

SECTION 6: BREAKING THE DRUGS AND CRIME CYCLE

Coordination of drug services

- 6.1 The Cabinet Office conduct a study into the need for whole of government co-ordination of drug services in order to achieve an integrated approach to combat the drug problem.**

Government response

The Government supports this recommendation.

The Government agrees a whole of government approach is needed to effectively combat the drug problem. To this end, the Government will:

1. Allocate primary responsibility for managing and implementing a whole of Government response to the Special Minister for State.
2. Continue the Cabinet Committee on Drugs set up following the Summit.
3. Establish an Office of Drug Policy in The Cabinet Office to provide leadership, coordinate drug policy across government and monitor progress in implementation. The Office will focus mainly on illicit drugs and will be staffed from contributions from a number of agencies.
4. Continue the Senior Officers Coordinating Committee, chaired by the Director, Office of Drug Policy.
5. Establish an Expert Advisory Group on Drugs to advise on strategic direction and other drug related initiatives (see 7.12).
6. Develop a five year Drug Treatment Services Plan which will map existing services and based on identified needs will outline future goals for service delivery (see 3.1).

Drug law enforcement policies

- 6.2 The development of drug law enforcement policies should:**

- **target solutions to specific problems,**
- **reflect a commitment to evaluation of and full cost accounting of all programs, and**
- **include an appropriate resource allocation “mix” across a range of strategies.**

Government response

The Government supports this recommendation.

The Minister for Police will review existing drug law enforcement policies to ensure these principles are incorporated into all current and future policies.

The review will ensure drug law enforcement policies are compatible with and are cost effective in relation to community protection and harm minimisation principles.

The Government will aim to ensure a proper balance of resource allocation between law enforcement, prevention, treatment and rehabilitation is maintained and that policies and practice are evidence based.

Review of Existing Research

6.3 Existing research be reviewed to determine best practice in diversion, including the best point of intervention (for example, pre-arrest, post-arrest, pre-sentencing, first offence) to divert users into a treatment or diversion program. This review should include all existing mechanisms, including the use of Griffiths bonds.

Government response

The Government supports this recommendation.

As indicated at 9.8, the Government will request the **Bureau of Crime Statistics and Research** to undertake a comprehensive review of drug related research currently being conducted and to develop a **strategic research plan** for research arising from the Drug Summit. The Government will request the Bureau to have regard to this Drug Summit recommendation in undertaking its review (see also 3.5 concerning the establishment of a five year clinical research program for drug treatment in New South Wales).

The Government supports the work of the Ministerial Council on Drug Strategy in developing a nationally consistent diversion framework in response to the Special Council of Australian Governments' meeting in April 1999. The Ministerial Council will report back to the Council of Australian Governments later this year. NSW is represented on this Council by the Minister for Health and the Minister for Police.

It is noted that much of the work for implementing this recommendation has already been done by the New South Wales Forum on Diversion of Offenders with Alcohol and Other Drug Problems and the Intersectoral Taskforce on Recidivism of Drug and Alcohol Offenders, a sub-committee of the Council on Crime Prevention.

Late in 1998, the Taskforce commissioned the review of current diversion strategies and development of two feasible options for consideration by the Council on Crime Prevention. The results of this research will be finalised in September 1999 and will be considered by the Government in the ongoing development, evaluation and implementation of its drug crime strategies.

Role of Police, Director of Public Prosecutions and Courts

6.4 Existing police discretionary powers to caution minor drug offenders be identified, clarified and formalised, and public support demonstrated for the exercise of police discretion. There is a need to explore how police prosecutors, the Director of Public Prosecutions and the courts can exercise appropriate discretion to divert offenders from prosecution and custodial sentences.

Government response

The Government supports this recommendation.

Police

The schemes which are outlined at 6.5, 6.7 and 6.8 will provide an opportunity to explore the exercise of police discretion in relation to minor drug offenders.

The Police Service, in consultation with relevant agencies, will revise the Police Service Handbook to specifically address the recommendations of the Drug Summit and will incorporate guidelines to assist police in the exercise of their discretion in regard to drug related incidents (see also 9.6).

Prosecution

The Government is investigating formalised prosecution diversion procedures followed in Scotland and Japan. In this context, the Attorney General's Department is preparing an **options paper on prosecutorial discretion for drug offenders** for the Council on Crime Prevention. There will be consultation with the Director of Public Prosecutions and other interested parties in relation to any proposals which are developed in this area.

Early Court Intervention Pilot (Lismore)

The Government is exploring the courts' exercise of discretion in relation to drug offenders through the existing **Drug Court Pilot Program** at Parramatta and the proposed **Youth Drug Court** (see 6.11). The Government also supports the use by the courts of flexible sentencing options such as Griffith bonds in relation to drug offenders (see 9.18).

The Government will establish an **Early Court Intervention Pilot at Lismore Local Court**. In this program, the court, assisted by a court based clinician, will send offenders on bail to drug treatment services. The pilot will provide a scheme of early intervention for defendants who are motivated to seek treatment, complementing the Parramatta Drug Court pilot which targets more serious repeat offenders facing a gaol term.

The Lismore pilot will be conducted for 12 months from July 2000. It will apply to adults apprehended by police for any drug or drug related offence with the exception of wholly indictable drug offences and offences involving violence or sexual assault

(This is the same range of offences to which the adult Drug Court applies). To be eligible, offenders will have to have a demonstrable drug problem and be eligible and suitable for release on bail.

