



ODPP
New South Wales

Submission to Special Commission of Inquiry into the Drug “Ice”

Office of the Director of Public Prosecutions

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Contents

Introduction	2
Issues Paper 2 - Justice	2
NSW Drug Court	3
The Compulsory Drug Treatment Correctional Centre (“CDTCC”).....	5
Other Diversionary options.....	5

Introduction

The Office of the Director of Public Prosecutions (ODPP) is responsible for the prosecution of serious offences in New South Wales.

It is our experience that many people whose lives are impacted by Ice addiction will come into adverse contact with the criminal justice system as a corollary of their drug use.

In reference to the role that the ODPP plays in the prosecution of drug-dependent offenders, we draw attention to the following provisions of the **United Nations Guidelines on the Role of Prosecutors**, which is adopted in the NSW ODPP Prosecution Guidelines.

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of the suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

We further note the overall obligations of the ODPP to provide a fair, just and equitable prosecution service to the NSW community. It is in the context of these obligations and imperatives that we make the following submissions in relation to some specific matters raised in Inquiry’s **Issues Paper 2 – Justice**.

Issues Paper 2 - Justice

2.4.8 Are existing diversionary programs achieving positive outcomes for ATS users/ATS related offending?

2.4.10 Are there sufficient diversionary programs available for adults and children/young people?

2.4.11 What are the barriers to accessing diversionary programs?

2.4.14 Which areas in NSW would benefit from new/additional diversionary programs?

NSW Drug Court

The ODPP provides staff to form part of the inter-agency team which manages the operation of the NSW Drug Court. The NSW Drug Court provides, for eligible participants, the opportunity of undertaking a diversionary program as an alternative to serving full-time custody. It calls for an accused person to receive a custodial sentence which is suspended upon them entering onto a Drug Court Program. This Program is intensive, heavily monitored and tailored to the individual. If a participant is successful on the program and becomes both crime-free and drug-free, s/he is not required to return to custody.

Since the inception of the NSW Drug Court in February 1999, there have been studies of its outcomes which give encouraging results. These include evaluations by NSW Bureau of Crime Statistics and Research (BOCSAR) in 2002 and again in 2008, both of which found - in broad terms - that the Drug Court both reduces recidivism and is less expensive than having a participant serve their custodial sentence.

The problem of Ice and the particular challenges associated with its treatment has been a matter of consideration in the Drug Court for some years now. In 2015, the teams from all three court venues held an Ice Strategy Forum to address whether changes to the program design, treatment and case management plans could be put in place to ensure that Drug Court was given a more effective response to problems specific to Ice use.

This led to a number of initiatives being put in place. For example, the Drug Court Program was restructured to increase the length of Phase 2 from 3 months to 4, with a consequential reduction in Phase 3 from 6 months to 5. This was to allow for a higher level of monitoring of participants at a later stage. In addition, the quantum of sanctions imposed by the court for drug use whilst on the program was revised and markedly increased as a response to concerns that Ice is very much a drug where one use makes it extremely difficult for the participant not to continue to use.

Anecdotally, there are currently very few participants on a Drug Court Program who do not use Ice – often in concert with other illicit substances. Tellingly, the success of the NSW Drug Court continues, with an increase in the number of positive outcomes every year (see the Drug Court website for the Annual Reviews).

Although the data strongly suggests that Drug Courts do assist participants to achieve sustained recovery from addiction – including Ice addiction - and embrace a pro-social lifestyle; due to some quite arbitrary eligibility criteria, the opportunity for a Drug Court Program is only available to a very limited number of those who could benefit from it.

The restrictions on eligibility mean that an applicant will need to show, among other criteria, that his/her usual place of residence falls within one of a very limited number of Local Government areas and the court referring him/her needs to be one of a very limited number of specified Local and District Courts. In addition, even if an applicant is successful in satisfying these threshold matters, the limited number of places available at each of the three Drug Court venues means that otherwise-eligible participants will be routinely rejected when they are not successful in a random ballot for the few places available.

Accordingly, the eligibility criteria and the geographical location of the courts provide an enormous barrier to accessing the opportunity of the diversionary program that is Drug Court. This creates a significant degree of inequity and means that a person who lives at the “right” address may be given

the opportunity to remain out of custody and have assistance in getting their life “on track” – whilst one who does not will simply go to gaol. Whilst this disparity is virtually inevitable when a program is in its pilot stage, the NSW Drug Court has now been established for twenty years and is an intrinsic part of the NSW criminal justice system.

The NSW Drug Court venues are in western Sydney (Parramatta), a small area in the inner city of Sydney and the Newcastle area (Toronto). Accordingly, many persons living in urban areas and almost all persons living in rural and regional areas of NSW are excluded.

