Submission to Victorian Attorney General

REVIEW OF SENTENCING OPTIONS FOR DRUG RELATED OFFENDING

To: The Hon. Martin Pakula MP, Victorian Attorney General
Date: 2 November 2015

Contact:
Gemma Hazmi, Senior Lawyer, Legal Policy
T: (03) 9607 9374
E: gHazmi@liv.asn.au
W: www.liv.asn.au
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>3</td>
</tr>
<tr>
<td>The Need For Reform</td>
<td>5</td>
</tr>
<tr>
<td>Ice: What is the problem?</td>
<td>5</td>
</tr>
<tr>
<td>Response: National Ice Action Strategy</td>
<td>5</td>
</tr>
<tr>
<td>A Multifaceted Solution</td>
<td>6</td>
</tr>
<tr>
<td>Drug offending is not simply a legal problem</td>
<td>6</td>
</tr>
<tr>
<td>A greater return on investment</td>
<td>6</td>
</tr>
<tr>
<td>Limitations of incarceration</td>
<td>7</td>
</tr>
<tr>
<td>Effective sentencing and rehabilitation</td>
<td>8</td>
</tr>
<tr>
<td>Review of sentencing options</td>
<td>11</td>
</tr>
<tr>
<td>Previous Sentencing Options for Drug Related Offences</td>
<td>11</td>
</tr>
<tr>
<td>Current Sentencing Options for Drug Related Offences</td>
<td>12</td>
</tr>
<tr>
<td>Non-Sentencing Alternatives for Drug Related Offences</td>
<td>14</td>
</tr>
<tr>
<td>Drug Court Victoria (DCV)</td>
<td>15</td>
</tr>
<tr>
<td>International Experience: The HOPE Program</td>
<td>19</td>
</tr>
<tr>
<td>LIV Recommendations</td>
<td>20</td>
</tr>
<tr>
<td>Recommendation 1</td>
<td>20</td>
</tr>
<tr>
<td>Recommendation 2</td>
<td>20</td>
</tr>
<tr>
<td>Recommendation 3</td>
<td>21</td>
</tr>
<tr>
<td>Recommendation 4</td>
<td>22</td>
</tr>
<tr>
<td>Recommendation 5</td>
<td>23</td>
</tr>
<tr>
<td>Conclusion</td>
<td>24</td>
</tr>
</tbody>
</table>
INTRODUCTION

The Law Institute of Victoria (LIV) is Victoria’s peak body for lawyers and those who work with them in the legal sector and represents over 19,000 members.

The LIV has had a long history of contributing to, shaping and developing effective criminal legislation, and has undertaken extensive advocacy on law reform and sentencing issues.

This submission has been prepared as a result of stakeholder contributions during a two part sentencing review discussion forum initiated by the LIV on 20 July 2015 and 7 September 2015.

These discussion forums were attended by various individuals and stakeholder organisations within the criminal justice system, including:

- Professor Arie Freiberg, AM
- County Court of Victoria
- Department of Justice & Regulation
- Drug Court, Victoria
- Magistrates’ Court of Victoria
- Office of Public Prosecutions
- Victoria Police
- Victorian Bar
- Victorian Custody Reference Group
- Victorian Aboriginal Legal Service
- Victoria Legal Aid
- The Centre for Innovative Justice
- The Victorian Alcohol and Drug Association

While these individuals and organisations were represented at the discussion forums and provided invaluable contribution, this submission is not made jointly, or on behalf of those particular organisations. Nevertheless, the breadth of discussions and feedback from these organisations have enabled us to take into account the perspectives of all sides of the criminal justice system in the formulation of this submission.

The discussion forums and this submission were overseen by a working group of members of the LIV Criminal Law Section Executive Committee:

- Tim Gattuso
- Andrew Halphen
- Melinda Walker
EXECUTIVE SUMMARY

The sentencing of offenders is a complex task. Sentencing for drug related offending adds another level of complexity due to factors including drug-dependency, health and addiction recovery that may not present with other types of offending. These additional factors require innovative solutions to address the underlying causes of drug offences. By addressing these causes, sentencing has the capacity to reduce reoffending, promote a higher return on investment in the justice system, and ultimately contribute to a safer community.

Recent reports have confirmed that there is a rapid increase in the number of recorded drug use and possession offences in Victoria over the past five years. The Crime Statistics Agency reports that the rate of offences has increased from 190.8 in 2010 to 323.32 in 2014. This represents an annual average percentage increase of 14.2%.¹

The rapid increase in the use of ‘Ice’ across Victoria to epidemic proportions in some of our regional areas has prompted the establishment of the National Ice Taskforce. However, little impact has to date been made in terms of addressing the sentencing conundrum that the abuse of this substance has created. This is largely due to the limited sentencing options that presently exist for the treatment of Ice addicted offenders, the restricted catchment of Victoria’s sole Drug Court, and the absence of any substitute medication programs for Ice addiction (unlike treatments such as Methadone and Naltrexone for Heroin addiction).

Over recent years, sentencing options have been reduced following the removal of several sentencing dispositions, including Home Detention, Combined Custody Treatment Orders (CCTOs), Intensive Corrections Orders (ICOs), Community Based Orders (CBOs) and Suspended Sentences (which often served as the Sword of Damocles to effectively encourage rehabilitation). These sentencing dispositions have been replaced by the all encompassing Community Corrections Order (CCO). CCOs provide for a broad range of conditions which can be tailored to suit the punishment and rehabilitation requirements of individual offenders. However, the effectiveness of CCOs in relation to drug offences is undermined by the absence of funding support for the residential treatment of addiction to not only Ice, but all drugs of addiction.

