

Submission
No 27

**INQUIRY INTO THE PROVISION OF DRUG
REHABILITATION SERVICES IN REGIONAL, RURAL AND
REMOTE NEW SOUTH WALES**

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Inquiry into the provision of
drug rehabilitation services in
regional, rural and remote
NSW

Legal Aid NSW submission to the
NSW Legislative Council

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Legal Aid
NEW SOUTH WALES 

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 29 Women's Domestic Violence Court Advocacy Services.

Legal Aid NSW's Cooperative Legal Service Delivery Program comprises 12 regional justice partnerships across

regional and remote NSW. The aim of the partnerships is to improve access to justice for disadvantaged people in regional and remote areas.

The Legal Aid NSW Children's Civil Law Service provides a targeted and holistic legal service to young people identified as having complex needs.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority, Drug Court and the Youth Drug and Alcohol Court.

Legal Aid NSW welcomes the opportunity to make a submission to the Legislative Council's Inquiry into the provision of drug rehabilitation services in regional, rural and remote NSW. Should you require any further information, please contact:

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Introduction

Legal Aid NSW welcomes the opportunity to contribute to the Legislative Council's Inquiry into the provision of drug rehabilitation services in regional, rural and remote NSW.

Many of our clients have an urgent need for assistance to overcome their drug problems, but face barriers accessing the services they need. Services are difficult to access in metropolitan areas, and are more difficult to access in non-metropolitan areas. We consider that there should be significantly increased investment in drug rehabilitation services in regional, rural and remote areas of NSW. As our submission will emphasise, a mix of service delivery models is needed.

Drug problems among Legal Aid NSW clients

Drug and alcohol use is a significant underlying issue for a large proportion of Legal Aid NSW clients. In 2013 we examined our 50 most frequent users of legal aid services between July 2005 and June 2010.¹ Three quarters of these 'high service users' had used drugs and/or alcohol. Twenty per cent had accessed treatment for drug and alcohol addiction. Most of the frequent users had complex needs—nearly half had received a mental health diagnosis. About half had a primary carer who had experienced drug and/or alcohol issues. The case study of John, below, illustrates how drug misuse often co-exists with mental and physical health problems and early experience of trauma, including witnessing domestic violence and being homeless.

Case Study: John

John is a young man aged twenty years old. He had his first contact with Legal Aid NSW when he was twelve and is a high user of legal aid services with 96 service contacts over a five year period.

John's childhood was characterised by physical health problems. He suffered from chronic ear infections, his speech was slow to develop and he had periodic bouts of asthma. He had early corrective surgery for a congenital abnormality.

John's mother suffered from obsessive-compulsive disorder and other anxiety problems. John's father was violent to his mother. At age two, John's parents separated and he lived with his mother in refuges for a period of time. He has subsequently had periods of living with his mother, his father, his grandparents and in various foster placements.

At age four, John was diagnosed with attention-deficit hyperactivity disorder. Over the subsequent years clinicians have diagnosed him with conduct disorder, oppositional defiant disorder, and various other psychiatric diagnoses. He has had episodes where he has self-harmed and has attempted suicide. On intelligence tests, John returned scores in the range of moderate intellectual disability.

¹ Legal Aid NSW *High service users at Legal Aid NSW* (2013) 3-4.

The Department of Family and Community Services became involved with John when he was seven years old. Over subsequent years John had many short and difficult out-of-home-care placements as well as numerous periods where he lived with friends or on the street.

John attended four primary schools and his early learning difficulties were initially addressed by teachers' aides. As John transitioned to high school he was frequently excluded and expelled. Placements in special schools were unsuccessful and he stopped attending school in Year 9.

John started smoking cannabis and drinking alcohol when he was about thirteen years old. By age fifteen he was using amphetamines. John's criminal justice offending profile involved offences such as stalk/intimidate, breach of bail, assault, and theft offences. Often his offences involve family members as victims.

John had periods of residential drug and alcohol treatment and was recommended for the Youth Drug and Alcohol Court but did not proceed with an application. The Youth Drug and Alcohol Court ceased operating in 2012.

