

ADCA is reviewing its policy positions which were first published in 2003. While the principles behind ADCA's policy positions remain extant, the supporting statistics and references now need to be updated. For information on the policy updates, please contact Brian Flanagan, ADCA's Strategic Communications and Policy Officer, on 02 6281 0686 or brian.flanagan@adca.org.au

2.10 Diversion

Summary

Many people come into contact with the criminal justice system as a result of their use of alcohol or illicit drugs. It is estimated that as many as 80% of prisoners are in custody for drug related offences. Governments have recognised the need to divert drug users from the criminal justice system to drug treatment and education agencies, but there remains a need for a national approach to the training and recruitment of alcohol and other drug workers which specifically addresses the treatment of people diverted from the criminal justice system. Additionally, further research is required into the nature of diversion participants and their needs in order to facilitate the engagement of this population. ADCA notes the outcomes of the 2002 evaluation of the national Illicit Drug Diversion Initiative and hopes that they will be used to inform the future development of diversionary measures in Australia. In this way more drug-using offenders may benefit from diversion out of the criminal justice system and into appropriate helping services.

Background

In a 1998 study of sentenced prisoners in New South Wales (NSW), 84% of males stated that the offences for which they were imprisoned were related to alcohol and/or other drugs and about a half stated that more than one drug was involved. Most of the female prisoners involved in the study identified heroin use as a cause of their incarceration (Kevin 2000).

Monitoring of people arrested by the police in seven sites across four Australian states shows high levels of drug use amongst detainees. Of the detainees who agreed to be interviewed in 2002, 54% reported paying cash for cannabis, cocaine, heroin or amphetamines in the last 30 days. Further, when adult male detainees were screened for the use of amphetamines, benzodiazepines, cannabis, cocaine, methadone and opiates, significant percentages, across a range of offence types, tested positive to any drug. This included:

- 84% of those detained on a drug offence
- 78% of those detained for an outstanding warrant or breach of an existing order
- 81% of those detained for property offences
- 71% of those detained for a traffic offence

- 67% of those detained for a violent offence
- 69% of those detained on a disorder offence
- 50% of those detained for a drink driving offence (Makkai & McGregor 2003).

These data confirm that a very large proportion of people in contact with the

criminal justice system use alcohol and/or other drugs. This raises a very significant question as to the appropriateness and utility of treating these people simply as offenders, rather than as people with health needs that are related to their criminal behaviour. Similarly, many people have questioned the degree to which criminal sanctions for drug use actually reduce crime and other drug related harm in the broader community. Receiving a criminal record or being imprisoned clearly has a negative impact on the lives of offenders and their families and does not address the issues that initially lead to offenders' problematic drug use.

In this context, programs to divert alcohol and drug offenders from the criminal justice system into treatment and other helping services have been established in Australia and overseas. Many different types of diversion programs exist targeting drug-using offenders at all stages of the criminal justice process, based on the principles of therapeutic jurisprudence; that is 'the study of the role of law as a therapeutic agent' (Winick 1997). They also reflect research evidence on the outcomes of coercing offenders into alcohol and other drug abuse intervention programs. As one reviewer concluded:

The evidence, which is primarily from the USA, gives qualified support for some kinds of legally coerced drug treatment, provided that these programs are well resourced, carefully implemented and their performance is monitored to ensure that they provide a humane and effective alternative to imprisonment (Hall 1997).

That said, serious ethical issues exist in respect of legal coercion into treatment so strong mechanisms to protect individual rights need to be in place.

Australian approaches

Diversion has been practised both formally and informally for many years in Australia (McKey 1999). There are currently diversion programs for drug offenders being run in every state and territory for cannabis and other drug offences. These programs operate at various stages of the criminal justice system, from the pre-arrest stage right through to the post-imprisonment stage.