The LIV submits that the effective treatment of drug addicted offenders is in the interests of the broader community. It will assist in the substantial reduction of the offending within it. The reduction of drug related offending requires a multifaceted approach that the present sentencing regime is ill-equipped to provide.

A multifaceted approach will promote a greater return on investment in the justice system compared to sentencing options such as imprisonment. Not only is this approach generally cheaper in the short term compared to the costs of imprisonment, it also promotes longer term savings by more effectively intervening to end the cycle of reoffending. Further, through treatment

and rehabilitation, drug offenders are more likely to contribute positively to the community in the future.

The LIV submits that:

- The current approach to sentencing for drug offences is failing, evident in the increasing recidivism rate for drug offences.
- One of the primary reasons for this failure is that most current sentencing options do not address the causes of drug offending, which include addiction, mental health issues and social exclusion.
- These underlying causes are multifaceted. Therefore, a multifaceted sentencing solution is required.
- A multifaceted approach will promote the interests of the broader community by reducing reoffending, promoting a higher return on investment in the justice system, and leading to positive social engagement of former offenders in the community.

The LIV recommends the following multifaceted approach to drug offence sentencing in Victoria:

- Expansion of the Drug Court into Melbourne CBD and regional hubs.
- Expansion of the CISP program into the County Court jurisdiction.
- Better utilisation of the Residential Treatment conditions available on CCOs.
- Fast-tracking of CCO contravention hearings modelled on the HOPE program.
- The development of Drug Treatment Units at existing prisons and secure treatment facilities.
THE NEED FOR REFORM

Ice: What is the problem?

‘Ice’ is the street name for ‘high purity crystal methamphetamine’.\(^2\) The National Drug Strategy Household Survey 2013 found that, while the use of methamphetamines has remained steady between 2010 and 2013 (at 2.1% of the population), there has been a shift in the form of methamphetamine. Ice has permeated the Australian community with a growth of use from 22% in 2010 to 50% in 2013.\(^3\) As a direct result, the treatment of individuals who have consumed the drug has increased from 13,000 in 2010 to 29,000 in 2013.\(^4\) Ice is highly addictive. Of great concern is also the poly-drug, which is when other illicit substances are combined with methamphetamine to make it more addictive to the user.\(^5\) Organised crime, and its current projected involvement of upwards of 60% in the drug trade, is a large contributor toward the increase in methamphetamine production, trafficking and use.\(^6\)

Response: National Ice Action Strategy

The National Ice Taskforce was established to combat the harm inflicted upon the community as a result of the production, import and dissemination of the illicit drug known as ‘Ice’.\(^7\)

The National Ice Action Strategy is a Commonwealth Government initiative involving a collaborative effort between states and territories to confront the threat Ice poses to the Australian community. The Taskforce’s purpose is ‘to examine all existing efforts to address ice and identify ways to take a systematic, comprehensive and coordinated approach to education, health and law enforcement’ to examine:\(^8\)

- the effects of the drug on the affected families and fellow community members,
- current approaches taken to deal with ice-related offences, and
- how these may be amended to combat the effect of this drug upon the Australian community.\(^9\)

\(^2\) Australian Government, National Ice Taskforce, Department of the Prime Minister and Cabinet http://www.dpmc.gov.au/taskforces/national-ice-taskforce
\(^4\) Ibid.
\(^5\) Ibid 16.
\(^7\) Australian Government, Terms of Reference, Department of the Prime Minister and Cabinet http://www.dpmc.gov.au/taskforces/national-ice-taskforce/terms-reference
\(^8\) Minister for Justice and Minister Assisting the Prime Minister on Counter Terrorism (Cth), ‘Inaugural Meeting of the National Ice Taskforce’ (Media Release, 22 April 2015) http://www.ministerjustice.gov.au/Mediareleases/Pages/2015/SecondQuarter/22-April-2015-Inaugural-meeting-of-the-National-Ice-Taskforce.aspx
\(^9\) Australian Government, National Ice Taskforce, Department of the Prime Minister and Cabinet http://www.dpmc.gov.au/taskforces/national-ice-taskforce
A MULTIFACETED SOLUTION

Drug offending is not simply a legal problem

The LIV submits that there are multiple factors that cause addiction. For those suffering from addiction, a multifaceted treatment approach which addresses the causes and symptoms of the addiction is most effective. As stated by Superintendent Peter O’Halloran: ‘law enforcement solely is not the answer to this, it is a community problem, it is a social problem, it is a government problem, and it is a policing problem across the state. In order to address that, we need a multifaceted approach.’

LIV members report that many clients struggle with mental illness which contributes to drug abuse. It is vital to ensure that treatment programs include medical care, social support, and rehabilitation.

The LIV believes that a multifaceted approach provides drug addicted offenders with a better chance of successfully managing their addiction and therefore reducing the likelihood of reoffending.

A greater return on investment

The LIV believes that investing in a multifaceted, treatment-based approach to deal with drug offenders will ultimately generate a greater return on investment than more traditional punitive approaches. The multi-faceted approach aims to intervene early and to provide support to the offender to address the causes of offending. This approach is likely to reduce recidivism rates and the associated costs to the community. Further, the approach is more likely to assist the offender to contribute positively to society.

“Justice reinvestment is the diversion of government spending from prisons and investing instead in strategies and initiatives designed to reduce offending rates, break the cycle of recidivism, and increase community safety.”

This approach requires investment into prison based programs, post release treatment and diversion, transitional support, measures to improving parole and managing case loads. Savings are then redirected into diversion based, intervention focused and transitional programs designed to reduce reoffending.

