

3 May 2019

Professor Dan Howard SC  
Commissioner,  
Special Commission of Inquiry into the Drug Ice  
GPO Box 5341  
SYDNEY NSW 2001

Dear Commissioner,

Thank you for the opportunity to comment upon the Issues Papers prepared in relation to your Special Commission of Inquiry into the Drug “Ice”. I found the papers to be both comprehensive and thoughtful. The statistics in relation to the use of Amphetamine Type Stimulants by Indigenous Australians, and ATS use in regional and rural areas, were worse than I expected, and increase my determination to see the Drug Court expanded again.

I have including within this response some of my comments provided during the consultation on the terms of reference for your Commission. In that way the Drug Court has provided a comprehensive response in the one document. Whilst I strongly support the expansion of both education and rehabilitation opportunities, I will focus my response on what the Drug Court can offer regarding this crisis in our communities.

### **The Big Picture**

The Drug Court program is more than a proven program for drug-addicted criminals. It is a successful example of collaborative teamwork in a complex legal and health environment. It is using the court and a court case as the focus point for the delivery of co-ordinated services from a multi-agency team. My “Big Picture” suggestion is that, as a community, we could and should provide a much more effective response to a greater range of cases. Why not use the same collaborative model (with a variation of partner agencies) to deal with cases stemming from alcohol addiction, mental health issues, domestic violence, and the children’s care and protection cases?

Solution-focussed Courts, such as the Drug Court, deal with the fundamental issues which cause offenders and others to intersect endlessly with the legal system. At the Drug Court the entry point is limited and defined, requiring criminal proceedings for drug related crime. We then address the foundations of life – housing, general, mental and oral health, employment and work readiness. We treat the family. That same process could and should use other interactions with the courts.

Of course, this goes beyond the ambit of the Special Commission, but just imagine how well this would work in a regional location? Local networks are a wonderful resource. Some years ago I attended a crisis meeting in a regional town regarding youth offending. Every agency around the table – Police, Education, Local Council, Health, Juvenile Justice and Family and Community Services – had a file in relation to the family or the house where the young offenders lived. A solution-focussed court program can provide a focus point for

resources which are already being spent on that family, as well as a legal avenue for the sharing of information.

### **Why Drug Courts should expand**

There are some broad policy reasons to pursue an expansion of Drug Court programs:

- It is a proven and effective way of working towards the State goal of reducing re-offending.
- It costs less than placing offenders in full-time gaol, and is clearly more effective.
- It is a program which targets the over-representation of Aboriginal and Torres Strait Islander offenders who would otherwise be in custody. The program discriminates in favour of ATSI identifying offenders. The Drug Court provides additional support regarding mental, physical and oral health, housing, education, training and employment, and even assists in relation to any care and neglect proceedings in the Children' s Court.
- It reduces the real impact of addiction and crime on ordinary citizens. Fewer homes and businesses will be broken into, a wide variety of fraud offences will be reduced, and fewer cars will be damaged for just a few coins in the glove box.
- It is a popular program. Communities are crying out for assistance given the widespread use of “ ice” . Addiction issues, of course, require many levels of intervention; however the Drug Court provides an effective intervention for families who are facing the nightmare of the incarceration of their son or daughter - perhaps after years of destructive behaviours.
- The Drug Court is very successful program. The Drug Court of NSW has been comprehensively evaluated twice by BOCSAR, and the published results are impressive. No other justice program has been proven to be effective in reducing recidivism - and all at a lower cost than incarceration. Over some years, Dr Don Weatherburn has railed against investment by Government in untried ideas when there is before it the established evidence of a successful program.

Whilst some might question the efficacy of spending money on treating criminals through the Drug Court, they are in fact a very sensible target. The relationship between drugs and crime is very strong – 70% of prisoners identify drugs and or alcohol as being the reason why they offended, and most female prisoners have a history of injecting drug use. Drug addicted offenders cost a great deal of money to imprison, and yet we know that imprisonment is an ineffective response. Only this week BOCSAR released research which found that 41.4 per cent of the 18,520 adults released from prison in 2017 had re-offended within the year to 2018. The research also found that the percentage of prisoners who committed another offence within the year has been steadily climbing since 2009.