Every state and territory allows for the provision of bail from police watch houses for offenders; informal cautions; and formal cautions for juvenile offenders (McKey 1999). A 2001 review of criminal laws against public drunkenness in Victoria noted that all jurisdictions except Victoria, Queensland and Tasmania have decriminalised public drunkenness (Drugs and Crime Prevention Committee 2001). Midford (1993) reports that in the jurisdictions where being drunk in public is no longer an offence, procedures have been established for intoxicated people to be apprehended without arrest and cared for in sobering up shelters or similar facilities.

A number of diversionary approaches have been developed, trialled and established in the various Australian jurisdictions during the 1990s. Among the most prominent were the Victoria Police Cannabis Cautioning Program, which commenced in 1997, and the Victorian Drug Diversion Pilot Program which

commenced the following year. Both programs involved police officers cautioning certain categories of offenders (rather than charging them with drug or other offences) and referring them to drug treatment services. The pilots received strong support from the members of Victoria Police and from the treatment agencies owing to their focus on harm minimisation (McLeod & Stewart 1999) and are believed to have helped shape the national Illicit Drug Diversion Initiative.

Drug courts have been established in NSW and elsewhere with the aim of reducing the level of criminal activity that is linked to drug use and dependency. They endeavour to achieve this by diverting drug-dependent offenders into programs designed to reduce or eliminate their problematic drug use. The drug courts in NSW were established as trials and were carefully evaluated over a three-year period. The evaluators reached the following conclusion:

Despite the high drop-out rate (about 40%) the NSW Drug Court program has proved more cost-effective than imprisonment in reducing the number of drug offences and equally cost-effective in delaying the onset of further offending (NSW Bureau of Crime Statistics and Research 2002).

An important learning, certainly in the NSW drug courts, has been how well people with severe problems can be helped by a well structured and supported program, albeit combined with coercion. Some other Australian jurisdictions are now implementing various types of drug courts reflecting local needs and opportunities.

All jurisdictions are implementing diversionary programs under Australia's Illicit Drug Diversion Initiative. This initiative, which was endorsed by the Council of Australian Governments (COAG) in May 1999 and is discussed in more detail below, aims to result in:

- people being given early incentives to address their drug use, in many cases before incurring a criminal record
- an increase in the number of illicit drug users diverted into drug education, assessment and treatment
- a reduction in the number of people appearing before the courts for the use or possession of small amounts of illicit drugs (Ministerial Council on Drug Strategy 1999).

Good practice strategies for harm reduction

Offending drug users' contact with the criminal justice system provides an ideal opportunity for intervention. Diversion programs are based on the beliefs that:

- we should have concern for the welfare of drug users who come into contact with the criminal justice system
- when there is a significant crisis in an individual's life (such as job loss,

divorce or contact with the criminal justice system) it is an opportune time to intervene to address drug taking behaviour.

This point of contact provides an opportunity for programs to positively intervene in the lives of offending drug users rather than simply punishing them for their behaviour (Siegal & Cole 1993).

Diversion programs in Australia range from well developed and documented schemes supported by legislation through to informal, local arrangements between police, alcohol and drug workers and the courts. Diversion programs may utilise a range of intervention points including:

- when police first make contact with the drug offender
- when charges are laid
- at the time of the first court appearance
- at the time of sentencing
- when leaving a correctional facility.

The offenders targeted by diversion programs generally include those facing use and possession charges; those whose use has led to property offences while intoxicated; and those who have committed offences in order to support a drug taking habit (Alcohol and other Drugs Council of Australia 1997).

In the period 1994 to 1999, ADCA conducted a national diversion project which involved extensive research and consultation (see Alcohol and other Drugs Council of Australia 1996, 1997, 1999; Quinlan 1994). As part of that process, a number of informing principles for best practice in the diversion of drug offenders were identified and disseminated. They were summarised in the evaluation report of the Victorian Drug Diversion Pilot Program as follows:

- shared philosophical principles of harm reduction within a social view of health
- a range of options for different types of offences and levels of drug use
- coherent legislation across different jurisdictions
- planning that includes the major stakeholders
- clear and ongoing communication among stakeholders
- information about the program
- clear definition of roles within the program
- a client charter that guarantees procedural fairness and the right to choose between the diversion program or the criminal justice system
- a program that is accessible and available to people regardless of their background, age, gender, geographic location and main substance used
- follow-up of those clients who need additional support services
- training for those people administering the program

- sufficient funding for the program on a three-year cycle
- evaluation of the program to ensure it is meeting its objectives (McLeod & Stewart 1999).