People in prison are highly likely to have used drugs prior to detention. A survey of prisoners in 2015 found that 67 per cent of prison entrants reported illicit drug use during the previous 12 months.² In 2012, the most commonly reported illicit drug used was cannabis. However in 2015, the most commonly reported illicit drug used was methamphetamine, with 50 per cent reporting having used this drug.³ Prison entrants were two to three times more likely than members of the general community to report recent illicit drug use,⁴ and were 10 times more likely to report using methamphetamines.⁵

The 2015 *NSW Young People in Custody Health Survey* found that 92 per cent of the young people surveyed had tried illicit drugs, with cannabis the most commonly used (90 per cent), followed by crystal methamphetamine at 55 per cent. Illicit drugs were used at least weekly by 81 per cent of young people surveyed, while 65 per cent reported committing crime to obtain alcohol or drugs and 78% were intoxicated (on alcohol, drugs or both) at the time of their offence.⁶

Again, complex needs are evident among young people in custody, with 87 per cent having at least one psychological disorder, and 60 percent having a history of child abuse or trauma.⁷

² Australian Institute of Health and Welfare *The health of Australia's prisoners 2015* (2015) (AIHW) 96.

³ AIHW 97.

⁴ AIHW 100.

⁵ AIHW 101.

⁶ NSW Health, NSW Justice, *2015 Young People in Custody Health Survey. Key Findings for All Young People*, 2.

⁷ Devon Indig et al. (2011) *'2009 NSW Young People in Custody Health Survey: Full Report'* Justice Health: Sydney.

Drug Court

Drug courts have been proved to be effective in reducing reoffending in both Australian and international research.⁸ These specialist courts deal with offenders who are dependent on drugs, and aim to help people overcome both their drug dependence and their criminal offending. The Parramatta Drug Court has been in operation for 18 years, the Hunter Drug Court for seven years and the Sydney Drug Court for four years. They take referrals from certain metropolitan Local and District Courts of non-violent offenders who satisfy the eligibility criteria. Participants are assisted not only with specific drug rehabilitation services but also with their other needs such as accommodation and education. A 2008 evaluation of participants in NSW Drug Court found that participants were:

*17 per cent less likely to be reconvicted for any offence, 30 per cent less likely to be reconvicted for a violent offence and 38 per cent less likely to be reconvicted for a drug offence at any point during the follow-up period.*⁹

Weatherburn et al noted 'The apparent success of the Drug Court suggests that consideration should be given to expanding its reach' and discussed how the model might be adapted to a regional setting.¹⁰ An earlier evaluation found that Drug Court cost less than conventional sanctions and is likely to be a cost-effective approach to reducing re-offending.¹¹

Legal Aid NSW considers that drug courts, with associated drug rehabilitation and other services, should be available in regional areas. We note there have been persistent calls from police, legal professionals, local politicians and judicial officers in Dubbo for a drug court in that town,¹² and we strongly support those calls. We also support the re-introduction in NSW of a fully funded youth drug and alcohol court, with legislative basis.

However, appropriately funded and resourced and culturally appropriate detoxification and rehabilitation facilities are necessary to support the work of drug courts.

⁸ Craig Jones *Intensive judicial supervision and drug court outcomes: interim findings from a randomised controlled trial* (2011) NSW Bureau of Crime Statistics and Research 2.

⁹ Don Weatherburn et al *The NSW Drug Court: a re-evaluation of its effectiveness* (2008) NSW Bureau of Crime Statistics and Research 1.

¹⁰ Don Weatherburn et al *The NSW Drug Court: a re-evaluation of its effectiveness* (2008) NSW Bureau of Crime Statistics and Research 13.

¹¹ Stephen Goodall, Richard Norman and Marion Haas, 'The costs of NSW Drug Court' (2008) NSW Bureau of Crime Statistics and Research.

¹² Jennifer Hoar 'Dubbo's Andrew Boog calls urgently for drug court, rehab' *Daily Liberal* 5 October 2017 <http://www.dailyliberal.com.au/story/4968510/boog-echoes-calls-for-drug-court/>; Heather Crosby 'Police echo calls for drug court at Dubbo' *Daily Liberal* 21 December 2012 <http://www.dailyliberal.com.au/story/1198570/police-echo-calls-for-drug-court-at-dubbo/>.

