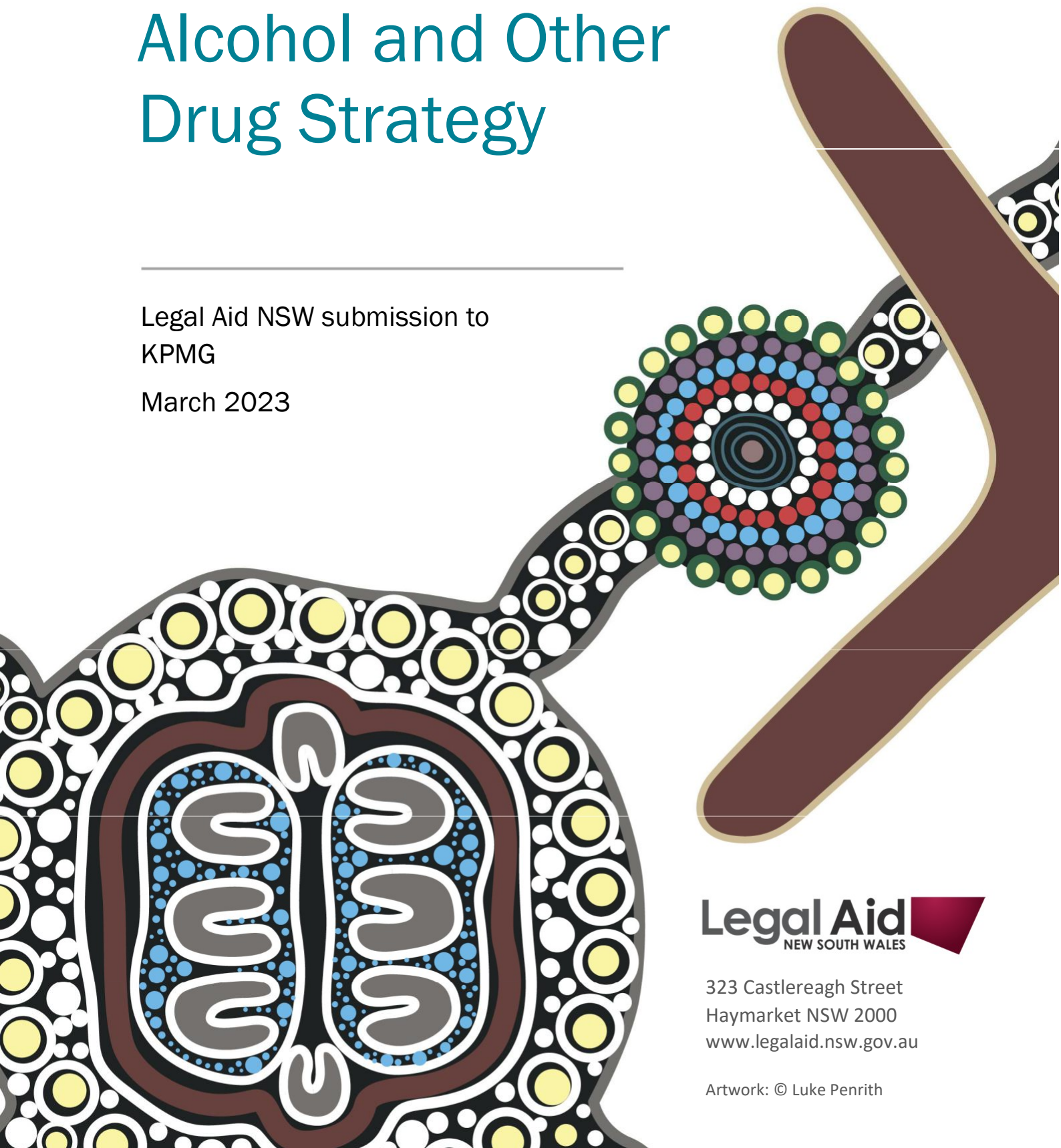


Development of a NSW Government Alcohol and Other Drug Strategy

Legal Aid NSW submission to
KPMG

March 2023



Legal Aid
NEW SOUTH WALES

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Acknowledgement

We acknowledge the traditional owners of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community.

We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

1. About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

Legal Aid NSW's Cooperative Legal Service Delivery Program comprises 12 regional justice partnerships across regional and remote NSW. The aim of the partnerships is to improve access to justice for disadvantaged people in regional and remote areas.

Our civil and family lawyers are also providing outreach to drug and alcohol services. Our Work and Development Order (WDO) Service assists not-for-profit organisations, government agencies and health practitioners to become WDO sponsors, and provides fines advice and WDO referrals to clients at specialist clinics and outreach events in regional locations.

