

18 November 2024

Ms Carmel Tebbutt and Mr John Brogden AM
Co-Chairs
NSW Drug Summit 2024
By email: MOH-NSWDS2024@health.nsw.gov.au

Dear Ms Tebbutt and Mr Brogden

LEGAL AID NSW'S SUBMISSION TO THE NSW DRUG SUMMIT 2024

Legal Aid NSW welcomes the opportunity to provide a written submission to the NSW Drug Summit 2024. **Enclosed** is a table outlining our position and recommendations for reform.

Legal Aid NSW has a broad range of experience in matters associated with alcohol and other drug (**AOD**) use across our criminal,¹ civil and family law practice areas. A significant proportion of our clients use or have a history of problematic AOD use.² These clients often face challenges in accessing services to address their drug issues, including barriers created by the criminalisation of drug and/or alcohol use, limited availability and geographic accessibility of AOD services, and the ability of these services to meet the needs of clients under the age of 18 years, those with complex needs, individuals with dependent children, and those from diverse cultural backgrounds. This submission reflects key insights from Legal Aid NSW solicitors who work with these clients.

Legal Aid NSW has previously made detailed submissions on the legal and social issues resulting from the criminalisation of personal drug possession and use.³ In these submissions, we advocated for decriminalising drug possession for personal use, and treating problematic drug use as a social and health issue rather than a criminal justice issue. We continue to support decriminalisation.

If the NSW Government continues to rule out decriminalisation, we recommend diversion from the criminal justice system as a preferred alternative to prosecution. Given that clients with AOD challenges often have complex, co-occurring needs, we believe the criminal justice system should be the last—not the first—point of intervention and

¹ Legal Aid NSW assists many clients with matters associated with drug use before the NSW criminal courts. We note a significant portion of these drug related charges involve conduct that does not put the general public at risk (i.e. drug possession for personal use).

² Legal Aid NSW, *High service users at Legal Aid NSW* (2013).

³ For example, see Legal Aid NSW, *Inquiry into the impact of the regulatory framework for cannabis in NSW* (Submission to the NSW Legislative Council Portfolio Committee No 1 Premier and Finance, May 2024), Legal Aid NSW, submission to the Special Commission of Inquiry into the Drug 'Ice', Issues Paper 2 – Justice, (May 2019), Legal Aid NSW, submission to the Special Commission of Inquiry into the Drug 'Ice', Issues Paper 2 – Justice, (May 2019), 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).

treatment. A punitive approach to drug use tends to increase the harms associated with use and may act as a barrier to treatment access.⁴

This submission promotes a fairer, more effective, health-centred approach to drug-related issues, which we believe will better serve individuals and society. Specifically, our recommendations aim to achieve the following:

1. **Reduce over-criminalisation and associated social costs:** Minor drug charges often lead to severe consequences, trapping individuals in cycles of disadvantage. Shifting from punitive measures to supportive approaches can ease the strain on the justice system and direct resources toward more effective solutions.
2. **Promote health-based approaches:** Drug dependence is a health issue requiring support, not punishment. We advocate for health-based solutions to improve outcomes and reduce recidivism.
3. **Address systemic inequalities:** Drug laws disproportionately impact marginalised groups. We support fair, equitable laws to address these disparities and promote justice for all.
4. **Enhance community safety:** Health-based interventions address the root causes of drug issues more effectively, potentially reducing crime and creating safer communities.
5. **Reduce the burden on the legal system:** Minor drug cases place a heavy strain on the criminal justice system. Decriminalising minor possession would increase criminal justice stakeholders' capacity to focus on more serious cases.

Thank you again for the opportunity to provide a submission.

Yours sincerely



Monique Hitter
Chief Executive Officer

Enclosure:

Legal Aid NSW's position and recommendations to the NSW Drug Summit 2024

⁴ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, (Report, January 2020) Vol 1a, p.xxvii.

Attachment A: Legal Aid NSWs position and recommendations for reform

Summary	Legal Aid NSW's position and recommendations for reform
<p>1. Decriminalise the possession of drugs for personal use</p>	<p>Legal Aid NSW continues to support decriminalising the possession of drugs for personal use and considers this will reduce discrimination of vulnerable communities and result in measurable savings in health costs, social costs and costs to the justice system.⁵ This is consistent with recommendation 11 of the <i>Inquiry into the impact of the regulatory framework for cannabis in NSW (Ice Inquiry)</i>:</p> <p>Recommendation 1: That, in conjunction with increased resourcing for specialist drug assessment and treatment services, the NSW Government should support decriminalisation of the use and possession for personal use of prohibited drugs. This should include the <u>removal of the criminal offences of use and possession of prohibited drugs for personal use</u>. Instead, people detected in possession of drugs should be referred to an appropriately tailored health, social and/or education intervention.⁶</p>
<p>2. Adopt a justice reinvestment approach</p>	<p>We support recommendation 20 of the Ice Inquiry that the NSW Government support local, community-driven initiatives, including justice reinvestment initiatives, that respond to the local drivers of drug use and support expansion of such programs. We suggest the NSW Government could further evaluate the costs to the criminal justice and child protection systems associated with drug 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.</p> <p>Recommendation 2: That the NSW Government support local, community-driven collective impact initiatives, including justice reinvestment initiatives, that aim to respond to the local drivers of drug use, and actively support the further expansion of such programs, in consultation with local communities.</p>
<p>3. Expand harm reduction strategies</p>	<p>Legal Aid NSW supports expanding harm reduction strategies such as substance testing and medically supervised drug consumption facilities.</p> <p><i>Supervised drug consumption services</i></p>

⁵ Ritter, Decriminalisation or legalisation: injecting evidence in the drug law reform debate, National Drug and Alcohol Research Centre (NDARC), 22 April 2016.

⁶ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, (Report, January 2020) Vol 1a, Recommendation 11.