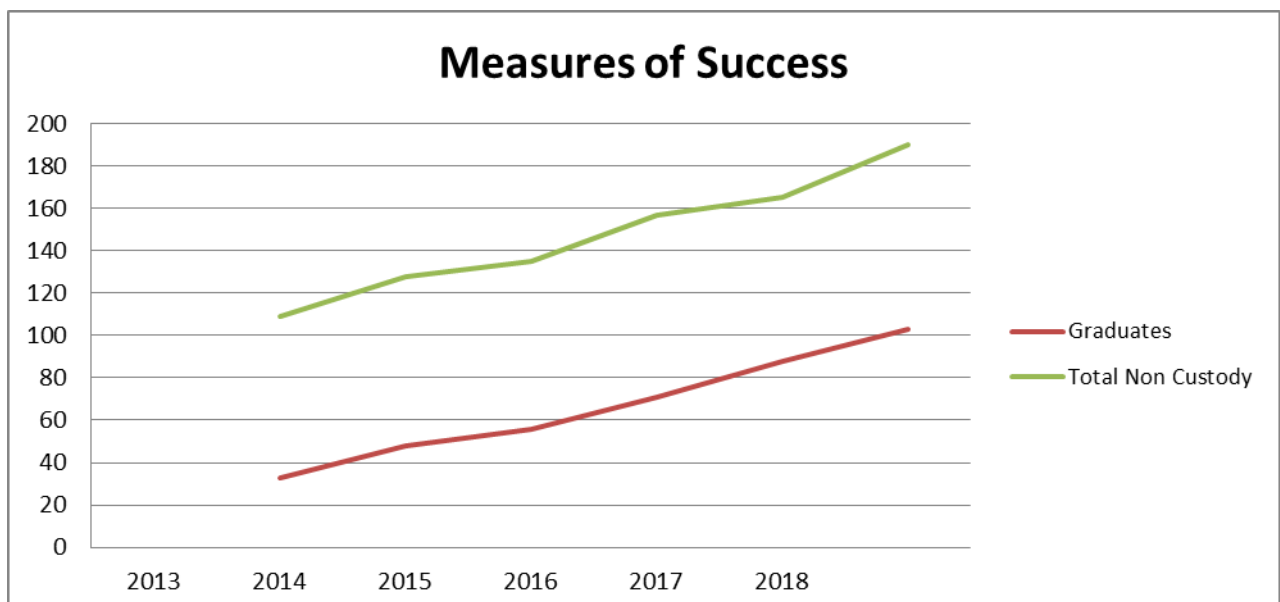
Offenders cause a great deal of distress and angst to their victims, and to their own parents and children. However, with treatment and assistance, they are often very ordinary, and can become useful and contributing members of our society. They are also very easily identified and already corralled, so the targeting of treatment on addicted offenders is in fact pinpoint.

At the serious end of the spectrum of responses to Ice, an expansion of the geographical coverage of the Drug Court is a rather obvious need. Given its proven success over 20 years since the Drug Summit of 1998, this program has only expanded twice, with the Hunter receiving coverage in 2011, and the inner city of Sydney in 2013. Expansion is very simple in technical terms, as funding, whilst difficult to achieve, is the only actual barrier. Funding is required for the services provided by all partner agencies, particularly NSW Health, and just a simple change to the regulations.

At the moment many residents in Sydney can be excluded from a Drug Court opportunity, and will therefore go to gaol on a full-time basis, because they live on the wrong side of the street (and therefore live in a Local Government Area which is not within the catchment of the Drug Court). Others are denied an opportunity simply through a lack of places on the program, and being referred to the program on an unfortunately busy week.

The Drug Court program is well established within the criminal justice system and the treatment community. A common scenario is for a participant to begin their program at residential rehabilitation, which is partly funded by the Drug Court program. We then work closely with the rehabs, and in fact having the backing of the Drug Court is very effective at the rehab end – so it is a symbiotic relationship. After a period in rehab, the participant may then be able to move back to be with family and return to work, now trustworthy enough to be allowed into the house, or to be with children.

The Drug Court has experienced significant and sustained increases in its success rate over recent years. The graphs below show that over the last six years there has been a quite dramatic and sustained increase in the number of participants completing the program to graduation status, and a sustained improvement in the percentage who are not returned to custody at the end of their program. It is clear that the Drug Court has been more successful in the current environment where Ice use has become the predominant drug of addiction.



Year	Program entrants	Sentenced program completers	Graduates	Total Non Custody	Custody	% Non Custody
2013	336	248	33	109	139	43.95%
2014	253	289	48	128	161	44.29%
2015	299	271	56	135	136	49.82%
2016	309	314	71	157	157	50.00%
2017	300	289	88	165	124	57.09%
2018	313	326	103	190	136	58.00%

Some regional communities have been agitating for a Drug Court, particularly Dubbo, the Illawarra, Central Coast and Northern Rivers. The program in the City of Sydney is very small, only taking offenders from a small central zone, and the Parramatta program is continually and increasingly declining referrals. So there is demand for expansion on all fronts.

The program should be expanded, and there should be an orderly expansion which targets key geographical areas of need. The Issues Papers highlight the needs in regional and rural NSW, and the very high levels of success at the Hunter Drug Court confirm the program is even more successful in a regional setting.