The greater return on investment generated by a multi-faceted approach is backed up by national and international studies.

11 The Senate Legal and Constitutional Affairs References Committee, Value of a Justice Reinvestment Approach to Criminal Justice in Australia, (June 2013) Page 3
In recent report\textsuperscript{12}, Jerry Madden, former Chairman of the Texas House of Representatives Corrections Committee and Senior Fellow with Right On Crime outlined how an earlier investment introducing substance abuse treatment facilities has proven to be a much more economical alternative. Funding initially reserved for building a prison was reinvested and the planned prison was no longer built. Additionally, the State of Texas closed down a prison, with two more due to close shortly.

In 2014 report, the First Steps Legal Service Development Project highlighted that one way to break the cycle of offending is by, “redirecting resources, where possible, into the recovery process in order to restore lives rather than compound the overall dysfunction. Thus, sparing the costs associated with incarceration (or re-incarceration), criminal justice, policing and the systemic impact on the families and broader communities”\textsuperscript{13}. Offenders are more likely to reoffend because punitive orders have resulted in their incarceration, but have not addressed the reasons for their behaviour.\textsuperscript{14}

An independent review undertaken by KPMG\textsuperscript{15} has established that Drug Court Victoria’s drug treatment orders (DTO) are considerably cheaper than an equivalent term of imprisonment, producing a 29% reduction in recidivism over two years, and a $50 million saving in prison costs for Corrections Victoria.

**Limitations of incarceration**

Incarceration for serious or repeat offenders is an important part of the sentencing system, but it has its limits. Imprisonment acts as a specific and general deterrent to offenders, has a punitive effect on the individual offender, and provides for the possibility of rehabilitation. However, without alternative sentencing options that focus on early intervention and support, incarceration is a blunt instrument. Incarceration can lead to a cycle of offending and imprisonment, especially if the prisons lack effective rehabilitation programs. This cycle comes at a high cost to the community and the state given that the average cost of keeping a prisoner in prison for a year is $100,000.\textsuperscript{16}

A recent report by the Victorian Ombudsman’s concluded that “the rapid growth in numbers of people in the system and behind bars has overwhelmed its capacity to deliver consistent and effective rehabilitation or reintegration for prisoners”\textsuperscript{17}. This has significantly affected the ability of prisoners to access rehabilitation programs while in custody, which is exacerbated by the limited capacity of external agencies to accommodate the numbers of those requiring post release support.

\textsuperscript{12} Australian Broadcasting Corporation Broadcast: 16/04/2013 (Reporter: Emma Alberici) \newline [http://www.abc.net.au/lateline/content/2013/s3738637.htm](http://www.abc.net.au/lateline/content/2013/s3738637.htm)\textsuperscript{13}


\textsuperscript{14} ibid\textsuperscript{15}

\textsuperscript{15} KPMG Government Advisory Services, Evaluation of the Drug Court of Victoria: Final Report – Magistrates’ Court of Victoria (18 December 2014) Page 3.\textsuperscript{16}

\textsuperscript{16} Commonwealth of Australia, Parliamentary Report: Value of a justice reinvestment approach to criminal justice in Australia (20 June 2013) Chapter 3\textsuperscript{17}

\textsuperscript{17} Victorian Ombudsman’s Report: Investigation into the rehabilitation and reintegration of prisoners in Victoria (September 2015), para 917
As a consequence, prisoners not released on parole ultimately leave the prison system without sufficient supervision, support or rehabilitation. LIV members report that offenders who are released after imprisonment quickly return to drug use, because incarceration has not dealt with the addiction and supports upon release are not in place. Our members further report that many prisoners released on parole are without a home to go to and many reoffend within a very short period of time.

The Ombudman’s report highlighted that releasing prisoners without sufficient support is “not consistent with the intent of any parole system and means that many prisoners are simply being warehoused, leaving prison without the reasons behind their offending and risk of reoffending being addressed”.

Effective sentencing and rehabilitation

The current sentencing regime, which relies heavily on incarceration, fails to adequately address the rehabilitative needs of offenders. The LIV submits that there is an urgent need to examine additional sentencing options that focus on rehabilitation.

The recent Victorian Ombudsman’s investigation into prisons determined that a “whole of government” approach is required to address the issues leading to reoffending. This approach requires an initial financial investment to ensure longer-term savings, the ultimate aim to increase community safety and regain community confidence in the justice system’s response.

For sentencing to be effective in reducing recidivism by drug offenders, the LIV submits that support should be provided to address the causes of offending from the point of charge through to parole, including:

- while on bail (eg the CREDIT and CISP Bail support programs)
- through diversion programs with attached conditions
- through special orders which provide case management support (eg Drug Treatment Orders)
- while in prison through appropriate rehabilitation and pre-release programs, and
- while on probation (eg the HOPE program described below).

The need for expansion of existing intervention programs currently existing in the justice system is supported by the Ombudsmen's report. These programs are discussed in further detail below, and include the Drug Court, the Court Integrated Services Program (CISP), Neighbourhood Justice Centres (NJC), the Assessment and Referral Court (ARC), the Criminal Justice Diversion Program and the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) / Bail

---

19 Ibid, para 937
20 Victorian Ombudsman’s Report: Investigation into the rehabilitation and reintegration of prisoners in Victoria (September 2015)
Support Program. All of these services are proven to make a significant difference in the ability of an offender to directly address the motivations and underlying causes of reoffending including but not limited to drug addiction and mental health instability.\(^{21}\)

In addition to these programs, the LIV submits that there is significant utility in making available drug and alcohol programs in prisons.\(^{22}\) The recent introduction of the drug and alcohol residential program at Margoneet is encouraging. However, this program is only available for a limited number of prisoners and our members are concerned that the current prisoner placement process will compromise its effectiveness. A review of the program over time will demonstrate its success or failure.