	<p>The Ice Inquiry found that the sole supervised drug consumption service⁷ in NSW is an effective harm reduction measure, delivering a range of positive public health and amenity outcomes. This service facilitates access to social and health services, including treatment supports, for a highly marginalised population that is disengaged from mainstream services. We support the expansion of supervised drug consumption services to areas of local need.</p> <p>Recommendation 3A: That the <i>Drug Misuse and Trafficking Act 1985 (NSW) (DMTA)</i> be amended to provide for supervised drug consumption services to be provided based on local need, including:</p> <ul style="list-style-type: none"> • to remove the restriction on the number of licenses available • to allow facilities to provide for other routes of drug consumption, including inhalation.⁸ <p><i>Clinically supervised substance testing</i></p> <p>Legal Aid NSW also supports the establishment of substance testing services, which would enable members of the public to submit samples of prohibited drugs anonymously for expert chemical analysis, including to identify the presence of contaminants and purity where technology allows. We note the Ice Inquiry found “there is strong and compelling evidence to support substance testing as an effective harm reduction measure used in conjunction with other harm reduction strategies”.⁹</p> <p>Recommendation 3B: That the NSW Government establish a state-wide clinically supervised substance testing, education and information service. This service should aim to reduce drug-related harms through the provision, in conjunction with substance testing, of appropriate health interventions, consumer education and information to members of the public.¹⁰</p>
Increase access to, and availability of supports	
<p>4. Increase access to treatment</p>	<p>The Ice Inquiry recognised the significant and long-standing unmet demand for alcohol and drug treatment services, particularly in regional, rural and remote areas. We agree with this finding and note many of our clients in need of treatment are effectively excluded from services due to lengthy wait lists.</p> <p>Recommendation 4: That the NSW Government urgently increase its investment in specialist alcohol and drug health services to meet the significant unmet demand for services across NSW.¹¹</p>

⁷ Supervised drug consumption services are places where people may consume prohibited drugs under the supervision of trained staff.

⁸ Adopted from Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, (Report, January 2020) Vol 1a, Recommendation 51.

⁹ Ibid Vol 1a, xlii.

¹⁰ Adopted from Ibid Vol 1a, Recommendation 53.

¹¹ Adopted from Ibid Vol 1a, Recommendation 31.

<p>5. Increase the capacity of residential rehabilitation facilities</p>	<p>Legal Aid NSW has previously raised concerns about limited residential drug rehabilitation beds and long wait lists which impede access to residential rehabilitation. These problems persist.</p> <p>Recommendation 5: That the NSW Government urgently increase its investment into residential rehabilitation facilities with a view to enabling them to increase their capacity to assist those in need.</p>
<p>6. Limit the circumstances in which people are excluded from accessing residential rehabilitation</p>	<p>Individuals with certain violent offences on their criminal records are often excluded from residential rehabilitation facilities based solely on a review of their criminal history. We have seen clients denied access to rehabilitation due to offences that occurred many years ago or where extenuating circumstances (e.g., excessive self-defense) provide important context for their behavior.</p> <p>While we acknowledge the right of rehabilitation facilities to protect staff and other participants by excluding those who may pose a risk, we believe that a thorough risk assessment should be conducted before making such decisions, rather than relying solely on an entry in a criminal record.</p> <p>Recommendation 6: Residential rehabilitation facilities should conduct more comprehensive, specific and individualized risk assessments before deciding to exclude individuals from their service. This should include an interview with the applicant and a review of the circumstances surrounding the offences of concern.</p> <p>We note a similar recommendation was made by the Ice Inquiry, being that ‘the NSW Government ensure the availability of residential rehabilitation programs for all people leaving custody as required, including those with a history of sexual or violent offending and mental health comorbidities’.¹²</p>
<p>7. Increase the mental health support available at AOD rehabilitation services</p>	<p>Of the 56 residential rehabilitation and detoxification facilities in NSW, only 24 provide mental health support, with some actively excluding individuals with diagnosed mental health conditions.¹³ In our experience, drug use and mental health issues often co-exist, making it rare for someone struggling with substance abuse to not also have one or more mental health conditions requiring treatment (known as dual diagnosis).</p> <p>The Ice Inquiry recognised this shortfall and recommended NSW Health ensure that access to specialist mental health input is available in all alcohol and other drug services, including those provided by non-government organisations. We support this recommendation, and support additional rehabilitation placements for individuals with dual diagnosis.</p>

¹² Ibid Vol 1a, Recommendation 104.

¹³ Ruth Carty, *Residential rehabilitation and detoxification facilities in NSW: A resource for lawyers and their clients* (Spreadsheet, 2024) <[Criminalcpd- Residential-rehabilitation-and-detoxification-facilities-in-NSW-a-resource-for-lawyers-and-their-clients](#)>.

	<p>Recommendation 7: That NSW Health ensure access to specialist mental health services is available in all residential rehabilitation services that receive public funding, including those provided by non-government organisations. This should be done with a view to increasing the number of residential rehabilitation facilities that cater to individuals with dual diagnosis.</p>
<p>8. Recognise and address the broader social needs of people with problematic drug use</p>	<p>Research has recognised that disadvantage is about more than income and is an interrelated set of barriers to full social and economic participation in society.¹⁴ Drug addiction can be one such barrier, and is often interlinked with other factors, including lack of mental health care, unemployment, and homelessness. When combined and left unaddressed, these factors can have a compounding effect, resulting in deep and persistent disadvantage.¹⁵</p> <p>Legal Aid NSW supports a systematic and holistic approach that recognises and responds to the broader social context in which individuals with AOD issues live. People experiencing problematic drug use often have a range of unmet social needs, which often include homelessness or unstable housing. It is necessary to address these needs before an individual can meaningfully address problematic drug use.</p> <p>Recommendation 8: That the NSW Government pilot a Housing First approach to support people with problematic drug use who are also experiencing housing instability. This approach should provide no-barrier housing, primary and mental health and psychosocial supports to help address drug-related harms in the homeless population.¹⁶</p>
<p>9. Ensure people retain their social housing while in residential rehabilitation</p>	<p>There are inconsistent policies across the various social housing providers within NSW outlining how long a social housing tenant can be absent from their property before being in breach of their tenancy agreement.¹⁷ Many housing providers allow a maximum absence of three months, which is often insufficient time for an individual to complete residential rehabilitation.</p> <p>We are concerned that these policies are undermining our clients' efforts to address their AOD addictions by undergoing residential rehabilitation. Where the length of the residential rehabilitation program exceeds the allowed absence from dwelling, our clients risk losing their social housing property in order to complete the program. This acts as a disincentive for clients who require treatment.</p>

¹⁴ Rosalie McLachlan et al, *Deep and Persistent Disadvantage in Australia* (Productivity Commission Staff Working Paper, July 2013) <<https://www.pc.gov.au/research/supporting/deep-persistent-disadvantage/deep-persistent-disadvantage.pdf>>. Australian Bureau of Statistics, 2071.0 - *Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016* (Web Page, 7 November 2024) < <https://www.abs.gov.au/ausstats/abs@.nsf/mf/2071.0>>.