The Legal Aid NSW Children's Civil Law Service provides a targeted and holistic legal service to young people identified as having complex needs, and assists children in the Youth Koori Court.

Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and Wollongong Family Law Courts, all six specialist Children's Courts and in some Local Courts alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Children's Legal Service (CLS) advises and represents children and young people involved in criminal cases in the Children's Court. CLS lawyers also visit juvenile detention centres and give free advice and assistance to young people in custody.

The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court. Our Prisoner's Legal Service offers a range of legal services to prisoners.

Should you require any further information, please contact:

[Redacted contact information]

2. Executive Summary

Legal Aid NSW welcomes the opportunity to comment on the development of the NSW Government Alcohol and Other Drug (AOD) Strategy (**AOD Strategy**).

Legal Aid NSW has made detailed submissions on legal issues arising out of problematic AOD use and access to treatment, including to the Special Commission of Inquiry into the Drug 'Ice' **Ice** (**Inquiry**) in May 2019¹, and to the Legislative Council Inquiry into the provision of drug rehabilitation services in regional, rural and remote NSW in December 2017.² This submission does not repeat that feedback, and instead focuses on proposed focus areas and high-level actions for the AOD Strategy.

We support a coordinated whole-of-government AOD Strategy that prioritises dealing with AOD use as a social and health issue rather than a criminal justice issue, recognises the needs of priority populations³, focuses on harm minimisation and seeks to address the holistic needs of people with problematic AOD use, consistent with a human rights approach (Ice Inquiry recommendation 5, supported by the NSW Government).

As the Ice Inquiry observed, Amphetamine Type Stimulants (**ATS**) use and “[d]ependent use, in particular, frequently occurs in a context of broad socioeconomic disadvantage and trauma. ATS use is often a symptom, not the cause, of an individual’s problems.”⁴

¹ Legal Aid NSW, submission to the Special Commission of Inquiry into the Drug 'Ice', *Issues Paper 2 – Justice*, (May 2019). Available:

https://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0003/31476/Legal-Aid-NSW-submission-to-Special-Commission-of-Inquiry-into-Ice-Issues-Paper-2.pdf

² Legal Aid NSW, submission to NSW Parliament Legislative Council, Inquiry into the provision of drug rehabilitation services in regional, rural and remote NSW, (December 2017). Available:

https://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0016/28114/LAN-submission-to-Legislative-Council-inquiry-drug-rehabilitation-servic....pdf

³ Including Aboriginal people and communities; culturally and linguistically diverse communities; people identifying as lesbian, gay, bisexual, transgender, queer or intersex (LGBTQI+); people in contact with the criminal justice system; people in particular occupations; people living in regional, rural or remote NSW; people with a mental health condition; people with a cognitive disability; pregnant women; older people; people experiencing homelessness; and young people, and incorporates interventions designed to address the needs of each of these groups.

⁴ Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a, p.xxvi. Available: <https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Drug-ice-1546/02-Report-Volume-1a.pdf>

We agree that punitive approaches to drug use tend to compound the harms of use to individuals and communities, and can act as a barrier to accessing treatment.⁵

We understand it is intended for the AOD Strategy to align with recommendations of the Ice Inquiry that were supported by the NSW Government and have focused our feedback on those recommendations. We have also noted significant issues that were not supported by the NSW Government, but that we consider should be revisited during the ten-year term of the AOD Strategy, including decriminalisation measures, expanding harm reduction strategies and reviewing drug law enforcement strategies.

Our experience is most relevant to the following proposed focus areas set out in the KPMG guidance material:

1. Supporting people who need help by addressing the underlying causes of AOD use and providing trauma-informed, culturally safe services across all service settings (**Supporting people who need help**)
2. Supporting community wellbeing and safety through regulation and legislation that controls the licit and illicit markets (**Supporting community wellbeing**)

We suggest that the AOD strategy incorporate the following high-level actions within each focus area:

Supporting people who need help

- a. recognise and address the broader social needs of people with problematic AOD use including access to housing
- b. increase access to treatment and reduce barriers for support for people across NSW
- c. increase the availability of culturally competent and respectful AOD services to meet the unique needs of Aboriginal people, in partnership with Aboriginal communities and Aboriginal community-controlled health services
- d. Increase and improve AOD services and supports available for people in prison; and
- e. expand post-custodial and community-based supports

Supporting community wellbeing

- a. increase diversion from the criminal justice system for adults and children

⁵ Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a, p.xxvii.

