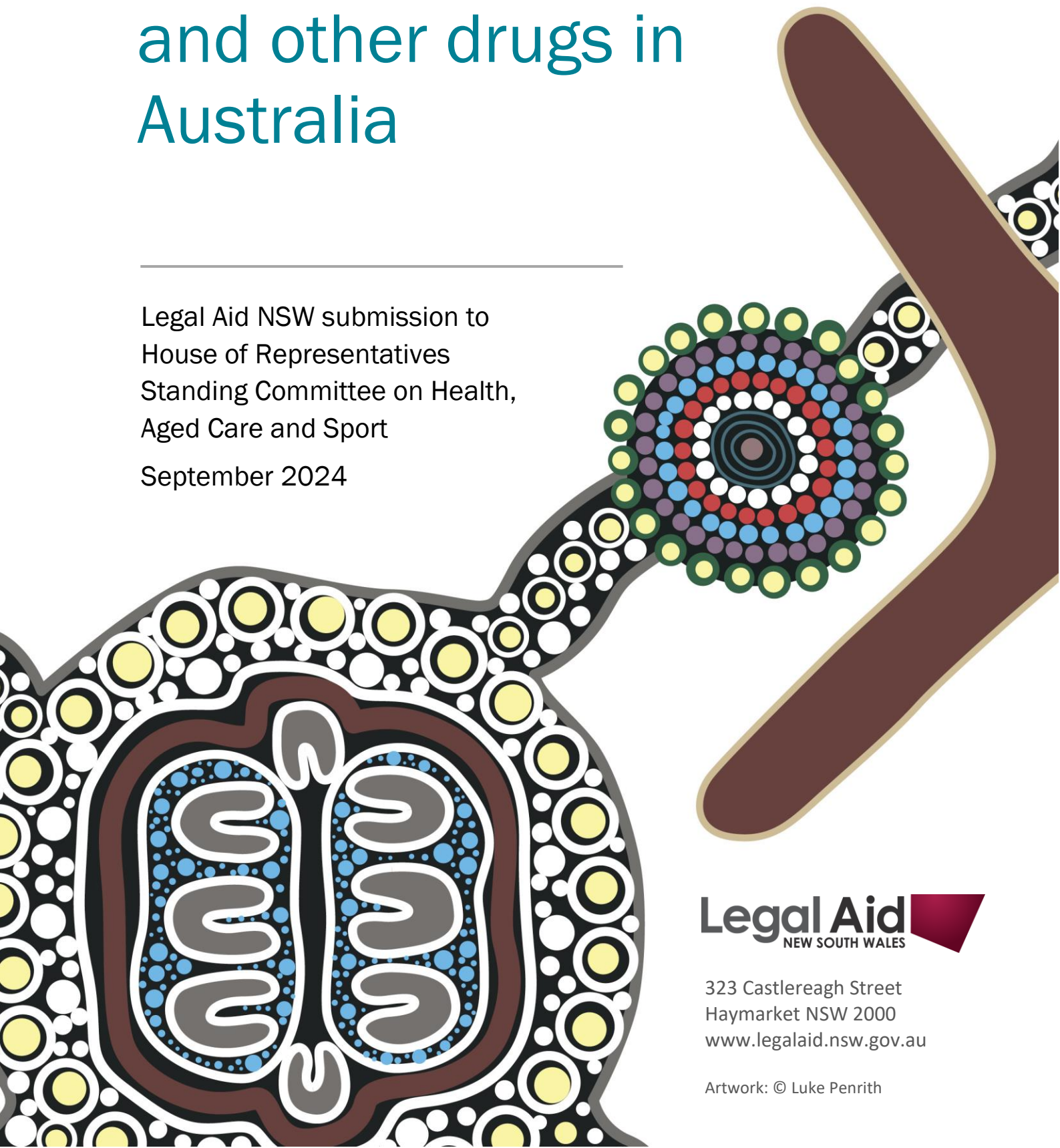


# Inquiry into the health impacts of alcohol and other drugs in Australia

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Legal Aid NSW submission to  
House of Representatives  
Standing Committee on Health,  
Aged Care and Sport  
September 2024



**Legal Aid**  
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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.

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.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law.

Specialist services focus on the provision of family dispute resolution services, family violence services, services to Aboriginal families and the early triaging of clients with legal problems.

Legal Aid NSW provides duty services at all Family and Federal Circuit Court registries and circuit locations through the Family Advocacy and Support Services, 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 jurisdiction

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and most regional offices. The purpose of the Civil Law Division is to improve the lives of people experiencing deep and persistent disadvantage or dislocation by using civil law to meet their fundamental needs. Our civil lawyers focus on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

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 Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

## 2. Executive summary

Legal Aid NSW welcomes the opportunity to contribute to the House of Representatives Standing Committee on Health, Aged Care and Sport's inquiry into the health impacts of alcohol and other drugs in Australia. We appreciate efforts to identify national priorities and coordinate service standards in the alcohol and other drug (AOD) sector.