¹⁵ Ibid 94.

¹⁶ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, (Report, January 2020) Vol 1a, Recommendation 66.

¹⁷ Homes NSW permit tenants to be absent from their residence for a period of up to six months for a range of reasons, including if the person is in prison or in drug or alcohol rehabilitation. Under special circumstances this can be extended to up to 12 months. In contrast, some Community Housing Providers allow a maximum absence of three months (eg Argyle Housing, Evolve Housing, Home in Place, Momentum Collective, the Housing Trust Ltd, Wesley Community Services, and SEARMS Aboriginal Corporation) and some allow as little as one month (eg, Wesley Community Services) and some do not have any publicly available policies regarding absences from dwellings.

	<p>Stable housing is an important protective factor against drug use and every effort should be made to ensure those who undertake residential rehabilitation do not lose their social housing while they undergo treatment.</p> <p>Recommendation 9: That Homes NSW ensure that social housing tenants who undertake residential rehabilitation do not lose their social housing while undergoing treatment.¹⁸</p>
<p>Reforms to law enforcement strategies</p>	
<p>10. Limit the use of strip searches and drug detection dogs</p>	<p>Legal Aid NSW is concerned about the policing practices used to detect drug possession, particularly routine searches, systematic searches and strip searches in public.</p> <p>There have been a number of instances of large-scale NSW Police Force (NSWPF) operations involving drug detection dogs and strip searches at music festivals and train stations.¹⁹</p> <p><i>Strip searches</i></p> <p>The Redfern Legal Centre has previously expressed concerns about a 50 percent increase in strip searches and noted ‘a high number of strip searches find nothing illegal, which places serious doubt on whether many of these searches are necessary and justified’.²⁰ In 2020 the Law Enforcement Conduct Commission (LECC) published its Inquiry into NSWPF strip search practices. LECC identified real problems with record keeping standards and compliance with the legal thresholds required to justify strip searches.²¹</p> <p>Recommendation 10A: That the NSWPF cease to use strip searches in public, particularly where the search is not necessary, and/or not based on a reasonable suspicion but attached to a specific location (such as a train station or music festival).²²</p> <p><i>Drug detection dogs</i></p> <p>Concerningly, the Ice Inquiry found evidence that the use of drug detection dogs may increase drug-related health harms, including panic ingestion (quickly consuming all the drugs to avoid detection); consuming drugs before the</p>

¹⁸ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, (Report, January 2020) Vol 1a, Recommendation 67.

¹⁹ Redfern Legal Centre, *Redfern Legal Centre concerned about police search operation at a public train station* (Media Release, 14 March 2019).

²⁰ Ibid.

²¹ Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices* (Report, 2020). In response, the NSWPF implemented new mandatory training and record keeping initiatives. However, a recent LECC audit assessing the efficacy of the new initiatives found:

- less than half of all officers undertaking strip searches at music festivals had completed the required mandatory training
- records documenting the seriousness and urgency considerations required by the law were only kept in 30 percent of strip searches- see Law Enforcement Conduct Commission, *Review of a sample of NSW Police Force strip search records 2021-2022* (Report, September 2023).

²² We note this recommendation is consistent with the District Court’s comments in the decision of *Attalla v State of NSW* [2018] NSWDC 190 and comments and recommendations of the Law Enforcement Conduct Commission (LECC) report on the Inquiry into NSW Police Force strip search practices.

	<p>festival or ‘preloading’; carrying drugs in vaginal and anal cavities; and buying drugs from unknown suppliers inside the festival.²³</p> <p>Recommendation 10B: That the NSWPF cease to use drug detection dogs at music festivals.²⁴</p>
Cannabis specific reforms	
11. Decriminalise the possession and cultivation of cannabis for personal use	<p>Legal Aid NSW considers the harms associated with cannabis use are often less than those associated with other illicit drug use.²⁵ As an alternative to decriminalisation, we continue to support the <i>Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 (the Bill)</i> currently before the NSW Parliament, which would make it lawful for:</p> <ol style="list-style-type: none"> 1. an adult to possess small quantities (up to 50 grams) of cannabis for personal use, and 2. an adult to cultivate not more than 6 cannabis plants for personal use. <p>Recommendation 11: That the NSW Government enact legislation to decriminalise:</p> <ul style="list-style-type: none"> • possession of a small amount of cannabis for personal use (as an alternative to recommendation 1), and • cultivation of a small amount of cannabis plants for personal use.
12. Make medicinal cannabis more accessible	<p>We have previously noted that the cost and practical difficulties involved with obtaining a cannabis prescription can place medicinal cannabis beyond the reach of many vulnerable people with chronic conditions.²⁶</p> <p>At present, only one medicinal cannabis product is approved by the Therapeutic Goods Administration (TGA), and therefore only one medicinal cannabis product is listed on the Therapeutic Benefits Scheme.²⁷ However there are mechanisms that allow access to unapproved medicines in certain situations and the TGA currently offers guidance for the use of medical cannabis in the treatment of epilepsy, multiple sclerosis, chronic non-cancer pain, chemotherapy-induced nausea and vomiting in cancer, and palliative care.²⁸ Because most medicinal cannabis is not subsidised by the Pharmaceutical Benefits Scheme the cost of it is prohibitive for many of our clients.</p> <p>Recommendation 12: As an alternative to decriminalisation, we recommend that the Therapeutic Goods Administration review and consider increasing the number of approved medicinal cannabis products on the Pharmaceutical Benefits Scheme to ensure medicinal cannabis is not cost prohibitive.</p>
Reforms to Schedule 1 of the <i>Drug Misuse and Trafficking Act 1985</i> (NSW)	

²³ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, (Report, January 2020) Vol 1a,,p xlvi.

²⁴ Adopted from Ibid Vol 1a, Recommendation 80.

²⁵ Legal Aid NSW, *Inquiry into the impact of the regulatory framework for cannabis in NSW* (Submission to the NSW Legislative Council Portfolio Committee No 1 Premier and Finance, May 2024).