The recent Ombudsman’s investigation found that the recidivism rate for those who have spent time in the Judy Lazarus Transition Centre is 10.4%, compared to the general prison population of 44.1%. The evidence is clear that the Centre, using a combination of supported case management, day release, work opportunities and family engagement, is a successful model that could be replicated to support greater numbers of prisoners in their transition back to the community.\(^{23}\)

LIV members report that longer term residential rehabilitation programs tend to be the most successful in the treatment of drug addiction and the consequent reduction of drug related offending.

There is an obvious short-fall in the number of affordable placements for the treatment of those addicted to drugs. Private treatment facilities are often well beyond the financial reach of those who need them most. Those that are affordable are so limited in number that the length of delay in obtaining a placement makes them virtually unavailable to the majority of those seeking residential treatment.

**Women in prison**

While the number of female prisoners in Australia is less than the number of males, the percentage of the female prison population over has grown from 35% in 2000 to 61% in 2010, according to the Australian Bureau of Statistics.\(^{24}\)

Additionally, the LIV notes with concern that the number of female prisoners is growing at a faster rate than males.\(^{25}\) In 2012, the number of women in prison increased 8.4% over 12 months and

---

\(^{21}\) ibid
\(^{23}\) Ibid, para 983
48% since 2002. In comparison, the number of male prisoners increased 0.4% cent over 12 months and 29% since 2002.\textsuperscript{26}

The second most common offence for which female prisoners were in custody was illicit drug offences (17%).\textsuperscript{27}

LIV members submit that this is of great concern given the lack of transitional support facilities for female prisoners. While a small number of male prisoners may access the 25 beds available in the Judy Lazarus Transitional Centre, women are unable to access this facility, and there is no other comparable service available to them.

\textsuperscript{26} ibid
\textsuperscript{27} ABS (2014)
REVIEW OF SENTENCING OPTIONS

Previous Sentencing Options for Drug Related Offences

Previous sentencing options available for addiction related offending, which have now been abolished include:

1) Community Based Orders (CBO)
2) Intensive Corrections Orders (ICO)
3) Combined Custody Treatment Orders (CCTO)
4) Suspended Sentences
5) Conditional Suspended Sentences
6) Home Detention

Each of these orders had a rehabilitative focus and provided an opportunity for offenders to serve their sentence in the community. These sentencing dispositions did not involve incarceration. They focused on the principle of parsimony enabling a broader application of s.5 of the Sentencing Act; in particular sub sections 5(3) to 5(7).

These sentencing dispositions have all now been replaced by the Community Corrections Order (CCO).

Abolition of Suspended Sentences

Suspended sentences were slowly phased out as a sentencing option in 2012, until they were completely abolished in 2014. LIV members report that the abolition of suspended sentences has had a profound effect upon the way in which the courts impose sentences, particularly in situations where the offence may warrant imprisonment, yet the offender has mitigating circumstances which may allow him or her to avoid such a punitive order.

In theory, some of the offenders who were previously eligible for a suspended sentence can be given a CCO.28 However, many now face immediate imprisonment in an already over-crowded prison system. A consequence of the abolition, as pointed out by the Sentencing Advisory Council, is the risk of ‘a substantial and unsustainable increase in the prison population’.29

LIV members have previously advocated for the retention of suspended sentences30, citing that the abolition of this as a sentencing option has had a debilitating effect upon offenders, particularly

28 s 36(2), Sentencing Act 1991 (Vic)
drug users. Condemning a drug user to imprisonment exacerbates the side-effects of drug use by not providing an option with more rehabilitative elements which works towards setting the offender free of their addiction.

**Current Sentencing Options for Drug Related Offences**

There are various types of sentencing options that may be imposed for those who are charged with drug related offences. These are outlined below.

**Imprisonment**

This is a punitive form of sentencing. For traffickers who do not consume the drugs themselves and are purely profit driven, this may often be an adequate and appropriate sentencing option for condemnation of their behaviour. However, LIV members report that in the case of an Ice addict, whether selling drugs to support their habit or committing drug related property or violent offences as a result of their addiction, imprisonment alone does not necessarily deter them from consuming the drug. It may perhaps even perpetuate it.

**Community Correction Order (CCO)**

The CCO was formed to ‘provide a community-based sentence that may be used for a wide range of offending behaviours while having regard to and addressing the circumstances of the offender.’\(^{31}\) The order may contain conditions relating to participation in rehabilitation programs, completion of unpaid community work, supervision by Corrections Victoria, judicial monitoring and various other special conditions and restrictions.

CCOs can therefore be structured to address the rehabilitation of an offender in addition to their punishment and supervision. However, in reality there are limits on the frequency and accessibility of such treatment programs. This is particularly so in relation to the residential treatment condition presently available as an option under s 48D(3)(c) of the *Sentencing Act 1991* (Vic). Whilst the option to attach residential treatment as a condition of a CCO exists, members report that it is rarely, if ever, used due to the unavailability of placements at residential treatment facilities. For this vitally important condition to be effective as a sentencing alternative, more residential treatment facilities are required. This would incur additional funding at the outset. However, the ultimate savings to the community in the treatment of drug addition and the subsequent reduction in drug related crime, as well as financial savings of approximately $100,000.00 per year of imprisonment,\(^{32}\) demonstrates the benefits of the initial outlay.