Legal Aid NSW has a broad range of experience in matters associated with AOD use across our criminal, civil and family law practice areas. A significant proportion of Legal Aid NSW clients use or have a history of problematic drugs and/or alcohol use.<sup>1</sup> Many of our clients face barriers accessing services to overcome their drug problems, including the criminalisation of drug and/or alcohol use, the availability of places in AOD services, the location of AOD services, and the ability of these services to work with clients who, for example, are under 18, have complex needs, have dependent children, and are from diverse cultural backgrounds.

Legal Aid NSW supports a co-ordinated whole-of-government public health approach to addressing health and social harms associated with problematic drug and alcohol use. In our view, maintaining a public health-based approach to this issue is the most effective and cost-efficient way of ensuring a harm minimisation focus for both the individual and the community.

We support the decriminalisation of the use and possession for personal use of prohibited drugs, and where this is not an option, consider diversion from the criminal justice system as the preferred alternative to criminal prosecution. As our clients that present with AOD problems often have co-occurring complex needs, we believe every effort should be made to ensure the criminal justice system is the last port of call – not the first – when it comes to intervention and treatment for AOD concerns. A punitive approach to drug use tends to compound the harms of use for individuals and communities, and can act as a barrier to accessing treatment.<sup>2</sup>

AOD services must be adequately resourced to ensure access for vulnerable and complex clients, and be culturally appropriate, respectful and safe for individuals with additional vulnerabilities, such as Aboriginal and Torres Strait Islander people.

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<sup>1</sup> Legal Aid NSW, *High service users at Legal Aid NSW* (2013).

<sup>2</sup> Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a, p.xxvii.

This submission reflects key observations of Legal Aid NSW staff who work with clients impacted by AOD use, and features de-identified case studies of Legal Aid NSW clients.

## Recommendations

### *Recommendation 1*

The Federal Government should support an increase in the number of culturally appropriate, respectful and culturally safe AOD services for Aboriginal and Torres Strait Islander people, including services provided on Country, in partnership with Aboriginal and Torres Strait Islander communities and Aboriginal and Torres Strait Islander led organisations.

### *Recommendation 2*

The Federal Government should ensure that the National Drug Strategy highlights the needs of current priority populations recognised in the Strategy, and includes populations living in regional, rural or remote NSW, people with disability, pregnant women, and people experiencing homelessness as additional priority groups.

### *Recommendation 3*

The Federal Government should promote consistency across states and territories regarding decriminalisation of the use and possession for personal use of prohibited drugs, to reduce harm to individuals and communities and allow drug and alcohol use to be treated primarily as a health issue with complex social determinants rather than as a criminal justice issue.

### *Recommendation 4*

- The Federal Government should ensure that all medical cannabis is subsidised by the Pharmaceutical Benefits Scheme, and that efforts are made to increase the number of doctors authorised to prescribe medical cannabis in rural and regional areas.
- The Federal Government should consider inserting drug driving guidance into the Australian Road Rules permitting the use of Therapeutic Goods

Administration approved medical cannabis when used in accordance with medical advice and where no impairment is present.

*Recommendation 5*

Where decriminalisation is not adopted, the Federal Government should support an expansion in the provision of evidence-based diversion programs to address problematic behaviours associated with AOD use.

*Recommendation 6*

The Federal Government should support an increase in the number of health services that address problematic AOD behaviours, with a particular focus on decreasing waiting time, increasing places, and addressing the needs of vulnerable populations, including Aboriginal and Torres Strait Islander people, children and young people, people living in rural and regional areas, and people with complex health needs.



### 3. Drug and alcohol use among Legal Aid NSW clients

Drug and alcohol use is a significant underlying issue for a large proportion of Legal Aid NSW clients. In our experience, clients who use AOD may present with complex needs, and have various legal needs which can span civil, family and criminal law matters. Our lawyers are increasingly required to source and secure appropriate rehabilitation placements for clients, on top of their core work of providing legal representation.

In our examination of our 50 most frequent users of all legal aid services (civil, criminal and family law services),<sup>3</sup> we found three quarters of 'high service users' had used drugs and/or alcohol. Twenty per cent had accessed treatment for drug and alcohol addiction. Most of the frequent users had complex needs and nearly half had received a mental health diagnosis. About half of the frequent users of legal aid services had a primary carer who had experienced drug and/or alcohol issues, and a high proportion of frequent users were children with complex needs.<sup>4</sup>

This data reinforces the experience of Legal Aid NSW lawyers and research that confirms people entering adult prison are more than four times as likely to report recent illicit drug use than people in the general community, and seven times more likely to drink to excess.<sup>5</sup> Mental health conditions are also over-represented in the prison population.<sup>6</sup>

In research by the NSW Government, the 2015 *NSW Young People in Custody Health Survey* found that 92 per cent of the young people surveyed had tried illicit drugs, with cannabis the most commonly used (90 per cent), followed by crystal methamphetamine at 55 per cent. Illicit drugs were used at least weekly by 81 per cent of young people surveyed, while 65 per cent reported committing crime to obtain alcohol or drugs, and 78 per cent were intoxicated (on alcohol, drugs or both) at the time of their offence.<sup>7</sup> Complex needs are evident among young people in custody, with

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<sup>3</sup> Legal Aid NSW, *High service users at Legal Aid NSW* (2013).