²⁶ Ibid.

²⁷ This medicine is nabiximols, a treatment of spasticity in multiple sclerosis.

²⁸ The Australian Government Department of Health, Therapeutic Goods Administration, *Guidance for the use of medicinal cannabis in Australia: Patient information*, (Brochure, December 2017).

<p>13. Increase the quantity amounts for psilocin/psilocybin in Schedule 1 of the DMTA</p>	<p>The current drug classification system under Schedule 1 of the DMTA distinguishes between the plant form and active ingredients for some drugs (such as cannabis leaf vs Tetrahydrocannabinol),²⁹ but not for others, such as psilocin/psilocybin (aka magic mushrooms). For psilocin/psilocybin, only the active ingredients are listed, meaning that a small recreational dose can lead to charges for possessing larger, indictable quantities due to the admixture rule.³⁰</p> <p>This discrepancy is problematic because the mass of the whole plant is much greater than the active ingredient. Research indicates that the amount of psilocybin in 1 gram of dry psilocybin mushrooms is approximately 0.01 grams³¹ and a recreational dose of psilocin/psilocybin typically weighs between 1 and 5 grams.³² One DDU of psilocin/psilocybin is 0.01 grams.³³ 0.01 grams of dry psilocin/psilocybin mushrooms would have no appreciable pharmacodynamic impact on the human body and would be such a miniscule amount that possession of one DDU would be nearly impossible.</p> <p>The practical consequence of the current schedule is that any person who has possession of a <i>single</i> recreational dose of psilocybin/psilocin in the form of a natural picked mushroom has possession of more than a traffickable quantity of the drug.³⁴ The deeming provision³⁵ in the DMTA means that a person who has more than a traffickable quantity is deemed to have the drug for supply unless they satisfy the court (on the balance of probabilities) it is not for supply. It is not uncommon for people to be charged with serious supply or manufacture prohibited drug offences arising out of possession of a single or a small number of recreational doses.³⁶</p> <p>This means, that the possession of a single or small number of recreational doses of psilocin/psilocybin is being criminalised disproportionately, particularly having regard to other prohibited substances. We are unsure whether this is intentional.</p> <p>Legal Aid NSW supports legislative reform to align the treatment of psilocin/psilocybin with how other drugs are categorised. This would potentially reduce harsh penalties for small, recreational amounts and prevent unfair criminal penalties based on the weight of the whole substance rather than just the active drug.</p>
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²⁹ Schedule 1 of *Drug Misuse and Trafficking Act 1985* (NSW) isolates 'cannabis leaf' and the active ingredient, 'tetrahydrocannabinol'.

³⁰ Section 4 of the *Drug Misuse and Trafficking Act 1985* (NSW) says that the purity of a prohibited drug is irrelevant. This may be contrasted with the position in relation to drug offences under s 312.1(a) of the *Criminal Code (Cth)*, pursuant to which the quantity of the *pure* form of the controlled drug may be calculated.

³¹ Filip Tylys et al, 'Psilocybin – Summary of Knowledge and New Perspectives' (2014) 24 *European Neuropsychopharmacology* 343, 344 Table 2. See also the 2011 paper below at 424.

³² Jan van Amsterdam et al, 'Harm Potential of Magic Mushroom Use: A Review' (2011) 59 *Regulatory Toxicology and Pharmacology* 423, 424

³³ *Drug Misuse and Trafficking Act 1985* (NSW), sch 1.

³⁴ The traffickable quantity is up to 0.15g- see *Drug Misuse and Trafficking Act 1985* (NSW), sch 1.

³⁵ *Drug Misuse and Trafficking Act 1985* (NSW), s 29. This section reverses the onus and 'deems' a person to have the possession for supply, unless they satisfy the court they had possession of the drug other than for supply.

³⁶ See *R v Jessop* [2023] NSWDC 367 involving a manufacture drug offence for mushrooms weighing 4.6 grams – an indicative sentence of 1 year and 6 months.

	<p>Recommendation 13: That the NSW Government enact legislation to introduce a plant form of psilocin/psilocybin as a separate drug in Schedule 1 of the DMTA (and retain the current listing for the pure form of psilocin/psilocybin).</p>
<p>14. Increase the quantity amounts for Lysergic acid in Schedule 1 of the DMTA</p>	<p>The current drug classification system under Schedule 1 of the DMTA also fails to distinguish between the pure form of Lysergic acid (LSD), and the way it is generally consumed- the dominant method of consumption is the ingestion of cardboard or similar paper ‘tabs/sheets’ which have been impregnated with liquid LSD. As is the case with psilocin/psilocybin, for LSD, only the active ingredients are listed, meaning that a small recreational dose can lead to charges for possessing larger, indictable quantities due to the admixture rule.³⁷</p> <p>The legislation for LSD operates on an assumption that people consume it directly rather than in the cardboard (or other admixture) form. Much like mushrooms, the mass of the cardboard/paper is many times greater than the LSD that has been impregnated in the cardboard.³⁸ This leads to unjust outcomes, including very high sentences for the possession of very small amounts of the drug.</p> <p>Legal Aid NSW supports legislative reform to increase the mass allowed for in Schedule 1 of the DMTA for LSD. We argue this would potentially reduce harsh penalties for small, recreational amounts and prevent unfair criminal penalties based on the weight of the whole substance (the cardboard) rather than just the active drug.</p> <p>Recommendation 14: That the NSW Government enact legislation to increase the mass allowed for in Schedule 1 of the DMTA for Lysergic acid.</p>
<p>Drug Court reforms</p>	
<p>15. Expand the Drug Court to additional regional locations</p>	<p>Drug courts have proved to be effective in reducing reoffending in both Australian and international research.³⁹ The NSW Drug Court is a specialist court that sits in four locations, Parramatta, Toronto, Sydney and Dubbo. It takes referrals from Local and District Courts in certain locations and accepts of non-violent offenders who satisfy the eligibility criteria.⁴⁰ Participants are assisted not only with specific drug rehabilitation services but also with their other</p>

³⁷ *Drug Misuse and Trafficking Act 1985* (NSW), s4. This section states that the purity of a prohibited drug is irrelevant. This may be contrasted with the position in relation to drug offences under s 312.1(a) of the *Criminal Code (Cth)*, pursuant to which the quantity of the *pure* form of the controlled drug may be calculated.

