



Victorian Aboriginal Legal Service Co-operative Ltd.

Head Office:
6 Alexandra Parade,
P.O. Box 218
Fitzroy, Victoria 3065
Phone: (03) 9419 3888 (24 Hrs)
Fax: (03) 9419 6024
Toll Free: 1800 064 865

**Submission to Victorian Government
Drug Policy Expert Committee
Level 9 , 589 Collins Street
MELBOURNE 3000**

SUBMISSION FROM THE VICTORIAN ABORIGINAL LEGAL SERVICE

Note: This submission has not been endorsed by the Board of Directors, hence it does not necessarily represent Victorian Aboriginal Legal Service policy.

Introduction

The Victorian Aboriginal legal Service is a member of the Federation of Community Legal Services and has contributed to the Federation submission to the Drug Policy Expert Committee. A copy of the recommendations from the Federation are attached as an appendix. This report provides some additional information that relates to Koori community needs.

The Victorian Aboriginal Legal Service has a staff of approximately thirty and provides a state wide service to Koori people. The Service is managed by a Koori Board of Directors. The Service opened over six thousand five hundred files in 1999. The majority of these are criminal matters but family and civil matters are also dealt with.

Drugs and the Criminal Justice System

The extent of the influence of drugs on people becoming involved in the criminal justice system is difficult to quantify exactly. In addition to drug offences, there are a range of other offences that are drug related. The Service's Legal Practice Executive Officer estimates that close to 100% of armed robbery charges that relate to Kooris are drug related. A lower but still significant proportion of other property related offences are drug related. Drugs are also a factor in some intervention order and family law matters.

Lower prices for drugs such as Heroin have contributed to increased use of illicit drugs. Government policies to increase sentences, reduce discretion for magistrates and judges in sentencing and lack of funds for community corrections and drug treatment programs have contributed to increased numbers of Koori people being jailed.

Indigenous Communities

The location of Koori Communities across Victoria means that there is a need for Koori services across Victoria.

There are a number of myths about Aboriginal communities and drugs. Saggars and Gray(1998) highlight the lack of factual basis to many of these. They point out that there are higher proportions of Aboriginal people who never drink or rarely drink than in the non

indigenous community. Nevertheless there is a percentage of Aboriginal people whose level of use of licit and illicit drugs is such as to cause harm to themselves and their family and community. The consumption patterns of this group gives rise to the over representation of indigenous people in health and legal problems related to drugs.

The causes of indigenous people becoming addicted to illicit and licit drugs are complex. Saggars and Gray(1998), in their international study of Indigenous people, "Dealing with Alcohol" , argue that in addition to socio-economic factors the dislocation of culture associated with foreign invasion is an additional and significant factor.

The importance of culture highlights the importance of Koori specific services and the need for cultural appropriateness of main stream services.

Critiques of the United States Approach

An increased policing and longer sentences approach, as has been used in the United States, does not appear to have lessened the illicit drug problems in that country. The imprisonment rate in the United States is approximately five times the rate in Australia and those imprisoned include a disproportionate number of poor and minority groups. There is a strong risk that the existing over representation of Koori people in prison would worsen if steps to copy American policies of control were to continue. There is no evidence to suggest the prevalence of illicit drug problems would be reduced by continuing or increasing control measures.

There are a range of critiques of American policies in relation to drug policies. Michael Massing (1998) in his book, *The Fix*, argues persuasively that the United States has pursued a "supply side" or control strategy to the detriment of a "demand side" treatment oriented approach. Massing advocates a return to the Nixon administration approach to the 1969 heroin epidemic. The Nixon approach identified that the real problem "was not casual drug users but hard core ones... that many of the users wanted help and that it was the government's responsibility to provide it in affordable, accessible and effective treatment".

The glamour of the New York "Broken Windows", high level policing policies is tarnished by the reality. Low level street crime has dropped and there has been a levelling off in the Crack market but the drug problems in New York are now simply better hidden. In 1997 the State's prison population, swollen by drug arrests, reached 70,000.

The Sentencing System

It is vital to reinstate a degree of flexibility to enable magistrates to consider the circumstances of breaches of community based orders.

Diversion needs to be a higher priority in sentencing policy. For a range of reasons, the existing diversion programs are not being accessed by Koori people. It is vital that, in

pursuing greater diversion options for drug and drug related offences, the specific needs of Koori people are considered and acted upon.

Policing

Decriminalisation of offences involving small quantities of illicit drugs would reduce police time spent on an ineffective policing activity.

Treatment and Programs

The Victorian Aboriginal Legal Service have an average of four clients a week who require some form of treatment, or rehabilitation. The low level of service availability means that there is usually only one successful referral a month.. This highlights the potential for diversion and prevention that exists at the criminal justice level.