<sup>4</sup> Legal Aid NSW, *High service users at Legal Aid NSW* (2013).

<sup>5</sup> Australian Institute of Health and Welfare, *The health of people in Australia's prisons 2022* (2023) 85, 100.

<sup>6</sup> Australian Institute of Health and Welfare, *The health of people in Australia's prisons 2022* (2023) 43.

<sup>7</sup> Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *NSW Young People in Custody Health Survey 2015* (2017) 60-62.

87 per cent having at least one psychological disorder,<sup>8</sup> and 60 percent having a history of child abuse or trauma.<sup>9</sup>

Legal Aid NSW's civil law and family law clients may also face drug and alcohol issues. For example, clients impacted by AOD issues also access Legal Aid NSW care and protection, housing, debt and domestic violence services. In response to this need, Legal Aid NSW offers an outreach service at the drug and alcohol recovery program We Help Ourselves (WHOS); in 2022–23 we provided a much-needed and highly valued in-person service each Wednesday at WHOS Lilyfield and a phone service to clients in Newcastle, Penrith and Goulburn.<sup>10</sup>

The case study of John, below, illustrates how drug misuse often co-exists with mental and physical health problems and early experience of trauma (including witnessing domestic violence and being homeless), and can impact upon a variety of legal needs.

### Case study: John

John is a young man aged 20 years old. He had his first contact with Legal Aid NSW when he was 12, and is a high user of legal aid services, with 96 service contacts over a five-year period.

John's childhood was characterised by physical health problems. He suffered from chronic ear infections, his speech was slow to develop, and he had periodic bouts of asthma. He had early corrective surgery for a congenital abnormality.

John's mother suffered from obsessive-compulsive disorder and other anxiety problems. John's father was violent to his mother. At age two, John's parents separated and he lived with his mother in refuges for a period of time. He has subsequently had periods of living with his mother, his father, his grandparents and in various foster placements.

At age four, John was diagnosed with attention-deficit hyperactivity disorder. Over the subsequent years clinicians have diagnosed him with conduct disorder, oppositional defiant disorder, and various other psychiatric diagnoses. He has had episodes where

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<sup>8</sup> Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *NSW Young People in Custody Health Survey 2015 (2017)* 65-68.

<sup>9</sup> Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *NSW Young People in Custody Health Survey 2015 (2017)* 72.

<sup>10</sup> Legal Aid NSW, *Annual Report 2022-2023 (2023)* 61.

he has self-harmed and has attempted suicide. On intelligence tests, John returned scores in the range of moderate intellectual disability.

The Department of Family and Community Services became involved with John when he was seven years old. Over subsequent years John had many short and difficult out-of-home-care placements as well as numerous periods where he lived with friends or on the street.

John attended four primary schools and his early learning difficulties were initially addressed by teachers' aides. As John transitioned to high school he was frequently excluded and expelled. Placements in special schools were unsuccessful and he stopped attending school in Year 9.

John started smoking cannabis and drinking alcohol when he was about 13 years old. By age 15 he was using amphetamines. John's criminal justice offending profile involved offences such as stalk/intimidate, breach of bail, assault, and theft offences. Often his offences involve family members as victims.

John had periods of residential drug and alcohol treatment and was recommended for the Youth Drug and Alcohol Court but did not proceed with an application. The Youth Drug and Alcohol Court ceased operating in 2012.

## 4. Priority populations

While increasing access to effective and affordable treatment services and support is critical to addressing problematic AOD use for all Legal Aid NSW clients, we recognise that there are specific groups who are at higher risk of disproportionate harms associated with AOD use.<sup>11</sup> Accordingly, we submit that health, treatment and rehabilitation facilities must be culturally appropriate, respectful and safe for individuals with additional vulnerabilities seeking access to these services. They must also be accessible to people with complex backgrounds – common service eligibility exclusions such as mental health conditions, housing instability or criminal convictions can prevent people seeking to access drug and alcohol services from getting the support they need.

For example, Legal Aid NSW recognises the need for culturally appropriate, respectful and culturally safe AOD services for Aboriginal and Torres Strait Islander people. The findings of the NSW Special Commission of Inquiry into the Drug “Ice” (**Ice Inquiry**) acknowledged that Aboriginal people 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 and racism.<sup>12</sup> Legal Aid NSW supports increasing the availability of culturally competent, safe and respectful AOD services to meet the unique needs of Aboriginal and Torres Strait Islander people, in partnership with Aboriginal and Torres Strait Islander communities and Aboriginal and Torres Strait Islander community-controlled health services. This would contribute to achieving outcomes and targets under the National Agreement on Closing the Gap.

We also recognise the need for a clear focus on rural and regional people and people in contact with the criminal justice system, as recommended by the Ice Inquiry.

Legal Aid NSW supports initiatives that assist services to address the needs of vulnerable and priority populations identified in the National Drug Strategy 2017-2026, including Aboriginal and Torres Strait Islander people, people with mental health conditions, young people, older people, people in contact with the criminal justice system, culturally and linguistically diverse populations, and people identifying as lesbian, gay, bisexual, transgender, queer or intersex (LGBTQI+).<sup>13</sup> We also suggest recognising and prioritising populations living in regional, rural or remote areas, people with a disability, pregnant women, and people experiencing homelessness.