³⁸ *Finch v R [2016] NSWCCA 133*, 117 onwards demonstrates the issue.

³⁹ Craig Jones, ‘Intensive judicial supervision and drug court outcomes: interim findings from a randomised controlled trial’ (2011) 152 *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin* 2.

⁴⁰ To be eligible for the Drug Court a person must:

- be highly likely to be sentenced to fulltime imprisonment if convicted
- have pleaded guilty or indicate that he or she will plead guilty to the offence
- be dependent on the use of prohibited drugs
- be 18 years of age or over
- be willing to participate
- be living in various Local Government Areas close to the location of the four courts.

	<p>needs such as accommodation and education. The NSW Drug Court has undergone several positive evaluations⁴¹ and the Ice Inquiry recommended its expansion to “priority regional areas”.⁴² We support this. We consider both the Mid North/North Coast and the Riverina area of NSW to be priority areas which would benefit greatly from the establishment of a Drug Court.</p> <p>Recommendation 15: That the NSW Government expand the NSW Drug Court, with associated drug rehabilitation and other services, to regional locations in addition to Dubbo and Toronto. Particularly, we recommend the establishment of a Drug Court in Coffs Harbour or Lismore that services the Mid North and North Coast of NSW, as well as one in an appropriate location that would service the South Coast and Riverina area of NSW. This would need to be accompanied by additional services in those areas to support Drug Court participants.</p>
<p>16. Expand the Drug Court eligibility criteria</p>	<p>Individuals who have been charged with offences involving violent conduct or sexual assault are currently not eligible to participate in the NSW Drug Court program.</p> <p>Whilst a 2006 BOCSAR study could not conclude a link between methamphetamine use and violent assaults, it did note instances of methamphetamine induced psychosis can produce violent behaviour. Anecdotally, Legal Aid NSW practitioners have seen many clients who use methamphetamine become involved in violent offences, especially if their drug use is compounded by mental health issues and/or the use of other drugs. We consider such clients should be eligible to access the benefits of the NSW Drug Court and support the NSW Drug Court being expanded to allow eligibility for violent offenders.</p> <p>Recommendation 16: The NW Drug Court should be expanded to allow eligibility for violent offenders in certain circumstances. This reform should be accompanied by additional resources to meet the increase in participants.</p>
<p>17. Improve oversight of drug court decisions</p>	<p>There is no automatic right for a person to enter the NSW Drug Court program. Further, no appeal is allowed against a decision of the NSW Drug Court to refuse to allow a person to enter the program or against the initial sentence imposed.⁴³ Additionally, when a person is on a program there is no appeal against any decision taken by the Drug Court relating to the conditions of a program or the imposition of rewards or sanctions.⁴⁴ Appeals can only be made against a final sentence.</p>

⁴¹ See, for example, Weatherburn et al, ‘The NSW Drug Court: a re-evaluation of its effectiveness’ (2008) 121 *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin* 13 and Craig Jones, ‘Intensive judicial supervision and drug court outcomes: interim findings from a randomised controlled trial’ (2011) 152 *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin* 2.

⁴² Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, (Report, January 2020) Vol 1a., p lx, Recommendation 14.

⁴³ *Drug Court Act 1998* (NSW), s 7B(10), s 7C(8) and *Criminal Appeal Act 1912* (NSW), s 5AF.

⁴⁴ *Ibid*, ss 9(2), 10(3), 11(2).

	<p>The inability to appeal decisions that have the potential to have huge impacts on our clients is significant and can lead to unjust outcomes. We support increased judicial oversight of the NSW Drug Court.</p> <p>Recommendation 17: That the NSW Government amend the <i>Drug Court Act 1998</i> and s 5AF of the <i>Criminal Appeal Act 1912</i> to allow judicial oversight of interlocutory NSW Drug Court decisions.</p>
18. Changes to mandatory withdrawal management	<p>Any person successfully referred to the NSW Drug Court must undergo mandatory withdrawal management, assessment and treatment planning at specialist units based at Correctional Centres (the Metropolitan Remand and Reception Centre (MRRC) for men and Silverwater Women’s Correctional Centre for women). This process requires NSW Drug Court participants who are currently in the community to be taken into custody for their period of mandatory detoxification. The minimum period for mandatory detoxification this is now six weeks.</p> <p>Legal Aid NSW argues that NSW Drug Court participants who are in the community should have the ability to complete a medically based detoxification period in the community, rather than a detoxification period based in a prison environment.</p> <p>Recommendation 18: NSW Drug Court participants who are in the community should have the ability to complete their mandatory withdrawal management in a medically supervised program within the community, rather than in a prison environment.</p>
Driving reforms	
19. Repeal/reform section 111 of the Road Transport Act 2013 (NSW)	<p>Since the introduction of the offence of driving with the of presence of prescribed illicit drug in person’s oral fluid, blood or urine⁴⁵ (drive with illicit drug present) Legal Aid NSW has seen a significant number of these offences in the Local Court of NSW, with a disproportionate impact on people from regional and rural areas where access to public transport is severely restricted.</p> <p>The offence is based on the mere presence of a drug in a person’s saliva and does not require the accused’s ability to drive to be impaired. The current roadside testing devices do not ascertain the level of drug present in a person’s body and a positive reading can be registered if tiny traces of the substance are detected. The offence carries substantial penalties including heavy fines and loss of licence.⁴⁶</p>

⁴⁵ Pursuant to the *Road Transport Act 2013* (NSW) s 111.

⁴⁶ A first-time offence can result in a 3-month driver licence disqualification and an on-the-spot fine of \$572. This means an offender avoids going to court. However, if a first-time offender decides to challenge the matter in court, it can result in a fine of \$2,200 and a 6-month driver licence disqualification period. A second or subsequent offence carries a \$3,300 fine with a 12-month disqualification period.

In 2016 the Local Court at Lismore found an accused had not consumed cannabis for 'at least nine days prior' to testing positive for driving with an illicit drug (cannabis) present.⁴⁷ In that same case, a NSWPF officer gave evidence that he 'believed the equipment detected cannabis three to four days after use'.⁴⁸ Whether cannabis can be detected for as long as nine days after use, or as little as three days after use, it is concerning that random detection, days later and in the absence of any evidence of intoxication or impaired driving, still gives rise to absolute liability and potential loss of driver licence.