There already exist Koori specific drug treatment services and in the country areas these frequently rely on volunteers. The level at which these services are funded and the clarity and cohesion of government policy in this area are clearly inadequate. In addition to Koori specific services mainstream services must continue to enhance their ability to provide culturally appropriate services. Increased expenditure on a range of treatment and rehabilitation programs is a necessity.

There appears to be clear evidence that heroin trials have produced positive results in some overseas countries. In spite of the controversy, these options appear to contribute at the least to a reduction in crime but also to a proportion of people "kicking the habit". They may in many senses be "treatment". Trials in Victoria should be pursued along with an expanded range of treatment and rehabilitation options.

The Service System

Feedback from Koori service providers suggests that there is considerable scope to improve the allocation of responsibilities at an intra and inter departmental level, clarify policy objectives and reduce the inflexibility created by having to deal with the different agendas of several departmental regions. "Border wars" between drug and mental health services is another symptom of policy challenges.

Conclusion

The Royal Commission into Aboriginal Deaths in custody made a wide range of recommendations which encompassed the need to improve social and economic conditions such as health, housing and employment if significant change to the level of deaths is to occur. The issue of drug policy again raises the issue of the extent to which the governments are prepared to commit in, policy and resource terms, to prevention.

Summary

The submission argues that drug related crime is a significant factor in the level of aboriginal imprisonment rates. Resources need to be shifted to the area of Treatment and Rehabilitation and away from "control".

It is strongly recommended that Koori communities have special needs and specific services need to be enhanced via increased funding, a state wide capacity and reduced bureaucratic hurdles and fragmentation. Culturally appropriate mainstream services are also required.

A whole of government approach would embrace harm minimisation and include diversion programs, an increase in flexibility for magistrates to enable a harm minimisation approach to be achieved and improved services to prisoners and exiting prisoners.

Attachment One

This attachment contains a list of the recommendations put forward in the Federation of Community Legal Centres submission to the Drug Expert Committee.

Summary of Key Recommendations

Key Recommendation 1

The Federation strongly supports the establishment of a number of Safe Injecting Facilities located in areas of high illicit drug use in Victoria.

Key Recommendation 2

The Federation recommends that the establishment of SIF be done in conjunction with communities, and after careful consideration of issues of accessibility, management, evaluation and legal liability.

The Federation also recommends that access to SIF should **not** be limited to those aged over 18 years.

Key Recommendation 3

The Federation recommends that the offences of use and possession of small quantities of cannabis, heroin, ecstasy, amphetamines and cocaine be repealed.

Key Recommendation 4

The Federation recommends that Police be made accountable for the exercise of their discretion to charge or not to charge young people with minor offences, including those related to drug use.

Furthermore the Federation urges the Committee to consider implementation of the recommendations of *Seen and Heard*, the Inquiry into Children and the Legal Process, with regard police powers, with a view to improving the relationship between police and young people in areas of high drug use.

Key Recommendation 5

The Federation supports the recommendation of the Parallel Programs in Courts Status Report, August 1999, that the parallel program trialed at Broadmeadows and Mildura Magistrates' Courts with the cooperation of the Police, be adopted Statewide, addressing the user concerns indicated on page 7 of that report by undergoing the processes outlined on page 8 of that report.

Key Recommendation 6

The Federation recommends that Sentencing Laws be amended so that for young people under 25 years, rehabilitation is the main objective for the Courts and community based treatment dispositions are the primary focus of sentencing, with imprisonment only the sentence of absolute last resort.

The Federation also recommends that the 1997 amendments to sections 18W, 26 and 31 of the *Sentencing Act* 1991 (Vic) should be repealed, so as to reinstate judicial discretion in sentencing for breaches of community based dispositions.

Key Recommendation 7

The Federation strongly argues that funding should be redirected from the incarceration of drug offenders to the administration of community based rehabilitation services, that all courts be resourced with juvenile justice liaison officers and that the innovative sentencing options such as CREDIT be expanded into statewide services.

Key Recommendation 8

The Federation recommends that before any further consideration is given to establishing a Drug Court in Victoria, a significant increase be made to funding for drug treatment and support services and that alternative measures such as CREDIT and Juvenile Justice Liaison Officers be expanded and further evaluated.

Key Recommendation 9

The Federation strongly supports a significant increase in funding for drug treatment services, such that the range, capacity and quality of community based and residential treatment services, both detoxification and long term rehabilitation, is significantly expanded from current levels.

Key Recommendation 10

The Federation supports drug education for young people in schools and in the community that provides balanced, accurate and up to date information about drug taking, its effects and the risks involved.

Key Recommendation 11

The Federation recommends that needle and syringe programs should be increased in number, capacity and quality, including the provision of sharp bins in high schools and other public facilities.

Key Recommendation 12

The Federation recommends that action be taken to implement the objectives of the Australian Committee for Medical Cannabis, namely to keep patients who use cannabis for legitimate medical purposes outside the criminal justice system and to develop and promote Australian research into the medical cannabis area.