- b. reform criminal records regarding prohibited drug use or possession
- c. improve data collection and analyses
- d. adopt a justice reinvestment approach
- e. review drug law enforcement strategies
- f. reconsider expanding harm reduction strategies; and
- g. revisit decriminalisation

We provide further detail on these high-level actions below.

3. Focus Area 1: Supporting people who need help by addressing the underlying causes of AOD use and providing trauma-informed, culturally safe services across all service settings.

3.1 Recognise and address the broader social needs of people with problematic AOD use including access to housing

People experiencing problematic AOD use often have a range of unmet social and health needs, which may include homelessness or unstable housing.

As noted by the Ice Inquiry, “research has found that people experiencing homelessness need stable housing before they engage with other services in order for the services to be effective. This approach is called ‘Housing First’, the guiding principle of which is ‘that safe and secure housing should be quickly provided prior to, and not conditional upon, addressing other health and wellbeing issues.’⁶ Legal Aid NSW strongly supports piloting the Housing First approach in NSW (recommendation 66, supported by the NSW Government).

We also support the Ice Inquiry’s recognition of the need for integrated health and social supports for people seeking treatment for ATS and recommendation 47 regarding the trial of a consortium model of care between various agencies and services, including community, primary and acute care, employment, housing and family support and court advocacy services (supported by the NSW Government). We would welcome being further consulted and involved in this trial.

These approaches align with research recognising that disadvantage is about more than income and is an interrelated set of barriers to full social and economic participation in society.⁷ AOD addiction can be one such barrier, and is often interlinked with other factors, including lack of mental health care, unemployment, and homelessness. When

⁶ Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 3, p.738

⁷ McLachlan, R., Gilfillan, G. and Gordon, J. (2013). *Deep and Persistent Disadvantage in Australia*, rev., Productivity Commission Staff Working Paper, Canberra. Available: <https://www.pc.gov.au/research/supporting/deep-persistent-disadvantage/deep-persistent-disadvantage.pdf>; Australian Bureau of Statistics (2018). 2071.0 – *Census of Population and Housing: Reflecting Australia - Stories from the Census 2016 — Socio-Economic Advantage and Disadvantage*. Available: 2071.0 - Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016 (abs.gov.au)

combined and left unaddressed, these factors can have a compounding effect, resulting in deep and persistent disadvantage.⁸

In our view, a systematic and holistic approach that recognises and responds to the broader social context in which individuals with AOD issues live is essential if we are to break these persistent cycles of disadvantage and criminalisation. Such an approach should be evidence-based, and cut across often siloed services such as health, employment, and housing.

3.2 Increase access to treatment and reduce barriers to support for people across NSW

The Ice Inquiry recognised the significant and long-standing unmet demand for AOD treatment services, particularly in regional, rural and remote areas. We support the range of recommendations regarding increasing availability and access to AOD services across NSW, for example recommendations 30, 31, 32, 35, 37 and 46, which were supported by the NSW Government.

3.3 Increase the availability of culturally competent and respectful AOD services to meet the unique needs of Aboriginal people, in partnership with Aboriginal communities and Aboriginal community-controlled health services

The Ice Inquiry recognised that in Aboriginal communities where ATS are used, the harms of use are magnified for reasons including the ongoing impacts of colonisation, racism and intergenerational trauma. Aboriginal people also face additional and specific barriers to seeking and accessing health, treatment and rehabilitation services, including the legacy of the Stolen Generations and fear of child removals, fear and distrust of government services, racism, the lack of culturally safe services and the necessity of separating from Country and family to access AOD treatment services.⁹

We support the range of recommendations directed towards increasing the number of culturally appropriate, respectful and culturally safe AOD services for Aboriginal people, including services provided on country, in partnership with Aboriginal communities and

⁸ McLachlan, R., Gilfillan, G. and Gordon, J. (2013). *Deep and Persistent Disadvantage in Australia*, rev., Productivity Commission Staff Working Paper, Canberra. Available: <https://www.pc.gov.au/research/supporting/deep-persistent-disadvantage/deep-persistent-disadvantage.pdf>, p.94.

⁹ Howard, D. (2020), Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants, Vol 1a, p xviii.

Aboriginal community led organisations (such as recommendations 58, 59 and 65, supported by the NSW Government).

This proposed high level action would also contribute to achieving outcomes and targets under the National Agreement on Closing the Gap¹⁰, including everyone enjoys long and healthy lives (outcome one), adults are not overrepresented in the criminal justice system (outcome ten), young people are not overrepresented in the criminal justice system (outcome eleven), children are not overrepresented in the child protection system (outcome 12) and people enjoy high levels of social and emotional wellbeing (outcome 14).