Legal Aid NSW is not aware of any evidence that suggests roadside testing has made NSW roads safer. Without that evidence and having regard to the negative impact loss of licence can have on people, especially those unable to access other means of transportation, Legal Aid NSW considers that this offence should be repealed. We note that the repeal of this offence would not impact the ability to prosecute conduct that involves driving while impaired by a drug. Section 112 of the *Road Transport Act 2013* (NSW) contains the offence of driving under the influence of alcohol or any other drug, which relies on the perceived impairment of a driver. This offence captures all drugs listed under Schedule 1 of the DMTA, including cannabis, methamphetamine, cocaine and methylenedioxymethamphetamine (**MDMA**).

Recommendation 19: The NSW Government should repeal section 111 of *the Road Transport Act 2013* (NSW).

Recommendation 19A: In the alternative, the NSW Government should amend section 111 of the *Road Transport Act 2013* to create a defence to an offence of drive with illicit drug present if the only drug detected is cannabis and the cannabis is medically prescribed.⁴⁹

This would enable individuals who consume medicinal cannabis on a regular basis to continue to drive without committing an offence. We note recommendation 20A is similar to a defence that already exists with respect to morphine consumed for "medicinal purposes".⁵⁰

There is currently a private members bill before NSW Parliament titled the *Road Transport Amendment (Medicinal Cannabis) Bill 2023* which proposes to enact such a defence.⁵¹ Legal Aid NSW supports this Bill.

Criminal record reforms

⁴⁷ Unreported, Lismore Local Court of New South Wales, Heilpern Mag, (1 February 2016).

⁴⁸ Ibid [15].

⁴⁹ We note a similar defence exists in Tasmania, pursuant to the *Road Safety (Alcohol and Drugs) Act 1970* (TAS) s 6A(2).

⁵⁰ *Road Transport Act 2013* (NSW) s 111(5) and 111(6).

⁵¹ *Road Transport Amendment (Medicinal Cannabis) Bill 2023* (NSW).

<p>20. Reform criminal records regarding prohibited drug use/possession</p>	<p>A criminal conviction against a person’s name typically has negative implications on their current and future employment, accommodation and international travel. 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”.</p> <p>Recommendation 20: As an alternative to decriminalisation, we support recommendation 18 of the Ice Inquiry, that the NSW Government amend the <i>Criminal Records Act 1991</i> (NSW) to reduce the period of time before which a conviction for use or possession of a prohibited drug may be spent from 10 years to two years, and in the case of a child or young person, from three years to one year.</p>
<p>Priority population reforms: Aboriginal people</p>	
<p>21. Ensure rehabilitation facilities are culturally appropriate for Aboriginal people</p>	<p>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.</p> <p>Recommendation 21: The NSW Government should support an increase in the number of culturally appropriate, respectful and culturally safe drug and alcohol 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.</p>
<p>Priority population reforms: Prisoners</p>	
<p>22. Improve withdrawal support and mental health support for people entering custody</p>	<p>Research has shown that people entering adult prison are more than four times as likely to report recent illicit drug use than people in the general community.⁵² Evidence before the Ice Inquiry suggested that in NSW approximately 8,000 people enter custody each year in active withdrawal from methamphetamine.⁵³ Unfortunately, Legal Aid NSW have observed many of these people do not receive adequate treatment for withdrawal, leading to significant distress and health issues during their initial weeks in custody. We support the provision of withdrawal support for this cohort.</p> <p>The Ice Inquiry recommended that Justice Health review its screening processes to identify and address inmates’ AOD treatment needs upon entry,⁵⁴ and that it receive funding to support stimulant withdrawal services, including in 24-hour court cells.⁵⁵ Although these recommendations were supported in principle by the previous NSW Government, we have observed little progress since the inquiry and urge that they be acted upon.</p>

⁵² Australian Institute of Health and Welfare, *The health of people in Australia’s prisons 2022* (Report, November 2023) 100.

⁵³ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, (Report, January 2020) Vol 1a, xlviii.

⁵⁴ Ibid Recommendation 92.

⁵⁵ Ibid.

	<p>Recommendation 22A: 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.⁵⁶</p> <p>Recommendation 22B: That Justice Health be funded to provide adequate services and facilities to inmates who are withdrawing from AOD, including those held in 24- hour court cells.⁵⁷</p> <p>Legal Aid NSW has also identified a critical need for improved mental health care for individuals entering custody. Currently, all medications are discontinued upon entry until an inmate is reviewed by a doctor or psychiatrist—a process that can take considerable time. This practice appears to be inconsistent with best practice in psychiatric care, which warns against the abrupt discontinuation of anti-psychotic or anti-depressant medications due to the risk of serious health consequences, including sudden death in some cases. Despite these risks, inmates are not being assessed or re-prescribed their medications in a timely manner. This approach is especially dangerous given the mental health issues associated with substances like methamphetamine, and raises serious concerns about the treatment of individuals in the care of Corrective Services NSW (CSNSW) and Justice Health.</p> <p>Recommendation 22C: That Justice Health review its inmate screening processes to ensure that the medical and mental health needs of inmates entering custody are assessed promptly. Justice Health should ensure that regularly prescribed medications are provided to inmates within 24 hours of their entry into custody.</p> <p>We have also observed that transfers between correctional centres can disrupt inmate care. Inmates are often removed from medications and programs received at one facility when transferred to another, often with little notice. Transfers between private and public facilities are particularly problematic. We recommend a smoother transition process that maintains the continuity of medications and programs.</p> <p>Recommendation 22D: That Justice Health streamline the transition process between correctional facilities, ensuring that prescribed medications and programs continue without interruption when inmates are transferred.</p>
<p>23. Increase and improve AOD services, health care and supports</p>	<p>The Ice Inquiry found a pressing need to improve access to alcohol and drug treatment services for incarcerated individuals.⁵⁸ The Inquiry identified that many shortcomings in drug and alcohol treatment within prisons stem from the divided responsibilities between CSNSW and Justice Health, along with CSNSW's insistence on limiting treatment access based on criminogenic need.⁵⁹</p>

⁵⁶ Adopted from Ibid Vol 1a, Recommendation 92.

⁵⁷ Ibid.

⁵⁸ Ibid Vol 1a, p xlix.