Youth Koori Court

The Youth Koori Court is part of the Children's Court, and deals with young Aboriginal people and Torres Strait Islanders who have been charged with a criminal offence. Legal Aid NSW's Children's Civil Law Service (**CCLS**) partners with the Aboriginal Legal Service NSW/ACT to provide civil law advice and assistance to participants in the Youth Koori Court. Since the Youth Koori Court pilot commenced in 2015, the CCLS has worked with over 70 participants, who are all young Aboriginal people with complex needs and, often, a multitude of civil law issues. If left unaddressed, these issues would create barriers to their rehabilitation and could contribute to criminal offending. A significant proportion of these clients have underlying drug and alcohol abuse issues. The following recent case study demonstrates the importance of a collaborative and therapeutic approach to these issues:

Case Study: Conrad

Conrad is a young man Aboriginal man who was removed from his family due to concerns around substance abuse, transience and neglect. Conrad and his siblings were placed with his grandparents, but experienced a breakdown of this placement, which resulted in spending time in foster care, crisis accommodation and residential out-of-home-care. Most of Conrad's placements have broken down because his carers were unable to provide the therapeutic care that his complex needs required.

Conrad has often had to couch-surf with friends or sleep on the streets, where he was exposed to further violence and alcohol and drug use. He has also spent time in juvenile detention, which he has indicated was often preferable to sleeping on the street. He also has had interactions with the child protection system as a parent with his own child removed from his care.

Conrad struggles with drug and alcohol issues, as well as mental health issues which has included incidents of self-harm. His homelessness has impacted on his education, employment, contact with his child, maintaining professional appointments to address his drug use and mental health, and his experiences have engendered a mistrust of welfare agencies.

Conrad was referred to the Youth Koori Court. With the assistance of Legal Aid NSW's Children's Civil Law Service he has been referred to Alcohol and Other Drug (**AOD**) counselling, as well as mental health services to ensure that he received sufficient support around his mental health and risk of suicide. The CCLS has also provided Conrad with care coordination and facilitated cross agency collaboration between numerous government and non-government agencies working with him. This has included assistance with Conrad's debt, accommodation, Centrelink and family law issues. As Conrad has now commenced seeing an AOD counsellor, CCLS is assisting him to set up a Work and Development Order.

Legal Aid NSW considers the Youth Koori Court should be both adequately funded to maintain this important role and to enable expansion to regional areas, including Dubbo. This should be accompanied by a commitment to both outpatient and residential drug and alcohol detoxification and rehabilitation facilities that are accessible and culturally appropriate.

Compulsory Drug Treatment Program

Certain metropolitan Local and District courts, including the Drug Courts, can refer male offenders with long-term drug dependence to the Compulsory Drug Treatment Program at the Parklea Correctional Centre in north-west Sydney.

This sentencing option is not available to residents of non-metropolitan NSW. Legal Aid NSW considers that both the Drug Court and the Compulsory Drug Treatment Program should be made available outside Sydney.

MERIT

Magistrates Early Referral Into Treatment (**MERIT**) is available at some Local Courts in NSW, and enables eligible defendants to have their matter adjourned to allow them to focus on treating their drug or alcohol problem. Treatment may include detoxification, methadone, residential rehabilitation, individual and group counselling, case management and welfare support. It is usually planned as a 12 week intensive program. Successful engagement in the program can be taken into account in sentence proceedings.¹³

An evaluation found that completion of the program reduces the risk of reconviction of any type of offence in the next two years by 12 per cent.¹⁴

Legal Aid NSW recommends:

- the expansion of the MERIT program to selected locations in regional and remote NSW
- the expansion of the MERIT program to include individuals suffering from alcohol abuse problems in all MERIT locations, and
- the expansion of the MERIT program to include people in custody and those charged with strictly indictable and/or violent offences.

¹³ Local Court Practice Note Crim 1: Case management of criminal proceedings in the Local Court [12.1].

¹⁴ Rohan Lulham *The Magistrates Early Referral Into Treatment Program – Impact of program participation on re-offending by defendants with a drug use problem* (2009) NSW Bureau of Crime Statistics and Research. Lulham also noted that the literature strongly suggests that small changes in the rate of convictions are associated with much larger changes in actual offending: at 9.

MERIT is not currently available in Bogan, Bourke, Brewarrina, Cobar, Coonamble, Coonabarabran, Dubbo, Gilgandra, Narromine, Walgett, Warren or Wellington—all areas of high need.

As with the Drug Court, any expansion of the MERIT program would require a commitment to both outpatient and residential drug and alcohol detoxification and rehabilitation facilities that are accessible and culturally appropriate.