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<sup>11</sup> Department of Health, *National Drug Strategy 2017-2026* (2017) 26.

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

<sup>13</sup> Department of Health, *National Drug Strategy 2017-2026* (2017) 18.

## Recommendation 1

The Federal Government should support an increase in the number of culturally appropriate, respectful and culturally safe AOD services for Aboriginal and Torres Strait Islander people, including services provided on Country, in partnership with Aboriginal and Torres Strait Islander communities and Aboriginal and Torres Strait Islander led organisations.

## Recommendation 2

The Federal Government should ensure that the National Drug Strategy highlights the needs of current priority populations recognised in the Strategy, and includes populations living in regional, rural or remote NSW, people with disability, pregnant women, and people experiencing homelessness as additional priority groups.

## 5. Decriminalisation

Legal Aid NSW assists many clients with matters associated with drug use who are before the NSW criminal courts. A significant portion of these drug related charges involves conduct that does not put the general public at risk (i.e. drug possession).

The reasons for drug use can be multifaceted and complex. We have observed that for many of our clients, drug use is a way to self-medicate to treat underlying mental health conditions. Addressing their drug use often requires medical intervention that also treats their mental health conditions. However, criminalisation can act as a barrier to accessing treatment.

Legal Aid NSW practitioners report a prevalent belief held by local communities and the police that arrests and charging for drug use can be a catalyst for change; that is, the prospect of imprisonment can make drug users accept treatment as a direct alternative. However, this approach can be ineffective as there are not enough residential rehabilitation facilities available for treatment, there are significant issues with defendants accessing assessments for rehabilitation facilities from custody (see section 7.1 below regarding the experience of our Information Referral and Rehabilitation Pilot), and there is no efficient mechanism for defendants to be bailed to such services.

Legal Aid NSW has also observed clients reluctant to seek medical assistance with cessation of illicit drug use as they fear stigma, criminalisation or other negative consequences. The same concerns are not present when seeking support to cease alcohol or nicotine use. A reluctance to disclose illicit drug use can lead clients to attempt to quit without professional support, reducing their chances of success. Decriminalisation will remove many of these barriers and assist people to speak openly to health professionals about their drug use.

Legal Aid NSW supports the recommendation of the Ice inquiry that, in conjunction with increased resourcing for specialist drug assessment and treatment services, the NSW Government implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs. This includes removal of the criminal offences of use and possession of prohibited drugs for personal use, and the referral of people detected in possession of drugs to an appropriately tailored health, social and/or education intervention.<sup>14</sup> We believe decriminalisation will reduce discrimination against vulnerable communities, reduce the barriers to accessing treatment, and allow drug use to be treated primarily as a health issue with complex social determinants rather than as a criminal justice issue.

There is also evidence that decriminalisation results in measurable savings in health costs, social costs and costs to the justice system.<sup>15</sup> Savings for the justice system can include freeing up police time, allowing them to focus on more serious crimes, savings on court and legal resources, and reductions in prison overcrowding.<sup>16</sup> In Legal Aid NSW's experience, drug possession and drug driving matters that relate to cannabis, for example, make up a sizeable portion of the Local Court workload.

An important qualifier concerning decriminalisation is that its success is reliant upon additional investment in health and social services.

### Recommendation 3

The Federal Government should promote consistency across states and territories regarding decriminalisation of the use and possession for personal use of prohibited drugs, to reduce harm to individuals and communities and allow drug and alcohol use to be treated primarily as a health issue with complex social determinants rather than as a criminal justice issue.

#### 5.1 Medical cannabis

In 2016, the Australian Government amended the *Narcotic Drugs Act 1967* (Cth) to allow the supply of medicinal cannabis products for the management of patients with certain medical conditions.<sup>17</sup> Despite the use of the drug being legally prescribed, NSW maintains a zero-tolerance approach to the presence of cannabis in a driver's body, regardless of whether their driving ability is adversely impacted by it. This law, as well as the cost of medical cannabis, can bring users of medical cannabis – often people with severe medical conditions – in contact with the criminal justice system unnecessarily.

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<sup>15</sup> National Drug and Alcohol Research Centre, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate* (2016).

<sup>16</sup> Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation* (2016) 21.

<sup>17</sup> In NSW, access to medicinal cannabis is also governed by the following legislation: *Poisons and Therapeutic Goods Act 1966* (NSW), *Drug Misuse and Trafficking Act 1985* (NSW), *Children and Young Persons (Care and Protection) Act 1998* (NSW), *Guardianship Act 1987* (NSW), and *Poisons and Therapeutic Goods Regulation*.

### Case study: Joe's story

Legal Aid NSW represents Joe, a 37-year-old single father who works part-time as a gardener.

Joe was diagnosed with a bone condition in his teens and has struggled with severe pain ever since. Joe has been prescribed opioid pain medication since his late teens, which has led to an increase in his tolerance, requiring stronger doses. Joe develops a prescription opioid addiction.

