disqualification provisions operate, in our view, without the appropriate exercise of judicial discretion and can lead to unjust outcomes, potentially without any corresponding benefits in respect of road safety. We note that the impact of licence disqualification is particularly punitive in regional, remote and rural locations where there is limited or no available public transport, causing flow on impacts including loss of employment.

We support the development of appropriate reform to improve just outcomes under the law while maintaining road safety, including the consideration of a medicinal use defence to section 111 of the *Road Transport Act 2013* (NSW).

Reinstatement of Youth Drug and Alcohol Court, or equivalent

We suggest the NSW Government consider reinstating the NSW Youth Drug and Alcohol Court, ideally through legislation similar to the *Drug Court Act 1998* (NSW).

The Youth Drug and Alcohol Court was closed in 2012. The objectives of the Court were to reduce the alcohol and drug dependency of children, to promote the re-integration of such drug dependent children into their families and the community, and to reduce the need for such drug dependent children to resort to criminal activity to support their drug dependencies.

We consider, particularly recognising the success and expansion of the NSW Drug Court, that specialist, therapeutic Courts are more effective in managing criminal cases where the defendant has alcohol and drug issues. Given the vulnerability of children and young people, the unique considerations involved in addressing alcohol and other drug issues experienced by children and young people, the greater prospects of rehabilitation for children and young people and the effectiveness of early intervention initiatives, it is our view that the reinstatement of a Youth Drug and Alcohol Court is warranted.

Magistrates Early Referral Into Treatment (MERIT) for defendants in the Children's Court of NSW

Diversionsary options in NSW Children's Courts are largely restricted to the measures legislated in the *Young Offenders Act 1997* (NSW), that is, police cautioning or youth justice conferencing. In our view, there is a gap in the provision of pre-plea or diversionsary programs

that focus on issues such as alcohol and other drug misuse, that contribute substantially to their offending.

Legal practitioners who have experience working with young adults in the Local Court jurisdiction have reported that the MERIT program can have a substantial and positive impact on their path toward rehabilitation. Although MERIT is a three-month program, and successful rehabilitation can take a longer time for young adults presenting with complex issues, the program often provides an entry point for these offenders to community programs and later referral to appropriate agencies at the completion of MERIT. For example, a young adult presenting with alcohol and other drug misuse problems may also have underlying trauma or undiagnosed mental health issues. The MERIT program may provide an opportunity for these underlying issues that are linked to drug and alcohol abuse to be identified and appropriate referrals for treatment to be made.

We note that the MERIT program is also equipped to meet participants at their level and responds well to different levels of capacity and maturity of participants. In our view this functionality would translate well if the program were to be extended to children and young people.

A 2009 evaluation of MERIT by the Bureau of Crime Statistics and Research found 'clear support for the proposition that MERIT is an efficacious drug diversion program that reduces reoffending among defendants who complete the program.'³ In our view, consideration should be given to introducing a pre-plea program such as MERIT in the Children's Court for children and young people with drug and alcohol dependency problems.

Young Offenders Act 1997 (NSW)

We support reform of the *Young Offenders Act 1997* (NSW) to be completed, informed by the review conducted by the Department of Communities and Justice,⁴ including to improve outcomes for children and young people in relation to prohibited drugs, primarily through increased diversionary options. In our view, appropriate amendments include:

- Amendment to provide that possession of a prohibited drug can be dealt with under the *Young Offenders Act 1997* (NSW) where a small quantity is involved, regardless of the drug involved. This would address the current anomalous situation where cannabis is treated differently to other prohibited drugs under section 8(2A). Section 8(2A)(b) provides that the *Young Offenders Act 1997* (NSW) applies only to offences involving not more than half the small quantity of cannabis leaf within the meaning of the *Drug Misuse and Trafficking Act 1985* (NSW), unless there are exceptional circumstances as prescribed under section 8(2A)(b)(ii). For all other prohibited drugs, the small quantity is the relevant amount, and the *Young Offenders Act 1997* (NSW) applies. We note that in practice, this often precludes children and young people from accessing cautions for possession of cannabis as the threshold amount is so small.
- Amendments to allow the supply of prohibited drugs to be dealt with under the *Young Offenders Act 1997* (NSW). We consider the standard criteria at ss 14(2), 20(3), 37(3) and 40(5) of the *Young Offenders Act 1997* (NSW) adequate to assess whether *Young Offenders Act 1997* (NSW) should apply in each case.