Work and development orders

Work and development orders (**WDOs**) allow people experiencing disadvantage to clear fines through unpaid work, courses or treatment. They are available to people who have a serious addiction to drugs, alcohol or volatile substances,¹⁵ and drug and alcohol treatment can be undertaken as part of a WDO. Large fine debt and fine enforcement measures have a crippling effect on vulnerable people, including people on low incomes, prisoners, the homeless, and people with mental illness or cognitive impairments. Aboriginal and Torres Strait Islander people are more likely to accumulate large fine debt, and be subject to fine enforcement measures, such as driver licence sanctions and garnishee orders. Indigenous people living in rural and remote areas are particularly affected by licence sanctions, as having a licence is usually essential for transport to employment, school, health services, buying essentials and meeting family and cultural obligations. Incarceration can then result from driving while subject to licence sanctions for fine default.¹⁶

In 2016-17, 29 per cent of WDO participants were eligible because of serious addiction,¹⁷ and the most common activity undertaken for all WDOs was drug or alcohol treatment.¹⁸ Legal Aid NSW has a specialist WDO Service which assists not-for-profit organisations, government agencies and health practitioners to become WDO sponsors, and provides fines advice and WDO referrals to clients at specialist clinics and outreach events in regional locations. The WDO scheme relies heavily on support from the non-government sector, and depends on sponsors being available. Capacity to accept new WDO clients can be an issue, particularly in regional and remote areas. An improvement in the availability of drug rehabilitation services in rural, regional and remote areas would be of significant benefit to vulnerable people with both unpaid fines and drug and alcohol addictions.

¹⁵ *Fines Act 1996* (NSW) section 99B.

¹⁶ As noted by the Australian Law Reform Commission in its recent Discussion Paper on Incarceration Rates of Aboriginal and Torres Strait Islander Peoples, in 2016, Indigenous people made up 31% of all people imprisoned for driving while suspended or disqualified: see NSW Bureau of Crime Statistics and Research, *NSW Criminal Courts Statistics 2016 (2017)* tables 5, 14, cited in the Discussion Paper at p126.

¹⁷ Revenue NSW / Department of Justice / Legal Aid NSW *Work and Development Order (WDO) Program Annual Report 16/17*, 24.

¹⁸ Revenue NSW / Department of Justice / Legal Aid NSW *Work and Development Order (WDO) Program Annual Report 16/17*, 26.

Broader considerations

Drug rehabilitation services are important, but they are not the only response to harmful drug use. Local communities should be consulted about what is needed to address their problems. For some, residential or outpatient rehabilitation services will be a priority. Other communities seek supply side solutions such as restrictions on the sale of liquor. Expanding employment opportunities can be important where drug use is a response to boredom and hopelessness.

Again we emphasise that among our clients, drug problems are frequently associated with mental health problems and trauma. For these clients, 12 week programs are unlikely to be a complete answer, and ongoing community based support is likely to be needed to move these people towards healing.

TOR 1: the range and types of services, including the number of treatment beds available

Legal Aid NSW solicitors in our regional offices report serious concerns about the adequacy of treatment options available. Our clients in regional and remote areas have very poor access to detoxification and drug rehabilitation services. Drug and alcohol related crime rates are high, and the drug and alcohol related drivers of crime are not addressed. Judicial officers are willing to refer to detoxification and rehabilitation services but they are often not available. Further detail has been provided by our Tamworth, Lismore and Dubbo offices and is included below. We stress that the problem is not limited to these areas, but is evident throughout the state.

Legal Aid NSW's Cooperative Legal Service Delivery (CLSD) Program comprises 12 regional justice partnerships across regional and remote NSW. In recent years, the single most persistent issue arising from the CLSD Program partnerships is the lack of detoxification and rehabilitation services. In November 2017, the CLSD Program convened regional planning days in Dubbo, Moree and Broken Hill, attended by a variety of justice and health workers. Advocacy on the lack of rehabilitation facilities was identified as a key priority in each of these locations.

The Bureau of Crime Statistics and Research (BOCSAR) has noted an increase in police recorded incidents of possess/use amphetamine in NSW in each quarter since June 2010.¹⁹ Table 1 below shows the disproportionate rates of possession and use in regional and remote NSW.²⁰ After the Sydney local government area, the top 15 locations with the highest rates of the crimes of possession and/or use of amphetamines in 2016/17 are in

¹⁹ That is, crimes reported to crime reported to, or detected by, the NSW Police Force: BOCSAR 'Mapping the increase in amphetamine and cocaine use in NSW' http://www.bocsar.nsw.gov.au/Pages/bocsar_news/Map-cocaine-and-amphetamines.aspx Accessed 1 December 2017.

