

ANCD releases major report on compulsory treatment in Australia

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In releasing a major report on compulsory treatment the Australian National Council on Drugs (ANCD) has highlighted that rather than forcing people into treatment (compulsory treatment), it is far better to give offenders the option of being diverted into drug treatment.

The new report “[Compulsory Treatment in Australia](#)” is clear that there are only very limited circumstances under which compulsory treatment should be used. In contrast, the report states that much more emphasis needs to be placed on diversion programs in Australia.

The ANCD has used the report to highlight that diversion programs can reduce drug use, reduce crime and save millions of dollars and that governments should substantially increase their support and commitment to these programs.

The comments have the full backing of ANCD member Magistrate Jeff Linden who says he has personally seen court time slashed dramatically through diversion programs, as well as a clear drop in the number of re-offenders.

The ANCD says earlier evaluations of diversion programs confirm that there is clear evidence that diversion can lead to lower crime rates, lower court and law enforcement costs and better health outcomes.

The ANCD says that since 1992 the number of people in prison across Australia has risen dramatically from 15,000 (1992) to 24,000 (2005). Many prisoners are identified as having drug and alcohol problems and prisons are far less likely to offer an appropriate environment to treat drug use. As an alternative, diversion is more likely to be successful in the long-term and also means fewer costs to the community. The ANCD notes that the average annual cost for a prisoner ranges from \$50,000 to \$73,000 per year whilst treatment in a residential rehabilitation centre costs less than \$30,000 per year, with even less being required for pharmacotherapy treatment, such as methadone and buprenorphine.

Whilst the issue of compulsory treatment is often debated in the community, there are strong civil and human rights issues that need to be addressed before any consideration should be given to compulsory treatment. The report clearly identifies that there is a lack of evidence to support the forced detention and treatment of people unless there are exceptional circumstances. The new report says even under these circumstances that compulsory treatment should only be used as a very short term option with very clear guidelines and rules in place.

The Australian Government is currently allocating more than \$60 million a year to diversion programs, but the ANCD warns that the success of the current illicit drug diversion initiative can only be maintained if this funding continues. The ANCD has also highlighted some improvements that could further enhance the success of diversion programs in the future. This includes a national evaluation of cannabis cautioning schemes so that the effective components of a successful scheme can be established and lead to a

harmonised cannabis cautioning scheme being introduced across the nation.

Dr John Herron — the Chairman of The Australian National Council on Drugs — says it's vital there is more emphasis placed on diversion programs. He says in simple terms treatment works; and it works a lot better if people are not in prison.

Dr John Herron said “More and more offenders are being given the opportunity to go into treatment programs. We estimate that millions of dollars will be saved because instead of putting people with drug problems before the courts or into jail — which often leads to a ‘revolving door’ effect where they are released, re-offend and then return to jail — people are getting access to treatment so their problems can be tackled at the source.”

“Diversion is a very effective system but it is not perfect. So in releasing this new report today we are making some important recommendations on where we can improve diversion even further. The straightforward fact remains — it is working.”

“Diversion may appear to some to be a soft option. Let me assure people though — it is not a soft option. It's a better option. It gives people the chance to deal with their drug and alcohol use — and any underlying problems. That's not easy for people to do.”

“Treatment works — but it's often a difficult and long road for people. Our view is that diversion programs can have a direct impact on offenders by addressing the causes of their criminal behaviour — and that in turn reduces their contact with the justice system. The evidence is clearly showing these kind of programs can and do work. We just need to keep investing in them to realise the long term gains for everyone in the community.”

Although not specifically addressed within the report itself, the ANCD says there is a growing body of evidence now showing that costs to the community from crime and drug use are reduced through diversion programs. For example, an evaluation of the NSW Cannabis Cautioning Police Diversion Program estimated that after three years of the scheme, 18,000 hours of police time had been saved, police costs were slashed by \$400,000 and local courts were estimated to have saved at least \$800,000.