Due to these concerns, Joe books an appointment with the only doctor in his regional area who can prescribe medicinal cannabis. The appointment is not bulk-billed. The doctor provides Joe with a prescription for medicinal cannabis for pain relief.

Unfortunately, the cost of the medicinal cannabis is more than the PBS-subsidised opioids and Joe cannot afford to get the prescription filled. Despite having a prescription, Joe begins to grow his own cannabis illegally. Joe is eventually raided by NSW Police who locate a number of cannabis plants. Joe is arrested, charged with cultivating a prohibited plant, and placed on bail. Joe ultimately pleads guilty and receives a community corrections order and a conviction.

The above case study highlights a number of issues. Firstly, only a small number of doctors can prescribe medicinal cannabis. Many of them do not bulk bill. People in rural and regional areas often have to travel significant distances to consult with a prescribing doctor. The cost and practical difficulties involved with obtaining a prescription place medicinal cannabis beyond the reach of many vulnerable people with chronic conditions. This in turn leaves vulnerable people at greater risk of criminalisation.

Further, the criminal offence of driving with the presence of an illicit drug present<sup>18</sup> disproportionately impacts on people from rural and remote areas, can impact those who use it for medical purposes, and targets recreational drug users as traffic offenders without sufficient evidence that it improves road safety. Legal Aid NSW suggests that current evidence of how, or if, drugs impact driving ability be examined to inform advice on the issue for states and territories, with the aim to ensure drivers are not unnecessarily criminalised.<sup>19</sup>

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<sup>18</sup> Pursuant to the *Road Transport Act 2013* (NSW) s 11.

<sup>19</sup> For example, Moxham-Hall, V. & Hughes, C. *Drug driving laws in Australia: What are they and why do they matter?* (2020) *DPMP Bulletin No. 29*. Sydney: UNSW Social Policy Research Centre; Perkins D, et al. *Medicinal cannabis and driving: the intersection of health and road safety policy*. (2021) *Int J Drug Policy*. 97:103307.



In our experience, most instances of cannabis use that come before the NSW criminal courts are occasional and pose little harm to offenders and the community. Legal Aid NSW agrees with the Ice Inquiry finding that “the negative consequences of having a criminal record for simple [drug] possession are completely disproportionate to the underlying conduct”.<sup>20</sup> A criminal conviction against a person’s name typically has negative implications for their current and future employment, accommodation and international travel.

#### Recommendation 4

- The Federal Government should ensure that all medical cannabis is subsidised by the Pharmaceutical Benefits Scheme, and that efforts are made to increase the number of doctors authorised to prescribe medical cannabis in rural and regional areas.
- The Federal Government should consider inserting drug driving guidance into the Australian Road Rules permitting the use of Therapeutic Goods Administration approved medical cannabis when used in accordance with medical advice and where no impairment is present.

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<sup>20</sup> Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a, xxxiv.

## 6. Diversion

For people in contact with the criminal justice system experiencing problematic AOD use, and where decriminalisation is not an option, Legal Aid NSW considers diversion from the criminal justice system as the preferred alternative to criminal prosecution. Below is an overview of some diversionary programs in NSW we believe have been helpful in addressing problematic behaviours associated with AOD use.

### 6.1 Cannabis Cautioning Scheme (CCS)

The CCS allows the NSW Police Force (**NSWPF**) discretion to issue up to two formal cautions to adults detected for minor cannabis offences. After the cautions have been exhausted, NSWPF are required to formally charge and prosecute the individual if they are caught with cannabis again. The caution notice provides the contact telephone number for the Cannabis Caution Line, which can provide a telehealth session with details about treatment, counselling and support.

Legal Aid NSW is generally supportive of the CCS. In 2011, the NSW Auditor General conducted a 10-year review of the scheme.<sup>21</sup> It found that over the previous 10 years, NSWPF had issued over 39,000 cautions to minor cannabis offenders, saving at least \$20 million in court costs. The review also found that people cautioned for minor cannabis offences were less likely to reoffend than those dealt with by the courts.

However, the level of police discretion currently allowed for in the CCS has been shown to be problematic. It means there is a risk of inequality in NSWPF practice, leading to certain minorities or regions experiencing greater criminalisation and less diversion. For example, a study by the NSW Bureau of Crime Statistics and Research found that under the NSW Cannabis Cautioning Scheme, just 12 per cent of Aboriginal adults were issued a caution compared with 44 per cent of non-Aboriginal adults<sup>22</sup>.

Legal Aid NSW supports initiatives that divert people away from formal criminal court proceedings and provide optional access to health supports, however does not view this initiative as a preferable alternative to decriminalisation.

### 6.2 Early Drug Diversion Initiative

The Early Drug Diversion Initiative is a NSW Government initiative following a recommendation of the Ice Inquiry that offers Police an alternative to initiating legal

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<sup>21</sup> NSW Auditor-Generals Report, *The Effectiveness of Cautioning for Minor Cannabis Offences* (2011).