²⁰ BOCSAR 'Amphetamines and cocaine statistics for NSW' http://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Amphetamines.aspx Accessed 31 November 2017.

regional and remote NSW. There are few drug detoxification and rehabilitation facilities in these locations.

Table 1: rates of possession and use of amphetamines in regional and remote NSW

LGA	Possession and/or use of amphetamines	
	Number	2016/17 rate per 100,000 population
Narrandera	24	405.4
Moree Plains	41	291.8
Deniliquin	21	282.7
Wellington	25	275.5
Gilgandra	12	274.7
Wagga Wagga	157	247.5
Cessnock	132	236.3
Coonamble	10	234.6
Lismore	102	228
Shoalhaven	228	227.7
Muswellbrook	37	215
Murray	16	210.6
Wollongong	437	209.2
Mid-Western Regional	49	202.6
Newcastle	322	199.7

Frequently, the only way our clients can access treatment is to travel hundreds of kilometres. Many are reluctant to do this because of family responsibilities, cultural obligations, a wish to maintain relationships with family and friends, or difficulty obtaining housing or employment in another town. For Amelia and Samantha in the case studies below, the lack of rehabilitation facilities close to them led to separation from their young children. For Darren, his drug use followed the loss of his child and there are no services to help him stop using.

Case Study: Amelia

Legal Aid NSW assisted Amelia in her family law proceedings. She was in her thirties, lived in a town in western NSW and had two children aged under 10 years. After she separated from their father, Tony, Amelia maintained primary care of the children and continued to engage in employment as she had done during her adult life. However, Amelia experimented with the drug 'ice' and her dependence on the drug increased. Amelia began a new relationship that was characterised by domestic violence. Amelia and Tony began to share the care of the children, and Tony brought an application in the Federal Circuit Court for an order that the children live with him.

From the commencement of court proceedings until their conclusion two years later, Amelia continued her struggle with addiction, homelessness, unemployment and unhealthy relationships. Rehabilitation and detoxification facilities were not available in Amelia's town. Finally, the Court ordered that the children live with their father and spend only supervised time with Amelia at a family member's home.

If rehabilitation and detoxification facilities had been available, it is likely that Amelia would have availed herself of those treatments as she could have stayed close proximity to her children. If her treatment was successful, she would have been in a very different position before the court or been able to resolve her matter at an earlier stage on less onerous terms.

Case Study: Samantha

Samantha is a young Aboriginal mother of two children aged 8 and 6 years. Samantha left a domestic violence relationship and moved with her children to Adelaide. However with no family support in Adelaide she struggled with the care of her children, housing instability and financial hardship. She increased the amount of cannabis she was smoking and began using ice on the weekends with friends.

The Department of Family and Community Services became involved and Samantha's children were permanently placed with a non-Indigenous family in Adelaide.

Samantha moved back to Broken Hill where she now has family support. She attempts to abstain from drugs but finds herself still dependent on cannabis, especially as she experiences grief and anxiety from being separated from her children.

Samantha would like to build up time with her children over the coming year and re-assess whether she is in a position to apply for restoration of her children after she has been drug-free for a reasonable period. Access to a detoxification and rehabilitation facility in Samantha's community would greatly assist her likelihood of sustaining positive change, but no such facility is available.

Case Study: Darren

Darren is an Aboriginal man in his mid-thirties who lives in regional NSW. He uses amphetamines which he largely attributes to the unresolved trauma surrounding the loss of his child one year ago. Darren came to Legal Aid NSW to seek assistance with a civil law matters, and is an active participant in resolving the issues that brought him to Legal Aid NSW. Darren's drug dependence of great concern to his lawyer but there are no referral options for detoxification and rehabilitation in his town.

Service models

Legal Aid NSW considers that a mix of services needs to be available. Detoxification services are usually provided on a residential basis, but rehabilitation services do not necessarily require this approach. Young people and people with parenting responsibilities may be more likely to engage with a service provided on an outpatient basis. On the other hand, outpatient treatment options are not adequate or appropriate for many people charged with criminal offences.

We suggest that the Inquiry also consider whether services should be provided as part of the public health system rather than, as currently, largely by non-government organisations.

Services for children

Legal Aid NSW has concerns about the range and types of services that are available to our young clients, particularly young Aboriginal clients. There are almost no services available for children in regional areas, and significant need exists—as the *NSW Young People in Custody Health Survey* confirmed (discussed above).