The ANCD has also noted that Queensland participants in the police illicit drug diversion program reported improvements in employment, general health and psychological health; and those who completed the NSW MERIT program (a court based diversion program) were far less likely to re-offend than those who did not complete the program.

The new report highlights the need for diversion programs to be better focussed on addressing issues for Indigenous people. Specifically:

- Though over-represented in the criminal justice system, the participation rates of Indigenous Australians in diversion programs at all levels are generally low.
- Indigenous offenders are disadvantaged from not being diverted into drug and alcohol treatment.
- There is evidence that a small number of diversion programs that have been designed especially for Indigenous offenders (e.g. Koori courts) can increase Indigenous participation rates, reduce recidivism, increase Indigenous participation and ownership of the administration of law, and strengthen Indigenous communities by reinforcing the status of Elders and Respected Persons.

The ANCD has been involved with the development and introduction of the COAG Illicit Drug Diversion Initiative since 1998.

It has also continually reviewed data and reports from across the country on diversion programs. ANCD Chairman Dr John Herron said “The ANCD is immediately calling for a continuation, expansion and improvement in the way that diversion programs are implemented in Australia.”

Mr Gino Vumbaca, ANCD Executive Director added “We need to focus more attention on the good outcomes for the community from diversion and invest even more in treatment services. We have far too many people appearing before the courts or in prison that would greatly benefit and productively contribute to society from an opportunity to address their drug dependence. Courts and prisons cost us hundreds of millions of dollars and have far too many returning customers. If we can intervene with treatment and stop this never ending cycle of drug use and offending we will not only be saving millions of dollars for the community, we will also be assisting thousands of people and families to a better life.”

The ANCD is also calling for:

- Ongoing support including training and education for all police services about the illicit drug diversion initiative.
- Publicly available regular reports on developments under the initiative including actual case studies.
- Exploration of strategies and programs to provide ongoing drug treatment for suitable offenders being released from prisons and juvenile detention centres.
- Expanding the criteria for diversion programs to include drug users with alcohol misuse problems.
- A review and update of the current national diversion program framework for endorsement by all governments.

Magistrate Jeff Linden, a member of the ANCD said "As the sole Judicial representative on the ANCD I endorse the report and treatment generally of drug afflicted people who regularly come before the Courts. I have been involved in diversion programs in various guises over 19 years as a Magistrate and am a strong advocate for them."

“In particular, I was the Judicial Officer responsible for the commencement and trialling of the MERIT Program in Lismore. With my health colleagues as partners I can say it has been and remains a most successful diversion program and has assisted hundreds of people to overcome what are often long term and damaging drug habits. It has seen re-offending cut dramatically and court time, on what were generally unmeritorious pleas of not guilty, saved by guilty pleas at the end of treatment.”

Dr John Herron added “This is a good news story but it’s not getting enough support in the community because not enough information is reaching the public arena. Over time this has the potential to be a very positive outcome for the whole community.”

ANCD Key Recommendations

The key ANCD recommendations in the new report “Compulsory Treatment in Australia” include:

1. Undertaking a national evaluation of cannabis cautioning schemes to ascertain the effective components of a successful scheme.
2. Introducing a nationally consistent and effective cannabis cautioning scheme across all jurisdictions.
3. Increasing government investment in drug and alcohol treatment services.
4. Providing a nationally consistent accreditation system for drug and alcohol treatment programs.
5. Providing ongoing support including expanded Illicit Drug Diversion Initiative (IDDI) training and

education for all police, including new recruits and magistrates.

6. Preparing and distributing regular reports on the developments and achievements of IDDI, including actual case studies.
7. Expanding the criteria for diversion programs to include people with alcohol misuse problems.
8. Examining all diversion exclusion criteria in consultation with relevant groups, especially Aboriginals and Torres Strait Islanders.
9. Focusing diversion programs to better address the needs of Indigenous offenders and reduce their over representation in prisons.
10. Expanding court diversion programs to all jurisdictions.
11. Encouraging the exploration of strategies and programs to provide a continuity of drug treatment for drug using offenders being released from prisons and juvenile detention centres.
12. Establishing an appropriately constituted panel (including NGO sector representation) to review and update the current IDDI framework for endorsement by all governments.