---

\(^{31}\) Sentencing Advisory Council, *Community Correction Orders Monitoring Report* (February 2014)

Further, once such treatment facilities are established, programs such as Odessey House and Windana would effectively become largely self-sufficient because the welfare benefits paid to the individuals undergoing residential rehabilitation are paid directly to the facility to cover the cost of their accommodation and food.

LIV members report that the erratic nature of drug addiction can impact upon an offender’s capacity to comply with the conditions imposed on a CCO. This may result in missed or late attendances at appointments for supervision, rehabilitation and community work. It may also be some time into an order before the benefits of the rehabilitative components take effect to reduce or cease illicit drug use.

We note that the legislation in its current form allows for a charge of CCO contravention to be brought, punishable by a term of up to 3 months imprisonment. We submit that in circumstances of repeated non-compliance and/or lower level additional offending, the benefits of the CCO should be permitted to continue until offenders have had an opportunity to achieve the desired outcome of rehabilitation.

**Drug Treatment Order (DTO)**

The purpose of a DTO is to assist in transitioning drug dependent offenders away from incarceration and towards a more rehabilitative and treatment-focused pathway, in addition to reducing the level of criminal activity associated with drug or alcohol dependency.

The jurisdiction of the DTO is limited to:

- Sentences imposed by the Drug Court;
- Offenders who plead guilty where the Court has considered that a term of imprisonment would otherwise be appropriate for the offending, the commission of which must have been contributed to by the offender’s dependency; and
- Operation within the Greater Dandenong area.

The Victorian Alcohol and Drug Association have recommended that:

…we need to extend the Drug Court to all Magistrates’ Courts throughout the state, which will divert many individuals with methamphetamine dependency away from the prison system and into treatment. This still punitive measure has the dual benefit of eliciting better health and wellbeing outcomes for the offender, and diverting people from the prison system, which is currently overburdened, ineffective, and a significant cost burden for the state.

---


Fine

A fine is usually imposed for the least serious of drug offences, such as possession of a small quantity of an illicit substance and the use of such substances.\textsuperscript{35} Fines are not effective in rehabilitating an offender who has a drug dependency.

Adjourned undertakings

Where a charge is proven, the court may order an adjourned undertaking (with or without conviction), which allows a person to be released into the community unsupervised for up to five years. The offender must agree to the undertaking. Standard conditions attached to an adjourned undertaking include being of good behaviour (i.e. not committing further offences) for the duration of the undertaking. The court may also impose other special conditions which include the completion of an accredited drug rehabilitation program. Unfortunately the effectiveness of such programs is limited due to their brief duration (LIV members report that these programs are often limited to requiring attendance at one or two one hour seminars). If an offender breaches the conditions of an adjourned undertaking, he or she may be called back to court for resentencing.

Criminal Justice Diversion Program (Diversion)\textsuperscript{36}

To be eligible for diversion, the offence must:

\begin{enumerate}
\item be triable summarily;
\item not be subject to a minimum or fixed sentence or penalty (except demerit points); and
\item involve the accused acknowledging responsibility for the offence.
\end{enumerate}

The prosecution must consent for the matter to proceed by way of diversion.

As with adjourned undertakings, conditions such as the completion of an accredited drug rehabilitation program may be attached to a diversion plan. Again, such programs are limited in their effectiveness.

Non-Sentencing Alternatives for Drug Related Offences

Court supervised bail programs

\textit{CREDIT/Bail Support Program}\textsuperscript{37} and \textit{Court Integrated Services Program (CISP)}\textsuperscript{38}

\textsuperscript{35} Jonathan Steffanoni, ‘You Can't Fine an Ice User Out of Their Addiction’, The Drum: ABC News (online), 29 October 2013
\textsuperscript{36} Magistrates’ Court of Victoria, Criminal Justice Diversion Program (14 October 2013)
\textsuperscript{37} Magistrates’ Court of Victoria, CREDIT Bail Support Program (8 July 2015)
Eligibility for either of these programs is by way of referral from the police, Magistrate, legal representative, support services, family members or by the person charged with the drug offence. There must be the presence of a physical or mental disability or illness, social issues and drug or alcohol dependency. The programs are currently only available in the Magistrates’ Court. Eligibility is not precluded as a result of a not guilty plea. In order to be eligible, the accused must:

- consent to participate in the program;
- be on, or applying for bail; and
- undergo frequent treatment sessions for his or her addiction.

Recent reports have also found that CISP has demonstrated that it is capable of managing offenders charged with more serious offences.\(^{39}\) While the primary services offered by CISP will always remain in the jurisdiction of the Magistrates’ Court, more serious offenders will make their way into the County Court either on bail or for sentencing, so the case management information derived from CISP becomes relevant in those proceedings. It is reported that County Court judges are well aware of this and take these matters into account in their decisions.\(^{40}\) However, for this to be fully effective, County Court judges need to have access to information about the programs and the services that it offers.\(^{41}\)

### Pilot Program in Western Suburbs, Victoria

This is a recent initiative by Victoria Police, only available in Melton, which aims to rehabilitate ice addicts through ‘intensive’ treatment programs as an alternative to imprisonment.\(^{42}\) The offender will undergo treatment for their addiction, and as a result of successfully completing the program, the impending charges will be dismissed.\(^{43}\) It is thought to be especially conducive for those who offend for the first time and are committed to early intervention.\(^{44}\)

### Drug Court Victoria (DCV)

Drug courts have been established in New South Wales, Queensland, South Australia, Victoria, and Western Australia. Its role is to transition drug offenders away from incarceration and towards a more rehabilitative and treatment-focused pathway.

---


\(^{40}\) ibid

\(^{41}\) ibid.