<sup>22</sup> NSW Bureau of Crime Statistics and Research. *Why are Aboriginal people less likely to receive cannabis cautions?* (Crime and Justice Bulletin No. 258) (2023).

proceedings for low level drug-offending. Police have the option to issue up to two \$400 on the spot fines. Someone who receives a fine can choose to pay it, attend court, or have their fine waived if they engage in a telehealth consultation about their drug use. This initiative does not apply to offences related to cannabis and operates alongside the Cannabis Cautioning Scheme.<sup>23</sup>

Legal Aid NSW supports initiatives that divert people away from formal criminal court proceedings and provide optional access to health supports, however does not view this initiative as a preferable alternative to decriminalisation, as unpaid fines can result in further contact with the criminal justice system.

### 6.3 Drug Court

Drug courts have proved to be effective in reducing reoffending in both Australian and international research.<sup>24</sup>

NSW has drug courts based in Sydney CBD, Parramatta, the Hunter region and Dubbo. The Dubbo Drug Court was opened in February 2023 after advocacy from the local community and a number of organisations including Legal Aid NSW. The court offers offenders who live in the Dubbo Regional Council local government area the chance to participate in the drug court program, which has been shown to reduce reoffending rates by up to 17 per cent.<sup>25</sup> Participants are assisted not only with specific drug rehabilitation services but also with their other non-legal needs such as accommodation and education.

Legal Aid NSW strongly supports the recent expansion of the Drug Court to Dubbo, and the expanding catchment area for Sydney Drug Court. We note that Legal Aid NSW sits on the Sydney Drug Court Expansion Steering Committee and Working Group, supporting the expansion of the Sydney Drug Court from sitting one day per week to full-time operation. However, to our knowledge, the number of rehabilitation beds has not increased, meaning that drug courts are often competing for the same very limited cohort of residential rehabilitation beds where a residential rehabilitation component is recommended. We therefore submit that the expansion of the drug courts needs to be supported by an increase in the number of residential rehabilitation beds.

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<sup>23</sup> 'Early Drug Diversion Initiative', NSW Government (Web Page, 2024) <<https://www.nsw.gov.au/money-and-taxes/fines-and-fees/support-and-community-services/early-drug-diversion-initiative>>

<sup>24</sup> NSW Bureau of Crime Statistics and Research, *Intensive judicial supervision and drug court outcomes: interim findings from a randomised controlled trial* (2011) 2.

<sup>25</sup> Legal Aid NSW, *Annual Report 2022-2023* (2023) 29.

Furthermore, Legal Aid NSW considers that NSW drug courts, with associated drug rehabilitation and other services, should be available in all regional areas. Access to the Drug Court can also be improved by reviewing its cultural appropriateness and eligibility criteria. The Drug Court eligibility should also be expanded to allow violent offenders to participate.

Unfortunately, the Youth Drug and Alcohol Court (**YDAC**) was discontinued in 2012 after it was found to be not cost effective. Reinstatement of the YDAC should be with modifications to the previous model, and supported by legislation which ensures that a participant is not given a greater sentence if they fail to complete the program.

#### 6.4 Compulsory Drug Treatment Program (**CDTP**)

Certain metropolitan Local and District Courts, including the Drug Courts, can refer male offenders with long-term drug dependence to the CDTP at the Compulsory Drug Treatment Correctional Centre located on the Parklea Correctional Complex in north-west Sydney. This sentencing option is not available to residents of non-metropolitan NSW, and should be expanded to be made available outside of the Sydney metro area.

An evaluation of the CDTP found that it was effective in improving participants' health and wellbeing over their time on the program.<sup>26</sup> Although the program was coercive, the vast majority of participants felt that their participation in the CDTP was voluntary. Participants made positive comments about the program and consistently expressed their desire to be in the program regardless of what stage they were in. This indicated that offenders in the program genuinely wanted to change their behaviour.

#### 6.5 Magistrates Early Referral Into Treatment (**MERIT**)

MERIT is a multiagency initiative of the NSW Department of Communities and Justice, the Chief Magistrate's Office, NSW Health and NSW Police, and receives strategic and operational support from both Legal Aid NSW and the Aboriginal Legal Service (NSW/ACT). The program commenced in 2000 as a trial at Lismore Local Court, and thereafter expanded to 62 Local Court locations. The program enables eligible defendants to have their matter adjourned to allow them to focus on treating their drug or alcohol problem. Treatment may include detoxification, methadone, residential rehabilitation, individual and group counselling, case management and welfare support.

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<sup>26</sup> NSW Bureau of Crime Statistics and Research, *An Evaluation of the Compulsory Drug Treatment Program* (2010) ix.

It is usually planned as a 12 week intensive program. Successful engagement in the program can be taken into account in sentence proceedings.<sup>27</sup>

The Ice Inquiry found that MERIT was well received and utilised, but that existing teams often struggled to meet demand. The Inquiry report identified that expansion to regional, rural and remote parts of NSW would be welcomed, recommending that MERIT (and critical wraparound support services) be adequately resourced to ensure access by all eligible defendants across the state.<sup>28</sup>

In September 2022, the NSW Government announced it would commit to expanding the MERIT program through the addition of several new AOD MERIT sites across the state, and enhancement of a number of existing drug treatment sites to include alcohol treatment services.<sup>29</sup> Since then, expansion of the program has progressed, and further locations are expected to be expanded over the next two years.