Justice NSW and NSW Health could be asked to identify the city, regional and rural locations of greatest need. There should be a sensible plan for the orderly expansion of the Drug Court program, which would take into account the current and future ability of providing the services required. So such issues as the ability to recruit and retain counsellors must be factored in, together with the availability of pharmacotherapy and psychiatric services – so as to avoid raising expectations that cannot be met.

### **Demand for Drug Court placements**

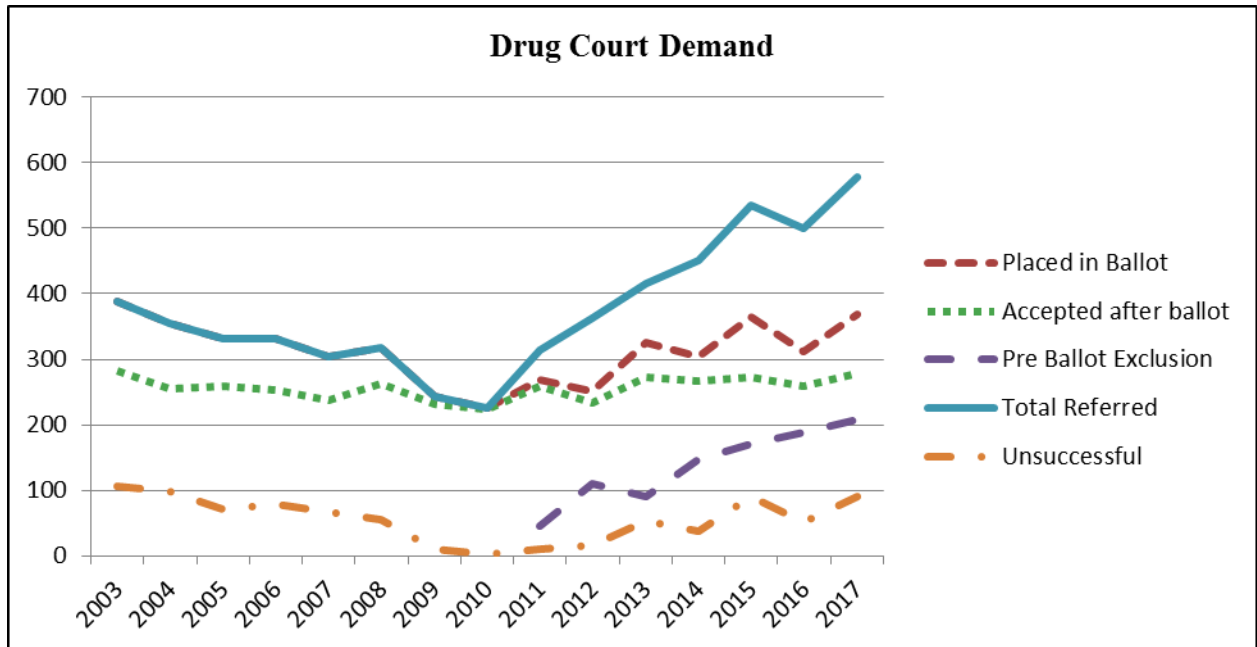
There are significant costs involved in NOT providing Drug Court places. The level of demand for places on program has steadily increased, yet the program has not expanded in five years.

The number of participants on the Drug Court program is defined by the resources provided by Government to the program and our partner agencies. So the resources required, be they counselling by the Health Services, Community Corrections supervision, legal representation, court room accommodation and judge time are defined by the number we can effectively manage at any one time. At Parramatta resources are provided for 170 participants, Sydney is 40, and the Hunter Drug Court can accommodate 80 participants.

The inequities of the failure to expand are becoming stark – opportunities are being lost, both at an individual and a community level, and the existing program is failing to meet the level of demand. The *2017 Drug Court Review* highlights the situation at Parramatta, where we have seen a very significant increase in demand for places on the existing program. Despite our best efforts to provide program opportunities, the gap between referrals and an opportunity to participate continues to grow. If a referred offender cannot be offered an opportunity to undertake a Drug Court program, they are returned to the referring District or

Local Court, and are then inevitably imprisoned. The review analyses the consequential additional multiple costs to the justice system of the returned referrals.

The graph below shows the ever increasing gap between referrals and placement on program.



The detrimental effect of this unmet demand is profound. To manage this level of demand fairly, if somewhat brutally, a computerised ballot is conducted, and so only some of the apparently eligible and appropriate offenders are successful in the ballot, and given a Drug Court opportunity. Those who are unsuccessful are, inevitably, simply sentenced to a gaol term.