3.4 Increase and improve AOD services and supports available for people in prison

There is a significant need to improve access to AOD services for people in prison. As the Ice Inquiry stated, “[i]nmates with AOD-related issues are entitled to health care that addresses their needs”, however “[t]he evidence before the Inquiry describes a situation in which most inmates will not get the AOD treatment they need.”¹¹

We support recommendation 93, that Corrective Services and Justice Health ensure that all people in custody who need AOD treatment receive it, supported in principle by the NSW Government.

We also support the range of recommendations regarding increasing and improving AOD services for people in prison, for example recommendations 87, 88, 92, 94, 95, 96, 98, 99 and 101, all of which were supported in principle, except recommendation 96A which was not supported, and recommendation 91 regarding Justice Health and Corrective Services developing a comprehensive AOD strategy which was supported by the NSW Government.

3.5 Expand post-custodial and community-based supports

Legal Aid NSW is concerned about the absence of transitional support and through care for people leaving custody. As the Ice Inquiry noted, the period after release from prison is a time of elevated mortality risk, particularly from suicide and drug overdose, and reoffending. Some of the significant challenges faced by people leaving prison include lack of identification documents, homelessness or insecure housing, lack of employment and education, problems accessing Centrelink and difficulty accessing health services

¹⁰National Agreement on Closing the Gap 2019 – 2029.

¹¹Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a, p III

including residential rehabilitation. These problems can be more pronounced for Aboriginal people leaving custody, and people from regional, rural and remote areas. We agree that “immediate and significant improvements to transitional support for prisoners leaving custody are required.”¹²

We support the range of recommendation aimed at improving support for people leaving custody, including the following recommendations which were supported in principle by the NSW Government:

- Justice Health and Corrective Services review their policies relating to release planning and handover of patient care on release (recommendation 99);
- ensure people leaving custody have identification (recommendation 100);
- provide transitional support for up to 12 months for people leaving custody (recommendation 102);
- Corrective Services facilitate AOD assessments for all inmates who seek access to residential rehabilitation (recommendation 103), and
- ensure the availability of residential rehabilitation programs for all people leaving custody who require it (recommendation 104).

¹²Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a, pliv

4. Focus Area 2: Supporting community wellbeing and safety through regulation and legislation that controls the licit and illicit markets

4.1 Increase diversion from the criminal justice system for adults and children

4.1.1 Introduce a pre-court diversion scheme

While decriminalisation is not currently being considered by the NSW Government, we support the establishment of a pre-court diversion scheme (recommendation 12, supported in principle by the NSW Government).

We would welcome being further consulted on the details of such a scheme and note that in our view it should allow police discretion to use other diversionary measures such as warnings/ cautions instead of a Criminal Infringement Notice (**CIN**), especially for children, young people and those with no prior record.

4.1.2 Expand diversionary programs – adults

We consider this should include:

- Adequately resourcing the Magistrate’s Early Referral Into Treatment (**MERIT**) program to ensure access for all eligible defendants across NSW (recommendation 13, supported in principle by the NSW Government).

We consider that expanding eligibility for MERIT should also be reconsidered during the life of the AOD Strategy, to include people suffering from alcohol abuse problems, people in custody and people charged with strictly indictable and/or violent offences.

- Expanding and adequately resource the Drug Court of NSW and progressively expanding it to regional areas, along with appropriate support for local services (recommendation 14, supported by the NSW Government).

We consider that eligibility for the Drug Court of NSW should be reconsidered during the life of the AOD Strategy, to permit violent offenders to access the program.

- Expanding the Compulsory Drug Treatment Program (**CDTP**) including to make it available to women and in additional locations (recommendation 15, supported in principle by the NSW Government).
- Adequately fund and resource the Walama Court program (including support services) to ensure its ongoing ability to facilitate a culturally appropriate diversion

program for Aboriginal people, and to meet growing demand for access by eligible defendants (recommendation 61, noted by NSW Government)

4.1.3 Expand diversionary programs – children and young people

We consider this should include:

- Implementing a diversionary treatment program similar to MERIT, appropriately adapted and resourced for young people across NSW (recommendation 16, supported in principle by the NSW Government). We would welcome being further consulted on the details of such a program.
- Increasing diversion under the *Young Offenders Act 1997* (NSW), (recommendation 17, noted by the NSW Government). Legal Aid NSW made a detailed submission on this topic to the NSW Legislative Assembly inquiry into the adequacy of youth diversionary programs in NSW in 2018¹³ and are eager for the outcome of the review of the *Young Offenders Act 1997* (NSW) to be released.
- Expanding the Youth Koori Court to regional areas (recommendation 60, supported in principle by the NSW Government)
- We also support expanding the Youth on Track program and Their Futures Matters programs, which did not form part of the Ice Inquiry's recommendations or the Government response.