\(^{43}\) ibid.

\(^{44}\) ibid.
The Drug Court Victoria (DCV) has two stated objectives:
   1) to improve the health and well-being of participants, and
   2) to reduce the severity and frequency of reoffending.\textsuperscript{45}

**Jurisdiction**

Jurisdiction of the Drug Court Victoria (DCV) is provided under s 4A of the *Magistrates Court Act 1989* (Vic). It is a division of the Magistrates' Court of Victoria.\textsuperscript{46} The primary role of the DCV is to issue Drug Treatment Orders (DTOs) under ss 18X to 18ZT of the *Sentencing Act 1991* (Vic).

In Victoria, the Drug Court is located in Dandenong. In order for a matter to be heard by the Drug Court, the offender must plead guilty to the offence, and were it not for the DTO, he or she would otherwise receive an order of imprisonment.\textsuperscript{47}

One of the key limits of this service is that the Dandenong Drug Court is the only court in the state that may issue a drug treatment order. Consequently, the jurisdiction of the court is restricted to offenders eligible within a small geographical area of Victoria.\textsuperscript{48}

**Services**

The Drug Court describes the DTO as a:

...gaol sentence, which the defendant, called the participant, is able to serve in the community on the provision that participant complies with a judicially monitored, highly structured, tailored and supervised drug dependence recovery program.\textsuperscript{49}

The DTO is comprised of three phases:

- Phase 1 – stabilisation;
- Phase 2 – consolidation; and
- Phase 3 – reintegration.\textsuperscript{50}

Each phase contains different treatment requirements and expectations of the participant.
Drug Court Structure

- DCV Program Manager
- DCV Magistrate
- DCV Registrar
- DCV Project Officer
- Senior Case Manager and four Case Managers (employed by the Office of Corrections)
- Two Clinical Advisors
- Victoria Police representative
- Defence Lawyer
- Drug Court Homelessness Assistance Program – four housing officers (WAYYS Housing Office, Dandenong)

Operation

DCV occupies one courtroom four days a week at the Dandenong Magistrates’ Court. The Court features its own registry as well as its own separate building (to undertake assessments, drug testing, supervision appointments and a range of other participant programs) which is conveniently situated near the Courts.

If a drug treatment order is issued, the defendant must strictly comply with the conditions imposed. This includes frequent drug and alcohol tests, supervision, and ‘heavy guidance’ aiming for successful completion of the order.

DCV features a two-step program:

1) Suspension and treatment – which lasts for two years and is the core component of the program.
2) Custodial component – maximum imprisonment sentence of up to two years for offences committed, and will be suspended while the DTO is carried out by the defendant.

Process

1. Screening for eligibility by a DCV case manager.
2. Assessment – if accepted, an adjournment occurs so that the DCV can thoroughly assess the appropriateness of a DTO – detailed assessment reports are prepared, which includes:
   - Corrections report by DCV case manager outlining the facts, risk assessment of re-offending and suitability for the program;
   - Substance abuse and mental health history report by DCV clinical advisor outlining the capability of the offender to participate in the program.

---

51 Ibid.
52 Ibid 6.
53 Ibid.
54 Ibid 7.
55 Ibid 8.
56 Ibid.
57 Ibid.
58 Ibid.
3. Sentencing by the Magistrate with consideration of the two reports. In order for a DTO to be ordered, the defendant must be willing to participate.\textsuperscript{59}

4. There are rewards or sanctions given when the offender complies or breaches a condition of the DTO, respectively.\textsuperscript{60}

**Specialist Clinical Intervention for Ice**

Due to the increased prevalence and use of ice, the Drug Court has established ‘specialist clinical interventions’, which include frequent meetings, strategies for decreasing use, and personal clinical consultations if needed. Offenders who are a part of this program are also encouraged to participate in social activities within the community (i.e. employment, community groups, etc.) in order to create positive and supportive relationships.\textsuperscript{61}

**Independent Evaluation of the Drug Court**

DTOs have been found to be a cost-effective response to a multifaceted problem. In December 2014, KPMG issued the ‘Evaluation of the Drug Court of Victoria: Final Report – Magistrates’ Court of Victoria (18 December 2014)’, which found that overall, specialised courts dealing with drug offences are better resourced and suited to the rehabilitation of drug offenders.

Pertinent points include:

- *This type of court is seen to be effective through the issuing of DTOs to decrease or completely eradicate use of illicit substances. It provides an avenue that promotes rehabilitation and reduced recidivism, because of their function in addressing underlying motives for offending behaviour.*\textsuperscript{62}

- ‘The DCV continues to deliver positive outcomes for the community and participants, as evidenced by improvements in health and wellbeing for the participants, and a reduction in recidivism by those who complete the program.’\textsuperscript{63}

- ‘The DCV also offers a cost effective sentencing alternative, being considerably cheaper than an equivalent term of imprisonment, and in line with other therapeutic justice programs.’\textsuperscript{64}

- ‘[T]here is sufficient data currently available to determine that the DCV at Dandenong should continue in its current format, and that further serious consideration should be given to rolling out this service delivery model to other locations with high incidences of drug related crime.’\textsuperscript{65}

The LIV submits that it is imperative that drug treatment order’s (DTO) such as those available to the Drug Court in Dandenong, is expanded to address the spread of drug related offending currently facing the community. Such an order not only ensures that a punitive aspect is imposed as a condition to deter non-compliance, but it also provides treatment services for the rehabilitation of the drug addicted offender consequently reducing the potential for reoffending.