³ R Lulham, 'The Magistrates Early Referral Into Treatment Program: Impact of program participation on re-offending by defendants with a drug use problem' Bureau of Crime Statistics and Research, (July 2009) online: <https://localcourt.nsw.gov.au/documents/merit-documents/-cjb131.pdf>.

⁴ Department of Communities and Justice, Review of the *Young Offenders Act 1997* (NSW) and the *Children (Criminal Proceedings) Act 1987* (NSW), (2011) online: [Review of the Young Offenders Act 1997 and the Children \(Criminal Proceedings\) Act 1987 | Communities and Justice](#).

- Amendment to remove the limit on the number of police cautions available under the *Young Offenders Act 1997* (NSW). Our members report that cautions may be quickly exhausted in respect of possession of small quantities of cannabis alone, leaving children and young people exposed to more severe criminal justice responses at an early stage.

Greater investment in rehabilitation facilities

We suggest the NSW Government support an increase in the number of health services that address problematic alcohol and other drug behaviours in adults, children and young people, particularly in rural and regional areas.

The Law Society continues to advocate for the NSW Government to take measures to invest in increasing access to better and different sorts of drug rehabilitation, including community-based health treatment such as drug and alcohol rehabilitation centres, as well as family-based rehabilitation services. A significant increase in the investment in drug rehabilitation services is required, particularly in regional, rural and remote areas of NSW, and in our view would contribute to improved community safety and relieve strain on law enforcement and criminal justice agencies.

Our members regularly report issues with respect to a lack of availability of, and access to, appropriate rehabilitation services for children, young people and adults, with frequent and severe issues arising as a result. By way of example, we note the case of *Re Kara* [2020] NSWSC 1083, concerning a 16-year-old Indigenous young person under the parental responsibility of the Minister for Families, Communities and Disability Services who the Court concluded was 'at very high risk of premature death due to misuse of drugs, and sexual exploitation associated with her drug use.'⁵

The Supreme Court concluded that orders for Kara to be confined in a secure inpatient facility involved 'a very serious interference with Kara's liberty' but were 'necessary in all the circumstances in order to protect Kara from serious harm or death in the short term and to promote her longer-term welfare.'⁶ In reaching this decision the following evidence concerning insufficient alternative rehabilitation facilities was considered:

In her report dated 6 August 2020, the specialist explained that there are currently no designated inpatient adolescent drug and alcohol units with medical and psychiatric care in New South Wales. The unit to which it is proposed to admit Kara as an inpatient is a mental health facility within a hospital, so that Kara will be able to receive medical management of her withdrawal in addition to the psychiatric, psychological and other therapy that she needs.

The specialist explained that there are adult drug and alcohol withdrawal inpatient units at a number of Local Health Districts in New South Wales, but it would not be appropriate for a 16 year old girl with a history of sexual exploitation to be admitted to such a unit.

There are also two units within New South Wales for the admission of patients for involuntary drug and alcohol treatment. However, the specialist is of the opinion that it is not developmentally appropriate for a 16 year old girl to be admitted to such a facility.⁷

We support urgent and appropriate investment in rehabilitation facilities, including in facilities that are equipped to support clients with complex needs and dual diagnoses. Our members also identify a critical need for greater access to, and availability of, rehabilitation facilities with the following features:

⁵ *Re Kara* [2020] NSWSC 1083, [71].

⁶ *Ibid.* [72].

⁷ *Ibid.* [56]-[58].

- Culturally appropriate and therefore effective programs for clients with deep trauma including Indigenous clients and refugees.
- Expertise in supporting clients with cognitive impairments, including congenital impairment.
- No requirement for clients to have been drug-free for a period of time before admission, to ensure there is appropriate support available for persons with entrenched addiction.
- Available to accept clients directly from Correctional Centres.
- Links clients to post-release programs and training as peer mentors.
- Specialist children and adolescent services.