Despite this, we know, as set out in Issues Paper 3 at page 6, that “People in remote and very remote areas are 2.5 times as likely to use meth/amphetamines as those in major cities.”

This issue was explored last year by a NSW parliamentary enquiry. The *Portfolio Committee No 2 (Health and Community Services) Report 49 into the provision of drug rehabilitation services in regional, rural and remote New South Wales* made twelve recommendations. Of these, two related directly to the expansion of the NSW Drug Court. In the response of the NSW Government to this Report of January 2019, both these recommendations met with a level of endorsement, as follows:

Recommendation 4

That the NSW Government conduct a review of the Drug Court and the Magistrates Early Referral In to Treatment program, including the feasibility of establishing them in additional regional areas.

SUPPORTED

The NSW Government recognises the role of court diversion programs in reducing drug and alcohol harms. The Magistrates Early Referral Into Treatment (MERIT) program has been evaluated and found to be effective with reported reduction in recidivism and increased health and wellbeing outcomes for people who complete the program. The NSW Drug Court was evaluated by NSW Bureau of Crime Statistics and Research (BOCSAR) in 2002 and re-evaluated in 2008. BOCSAR also published research on the effectiveness of intensive judicial supervision in the NSW Drug Court in 2011. The NSW Government will consider opportunities to expand the Drug Court and MERIT program to other locations, including regional areas.

Recommendation 5

That the NSW Government pilot a Drug Court in Dubbo in parallel with an increase in rehabilitation services for the area.

SUPPORTED IN PRINCIPLE

The NSW Government will consider expansion of the Drug Court to regional areas, including Dubbo. Any expansion of the Drug Court would require a commensurate increase in treatment services. The response to Recommendation 1 addresses service expansion planning.

In the interests of the equitable administration of justice in this state, the ODPP supports the expansion of the NSW Drug Court regime to other areas. This would encompass remote and other regional areas and also the expansion of the scope of the existing Drug Courts. The ideal would be, of

course, that any accused person who could benefit from Drug Court and who qualifies in terms of reasonable and necessary criteria should enjoy equal access.

The Compulsory Drug Treatment Correctional Centre (“CDTCC”)

Since Ice use is often associated with violence, there are some offenders who are ice dependent and who will not meet the criteria of being either eligible or appropriate for release into the community on a Drug Court Program. These offenders may be able to serve their sentence in custody under a Compulsory Drug Treatment Order. This is an intensive drug rehabilitation program operating from within the custodial setting at Parklea and has had some impressive successes. A BOCSAR report from 2010 concluded that “the CDTCC has had a positive effect on the physical and mental health of offenders who enter it”.

The CDTCC was set up thirteen years ago, in August 2006. There has been no increase in the scope of the program since its inception; there are only 70 beds at the centre and a CDTO is not available to females. Whilst a review of the program was to have taken place, including a consideration of it being extended to allow women to participate, this has not happened.

Where any person is sentenced or dealt with on appeal in NSW there is a statutory requirement under s18B of the Drug Court Act to ascertain whether there are grounds on which the Drug Court might find the person to be an eligible convicted offender, and, if so, to refer the person to the Drug Court to determine whether the person should be the subject of a compulsory drug treatment order (“CDTO”). Anecdotally, it appears unlikely that all potential subjects of a CDTO will be referred, since it appears that the protagonists in the sentencing proceedings will often not be alert to this requirement and turn their minds to the issue of apparent eligibility.

In the interests of the equitable administration of justice in this state, the ODPP supports the expansion of the CDTCC regime to women as well as offenders who do not qualify purely due to residence requirements. It further supports ongoing education for lawyers and judicial officers concerning the referral of appropriate convicted offenders for assessment as to their suitability for the CDTCC, as well as an overall increase in the number of available places within the CDTCC.

Other Diversionary options

2.2.9 Are there any other innovative approaches to law enforcement strategies to reduce drug driving (ATS) that should be considered?

Various states in the USA have adopted specialised treatment courts known as Driving Whilst Impaired (“DWI”) Courts. These grew out of the Therapeutic Jurisprudence movement and are a variation on Drug Courts which seek to address the specific problem of recidivist offenders who drive whilst under the influence of either alcohol or illegal drugs. The outcomes of these diversionary courts are said to be positive in reducing recidivism in those who offend by driving whilst so impaired. It may be that a DWI Court model drawn from the North American experience would merit consideration for the NSW context.

Thank you for the opportunity to make a submission to this inquiry. Any questions about this submission may be addressed to Johanna Pheils, Deputy Solicitor (Legal) [REDACTED]

Office of the Director of Public Prosecutions

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