\textsuperscript{59} Ibid 8–9.
\textsuperscript{60} Ibid 12–13.
\textsuperscript{61} Ibid 15.
\textsuperscript{63} Ibid 7.
\textsuperscript{64} Ibid (7).
\textsuperscript{65} Ibid (7)
International Experience: the HOPE Program

The Hawaii Opportunity Probation with Enforcement (HOPE) program is a community supervision strategy for substance-abusing probationers. Its aims are to reduce drug use, recidivism, and incarceration. HOPE targets those who are on probation, and generally have long histories of drug use, and who are considered at high risk of failing probation or returning to prison.\(^{66}\) Similar to the Victorian Drug Court, the HOPE program begins with a hearing in front of a judge, who outlines their expectations of compliance with conditional treatment orders. A violation of probation conditions results in an immediate, but brief incarceration period.

HOPE was designed with a theoretical foundation that emphasises the use of ‘swift and certain sanctions’ when probationers fail to comply with those expectations, and elements of procedural justice that makes it clear to probationers that courtroom members (probation officers and supervising judges) want them to succeed’.\(^{67}\)

The HOPE program relies on its swift sanctioning process. If a probationers’ drug test is positive, they are arrested on the spot and taken to jail. If a probationer fails to appear for a drug test, a bench warrant is issued immediately and served by the police. A hearing on the motion is usually held within 72 hours of the filing, with a probationer confined in the interim.\(^{68}\)

Unlike the current Victorian Drug Court model discussed above, HOPE does not attempt to impose drug treatment on every probationer. Instead, it relies on a Behavioural Triage Model.\(^{69}\) Rather than require all probationers to receive drug treatment, an offender’s need for treatment is based on ‘observed behaviour signals’, such as positive drug tests, rather than self-reporting.\(^{70}\) Probationers are sentenced to drug treatment only if they continue to test positive for drug use or if they request a treatment referral.

\(^{66}\) Hawaii Opportunity Probation with Enforcement (HOPE)  [http://hopehawaii.net/](http://hopehawaii.net/)
\(^{67}\) ibid
\(^{68}\) ibid
\(^{70}\) ibid
LIV RECOMMENDATIONS

As outlined above, the LIV believes that investing in a multifaceted, treatment-based approach to deal with drug offenders will ultimately generate a greater return on investment than more traditional punitive approaches to sentencing. This approach is more likely to reduce recidivism rates and the associated costs to the community. We therefore make the following recommendations:

Recommendation 1

Expansion of the Drug Court into Melbourne CBD and regional hubs

As outlined above, Drug Court Victoria is a ‘multi-disciplinary and multi-departmental’ response to drug dependency and drug related crime, with an emphasis on the provision of therapeutic responses to addiction related offending.

It also provides a leading example of a cost effective response to treatment for drug related offending. As established by the KPMG review, DTO’s are considerably cheaper than an equivalent term of imprisonment, producing a 29% reduction in recidivism over two years, and a $50 million saving in prison costs for Corrections Victoria.

The report also found that DCV participants committed 90% fewer drug trafficking offences after a DTO, compared to a “control cohort” group released from prison after two years, who committed 71% more.

The LIV recommends that the Drug Court be expanded to the Melbourne CBD and to several key regional areas across Victoria. Based on the evidence from the KPMG evaluation, expansion of the Drug Court would produce significant state-wide benefits and downstream economic savings through reduced imprisonment and crime related costs.

Recommendation 2

Expansion of CISP into the County Court jurisdiction

As outlined above, CISP provides short term assistance before sentencing, for offenders with health, social and addiction related needs, working on the causes of offending through individualised case management. The program provides priority access to treatment and community support services in an attempt to reduce the likelihood of re-offending.

CISP is viewed as a key element in the process of therapeutic jurisprudence generating tangible outcomes for offenders in the form of better understanding of the issues that lie behind their offending, and undertaking effective responses to those problems.

71 Ibid (7)
72 Ibid (4)
73 Evaluation of the Court Integrated Services Program: Final Report
Recent reports have found that CISP has demonstrated that it is capable of managing offenders charged with more serious offences, thus raising the option of extending the program to the County Court. While more serious offenders make their way into the County Court either on bail or for sentencing, the case management information from CISP becomes relevant to County Court proceedings. It has been reported to the LIV that some County Court judges are aware of this and take these CISP case management histories into account when making their decisions.

At present, the rehabilitation, structure and support offered by CISP ceases when an accused is committed to the County Court, whether for trial or plea hearing. There is commonly a delay of several months before a plea is reached and often over a year before a trial date arrives. At a time when the benefits of CISP are perhaps most pertinent they are unable to continue.

The LIV therefore recommends that the CISP program be extended to the County Court.

**Recommendation 3**

**Better utilisation of the Residential Treatment conditions available on Community Corrections Orders**

Whilst CCOs can be structured to address the rehabilitation of an offender in addition to their punishment and supervision, there are limits on the accessibility of treatment programs. This is particularly so in relation to the residential treatment condition presently available as an option under s.48D(3)(c) of the *Sentencing Act 1991* (Vic).

Members report that the option to attach a residential treatment condition to a CCO is rarely, if ever, used due to the unavailability of placements at residential treatment facilities. For this vitally important condition to be effective as a sentencing alternative, more residential treatment facilities are required. Whilst this would incur additional funding at the outset, the ultimate savings to the community in the treatment of drug addition and the subsequent reduction in drug related crime, as well as financial savings of approximately $100,000.00 per year of imprisonment demonstrates the benefits of the initial outlay.

Once such treatment facilities are established, programs such as Odessey House and Windana would effectively become largely self-sufficient because welfare benefits paid to the individuals undergoing residential rehabilitation are instead paid directly to the facility to cover the cost of their accommodation and food.