In respect of the provision of services to Aboriginal and Torres Strait Islander people, in order to be consistent with the requirements of the National Agreement on Closing the Gap, Aboriginal Community Controlled Organisations must be at the forefront of program design and service delivery, and must be resourced accordingly. We suggest that, given the health-based nature of drug misuse, education specifically designed for children and young people and delivered in a culturally effective way, within local communities, would be a worthwhile investment.

Recommendations of the Special Commission of Inquiry into the Drug 'Ice' (Ice Inquiry)

The former NSW Government, *Response to the Final Report of the Special Commission of Inquiry into the Drug 'Ice'*⁸, in September 2022, supported 86 of the 109 recommendations of the Ice Inquiry. Support for these recommendations, and the accompanying \$499 million investment package, was, in our view, a welcome development towards addressing drug misuse as a health and social issue. However, notwithstanding this development, the former NSW Government left several key recommendations unsupported.

We suggest that the current NSW Government is presented with a valuable opportunity to meaningfully address issues arising from drug misuse by revisiting previously unsupported recommendations of the Ice Inquiry. This includes supporting the recommendations identified below as priority matters. Many of these recommendations are targeted towards addressing the drug health needs of inmates. In our view, this is necessary, as if left untreated, these needs affect not only the individual, but also the communities to which they return.

Recommendation 11 – *That in conjunction with increased resourcing for specialist drug assessment and treatment services, the NSW Government implement a model for decriminalisation of the use and possession for personal use of prohibited drugs, which includes the following elements:*

- *Removal of the criminal offences of use and possession for personal use of prohibited drugs*
- *At the point of detection, prohibited drugs be confiscated and a referral made to an appropriately tailored voluntary health/social and/or education intervention*
- *No limit on the number of referrals a person may receive*
- *No civil sanctions for non-compliance*⁹

⁸ NSW Government's response to the Special Commission of Inquiry into the Drug 'ice' (September 2022) online: <https://www.nsw.gov.au/sites/default/files/noindex/2023-07/Final-NSW-Government-response-to-the-special-commission-of-inquiry-into-the-drug-ice.pdf>.

⁹ Professor D Howard SC, 'Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants' Final Report, Volume 1a, p. ix, online: <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/special-commissions-of-inquiry/drug-ice>.

While we understand that the Premier has expressed an election commitment to oppose the decriminalisation of cannabis use and possession,¹⁰ we suggest that it may be appropriate for the NSW Government to continue to build and consider evidence in respect of proposals to decriminalise the use and possession for personal use of prohibited drugs.

We recognise the view of health and justice advocates that decriminalisation meaningfully recognises drug misuse as a health and social issue, rather than a criminal justice, law enforcement or moral issue. We suggest that the NSW Government consider exploring appropriate and incremental models for decriminalisation of the use and possession for personal use of prohibited drugs with a view to reducing harm and improving community safety outcomes, consistent with the terms set out in Recommendation 11 of the Ice Inquiry.

We acknowledge that steps have been taken toward partial decriminalisation in NSW, including through implementation of the Cannabis Cautioning Scheme, the availability of penalty notices for possession of prohibited drugs other than cannabis and the Early Drug Diversion Initiative. While we consider these initiatives to be a positive step, we are concerned about their limitations, including that the options remain subject to discretion and are not afforded to all.

We note that currently, the availability of offences for the use and possession for personal use of prohibited drugs can operate to cause harm to individuals and the community that is disproportionate to those criminal behaviours. Our members report that these offences disproportionately increase contact with law enforcement and the criminal justice system, including by enabling the approach of, and search by, NSW Police Force in a broad variety of circumstances, including for example by virtue of being present in a public place known for drug supply such as a train station. Contact with law enforcement under these conditions, even where the individual is not in possession of a prohibited drug, can lead to other charges being laid against the individual that would not otherwise have been laid, such as resist police, operating to swiftly engage individuals with the criminal justice system.