We have observed that young Indigenous clients referred to residential drug and alcohol services in Sydney and Canberra rarely graduate from the programs, and often do not remain at the service for more than 24–48 hours. This appears to be because the services are not culturally appropriate or trauma-informed. Children who have experienced multiple traumas and have had chaotic family histories are required to conform to strict rules and are asked to leave for infractions such as swearing, smoking or possessing a can of deodorant. One of our clients left a residential rehabilitation placement because he was not allowed to use a PlayStation—he had been diagnosed with Attention Deficit Disorder and it was difficult for him to have nothing to do.

Staff members are rarely Aboriginal, although their clients are often Aboriginal. Our observation is that regionally based rehabilitation services for young people have had greater success in engaging with their clients. We suggest that the Inquiry consider the extent to which rehabilitation services for young people are trauma-informed, and should consider recommending that services with significant numbers of Aboriginal clients should employ Aboriginal staff and ensure that the service is culturally competent. There are

suggestions that drug rehabilitation services for young people are best provided as outpatient services so that the young person can remain in their community.

Services near hospitals

Many of our clients, particularly our Aboriginal clients, are in poor health. Drug rehabilitation services should be available near both on a residential basis near hospitals and also on an outpatient basis. One of our clients was not admitted to a rehabilitation facility, Triple Care Farm, in NSW's Southern Highlands because his medical issues (heart murmur, epilepsy and dystonia) meant he had to be close to a hospital.

Tamworth

A solicitor in our Tamworth office observes that rehabilitation services are limited in that town. A day program (Rosalie House) has recently opened, and MERIT is available through the Local Court, but no residential services or detoxification services are available in Tamworth. The closest residential program is in Armidale (Freeman House), which is 100 kilometres away, and the waiting list is approximately six months. For our clients, particularly our Aboriginal clients, the waiting lists and the long distance from family and community are significant barriers to undergoing rehabilitation (as noted above). Some are granted bail but reoffend while they are waiting for a place to become available. Others are refused bail because an immediate place is not available. Many of those who do obtain a place at Freeman House do not complete the program because it is hard to be away from home. Detoxification and residential rehabilitation services in Tamworth would make a real difference to our clients, improving their chance of ending drug use and criminal offending.

Lismore

Our Lismore office reports similar difficulties. The MERIT program is available, and provides significant benefits to our clients. However, due to insufficient capacity, we are sometimes notified that there will be no access for custody clients, and sometimes there will be no access for any clients for four to six weeks. Clients who are facing charges for strictly indictable offences are not able to access MERIT, and it is difficult for these clients to access rehabilitation services unless they make a Supreme Court bail application (this is explained further in the case study of Graeme below). It is very hard to access rehabilitation for clients who are bail refused. Some facilities (for example, The Buttery in Binna Burra) do not take people directly from custody, whereas courts are more likely to grant bail if a residential rehabilitation placement is available. Pre-entry conditions can limit access for people with mental health problems, as some services limit the use of medication. As noted above, a large proportion of Legal Aid NSW clients have mental health problems, although many are untreated.

The biggest gaps in services reported by our Lismore office are services for Aboriginal women, and for all women with children.

Central and north west NSW

Our Dubbo office reports that in central and north-west NSW there are only three residential rehabilitation services: the Lyndon Community at Orange, Weigelli at Cowra and Orana Haven at Brewarrina. There is a total of approximately 60 beds, which is insufficient to meet demand. There is no detoxification facility in the region other than at the Lyndon Community. However the Lyndon Community does not assess or accept people from Corrective Services NSW custody into their programs.

Coffs Harbour

Our Coffs Harbour office reports that the situation there is similar to that reported by Lismore. MERIT is available and is of significant benefit. However MERIT clients are often referred to service providers throughout the state, for example, in Orange (700km away) because of lack of capacity in Coffs Harbour. This limits access for clients who have responsibilities and family support in Coffs Harbour.

Adele House, a residential rehabilitation service for men only, is a valuable resource. However, Stage 2 of this program, which incorporates employment, is located in Werrington (in western Sydney) which again creates barriers for some of our clients.

There is a rehabilitation service for juveniles, Junaa Buwa. However it only assists young people who have already had contact with Juvenile Justice NSW, so a young person arrested for the first time with an entrenched drug addiction would not be eligible.