These principles were used as evaluation criteria for the Victoria Police diversion programs (McLeod & Stewart 1999) and also in ADCA's lobbying for the establishment of the national Illicit Drug Diversion Initiative.

Illicit Drug Diversion Initiative

Diversion has received a much greater focus in recent years with the decision by COAG in May 1999 to establish a national approach to diversion as part of the National Illicit Drug Strategy. The Illicit Drug Diversion Initiative has been implemented throughout Australia, with a national evaluation and monitoring strategy being administered by the Commonwealth Department of Finance and Administration (see Commonwealth Department of Health and Ageing 2001).

The Commonwealth Government initially allocated \$111 million over four years to 30 June 2003 to support the development and implementation of the national initiative. Its rollout has occurred at various times since 2000 in different parts of Australia. A second phase of the initiative was announced in December 2002 with additional funding of \$215 million committed over a further four years to assist minor offenders to address their drug use.

Although the approach varies between jurisdictions, generally the measures funded under the initiative have the following features:

- offenders are diverted by police to an assessment facility to ascertain their needs for drug education or treatment or, in some jurisdictions, are diverted directly to drug education programs
- offenders' offences are expiated (no criminal conviction is recorded) if they participate fully in the specified drug education or treatment program. Those who fail to participate fully are redirected to the criminal justice process.

Offenders are eligible for diversion if they meet the following minimum criteria:

- sufficient admissible evidence of the offence
- admission to the offence
- use and or possession of illicit drugs (jurisdictions may decide to go beyond this minimum level of drug offence). The diversion program will apply to all illicit drugs and such other drugs and drug use as may be agreed bilaterally, for example, the illicit use of licit drugs such as the abuse of benzodiazepines
- no history of violence. Offenders with a violent history will not be part of the target group, however, there may be situations where this is not appropriate, such as where the history of violence is very much in the past

- informed consent by the offender to diversion (Commonwealth Department of Health and Ageing 2001b).

Numerous concerns have been raised by stakeholders regarding the national diversion initiative. Anecdotal information from agencies around Australia indicates that diversion measures are impacting adversely on Indigenous people. More specifically, it has been suggested that the diversion of Indigenous people is problematic in the absence of culturally appropriate treatment facilities. This issue is discussed in more detail below.

The implementation of diversion measures has highlighted the severe shortage of trained staff in the alcohol and other drugs sector. The Commonwealth Government should give priority to the development of a national approach to the recruitment and training of alcohol and other drug workers which includes training in treating people diverted from the criminal justice system. Training issues are addressed further in the ADCA policy paper on the alcohol and other drugs workforce.

There is also a need to provide magistrates, judges and court officials with current and accurate information regarding the services provided by alcohol and other drug agencies and the evidence regarding effective treatment interventions. This will enable individuals to be referred to the type of treatment that is most appropriate to their needs.

An evaluation of the COAG initiatives on illicit drugs, of which the diversion initiative is the centrepiece, was completed in October 2002, although the evaluation report was not made available to ADCA until July 2003. The key purpose of the evaluation was to inform future policy directions by advising on the effectiveness of the package in:

- helping to stop the growth in drug use
- preventing the uptake of illicit drugs by new users
- reducing harm to individuals and the related cost to the community.

The evaluation also sought to advise on the effectiveness of the individual initiatives in achieving their stated objectives (Health Outcomes International 2002).