We also note that the mere fact of early and frequent exposure to law enforcement, even if no charges initially arise, can have severe negative consequences for children and young people, including to ultimately entrench them in the criminal justice system and contribute to poor life and community outcomes.¹¹

Indeed, as recently found by the NSW Parliament Legislative Council Portfolio Committee No 1 – Premier and Finance and set out in Report no. 65 *Impact of the regulatory framework for cannabis in NSW* (October 2024), ‘searching of persons on account of a mere suspicion of the possession of a small quantity of cannabis is likely to be often unjustified and inconsistent with community expectations in a free society.’¹²

The recommendation to explore models of decriminalisation is consistent with, and supported by, international human rights law and policy. As stated in the 2023 Report of the Office of the United Nations High Commissioner for Human Rights (**High Commissioner**), ‘shifting away

¹⁰ J McKinnell, ‘NSW premier Chris Minns rejects cannabis decriminalisation on day of parliamentary inquiry’, ABC News, (1 August 2024) online: <https://www.abc.net.au/news/2024-08-01/nsw-premier-chris-minns-cannabis-decriminalisation/104164256>.

¹¹ T Whitten et al. ‘Children’s contact with police as a victim, person of interest and witness in New South Wales Australia’, *Australian and New Zealand Journal of Criminology* (2020) Vol. 53(3), p. 389, online: <https://journals.sagepub.com/doi/pdf/10.1177/0004865819890894>.

¹² NSW Parliament Legislative Council Portfolio Committee No 1 – Premier and Finance, Report no. 65 ‘Impact of the regulatory framework for cannabis in NSW’ (October 2024), Finding 10, p. xi, online: <https://www.parliament.nsw.gov.au/tp/files/189762/Report%2065%20-%20Impact%20of%20the%20regulatory%20framework%20for%20cannabis%20in%20NSW%20-%20First%20Report%20-%202031%20October%202024.pdf>.

from punitive models is critical to addressing all human rights challenges that arise from or are facilitated by the implementation of punitive drug control policies'.¹³ To this end, the High Commissioner made a number of recommendations for States to develop drug policy that is grounded in human rights, including to 'adopt alternatives to criminalisation, "zero tolerance" and elimination of drugs, by considering decriminalisation of usage; and take control of illegal drug markets through responsible regulation.'¹⁴

We recognise that transitioning to any model of decriminalisation would require a cultural shift from both Government and the community, the development of appropriate regulation processes and importantly, reallocation of resources to ensure that appropriate health and support services are available to respond to drug misuse in lieu of police intervention.

If the NSW Government elects not to explore models of decriminalisation, it is our view that, at a minimum, diversionary options be expanded to mitigate the risks and harms currently arising from the criminal justice response to use and possession for the personal use of prohibited drugs, particularly for children and young people.

Recommendation 18 - *That for the purposes of the Criminal Records Act 1991 (NSW), the period of time before which a conviction for use or possession of a prohibited drug may be spent is reduced from 10 years to two years, or in the case of a child or young person, from three years to one year.*¹⁵

We agree with the position set out in the Final Report of the Ice Inquiry that 'the negative consequences of having a criminal record for simple possession are completely disproportionate to the underlying conduct,'¹⁶ and consider it unduly punitive that convictions for possession are not able to be spent for 10 years, and in the case of children and young people, for three years.

The Law Society supports reform of the *Criminal Records Act 1991* (NSW) as recommended by the Ice Inquiry, preferably as part of a comprehensive review of that Act.

Recommendation 53 - *That the NSW Government establish a state-wide clinically supervised substance testing, education and information service, with branches at appropriate fixed-site locations, to:*

- *provide illicit drug market monitoring functions to inform public health and law enforcement responses, and*
- *reduce drug-related harms through the provision, in conjunction with such testing, of appropriate health interventions, consumer education and information to members of the public.*

That in addition, with a view to establishing an outreach capacity of the service to settings where there is a high risk of harm through illicit drug use, a trial be undertaken onsite at a music festival, and independently evaluated, to:

¹³ Office of the United Nations High Commissioner for Human Rights, 'Human rights challenges in addressing and countering all aspects of the world drug problem' (15 August 2023), p. 18 [67], online: <https://documents.un.org/doc/undoc/gen/g23/156/03/pdf/g2315603.pdf>.