⁵⁹ Ibid Vol 1a, p III.

<p>available for people in prison</p>	<p>The Ice Inquiry recommended that Justice Health be made primarily responsible for providing drug treatment services and programs in custody⁶⁰ (a recommendation not supported by the previous NSW Government). The inquiry also recommended that Justice Health ensure custody-based AOD treatment services and programs match community standards,⁶¹ with a corresponding funding increase to NSW Health (both supported in principle by the NSW Government).⁶² Unfortunately we have seen little improvement; AOD services in many correctional centres remain almost non-existent. We reiterate and reiterate the following recommendations of the Ice Inquiry:</p> <p>Recommendation 23A: That the provision of drug treatment services and programs in custody immediately be made the principal responsibility of Justice Health.⁶³</p> <p>Recommendation 23B: 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. There should be a commensurate increase in funding to Justice Health to enable the provision of such services.⁶⁴</p> <p>We note addressing the health needs of individuals during incarceration, including access to alcohol and drug treatment, positively impacts communities upon their release.⁶⁵</p>
<p>24. Increase and improve AOD support for people exiting custody</p>	<p>Legal Aid NSW is concerned about the absence of transition support and throughcare in NSW. 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.⁶⁶ 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 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”.⁶⁷</p> <p>Our solicitors report that clients have been released without accommodation, arrangements for transport, at night in country towns when there is no train until morning, without medications or prescriptions, and without any treatment for their substance addiction. It is not uncommon for inmates to be released from the Sydney Central Law Courts or the</p>

⁶⁰ Ibid Recommendation 96A.

⁶¹ Ibid Recommendation 96B.

⁶² Ibid Recommendation 96C.

⁶³ Adopted from Ibid Recommendation 96A.

⁶⁴ Adopted from Ibid Recommendation 96B&C.

⁶⁵ Ibid Vol 1a, p III

⁶⁶ Ibid.

⁶⁷ Ibid pliv

Downing Centre Court complex in their prison greens and with no accommodation arrangements, having received no treatment in custody for their substance abuse and/or mental health issues.

Access to residential rehabilitation facilities is vital for many people leaving custody as it helps prevent relapse, reduce recidivism, and support reintegration. Residential rehabilitation provides structured treatment for addiction and mental health issues, addressing root causes of criminal behavior and improves health outcomes. This reduces the likelihood of reoffending and contributes to safer communities.

Unfortunately at present many residential rehabilitation facilities refuse to take people directly from custody. In the facilities that do take people directly from custody, the beds are limited and the wait lists are long.

Legal Aid NSW supports NSW Government funding to increase in the number of residential rehabilitation beds available for people exiting custody.

Recommendation 24A: That the NSW Government dedicate funding to increase the number of publicly available residential rehabilitation beds for people exiting custody.

The NSW Local Court previously had the ability to order Alcohol and Drug assessments for individuals in remand custody. These assessments were conducted by CSNSW staff, and a short report was provided to the court after the assessment was completed. This service was invaluable to Legal Aid NSW, helping us support clients in addressing AOD issues and reintegrating into society more successfully. Unfortunately, this service ended for all Local Court matters around 10 years ago. Given the high prevalence of problem AOD use in NSW Correctional Centres, we recommend re-establishing this service.

Recommendation 24B: That CSNSW facilitate AOD assessments for all inmates who seek access to residential rehabilitation.⁶⁸

We also support various other recommendations from the Ice Inquiry (which were supported, but not implemented by the previous NSW Government) aimed at enhancing support for individuals leaving custody:

Recommendation 24C: 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:

⁶⁸ Adopted from Howard, D. (2020), *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*, Vol 1a, Recommendation 103. We note this recommendation was 'supported in principle' by the previous NSW Government, however the NSW Government response notes: "Under current resourcing, Corrective Services NSW is not able to support undertaking non-court ordered AOD assessments".

	<ul style="list-style-type: none"> • 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.⁶⁹ <p>Such support could be provided by an expanded Post Custodial Support Program, which delivers specialist AOD case management, counselling and support services for people exiting custody who are at risk of AOD-related harm.⁷⁰ This program only operates in five areas (Northern NSW, Mid North Coast NSW, Southern NSW, the Murrumbidgee/Riverina area and the Central West). We support its expansion across the state.</p>
<p>25. Implement a prison-based needle exchange program</p>	<p>Drugs are readily available and widely used in NSW prisons.⁷¹ Legal Aid NSW have observed that clients often become exposed to other substances in custody that they might not have been in contact within the community.⁷²</p> <p>Drug use in custody, particularly intravenous use, is a risk behaviour in the transmission of blood-borne viruses. In data provided to the Ice Inquiry, Justice Health estimated the prevalence of hepatitis C in NSW custodial settings was 40 percent (compared to 1 percent in the community).⁷³ In addition to blood-borne virus transmission, people who inject drugs are at risk of a range of conditions relating to bacterial infections of the heart (endocarditis), lungs (pneumonia), bones (osteomyelitis) and skin (pustules and abscesses).⁷⁴</p> <p>A Prison Syringe Exchange Program is a harm reduction initiative that provides inmates who inject drugs with clean, sterile syringes to prevent the spread of diseases like HIV and Hepatitis C. Inmates can exchange used syringes for new ones through designated staff or machines. The program aims to reduce infection rates by discouraging the sharing of needles.</p> <p>The Ice Inquiry recommended that the NSW Government pilot, and have independently evaluated, a needle and syringe program in one or more custodial facilities in NSW.⁷⁵ This recommendation was not supported by the previous NSW Government.</p>

⁶⁹ Ibid, Recommendation 102.

⁷⁰ NSW Health, *New Post Custodial Support Program: New treatment program for people with drug and alcohol needs leaving custody* (Fact Sheet for Corrective Services NSW, 2024).

⁷¹ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) Vol 1a.

⁷² Including, for example, buprenorphine, amphetamines and methadone.

⁷³ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) Vol 1a.

⁷⁴ Ibid Vol 1a, p 202.

⁷⁵ Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) Recommendation 97.