In delivering their report the evaluators highlighted that the commencement of many of the individual measures comprising the COAG package had experienced considerable delays. While some measures were therefore in their infancy, others were still being implemented or were yet to be rolled out. They concluded that this short history of the COAG initiatives as well as the lack of a consistent and nation-wide evidence base limited their capacity to identify and quantify the effectiveness of many of the proposed programs. Despite these limitations, the researchers identified a number of indicators which suggest that the initiatives are worthwhile and that there is considerable support for their continuation (Health Outcomes International 2002).

Overview of the evaluation of diversion measures

In respect of the diversion component of the COAG initiatives, the researchers again highlighted the infancy of the initiative and the limited data available. They were therefore unable to identify groups that were not well-reached or well-served by diversion interventions nor were they able to report on the specific impacts and outcomes of diversion programs on those that did participate. The researchers believe that in this context the evaluation may have been premature and that it was certainly restricted in its capacity to draw meaningful conclusions. Despite these problems the researchers made many important observations about the initiative. These culminated in a number of useful recommendations which ADCA urges governments to consider in the context of the second phase of the initiative (Health Outcomes International 2002).

While placing significant caveats on the data that they were able to gather, the researchers reported nearly 20 000 referrals to diversion between the announcement of the initiative in 1999 and 31 March 2002. These rates are generally about one third of the original projections across virtually all jurisdictions. Police diversion accounted for approximately 90% of all diversions (noting that some jurisdictions do not have court diversion programs) and cannabis was by far the most common drug for which diversions were made. Males participated in diversion more often than females by a ratio of 3:1 and the average age of participants was the mid to late twenties. The researchers noted that compliance with the requirements of the diversion process appeared to reduce as the intensity and duration of the intervention increased (Health Outcomes International 2002).

Identification and assessment of the effects of diversion on offenders was limited due to the lack of a national data collection that would support such analysis. However, the researchers noted that a study of the impact of diversion on a small sample of participants in two states shows that diversion has a positive impact on some clients. The study also provides some evidence of reduced drug use and criminal behaviour which can be attributed to the program. Further, it appears that service providers are generally supportive of the initiative and that it is gaining greater acceptance by police and other criminal justice personnel. The researchers concluded that a considerable investment in diversion has been made by all jurisdictions at many levels. This investment, along with the momentum that has been generated, provides a sound foundation for the further development and expansion of the initiative. The results of the evaluation were seen to be consistent with the international experience of similar programs (Health Outcomes International 2002).

Acceptance, communication and collaboration

The evaluation researchers recognised that for diversion programs to be effective it is vital that police and magistrates accept that the diversion of offenders is worthwhile and commensurate with their roles. They highlighted that gaining such acceptance requires both organisational and cultural change and is therefore neither a simple nor rapid process. While the researchers

reported increased acceptance of the value of diversion over time, they noted the need for ongoing training and reinforcement among new and existing police officers and court personnel, along with the establishment of mechanisms for feedback. They also noted that drug diversion procedures need to be made as straightforward as possible and, wherever feasible, easier than the alternative of referral to court (Health Outcomes International 2002).

Another essential component of an effective diversion system that was identified by the researchers is communication between treatment service providers and police. While noting an increase in such communication since the implementation of the diversion initiative, they identified a need for ongoing interaction on a systemic and regular basis (Health Outcomes International 2002).

On a broader level, the implementation of the initiative has generated a greater sense of collaboration, cooperation and partnership between the Commonwealth and the states and territories. Increased levels of communication and planning across portfolios at both the federal and state/territory levels were also identified (Health Outcomes International 2002).

Impact on treatment services

An unintended outcome of the diversion initiative appears to be an increase in treatment services provided to voluntary clients. This resulted from the increased capacity of treatment services being underutilised by diversion participants due to the low number of diversion referrals to date. While ADCA is pleased that voluntary clients were able to make use of the additional treatment places, there is concern about the effect that a future increase in the number of diverted offenders may have on this situation. Conversely, as noted by the researchers, some service providers are concerned about the future of their funding if referrals remain below expected levels (Health Outcomes International 2002).