The Sherwood Cliffs Christian Community offers rehabilitation services in the area, but for many of our clients, the faith-based approach is not appropriate.

People in custody in non-metropolitan areas

People detained in the John Moroney and Dyllwynia Correctional Centres in western Sydney are able to access the Intensive Drug and Alcohol Treatment Program, a residential program for people whose drug or alcohol problem is linked to their offending behaviour. No such program is available to offenders in non-metropolitan areas of NSW, despite the significant needs in these areas.

Legal Aid NSW is also concerned about the barriers for people on remand to access community-based drug rehabilitation services. In 2016, Corrective Services NSW changed its policy so that assessment reports for residential rehabilitation programs can now only be undertaken following a guilty plea to assist in identifying sentencing options, or where the inmate has been remanded for the purpose of a Supreme Court bail determination.

The current policy significantly reduces the ability of inmates to access appropriate treatment in a residential rehabilitation program. Practical issues arise where an accused tries on their own to be assessed for a program. In the experience of Legal Aid NSW solicitors, an accused who has an initial phone assessment and is then required to provide

further information to the rehabilitation facility such as criminal history report may not be helped by Services and Program Officers. This results in the accused automatically being found unsuitable. They may also be required to phone the facility each week to maintain their place on the waiting list. This is a significant barrier for a person in gaol, as the case study of Graeme, outlined below, illustrates. Legal Aid NSW solicitors observe that the experience of Graeme is not unusual.

Case Study: Graeme

Legal Aid NSW acted for Graeme, an Indigenous man with long-term drug and alcohol dependence who lives in regional NSW. He was charged with a number of offences related to domestic violence in August 2016. He was bail refused and pleaded guilty to the charges at his first appearance in the Local Court. A court-ordered drug and alcohol assessment identified Graeme as suitable for a long term residential rehabilitation program. He was accepted into a facility, but with an expected wait time of approximately six weeks. Graeme was told he must call the facility three times a week between 10am and 4pm to maintain his position on the waiting list.

By November 2016, Graeme had run out of gaol money and was unable to keep calling the facility three times a week. During that time, his brother committed suicide, and Graeme was refused leave by Corrective Services NSW to go to the funeral. He only called the facility once a week, and so lost his place on the program. At his solicitor's request he was placed back on the waiting list, but at the bottom of the list and with an expected wait time of more than three months. A further bail application was refused. By December 2016 Graeme had progressed to the top half of the list. By the end of January 2017 however, he gave up trying to get into the program and proceeded to be sentenced. While the sentence he received was backdated, he had spent five months on remand with no access to a much needed rehabilitation program.

Within weeks of his matter being finalised, Graeme reoffended and was returned to prison.

Legal Aid NSW submits that such barriers could be addressed through:

- revising the current Corrective Services NSW's policy with respect to alcohol and drug rehabilitation assessments reports
- the re-introduction of dedicated alcohol and drug workers in prisons
- measures to facilitate access by Legal Aid NSW staff and rehabilitation service providers to prisoners on remand to assist with assessment processes, and
- the establishment of a free call service to rehabilitation providers.

TOR 5: The cost to patients

Our clients have reported having to pay for a criminal record check before entering rehabilitation. Some of our clients are in acute financial difficulties and this charge can pose a barrier to treatment. The cost of travel is also of concern for our clients: as noted above, clients are sometimes required to travel from Dubbo (where there are no rehabilitation services) to Kempsey for treatment—more than 600 kilometres away.

TOR 6: Waiting lists and waiting times for gaining entry

Legal Aid NSW solicitors report serious concerns about waiting lists for drug rehabilitation programs. People who are remanded in prison are highly motivated to address their drug problems so that they can present evidence of their rehabilitation to the courts if they are convicted. Judicial officers are also willing to grant bail to accused persons so that they can attend rehabilitation. However, we understand that they are frustrated by the absence of local services, particularly in western NSW.²¹

The NSW Government has indicated that the commencement of sentencing reforms will see more offenders subject to supervision and programs to address their offending behaviour.²² However, while funding has been provided to increase staffing levels in Corrective Services, this does not appear to be accompanied by increased funding of community based rehabilitation programs. In our view, the effective implementation of these reforms so as to reduce re-offending by increased community based supervision will require increased access to detoxification and rehabilitation for offenders. Many of our clients are eager to access these opportunities, and are unable to do so because they are not available.