Key findings from report

Compulsory treatment in Australia

- That any compulsory treatment legislation should clearly state the intended outcomes of the legislation.
- That all jurisdictions should work in collaboration towards development of a nationally consistent approach to compulsory treatment.
- That the short-term model of involuntary care recommended by the New South Wales Standing Committee on Social Issues (2004) be used as a starting point for developing a national approach to civil commitment. Key features:
 - Duration: 7–14 days
 - Target population: persons with substance dependence who have experienced or are at risk of serious harm, and whose decision-making capacity is considered compromised
 - Purpose: stabilisation; comprehensive assessment; restoring decision-making capacity; linking into long-term care (e.g. guardianship); encouraging and linking into voluntary treatment system
 - Criteria: four criteria must be met before a decision to commit a person to involuntary care can be made:
 - severe substance dependence, as diagnosed by an internationally recognised tool such as the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM IV); substance dependence or use alone is not sufficient
 - serious harm to self (including injury, illness and self-neglect) experienced, or immediate risk thereof
 - lack of capacity to consent to treatment
 - treatment plan outlining expected benefit and rationale for proposed period of involuntary care.
 - Treatment type: detoxification in a secure medical facility.
- That alternate models of care be developed to address the needs of people with complex needs and/or antisocial behaviour. In this context, evaluative information on emerging programs to address this group's needs in South Australia and Tasmania as well as the Multiple and Complex Needs Initiative in Victoria might be informative.

Diversionary programs and practices in Australia

- That consideration be given to expanding existing diversion programs by amending eligibility criteria to

include problematic/dependent alcohol use.

- That provisions excluding certain offenders be further examined in consultation with relevant groups, especially Aboriginals and Torres Strait Islanders.
- That if violence is retained as an excluding factor, the terms 'violence' and 'violent' be clearly defined and limited to 'serious violent offences'.
- In some jurisdictions, mental illness can render an offender unsuitable for AOD diversion; in others, AOD dependence can render an offender unsuitable for mental health diversion. There is the potential for high numbers of dually diagnosed offenders to fall between the diversion nets.
- That the issue of unsuitability for diversion due to mental illness be revisited and discussed, including discussion and clarification of:
 - whether AOD diversion or mental illness has primary jurisdiction for dual diagnosis clients when these two diversions operate together
 - how the courts may best sit as both a drug court and a mental health court
 - the training needs of magistrates regarding AOD and mental health issues
 - the potential establishment of general problem-solving courts with authority and resources to address multiple issues, including AOD, mental health and homelessness issues.
- That consideration be given to expanding court diversion programs to all jurisdictions to overcome inequality in sentencing options and thereby access to treatment options.
- That systematic monitoring and evaluation be maintained, including consideration of possible net-widening.
- That guidelines to identify and minimise net-widening be developed.
- In a climate where AOD treatment services available to the general community can be in short supply and wait lists can be lengthy, it is arguably inappropriate and unfair to give preferential treatment to people referred via the criminal justice system. There is concern that this potential for displacement of voluntary clients creates 'perverse incentives' for people to access treatment via the criminal justice system.
- That ongoing monitoring of the demand for and the availability of treatment services in each jurisdiction be a part of the evaluation of diversion programs to avoid displacement of voluntary clients.
- That the specific skill development needs of professions participating in compulsory treatment and diversion programs be identified.
- That protocols that include clear articulation of lines of responsibility be available.
- That principles of best practice be developed and disseminated.
- That a clearing house maintain information and educational materials in these areas.

Indigenous Australians

- That programs designed specifically to meet the needs of Indigenous Australians be further developed.
- That exploration of effective processes, treatments and models for Indigenous Australians be ongoing.

Fact sheet 1

Drug treatment and the Australian criminal justice system

(prepared by the Australian Institute of Criminology & Australian National Council on Drugs)

1. Reducing drug use

Police Drug Diversion

- In Queensland the Police Illicit Drug Diversion Program (PIDDP) evaluation reported decreases in regular cannabis use after six months (HOI 2002).