¹⁴ Ibid. p. 18, [68(a)].

¹⁵ Professor D Howard SC, 'Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants' Final Report, Volume 1a, p. x, online: <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/special-commissions-of-inquiry/drug-ice>.

¹⁶ Professor D Howard SC, 'Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants' Final Report, Volume 1a, p. xxxiv [62], online: <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/special-commissions-of-inquiry/drug-ice>.

▪ *provide illicit drug market monitoring functions to inform public health and law enforcement responses, and reduce drug-related harms through the provision, in conjunction with such testing, of appropriate health interventions, consumer education and information to members of the public.*¹⁷

As set out in the Final Report of the Ice Inquiry, ‘there is strong and compelling evidence to support substance testing as an effective harm reduction measure used in conjunction with other harm reduction strategies’, and ‘implementation of a substance testing pilot is supported by professional medical, healthcare and peak bodies, including:

- the Australian Medical Association
- the Royal Australasian College of Physicians
- the Royal Australian College of General Practitioners
- the Australasian College for Emergency Medicine
- St Vincent’s Health Australia.¹⁸

We understand that some measures are already in place to reduce harm, including work undertaken by NSW Health to test drug samples seized by the NSW Police Force and issue harm reduction messaging to the community.¹⁹ While we consider this to be a positive step, we note that there are limitations to this approach, including limits on the reach and influence of NSW Health communications and the fact that not all drugs in circulation will be tested.

Harm reduction is an integral part of the right to health and to this end, we support substance testing as a harm-reduction strategy. We are of the view that substance testing would complement the measures currently in place to more effectively reduce harm in the community.

Recommendation 80 - *That the NSW Police Force cease the use of drug detection dogs at music festivals and implement other detection practices to target illicit drug supply.*²⁰

The Law Society agrees with the proposal to cease the use of drug detection dogs at music festivals, and queries whether this method of targeting illicit drug supply is appropriate in any context. In 2006, the NSW Ombudsman published a report in relation to the *Police Powers (Drug Detection Dogs) Act 2001 (NSW)*, in which it was found that:

despite the best efforts of police officers, the use of drug detection dogs has proven to be an ineffective tool for detecting drug dealers. Overwhelmingly, the use of drug detection dogs has led to public searches of individuals in which no drugs were found, or to the detection of (mostly young) adults in possession of very small amounts of cannabis for personal use.²¹

Similar concerns have continued to be raised in relation to the use of drug detection dogs, including recent research which indicated that anticipated drug dog presence at festivals fails to deter people from carrying or consuming drugs, and strategies to avoid detection may even

¹⁷ Ibid. p. xvi.

¹⁸ Ibid. p. xliii [121].

¹⁹ NSW Government’s response to the Special Commission of Inquiry into the Drug ‘ice’ (September 2022) online: <https://www.nsw.gov.au/sites/default/files/noindex/2023-07/Final-NSW-Government-response-to-the-special-commission-of-inquiry-into-the-drug-ice.pdf>.

²⁰ Professor D Howard SC, ‘Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants’ Final Report, Volume 1a, p. xx, online: <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/special-commissions-of-inquiry/drug-ice>.

²¹ NSW Ombudsman, *Police Powers (Drug Detection Dogs) Act 2001 Review* October 2006, (14 September 2006), online: <https://www.ombo.nsw.gov.au/Find-a-publication/publications/reports-to-parliament/police/review-of-the-police-powers-drug-detection-dogs-act-2001>.

compound harm.²² The fact that drug detection dogs are often used to inform a police officer's suspicion on reasonable grounds that a strip search is necessary, is particularly concerning, given the reported harms associated with this practice, including for vulnerable groups.²³

Recommendation 97 - *That the NSW Government pilot, and have independently evaluated, a needle and syringe program in one or more custodial facilities in NSW.*²⁴

The Ice Inquiry found that:

Injecting drug use is prevalent throughout prisons in NSW. The Inquiry found that drugs and drug paraphernalia are frequently detected in custody and drug taking in custody is common, as is injecting drugs. People in custody share equipment, often without adequate sterilisation of equipment; and people in custody are suffering drug-related harms, including transmission of blood-borne viruses, bacterial infections and needlestick injuries. Further, despite the availability of direct acting antiviral drugs to treat hepatitis C, inmates are becoming reinfected in custody.²⁵

A needle and syringe program is, in our view, an appropriate harm reduction initiative to respond to these concerns, particularly noting the findings of the Ice Inquiry that the prevalence of Hepatitis C in prisons is '30 times higher than in the general population.'²⁶ The Australian Medical Association, Royal Australasian College of Physicians, Public Health Association Australia and Hepatitis Australia are examples of organisations that support needle and syringe program in prisons.²⁷

We support the use of needle and syringe programs in NSW prisons as an initiative that could reduce transmission of blood-borne viruses, both in custodial settings and in the broader community.

Further action suggested on Ice Inquiry recommendations supported, or supported in principle

We note that several recommendations, particularly those related to addressing drug-related harm in custodial settings, were supported or supported in principle by the former Government. While we consider this support to be a positive step, our members report that, notwithstanding such support, real change to implement the recommendations has not been effected, including with respect to the following recommendations.

Recommendation 92 - *A. That Justice Health review its inmate screening processes to ensure that the AOD treatment needs of every inmate are identified and met on entry into custody.*

²² Gibbs, D et al, 'Encounters with police drug detection dogs at music festivals amongst people who regularly use ecstasy and/or other illicit stimulants in Australia', Drug and Alcohol Review 42 (3), (2023) online: <https://pubmed.ncbi.nlm.nih.gov/36692962/>.

²³ LECC, 'Inquiry into NSW Police Force strip search practices' (December 2020) online: <https://www.lecc.nsw.gov.au/pdf-files/inquiry-into-nsw-police-force-strip-search-practices>.

²⁴ Professor D Howard SC, 'Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants' Final Report, Volume 1a, p. xxii, online: <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/special-commissions-of-inquiry/drug-ice>.

²⁵ Ibid. [203].

²⁶ Ibid. [209].

²⁷ Professor D Howard SC, 'Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants' Final Report, Volume 1a, p. iii [208], online: <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/special-commissions-of-inquiry/drug-ice>.

*B. That Justice Health be funded to provide adequate services and facilities to inmates who are withdrawing from amphetamine-type stimulants, including those held in 24-hour court cells.*²⁸

Research from the Australian Institute of Health and Welfare has shown that ‘People entering prison were more than 4 times as likely to report illicit drug use in the preceding 12 months as people in the general community (73% and 17%, respectively).’²⁹ The Final Report of the Ice Inquiry reported that ‘approximately 8000 people enter custody each year in active withdrawal from methamphetamine.’³⁰

Our members report that many people in custody do not receive adequate treatment for withdrawal, leading to significant distress and health issues during their initial weeks in custody. This remains the experience of our members, particularly in regional areas, notwithstanding Government support and funding for this recommendation of the Ice Inquiry.

Our members report that not all patients in custody who require withdrawal medication as a result of physical withdrawals are provided with medication as required. Members report experiences where patients in withdrawal have been provided with Panadol and sent back to their cell.

We consider there a need for the NSW Government to take action to ensure that this recommendation is implemented comprehensively across NSW.

Recommendation 96 - A. That the provision of drug treatment services and programs in custody immediately be made the principal responsibility of Justice Health.

B. That Justice Health ensure that access to and standards of AOD treatment services and programs provided in custody are equivalent to those in the community.

C. That there be a commensurate increase in funding to NSW Health to enable the provision of such services.³¹

Notwithstanding the former NSW Government commitment to \$5 million per annum in new funding to ‘expand access to alcohol and other drug treatment interventions for people whilst in custody and also increase access to post-release treatment and support’,³² our members report continuing instances of many people in custody receiving no alcohol and other drug treatment in cases where such treatment is required. The Law Society is particularly concerned that without access to such treatment, there is a continuing risk of harm to the community when inmates are released from custody.