Issues for further investigation

One of the findings of the evaluation which requires urgent further investigation is that the diversion initiative may not be engaging illicit drug users early in their drug-taking career as intended. It seems that many participants in diversion programs – at least those that involve a treatment component – are both older and more advanced in their drug use and criminal activity than envisaged when the initiative was announced. The researchers note that this trend has a number of implications including a clear need to rethink and understand the nature of the population participating in the programs as well as the need to research the nature and effectiveness of the diversion interventions being offered. The researchers suggest that it would be useful to consider what other forms of early intervention might be required to engage people early in their drug use and note that such measures may not necessarily rely on the justice system (Health Outcomes International 2002).

Another area which the researchers believe warrants further investigation is the development of approaches that both encourage and facilitate the participation of diversion clients in voluntary treatment following the completion of their mandated program. Recognising the well documented evidence that the effectiveness of treatment is closely associated with retention in appropriate programs, the researchers suggested that consideration should be given to providing funding for programs that support the transition of participants from diversionary to voluntary programs (Health Outcomes International 2002).

National diversion minimum data set

The implementation of a diversion national minimum data set was a key component of the COAG initiative. However, due to considerable difficulties in establishment and data collection, no unit record data was provided to the evaluators and this significantly impeded their capacity to report on the effectiveness of the initiative. The researchers report that a routine national collection of a robust data set is essential to the future monitoring and evaluation of diversionary programs in Australia. They strongly recommend that the development and implementation of the national minimum data set be expedited as a matter of urgency and that consideration be given to the outsourcing of both implementation of the data set as well as the ongoing collection and reporting functions (Health Outcomes International 2002).

Future monitoring and evaluation

The outcomes of the diversion evaluation serve to emphasise yet again the need for ongoing monitoring and evaluation strategies to be included in programs at their outset. Such strategies must include the development of appropriate data gathering mechanisms which are implemented at the inception of the program and are well resourced throughout its duration.

In the case of the diversion initiative considerable work still needs to be done to institute a formal program of research and evaluation including the development and ongoing collection of a national minimum data set for diversion (Health Outcomes International 2002). ADCA believes that such a program must form part of the next phase of the diversion initiative and should provide information on the effectiveness of the initiative and its impacts including:

- the outcomes for offenders diverted compared with those not diverted
- whether the initiative is engaging targeted populations
- any unintended consequences of the implementation of diversion measures
- cost effectiveness compared with other approaches
- impact on population groups such as Indigenous Australians
- ways to expand the initiative to make it available to currently ineligible offenders.

Diversion of Indigenous people

A study has been commissioned by the Commonwealth Department of Health and Ageing to investigate the effectiveness of the national diversion initiative among Indigenous communities. An interim report of findings indicates that the level of awareness of the initiative among Indigenous people and agencies is low and that current diversion models are not well suited to Indigenous people. The interim report recommends the incorporation of alternative, culturally appropriate approaches to both diversion criteria and treatment services in order to engage Indigenous clients (reported in Health Outcomes International 2002). At the time of writing ADCA understands that the final report of the study has been provided to the Commonwealth and hopes that the findings will be used to modify the second phase of the national diversion initiative to help it better meet the needs of Indigenous people.

The interim findings of the study commissioned by the Commonwealth are supported by a recent report published by the Australian National Council on Drugs (ANCD) (Siggins Miller Consultants 2003). The report identifies a number of problems with the diversion of Indigenous youth from the criminal justice system. These include a lack of adequately resourced diversionary options, problems with police control over access to diversion options and a failure to adequately involve Indigenous communities in planning and implementing diversionary programs. The authors note that while alcohol and other drugs often contribute to offending behaviour, drug offences per se are not common (Siggins Miller Consultants 2003).