Court Diversion

- An evaluation of the NSW MERIT program found reductions in self-reported drug use and poly-drug use. Participants also reported less frequent contact with drug using peers. (Passey et al. 2003).

Drug Courts

- Queensland drug court participants submit few positive urinalysis tests. The number of positive tests submitted declines at each phase of participation. People who have completed the program must be drug free for at least three months before completing (Makkai and Veraar 2003).
- NSW drug court participant's median weekly expenditure on illicit drugs declined significantly from \$1000 to \$175 for the duration of participation on the program (Freeman 2002).
- Victorian drug court participant's self-reported use of heroin dropped from an average of once a day to less than once a week after six months of participation (Alberti et al. 2004).

2. Improving health and well-being

Police Drug Diversion

- Queensland participants in the police illicit drug diversion program reported improvements in employment, general health and psychological health (HOI 2002).
 - Employment increased from 25 percent of participants in full-time work at baseline to 31 percent after six months.
 - Physical health improved for both males and females in the six months following diversion.
 - Psychological health improved across most subscales in the SCL-90-R Psychological Symptom Inventory, with levels of distress and the number of symptoms dropping to 'normal' levels among the non-patient adult population.

Court Diversion

- NSW MERIT court participants reported significant improvements in psychological well-being, social functioning, and general physical well-being. Injecting-related risk taking behaviour declined significantly between entry and follow-up (Passey et al. 2003).

Drug Courts

- NSW and Queensland drug court participant's health and well-being improved significantly as a result of participation. Health was measured using the SF36 general health survey and significant improvements were demonstrated across all eight health dimensions (Freeman 2002; Payne 2005).
- Victorian Drug Court participants self-reported improvements in their living and employment situation, in addition to increased involvement in drug treatment programs (Alberti et al. 2004). Full-time employment increased from 11 percent at commencement to 25 percent after six months.

3. Reducing reoffending

Police Drug Diversion

- South Australian participants of the Police Drug Diversion Initiative were less likely to be charged with a new offence. Drug offending, which is specifically targeted by the program, declined from 6.5 percent prior to diversion to 2.6 percent following diversion for juveniles and 16.4 percent to 10.2 percent for adults.
- Queensland participants in the police illicit drug diversion program reported decreases in the proportion of offenders self-reporting property offences following diversion (7% to 1.2% after six months).

Court Diversion

- Participants who completed the NSW MERIT program were less likely to reoffend than those who did not complete the program (25% vs. 50% after three months). The average time to first offence was also longer among those who completed (375 days vs. 247 days) (Passey et al. 2003). These results were supported by self-report OTI data showing a significant reduction in the overall frequency of offending.
- Participants in the Victorian CREDIT program were less likely to reoffend than persons who were referred to CREDIT but did not participate (Heale & Lang 1999).

Drug Courts

- New South Wales, Queensland and Victorian drug court participants committed fewer criminal offences both during and after drug court participation. The time taken to reoffending is also longer than for similar drug using offenders who were not placed onto the drug court programs.
 - In NSW, people who completed the program took an average of 427 days to commit a new theft offence and 567 days to commit a new drug offence. This compared with 299 and 485 days, respectively, among the control group (Lind et al. 2002).
 - In NSW, people who completed the program committed an average of one theft offence every 365 days, compared to four offences among the control group (Lind et al. 2002).
 - Self-reported offending among Victorian drug court participants declined. The number reporting weekly or more property offending declined from 43 percent to zero after three months (Alberti et al. 2004).

4. Reducing criminal justice system costs

Police Drug Diversion

- New South Wales participants of the Cannabis Cautioning Scheme committed fewer drug offences and had fewer court cases. There were also fewer persons imprisoned for cannabis related offences. (Baker & Goh 2004).
- Further to the above, it was estimated that after 3 years of the scheme operating over 18,000 hours of police time was saved and police costs were slashed by \$400,000 with local courts estimated to have saved at least \$800,000 (Baker & Goh, 2004).