In our view, access to alcohol and other drug treatment for people in custody is key to supporting community safety and reduce recidivism, and that the NSW Government should ensure such treatment is accessible across NSW.

²⁸ Ibid. p. xi.

²⁹ Australian Institute of Health and Welfare, ‘The health of people in Australia’s prisons 2022’ (2023), online: <https://www.aihw.gov.au/reports/prisoners/the-health-of-people-in-australias-prisons-2022/contents/health-risk-behaviours/illicit-drug-use>.

³⁰ Professor D Howard SC, ‘Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants’ Final Report, Volume 1a, [170], online: <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/special-commissions-of-inquiry/drug-ice>.

³¹ Ibid. p. xxii.

³² NSW Government’s response to the Special Commission of Inquiry into the Drug ‘ice’ (September 2022) online: <https://www.nsw.gov.au/sites/default/files/noindex/2023-07/Final-NSW-Government-response-to-the-special-commission-of-inquiry-into-the-drug-ice.pdf>.

Recommendation 103 - *That Corrective Services facilitate AOD assessments for all inmates who seek access to residential rehabilitation.*³³

Access to residential rehabilitation facilities is vital for many people leaving custody as it works to prevent relapse, reduce recidivism, and support reintegration. Residential rehabilitation provides structured treatment for addiction and mental health issues, addressing root causes of criminal behaviour and improving health outcomes, reducing the likelihood of reoffending and contributing to safer communities.

While we understand that the Justice Health Connections Program is constituted to provide pre and post release support to sentenced prisoners, we are concerned about the limitations of this service, including that it is not available for persons on remand and provides limited support in respect of residential rehabilitation. Notwithstanding the availability of the Connections Program, our members report continuing and major difficulties experienced by inmates in accessing and transferring to residential rehabilitation facilities from custody.

We also note that Corrective Services NSW is not able to undertake non-court ordered alcohol and other drug assessments due to resourcing restrictions.³⁴ We would support action to address these resourcing restrictions and to enable Courts in addition to the District Court of NSW to request assessments, noting in particular that the vast majority of criminal cases are heard in the Local Court of NSW.

To meaningfully implement this recommendation, we also consider it essential for the availability of residential rehabilitation services in NSW to be expanded. Among other benefits, this would ensure that the work undertaken by Correctives Services to facilitate assessments results in a placement being secured in all appropriate cases.

Recommendation 102 - *That the NSW Government provide or fund a transitional support service available to all people leaving custody for up to 12 months post-release, which ensures:*

- *dedicated case management*
- *safe and stable housing*
- *primary and mental health services*
- *drug treatment services on a health needs basis*
- *support into education, employment and other social support or services.*³⁵

We are concerned that, notwithstanding the former NSW Government commitment to funding transitional support services, there remains a lack of transitional support, particularly in regional, rural and remote locations in NSW. For example, our members report that inmates are often released from custody without essential arrangements in place including for accommodation, transport, medications or prescriptions, or any treatment for their substance issues and/or mental health conditions.

We consider improved, comprehensive and accessible transitional support services to be a key priority to ensure community safety.

³³ Professor D Howard SC, 'Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants' Final Report, Volume 1a, p. xxiii, online: <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/special-commissions-of-inquiry/drug-ice>.

³⁴ NSW Government's response to the Special Commission of Inquiry into the Drug 'ice' (September 2022) online: <https://www.nsw.gov.au/sites/default/files/noindex/2023-07/Final-NSW-Government-response-to-the-special-commission-of-inquiry-into-the-drug-ice.pdf>.

³⁵ Ibid.

Thank you for the opportunity to contribute to the NSW Drug Summit 2024. We look forward to attending the forums in Sydney on 4 and 5 December 2024, and engaging further with the NSW Government in respect of consequent reform proposals.

If you have any questions in relation to this letter, please contact Claudia Daly, Policy Lawyer on (02) 9926 0233 or by email: claudia.daly@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a long horizontal flourish extending to the right.

Brett McGrath
President