	<p>Legal Aid NSW supports the use of Prison Syringe Exchange Programs in NSW prisons and argues they could significantly reduce the transmission of blood-borne viruses in these settings.</p> <p>Recommendation 25: CSNSW should implement a Prison Syringe Exchange Program across NSW Correctional Centres.</p>
<p>Priority population reforms: Children and young people</p>	
<p>26. Increase the number of youth specific residential rehabilitation and community based AOD support</p>	<p>A significant proportion of young offenders have substance abuse issues.⁷⁶ Therefore, AOD services specifically designed for children are crucial to reducing contact with the criminal justice system. Youth specific services are needed for children and young people, to ensure 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.</p> <p>Unfortunately there is a lack of youth specific AOD services in NSW.⁷⁷ NSW has six youth specific residential rehabilitation programs accessible to children and young people, one designed specifically for youth justice clients. These programs typically involve up to three months of accommodation, 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.⁷⁸</p> <p>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, often in an environment which is less comfortable to the participants. This can result in higher levels of distress and anxiety in what is already a confronting and demanding environment and can lead to disengagement despite a genuine intention to rehabilitate. Community-based options should be prioritised and made accessible to all children and young people who require support, allowing them to remain in their community and on Country while receiving treatment.</p> <p>Recommendation 26: That the NSW Government support an increase in the number of health services that address problematic AOD behaviours in children and young people, particularly in rural and regional areas.</p>

⁷⁶ NSW Legislative Assembly Committee on Law and Safety, *The adequacy of youth diversionary programs in New South Wales* (2018); D Kenny et al. *Young Offenders on Community Orders: Health, Welfare and Criminogenic Needs* (Sydney University Press, 2008).

⁷⁷ 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.

⁷⁸ Mission Australia, *Opening of Mission Australia’s new youth rehabilitation facility Walawaani* (Media Release, 24 February 2023).

<p>27. Reinstate a NSW Youth Drug and Alcohol Court</p>	<p>The Youth Drug and Alcohol Court (YDAC) was discontinued in 2012 after it was found not to be cost effective. One factor that contributed to this finding was the low number of YDAC participants. Clients were not provided with an indicative sentence before commencing the YDAC (due to its limitations as a result of not being a distinct jurisdiction like the NSW Drug Court) and hence some participants received longer sentences when they failed to complete the program. By contrast, the NSW Drug Court operates as an alternative to imprisonment and participants will not be penalised with an increased sentence if their participation in the program is inadequate. Further, many changes were made to the NSW Drug Court as it developed, increasing its cost effectiveness.</p> <p>The report of the <i>NSW Youth Diversion Inquiry</i> noted various stakeholders were calling for the reinstatement of the YDAC.⁷⁹ Noting the effectiveness of the NSW Drug Court, Legal Aid NSW recommends consideration of reinstatement of a more efficient YDAC in conjunction with increased AOD services.</p> <p>Recommendation 27: That the NSW Government consider reinstating a NSW Youth Drug and Alcohol Court, ideally through legislative change similar to the <i>Drug Court Act 1998</i> (NSW), providing a legislative basis for the Court and its distinct sentencing practices.</p>
<p>28. Create a MERIT style program for young people involved in the criminal justice system</p>	<p>The Magistrates Early Referral into Treatment (MERIT) is a program for adults in the Local Court who have issues related to alcohol or other drug use. MERIT provides access to a wide range of alcohol and other drug treatment services for 12 weeks while court matters are adjourned.</p> <p>As an alternative to a YDAC, we support Ice Inquiry recommendation 16, that the NSW Government appropriately adapt and resource the MERIT program to cater for young people and make it available across NSW.</p> <p>Recommendation 28: That the NSW Government expand, appropriately adapt and resource the MERIT program for young people and make it available across NSW.⁸⁰</p>
<p>29. Reform to the Young Offenders Act (YOA)</p>	<p>The <i>Young Offenders Act 1997</i> (NSW) (YOA) allows a young person charged with certain offences⁸¹ to be diverted away from the criminal justice system and instead receive a warning, caution or youth justice conference.</p> <p>However, the YOA restricts the availability of diversionary options for possession of prohibited drugs to no more than the small quantity applicable to that drug. This means that, despite the offence of possess prohibited drug being a summary offence, a significant number of possession offences must be referred to court simply because the weight exceeds the small quantity.</p>

⁷⁹ 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).

⁸⁰ Adopted from Dan Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Report, January 2020) Recommendation 16.

⁸¹ *Young Offenders Act 1997* (NSW), s 8.

In addition, the YOA limits other drug offences which are eligible for YOA diversion to only those listed in Division 1 of Part 2 of the *Drug Misuse and Trafficking Act 1985* (NSW). This means that several other offences which, in practice, would often be dealt with summarily are not eligible for YOA diversion and therefore must be referred to court.

In some cases, it may be appropriate for these to have limitations or conditions attaching to them (for example, a s.25(1) supply offence could be diverted under the YOA where the quantity is less than the traffickable quantity of the applicable drug). However, it is recommended that all summary offences be eligible irrespective of quantity and that the YOA be expanded to include indictable offences which would be disposed of summarily.

Recommendation 29: That the NSW Government amend section 8 of the *Young Offenders Act 1997* (NSW) to allow diversion of all possess prohibited drug offences as well as indictable offences which can be disposed of summarily.

Alternative reform- cannabis specific amendments

As an alternative to the above recommendation, we support reforms to the YOA specifically in relation to cannabis. The Cannabis Cautioning Scheme (**CCS**) is only available to adults. When a person under the age of 18 years is found in possession of cannabis, they can be dealt with under the YOA, instead of the CCS.

However, there is a discrepancy between the eligibility criteria for diversion with respect to a cannabis possession offence under the YOA and the CCS. Whilst the CCS allows for cautions for the possession of an amount of cannabis that does not exceed 30 grams, the YOA only allows for cautions and youth justice conferences if the amount of cannabis does not exceed 15 grams, unless exceptional circumstances exist.⁸² The eligibility for diversion for children found in possession of small quantities of prohibited drugs is therefore stricter than it is for adults.

Legal Aid NSW recommends the YOA be amended to expand the eligibility criteria in relation to the possession of cannabis to ensure it encourages diversion in situations where an adult would be eligible for diversion.

Recommendation 29A: As an alternative, the NSW Government should amend section 8 of the *Young Offenders Act 1997* (NSW) to allow diversion of all possess prohibited drug offences that relate to cannabis.

⁸² Ibid ss 8(2)(e1) and 8(2A)(b).