There are several reasons why Legal Aid NSW considers MERIT to be highly effective. It is much easier for a person of limited means to get a place at a residential rehabilitation through MERIT than by themselves. MERIT also has a vetting process which means people are more likely to access higher quality treatment via this program. Further, MERIT officers can provide support as a contact person for drug users to reach out to if they struggle in the program. MERIT does not have a policy of treating ongoing drug use as a breach of their program that warrants immediate exclusion, and this is a further factor contributing to the success of its participants.

Generally, there is very good support for MERIT from magistrates, but there are some exceptions.

Legal Aid NSW recommends the further expansion of MERIT to include:

- areas in regional and remote NSW with high need
- individuals suffering from alcohol abuse problems in all MERIT locations, and
- people in custody and those charged with strictly indictable and/or violent offences.

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<sup>27</sup> Local Court of NSW, *Local Court Practice Note Crim 1: Case management of criminal proceedings in the Local Court* (24 April 2012) [12.1].

<sup>28</sup> Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a. p xxxiii and Recommendation 13.

<sup>29</sup> NSW Communities and Justice, 'Expansion of court diversion program to reach 93 per cent of eligible defendants across NSW' (Media Release, 16 September 2024).

## 6.6 Work and Development Orders (WDOs)

WDOs allow people experiencing disadvantage to clear fines through unpaid work, courses or treatment. They are available to people who have a serious addiction to drugs, alcohol or volatile substances,<sup>30</sup> and drug and alcohol treatment can be undertaken as part of a WDO. Large fine debt and fine enforcement measures have a crippling effect on vulnerable people. Aboriginal and Torres Strait Islander people are more likely to accumulate large fine debt, and be subject to fine enforcement measures, such as driver licence sanctions and garnishee orders. Incarceration can then result from driving while subject to licence sanctions for fine default.<sup>31</sup>

The WDO scheme relies heavily on support from the non-government sector, and depends on sponsors being available. Capacity to accept new WDO clients can be an issue, particularly in regional and remote areas. However, an evaluation of the WDO Scheme found that where sponsors were available, the program was achieving its objective of enabling vulnerable people to resolve their outstanding debt whilst also reducing client stress and enabling them to address the factors that contributed to the debts.<sup>32</sup>

### Recommendation 5

Where decriminalisation is not adopted, the Federal Government should support an expansion in the provision of evidence-based diversion programs to address problematic behaviours associated with AOD use.

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<sup>30</sup> *Fines Act 1996* (NSW) s 99B.

<sup>31</sup> NSW Bureau of Crime Statistics and Research, *NSW Criminal Courts Statistics 2016 (2017)* tables 5, 14, cited in Australian Human Rights Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples (2017)* para 6.75.

<sup>32</sup> INCA Consulting, *Evaluation of the Work and Development Order Scheme: Qualitative Component* (Final Report, May 2015).

## 7. Other services and barriers to accessing services

### 7.1 Legal Aid NSW Information Referral and Rehabilitation Pilot

The Legal Aid NSW Information Referral and Rehabilitation Pilot (**Pilot**), which has run from January 2024, assists Legal Aid NSW criminal law solicitors in supporting clients who are currently in custody to access residential rehabilitation services. As of September 2024, the Pilot has received 268 referrals and worked with 104 clients.

The Pilot has collected data on the demographics of those in custody seeking AOD support or being directed into support through the criminal justice system. It has aided and provided advocacy support for Legal Aid NSW solicitors and clients through residential rehabilitation applications, support letters at court, and AOD education. The Pilot has also been able to provide practical and immediate information on service eligibility, allowing solicitors and clients to make an informed decision on next steps.

The Pilot has expanded Legal Aid NSW's understanding of the current AOD sector, especially the public residential rehabilitation space. The Pilot has exposed a lack of accessible services for those impacted by AOD who have a criminal record. Many residential rehabilitation facilities have restrictive eligibility criteria which excludes clients with a violent criminal record. While a large number of clients have been referred to the Pilot, there is a very low success rate of obtaining rehabilitation beds for people in custody. Where there is a systems focus on residential rehabilitation, to the detriment of services accessible to those in the community such as AOD counselling, it leaves most of our clients with limited to no service options.

### 7.2 Barriers to accessing services

#### 7.2.1 Availability and accessibility

Legal Aid NSW solicitors report serious concerns about waiting lists for drug rehabilitation programs. People who are remanded in prison are highly motivated to address their drug problems so that they can present evidence of their rehabilitation to the courts if they are convicted. Judicial officers are also willing to grant bail to accused persons so that they can attend rehabilitation, however there is a lack of local placement options.

Further, many residential rehabilitation facilities require a person on the waiting list to call the facility three times per week to remain on the waiting list. This can be onerous for those with limited telephone access, and is particularly onerous on those in custody.

Additional barriers can include the requirement to produce a birth certificate and/or several forms of identification, and to independently detox before entering the rehabilitation facility.