4.2 Reform criminal records regarding prohibited drug use or possession

We agree with the Ice Inquiry' finding that "the negative consequences of having a criminal record for simple possession are completely disproportionate to the underlying conduct."¹⁴

We support recommendation 18, that 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. The Government response supported in principle reducing the period of time before which a conviction for use or possession of a prohibited drug may be spent, from 10 years to five years for adults, subject to further consultation with stakeholders. We would welcome the opportunity to comment in more detail on this proposal.

¹³Legal Aid NSW, submission to the NSW Parliament Committee on Law and Safety, *Inquiry into Youth Diversionary Programs in NSW*, (January 2018). Available: https://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0009/28476/Legal-Aid-NSW-submission-Youth-Diversion.pdf

¹⁴Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a,p xxxiv

4.3 Improve data collection and analyses

We support recommendation 56 concerning investment in research to better understand the prevalence, harms, patterns of use and attitudes towards ATS use among Aboriginal people, and recommendation 71 regarding further research to better understand the nature of the association between ATS use and domestic and family violence, both of which were supported by the NSW Government.

We also support recommendation 86, that NSW Police record and analyse data on whether ATS use was involved in the commission of a crime, supported in principle by the NSW Government.

4.4 Adopt a justice reinvestment approach

Legal Aid NSW supports a justice reinvestment approach to addressing the prevalence and harmful impact of AOD use in NSW. We support recommendation 20, that the NSW Government support local, community-driven collective impact initiatives, including justice reinvestment initiatives, that respond to the local drivers of drug use and support expansion of such programs (supported by the NSW Government).

We suggest that the NSW Government could further evaluate the costs to the criminal justice and child protection systems associated with AOD use, compare this with the resources being allocated to detoxification and rehabilitation, and consider whether there may be any savings in devoting further resources to preventative measures.

4.5 Review drug law enforcement strategies

We continue to support NSW Police ceasing to use drug detection dogs at music festivals (recommendation 80, not supported by the NSW Government). We would welcome this issue being revisited during the term of the AOD Strategy.

We also oppose police strip searches in public by police, particularly where the search is either not necessary, and/or not based on a reasonable suspicion but attached to a specific location (such as a train station or music festival). This is consistent with the District Court's comments in the decision of *Attalla v State of NSW*¹⁵ and comments and recommendations of the Law Enforcement Conduct Commission (LECC) report on the Inquiry into NSW Police Force strip search practices.¹⁶ We support recommendation 82 that the NSW Police Force should amend its policies and guidelines to limit the use of

¹⁵ *Attalla v State of NSW* [2018] NSWDC 190.

¹⁶ LECC Inquiry into NSW Police Force strip search practices Report (2020), pp.vi-ix, 37-41,

strip searches (not supported by the NSW Government), and suggest this issue is revisited.

4.6 Reconsider expanding harm reduction strategies

Legal Aid NSW supports expanding harm reduction strategies such as substance testing and medically supervised drug consumption facilities. We acknowledge that key recommendations of the Ice Inquiry regarding these matters (such as recommendations 51 and 53) were not supported by the NSW Government. We support the NSW Government reconsidering these issues during the term of the AOD Strategy.

4.7 Revisit decriminalisation

Legal Aid NSW continues to support decriminalising the use and possession for personal use of prohibited drugs (recommendation 11), which we consider would reduce harm for individuals and communities, and barriers to treatment. We acknowledge that this was not supported by the NSW Government, however we consider that decriminalisation should be reconsidered during the ten-year life of the AOD Strategy.

As the Ice Inquiry observed, the criminalisation of simple possession has a disproportionate impact on Aboriginal people, including through the high prevalence of secondary offending associated with the imposition of fines for low-level drug offences.¹⁷

We also note the work of organisations such as the Centre for Policy Development on the relationship between disadvantage and the criminal justice system, which concludes that the criminal justice system compounds existing disadvantage, create additional disadvantage, and traps a growing number of Australians, their families and communities in cycles of disadvantage. Any contact with the criminal justice systems, even short periods in remand, or contact via a parent, is associated with poorer outcomes for families and communities.¹⁸

We would welcome being consulted further on decriminalisation measures.

¹⁷Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a, p XXXi

¹⁸Centre for Policy Development, *Partners in Crime: the relationship between disadvantage and Australia's criminal justice systems* (Report, December 2020) 6. Above n6, p.10.



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