The researchers advocate for the development of a greater number and range of culturally appropriate diversion options that specifically target Indigenous youth in areas of high need. Where the numbers of young offenders may not warrant such specific programs, the researchers recommend increased capacity to assist Indigenous young people in mainstream diversion programs. Ideally such programs should be community-based and involve Indigenous people, families and communities. Increased education for police and magistrates about diversion options for Indigenous juveniles is encouraged as are treatment services that address multiple risk and protective factors (Siggins Miller Consultants 2003).

Second phase of the Illicit Drug Diversion Initiative

ADCA believes that diversion out of the criminal justice system of offenders who might benefit from drug education or treatment should remain an integral component of the National Drug Strategy. It is essential that the results of the 2002 evaluation of the Illicit Drug Diversion Initiative are used to inform the future development of diversion measures in Australia so that they reflect the best available evidence.

Although it is not explicitly addressed in the evaluation of the program, ADCA believes that eligibility for diversion in respect of alcohol and other drug offences under the Illicit Drug Diversion Initiative should be expanded to include people with a prior history of offending and people arrested for violence

offences. While not suggesting that violence offences in themselves should be expiated, ADCA believes that diversion to treatment should be included in the options available to criminal justice personnel when dealing with people who have committed alcohol and other drug offences in conjunction with violent offences. Certainly the drug treatment and education needs of violent offenders and those with a history of offending are no less than those of other offenders. The ANCD report addressing diversion of Indigenous youth suggests that such an expansion of eligibility may assist in the engagement of Indigenous people in diversion programs. The authors of the report recommended:

Policies that exclude juvenile offenders from diversion programs on the basis of prior convictions should be revised to increase the availability of diversion to Aboriginal and Torres Strait Islander young people (Siggins Miller Consultants 2003).

While ADCA remains strongly supportive of the implementation and expansion of the national Illicit Drug Diversion Initiative, it must be viewed as one of a range of effective strategies to reduce the demand for alcohol and other drugs and therefore not funded to the exclusion of other high priority issues. Information from alcohol and other drug treatment services and from NGO representatives on state reference groups for the Illicit Drug Diversion Initiative indicates that many state and territory governments have been slow to implement the initiative and that the original allocation of \$111 million has yet to be fully expended. This is supported by the outcomes of the evaluation of the COAG measures. In light of this, ADCA believes that some of the additional \$215 million for diversion announced by the Prime Minister in December 2002 would be better allocated to address other key issues such as the development of effective prevention initiatives; treatment approaches for amphetamine-type substances; workforce development; and strategies to address alcohol use and harm.

ADCA policy recommendations

ADCA recommends that:

- the federal government work with state and territory governments in developing a national approach to the training and recruitment of alcohol and other drug workers which specifically addresses the treatment of people diverted from the criminal justice system
- the findings of recent reports addressing diversion of Indigenous people be used to inform the development and enhancement of diversionary measures, including those under the second phase of the national diversion initiative, to ensure that they better meets the needs of Indigenous people
- in line with the outcomes of the evaluation of COAG initiatives on illicit drugs, further research be conducted into the nature of diversion participants and their needs as well as the examination of other forms of interventions that may be needed to engage people early in their drug use

- governments examine mechanisms for providing current and accurate information to court officials regarding the effectiveness of alcohol and other drug treatments and the services provided by alcohol and other drug agencies
- a comprehensive and appropriately resourced monitoring and evaluation strategy be developed and built into the second phase of the Illicit Drug Diversion Initiative to provide information on its effectiveness and impacts. In line with the outcomes of the evaluation of COAG initiatives on illicit drugs, this strategy must include the finalisation and routine collection of a national diversion minimum data set
- eligibility for diversion in respect of alcohol and other drug offences be expanded in the next phase of the national diversion initiative to include people with a prior history of offending and people arrested for violence offences
- consideration be given to reallocating some of the funding provided for the second phase of the Illicit Drug Diversion Initiative to address other high priority issues.

See also

Cannabis	1.5
Heroin	1.6
Treatment	2.4
Workforce development	2.11

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