In past years the Drug Court introduced a number of measures to try and increase and improve opportunities, however despite those ameliorating steps being taken, the gap between the number being given an opportunity to do the program, and the number of offenders being referred to the Drug Court continues to grow.

The inequity of the sentencing outcome is becoming starker, as co-offenders or even life partners (who have committed crimes together) may have different outcomes in the ballot referred to above. So one of a pair may get a chance to stay out of custody and recover, and the co-offender or partner is imprisoned.

The cost to the community by NOT providing a Drug Court program is reflected in some analysis of the 2017 year. Ninety-six (96) apparently suitable offenders were unsuccessful in the ballots conducted. Between them they had committed 938 crimes.

So what happened to them? The 96 referred offenders who were unsuccessful in the ballot were sentenced in the Local Court, or the District Court (either at first instance or on appeal) to a total of **561 months** as their non-parole periods. Applying the average daily cost of adult incarceration of \$172.80, those sentences cost the community **\$2.91 million**. Additionally, 96 months of

Intensive Corrections Orders were imposed in lieu of full-time custody, which carries an actual cost, on Corrective Services calculations, of \$62,000.

There are many, many more costs involved. The Local Court and District Courts had to sentence all 96 offenders at least once, and a surprisingly high number (36 participants or 37.5%) of the offenders dealt with in the Local Court appealed the sentence, leading to a second sentencing task in District Court. So there are even duplicated costs regarding Judges and Magistrates, prosecutors and legal aid lawyers, registry and administration costs.

To finalise all matters also led to delay – from 2 to 10 months from the return to the referring court.

There is a second issue in relation to a Drug Court opportunity being denied. The 96 discussed above are additional to those declined without even being placed in the ballot. In the *Drug Court Review 2016* I wrote:

*“ The number returned (after the ballot) does not represent all who were denied an opportunity, as, almost invariably, if an offender has had a previous Drug Court program, they are excluded from even taking part in the ballot for a placement, and are similarly returned to the referring court. The Court seems it as more equitable to give a “fresh” referral a first Drug Court opportunity than a second opportunity to a previous participant. However treatment theory tells us very clearly, as would common sense, that a drug-addicted offender may well need more than one episode or opportunity to grasp recovery. It may be that the previous participant was young, chaotic and perhaps foolish on the last occasion, and desperately wants assistance now. So denying a second Drug Court program opportunity can be tragic for the offender and a poor result for the community”.*

Parramatta Drug Court alone returned 209 referrals to the originating court in 2017. There are many reasons for such a return, ranging from significant violence issues to not facing a full-time sentence for the referred offences. But of those 209, a significant number, 64, had received a previous Drug Court opportunity in the last 18 years, and were excluded on that basis.

## **Some specific issues from the Issues Papers**

### **Paper 2 – Justice**

At page 4, the Issues paper raises the issue of drug driving convictions and the surprising lack of data as to the drug involved. You may have considered this angle already, however the Forensic laboratory used by the Police provides an expert’s certificate in every case of “Driving under the Influence”, and nominates the drugs present which have an effect of the driving ability of the defendant. One might expect the lab to keep statistics as to the positive findings being made, and in relation to what drug or drugs?

Secondly, any data on ATS drug driving and the proportion thereof could be severely skewed by the limited range of drugs being checked for, and the lack of instant testing for many drugs, including, as I understand it, a failure of the instant tests to detect cocaine. I doubt, but

I am unaware, that the initial saliva tests check for fentanyl, oxycontin, pregabalin (lyrica) or GHB, or any of the many forms of synthetic cannabis.

At page 12 there is a discussion on the impact ATS has on the criminal justice system, and whilst the statements made are accurate, I think they do not go far enough, and I would caution against underestimating the extent and nature of crime which flows from addiction. Drug-addicted offenders commit all manner of crimes to fund their addiction, and the impact on the criminal justice system is immense. The drug addicted offenders I see are leading chaotic lives, so they drive, repeatedly, whilst disqualified as they have a need to commit crimes, obtain funds and then see their supplier. They engage in police pursuits because they believe they need to evade a return to custody. They steal cars, commit endless frauds and identity theft offences, raid letterboxes all night, and shoplift on a commercial scale. Offenders coming to the Drug Court typically face 5 to 40 charges, which can be committed across several months, in various locations, and range across all of the crimes cited above. Frequently, breaches of orders allowing conditional liberty are included as well.

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**In Conclusion**, it is not suggested that the Drug Court is the only effective program - indeed it is very important to provide treatment only to the level required, and not mix low-level beginners with more experienced and chaotic offenders. But it is very effective for a group of drug addicted offenders who cause a great deal of harm and concern in the community. So there should be a range of interventions, with an escalating level of response which reflects the circumstances of the drug addicted individual.

J R Dive  
Senior Judge