The LIV therefore recommends that additional funding be immediately dedicated to the expansion of existing residential rehabilitation programs and the development of new ones so that s.48D(3)(c) of the *Sentencing Act 1991* (Vic) can be utilised.

---

24 Ibid (page 108)
**Recommendation 4**

**Fast tracking of CCO contravention hearings**

As outlined above, our members’ experience demonstrates that tailored case management models for addressing drug related offending is highly effective. However the nature of drug addiction can impact upon an offender’s capacity to comply with the conditions imposed on a CCO. This may result in missed or late attendances at appointments for supervision, rehabilitation and community work. It may also be some time into an order before the benefits of the rehabilitative components take effect to reduce or cease illicit drug use.

The legislation in its current form allows for a charge of CCO contravention to be brought, punishable by a term of up to 3 months imprisonment. In circumstances of repeated non-compliance and/or lower level additional offending, the benefits of the CCO should be permitted to continue until they can have an opportunity to achieve the desired outcome of rehabilitation in addition to their punitive components.

In a manner similar to the way the HOPE program operates, these contraventions could proceed to court with a short ‘sanction’ of up to 10 days to be imposed where appropriate, without the CCO itself being cancelled. Following completion of the short sanction, the CCO can continue. This can be repeated for continued non-compliance until the conditions are complied with and the benefits of the order can take effect. The total number of sanctions served could be taken into account in the event that the CCO is ultimately contravened to the point of requiring cancellation and re-sentencing. This would ensure that the offender does not ultimately serve longer in custody (as a result of sanctions) than would otherwise be required for the original offence.

Given the nature of this recommendation, the use of sanctions should be reserved for the ‘higher end’ CCOs that have been imposed as an alternative to imprisonment. To create this distinction, the abovementioned alternative of sanctions could be attached as a condition at the time of sentencing to ensure they are not invoked for the ‘lower end’ CCOs that are imposed for offences that would not ordinarily carry a term of imprisonment.

Such a condition could also be used in conjunction with the judicial monitoring condition in appropriate cases so as to give the sentencer the option of ordering short sanctions to be imposed at judicial monitoring hearings where orders are not being complied with. This would again enable the CCO to continue following completion of the short sanction.

These dispositions would only be effective if contravention and judicial monitoring hearings take place as soon as possible after the non-compliant behaviour. The longer the gap, the less effective the use of sanctions will be as the subject of the order may have either returned to compliant behaviour, or at the other extreme, completely relapsed into drug abuse and related offending.

The LIV submits that there should be a trial of the fast-tracking of CCO contravention hearings at the Dandenong Magistrates’ Court, with short, swift sanctions for non-compliance and minor
further offence contraventions, followed by a return to the order (adopting the HOPE approach as outlined above).

We also suggest that there may be scope to consider expanding this model into the parole system.

**Recommendation 5**

**The development of Drug Treatment Units at existing prisons and the creation of secure treatment facilities**

LIV members report that longer term residential rehabilitation programs tend to be the most successful in the treatment of drug addiction and the consequent reduction of drug related offending.

As expressed above, there is an obvious short-fall in the number of affordable placements for the treatment of those addicted to drugs. Private treatment facilities are often well beyond the financial reach of those who need them most. Those that are affordable are so limited in number that the length of delay in obtaining a placement makes them virtually unavailable to the majority of those seeking residential treatment.

Also, as detailed in the Ombudsman’s report, there are serious limitations on the drug rehabilitation available to those in custody – whether on remand or undergoing sentence.

The LIV recommends the development of specialised Drug Treatment Units at existing prisons and the expansion of centres like the Judy Lazarus Transition Centre to focus on relapse prevention rehabilitation, drug education and transition back into the community for those undergoing sentence.

This should also include the development of a centre like the Judy Lazarus Transition Centre for women.

These facilities could incorporate weekend and early release as incentives or rewards. Drug Units within the prison system could also permit early parole for those undergoing sentence, with a return to custody for short ‘sanction’ periods in the event of non-compliance.

This should be coupled with the development of Secure Treatment facilities for those not yet sentenced, or who are sentenced to a penalty other than imprisonment, who wish to address their addictions by way of affordable residential treatment.
CONCLUSION

A recent media report\textsuperscript{76} highlighted the need for greater funding for drug-rehabilitation services after a prisoner asked to stay in jail because she feared she would resume using heroin and ice once out of custody. A County Court Judge stated that it was unfortunate the prisoner had served part of her jail term, at her own request, as she waited for support to become available. He stated: “It is a sad reflection on our community that persons such as you, addicted to heroin and ice, have to wait in prison for a bed to become available in places such as Odyssey House.”\textsuperscript{77}

As outlined in this submission, there is a strong evidence base to demonstrate that a multifaceted, treatment-based approach is far more effective in reducing recidivism than traditional punitive sentencing practices. Further, a multifaceted approach is likely to generate a greater return on investment. Ultimately, the LIV submits that such an approach would contribute to a safer community.

The LIV strongly submits that it is vital for the criminal justice system to review current sentencing options for drug related offending. Our submissions are based on experiences of experienced practitioners directly working with drug offenders in the Victorian community.

The LIV would be pleased to participate in any ongoing work proposed by the government in addressing these issues.

\textsuperscript{76} A Cooper, Judge calls for more drug funding as addict asks to stay in jail, The Age (20 Oct 2015) \url{http://www.theage.com.au/victoria/judge-demands-more-drug-funding-as-addict-asks-to-stay-in-jail-}

\textsuperscript{77} ibid