TOR 7: Pre-entry conditions

The case study of Graeme, above, illustrates how a six week wait for rehabilitation, and a requirement to call the facility three times per week to remaining on the waiting list, posed an insurmountable barrier to treatment.

The requirement to produce a birth certificate is also a barrier for some of our clients. Many births are not registered, and to apply for one as an adult, several forms of identification are required. Disadvantaged people with literacy problems or cognitive disability find the process prohibitive. The Pathfinders program has successfully assisted 4,700 Aboriginal people to access birth certificates, which then allows them to get a driver licence and access a range of government and community services.²³ That program has ended, but there are still many people needing birth certificates. We consider that vulnerable and

²¹ 'Former judge backs rehabilitation push in Dubbo' *Daily Liberal* 4 October 2017

²² NSW Justice *Sentencing Reform* <http://www.justice.nsw.gov.au/Pages/Reforms/Sentencing.aspx> accessed 21 November 2017

²³ Pathfinders *National Aboriginal Birth Certificate Program* <http://www.pathfinders.ngo/successful-free-aboriginal-birth-certificate-program-has-ended/> accessed 24 November 2017

disadvantaged people, including Aboriginal people and people in prison, should be able to access a birth certificate without charge.

The requirement to detoxify before entering a rehabilitation facility is sometimes a barrier. Detoxification is a precondition for rehabilitation and it is essential that both of these services are available. Legal Aid NSW understands that public hospitals do not provide detoxification facilities.

TOR 8: Mandatory detoxification

Legal Aid NSW does not support mandatory detoxification programs. There are insufficient places for people who are motivated and ready to undergo detoxification. The efficacy of mandatory detoxification is not demonstrated.²⁴

TOR 11: Evidence of rehabilitation services that have had both successful and unsuccessful outcomes

In conclusion, we provide two cases studies demonstrating the difference that the provision of drug rehabilitation services can make to clients in regional and remote NSW.

For Tamsin, the absence of appropriate rehabilitation services in her community led to reoffending.

Case Study: Tamsin

Legal Aid NSW acted for Tamsin, a non-Aboriginal woman with an ice addiction living in a remote town in northern NSW. The closest larger town is Moree, where there is a rehabilitation facility for Indigenous people only. Tamsin was placed on a suspended sentence for a drug related offence. She was ordered to be supervised, but supervision was limited to sessions with a drug and alcohol counsellor who travelled from Moree to her town monthly. The level of support available to address her drug use was inadequate and she reoffended. She was then on remand in Sydney, and was able to obtain a place in a rehabilitation facility in Sydney. It is very unlikely she would have been able to make arrangements to be assessed and attend this rehabilitation service if she was still in her home town.

On the other hand, the availability of rehabilitation can help turn lives around, prevent reoffending, reduce the need for imprisonment and avoid the social and economic costs of imprisonment for offenders and the community. Legal Aid NSW recently received a

²⁴ Sophie Scott, Alison Branley 'Experts reject Jacqui Lambie's suggestion for mandatory ice treatment; warn no evidence it works' *ABC News* 13 August 2015 <http://www.abc.net.au/news/2015-08-13/no-evidence-mandatory-ice-detox-works-experts-say/6694606>; Matt Noffs 'Forcing young ice addicts into detox won't solve the problem' *Sydney Morning Herald* 11 August 2015 <http://www.smh.com.au/comment/forcing-young-ice-addicts-into-detox-wont-solve-the-problem-20150811-giwdhu.html> (accessed 17 November 2017)

letter from our client David's mother, demonstrating the difference that drug rehabilitation services can make. An extract from this letter follows.

David was finally sentenced last Friday. Thanks to the miracle you managed getting him into [rehabilitation facility] two years ago, he has progressed in leaps & bounds & his life is definitely on track now. After completing the entire program, he worked as a farm hand for three days a week & he attended TAFE two days a week: the staff had grown to trust and respect him, and his work ethic impressed them to the point he was getting more and more responsibility as time went on. A few months ago he progressed to full time employment on the farm (whilst living in) during which time he obtained a number of proficiency tickets for machinery operation. His bail conditions were amended to allow him to leave the farm for the final two weeks prior to sentencing, committing to the outreach program [name of rehabilitation facility] offers and living in the community. On Friday he received a two year non-custodial intensive supervision sentence. The judge remarked it was good to see someone before her who had taken all the opportunities offered to him. Today, David is healthy, happy, working, and living a life of abstinence.