Court Diversion

- Participants of the NSW MERIT and Victorian CREDIT courts received less severe sentences as a result of successfully completing the programs (Passey et al. 2003; Heale & Lang 1999).
- Conservative cost estimates of the NSW MERIT program suggested that more than twice the amount spent was saved (Passey et al. 2003).

Drug Courts

- Two cost effectiveness studies have been completed among the drug courts. In NSW, the operating costs of the drug court per day per person were slightly lower than for the alternative of imprisonment (\$143.87 vs. \$151.72) (Lind et al. 2002). In Victoria the cost of the drug court program was estimated as being higher than the alternative of imprisonment, however, these costs included substantial once-off start-up costs (King and Hales 2004). Both evaluations noted that the potential cost savings of reduced drug use and recidivism would add to the cost benefit of the programs.

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Fact sheet 2

Adult Corrections

- the number of offenders in custody in Australia has increased from over 15,000 in 1992 to more than 24,000 in 2005 (an increase of over 50%) with more than 35,000 people entering a prison somewhere in Australia each year – this does not include periodic or weekend detainees;
- on average it costs between \$50,000 - \$73,000 per year for each offender in custody;

- on average, the expenditure per prisoner per day in 2004-05 was \$170;
- 93% of all offenders are male and 64% of all offenders are under the age of 35 years;
- in 2004/05 the rate of imprisonment for Indigenous people was 1,957.1 people per 100,000 of the adult population compared to approximately 118 non-Indigenous people per 100,000.
- Indigenous people represent 25.3% of Australia's prison population;
- the high correlation between drug misuse and crime is one of the major issues confronting the criminal justice system;
- research estimates between 41% and 70% of violent crimes are committed under the influence of alcohol;
- co-morbid substance use disorder and mental illness is common among offenders in custody. 66% of females and around 50% of males in custody with a substance use disorder also have a mental disorder (psychosis, anxiety disorder or affective disorder) was reported in one Australian jurisdiction;
- approximately 60% of offenders report drug use on at least one occasion during their current term of imprisonment. Around 33% of people who inject drugs continue to inject drugs in prison. A smaller percentage of people also begin using drugs and injecting drugs for the first time when in prison;
- the level of hepatitis C in prisons is estimated to be up to 17 times greater than in the general community;
- the prevalence of hepatitis C in male offenders in Australia has been estimated at over 30% with some jurisdictions reporting even higher rates;
- the prevalence of hepatitis C in female offenders in Australia has been estimated at over 60%, again with some jurisdictions reporting even higher rates;

Juvenile Justice Services

- there has been a general decline over the previous 24 years in the number and rate of persons aged 10 to 17 years in juvenile detention in Australia. In 1981, there were over 1,300 young people detained, while in 2004 only 564 juvenile detainees were recorded;
- in 1981 the rate of juvenile detention was 64.9 per 100,000 population and in 2004 it was 25.5 per 100,000 population;
- the total number of Indigenous persons in juvenile detention on 30 June 2004 was 306. This represented 54% of the total number of persons in juvenile detention;
- in 2004 young males were 12 times more likely than young females to be in detention;
- 43% of youths in a 2001 study reported that they believed a member of their family had a problem with drug misuse;
- alcohol has been identified as being closely associated with male juvenile violent crime. Alcohol is also considered to be a significant contributing factor in juvenile property crime;
- inhalants are predominately used by young people aged 10 to 16 years and their abuse is more prevalent and problematic amongst both indigenous and non-indigenous young people who suffer disadvantage;
- a study of re-offending rates among 458 juveniles in one Australian jurisdiction indicated that drug misuse had a significant relationship with re-offending. In particular, 6 months after release from juvenile detention, those who reported using drugs several times a week or more were 77% more likely to re-offend than youths whose drug misuse was less frequent.

The ANCD is the principal advisory body to Government on drug and alcohol issues.

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