### 7.2.2 Complex/dual diagnosis clients

As mentioned above, the reasons for drug use can be multifaceted and complex. For many of our clients, drug use is a way to self-medicate to treat an underlying mental health condition, disability or impairment. Addressing their drug use can require a combination of health specialists that may not be available in focused rehabilitation services. Clients have told us that they have been turned away from rehabilitation support facilities due to their additional or dual health diagnosis.

### 7.2.3 Culturally appropriate and culturally safe services

As mentioned above, there is a lack of culturally appropriate and culturally safe services for Aboriginal and Torres Strait Islander people. Legal Aid NSW recommends that all rehabilitation services should undertake localised Aboriginal and Torres Strait Islander cultural awareness training to build their capacity to deliver services to Aboriginal and Torres Strait Islander people. There should also be more Aboriginal and Torres Strait Islander community controlled and culturally appropriate rehabilitation centres, particularly in regional, rural and remote communities.

As discussed in section 4, it is critical that drug and alcohol services provide culturally appropriate assessment and support. Cultural competence for culturally diverse clients is critical for effective service delivery, and ensures “an environment that is safe for people: where there is no assault, challenge or denial of their identity, or who they are and what they need”.<sup>33</sup>

For Aboriginal and Torres Strait Islander clients, Legal Aid NSW supports services that provide and promote cultural safety with the aim to ensure a safe environment for Aboriginal and Torres Strait Islander people to live and work in.<sup>34</sup> Legal Aid NSW acknowledges that Aboriginal and Torres Strait Islander conceptualisation of wellbeing and healing are inextricably bound to cultural understanding of connectedness: a sense of self, identity and sense of belonging to family, community and Country.<sup>35</sup> Services that do not demonstrate cultural competence may be inappropriate and even cause further harm, perpetuating the marginalisation of Aboriginal and Torres Strait Islander people and resulting in inadequate treatment and a lack of access to appropriate services.<sup>36</sup>

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<sup>33</sup> Legal Aid NSW, *Aboriginal Cultural Safety Framework* (May 2022).

<sup>34</sup> Legal Aid NSW, *Aboriginal Cultural Safety Framework* (May 2022).

<sup>35</sup> Edwidge and Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (2021) 19.

<sup>36</sup> Adams, Drew and Walker, *Principles of Practice in Mental Health Assessment with Aboriginal Australians* 272 in Dudgeon, Milroy and Walker, *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (2014).



Ensuring services are culturally appropriate and culturally safe would promote higher levels of engagement, increased client satisfaction, better understanding, and confidence in addressing their AOD concerns.

#### 7.2.4 Age appropriate services

A significant proportion of young offenders have substance abuse issues.<sup>37</sup> Therefore, drug rehabilitation services specifically designed for children are crucial to reducing contact with the criminal justice system. However, the *NSW youth diversion inquiry* found there is a lack of youth drug and alcohol rehabilitation services in NSW.<sup>38</sup> This finding is consistent with our experience that services are scarce and often crisis driven.

Intensive and focused inpatient and outpatient drug and alcohol facilities need to be available for children and young people, to ensure that the services are tailored to this group, that they feel physically and emotionally safe, and that the staff are specifically trained in dealing with their special needs, including children with behavioural and other health needs. Access to services close to home for family support and education is also critical.

#### Case study: Todd's story

Legal Aid NSW acts for Todd, a child from Southern NSW. Todd has not attended school for many years.

Despite his age, Todd has been involved with the criminal justice system for many years and has been charged with numerous offences.

Throughout this period Todd has had significant drug addiction issues. However, there are no outpatient rehabilitation services in Todd's area, and the closest inpatient rehabilitation service is hours away.

NSW has six youth specific residential rehabilitation programs accessible to children and young people, one designed specifically for youth justice clients. Residential rehabilitation programs typically involve up to three months of accommodation,

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<sup>37</sup> NSW Legislative Assembly Committee on Law and Safety, *The adequacy of youth diversionary programs in New South Wales* (2018); D Kenny and P Nelson, et al. *Young Offenders on Community Orders: Health, Welfare and Criminogenic Needs*, Sydney University Press (2008).

<sup>38</sup> NSW Legislative Assembly Committee on Law and Safety, *The adequacy of youth diversionary programs in New South Wales* (Report no. 2/56 Committee on Law and Safety, 2018) 272.

combined with on-site counselling, case management and living skills education. At least one of the services is funded by the Commonwealth Department of Health.<sup>39</sup>

These residential services are critical and valuable services, however many of our clients struggle to get accepted into these facilities. Some are denied acceptance because of their complex 'criminogenic needs', or due to previous failed attempts and concerns about their commitment. Further, residential rehabilitation is disruptive and requires a child to leave their family and community. Community-based options should be prioritised and made accessible to all children requiring support, allowing them to remain in their community and on Country while receiving treatment.

## Recommendation 6

The Federal Government should support an increase in the number of health services that address problematic AOD behaviours, with a particular focus on decreasing waiting time, increasing places, and addressing the needs of vulnerable populations, including Aboriginal and Torres Strait Islander people, children and young people, people living in rural and regional areas, and people with complex health needs.



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<sup>39</sup> Mission Australia, 'Opening of Mission Australia's new youth rehabilitation facility Walawaani' (Media Release, 24 February 2023).