The pilot will require police to identify, at the time of arrest, offenders who appear to be eligible. Police will arrange to have those offenders appear at Lismore Local Court on the next court day, where they will be assessed by a clinician attached to the court. If the clinician confirms for the magistrate that the offender is suitable for the program, the offender will immediately enter treatment under appropriate bail conditions.

On the date the defendant returns to court, the clinician will provide a further report. The implications of compliance or non-compliance with the conditions of the program will be at the discretion of the magistrate.

The Early Court Intervention Pilot is modelled on the Victorian CREDIT pilot program (Court Referral Evaluation for Drug Intervention Treatment), which is a nine month pilot which commenced at the Melbourne Magistrate's Court in November 1998.

Young Offenders Act - amendment to cover minor drug offences

6.5 The Young Offenders Act 1997 should be amended to cover minor drug offences, to allow warnings, cautions and conferences.

Government response

The Government supports this recommendation.

The Young Offenders Act has been operating successfully since its commencement in April 1998, allowing young people charged with a wide range of offences to benefit from formal police cautioning and youth justice conferencing.

The Government plans to **amend the Young Offenders Act 1997 to cover all minor drug offences**. This will provide for young people who have committed minor drug offences to be dealt with by warning, caution, youth justice conference or court, in accordance with the general principles laid down by the Young Offenders Act.

This initiative is aimed at keeping young offenders who have committed minor drug offences out of the formal criminal justice system and assisting them to face their drug problems. Early intervention provides a greater chance of long term rehabilitation.

In response to the Drug Summit, the Government will provide enhancements to a range of services for young people with drug problems throughout the State. These enhanced services will be able to be accessed by young people who are dealt with under the Young Offenders Act. These services include an extra ten juvenile justice drug counsellors in various regional localities such as Lismore, Gosford, Bateman's Bay and Dubbo, two additional contracted drug rehabilitation programs in regional New South Wales, increased home detoxification capacity across the State, and the

availability of multidisciplinary team members from juvenile justice centre detoxification units to bolster the services offered by community based juvenile justice drug and alcohol staff.

In addition, services in Western Sydney will be enhanced to cater for increased demand as a result of both the Youth Drug Court and the extension of the Young Offenders Act to include minor drug offences (see 6.11).

Legislation to deter cannabis use

6.6 There are recognised health risks associated with cannabis use and as such there should remain in place legislation to deter its widespread use and sale.

Government response

The Government supports this recommendation.

The aim of the Drug Misuse and Trafficking Act 1985 will continue to be to discourage the use and sale of illicit drugs such as cannabis through ongoing prohibitions against use, possession, sale, supply, cultivation and trafficking.

The Government will also continue to promote community awareness of the health risks associated with cannabis use.

This year, the Department of Education and Training produced an information brochure for senior secondary school students on the health and legal consequences of cannabis use. There was also extensive in-service training in 1997 on the use of a teaching resource *Candidly Cannabis*.

Last year parent information evenings were held statewide on the issues of drug use and drug education. Government schools will build on this successful initiative with follow-up drug information sessions for parents each year from now (see 10.7).

Cannabis treatment programs will be given particular priority bearing in mind recent surveys indicating an increasing use of cannabis by young people. The Government will encourage research on effective treatment for young people dependent on cannabis (see 3.5).

Cannabis Cautioning Scheme

6.7 In relation to minor drug offences involving cannabis (committed by juveniles or adults):

- (a) The police power to caution offenders be formalised and protocols be developed to govern prosecutorial discretion. The protocols**

should be developed having regard to the following matters:

- **the offender was found in possession of, or using, not more than a small quantity of cannabis, or in possession of items of equipment for cannabis administration,**
 - **the cannabis was held for personal use**
 - **the offender admits to having committed the offence**
 - **the offender consents to being cautioned, and**
 - **on receiving a caution, the offender is referred to an education or drug referral service.**
- (b) **There be a commitment to diversion of offenders to education and/or treatment before charge.**
- (c) **The Court's power to refer offenders to education and/or treatment be encouraged.**

The development of this policy should have due regard to the Victorian experience. The effectiveness of the use of police and prosecutorial discretion would be reviewed after two years based on criteria settled in advance.

Government response

The Government supports this recommendation.

The Government will establish a **Cannabis Cautioning Scheme** on a trial, state-wide basis next year. The scheme will provide for formal cautioning of adult offenders apprehended for minor cannabis offences. The aim will be to use police intervention to assist offenders to consider the legal and health ramifications of their cannabis use and seek treatment and support.

Key elements of the scheme are outlined as follows.

- It will apply to adults, apprehended by police, using or in possession of small amounts of cannabis leaf or cannabis implements for personal use.
- It will allow police to caution the offender and provide a cannabis cautioning notice that warns of the health and legal consequences of cannabis use and contains contact information for relevant treatment and support services.
- The Police Commissioner will issue guidelines for the exercise of police discretion under this scheme.
- Police will retain an overriding discretion not to caution if the circumstances suggest that court proceedings would be more appropriate.
- A person can only be cautioned if they have no prior convictions for drug offences or offences of violence or sexual assault.
- A person may not receive more than two cautions.

The scheme is modelled on a Victorian scheme that was piloted in the Broadmeadow district for six months between July 1997 and January 1998 and extended statewide in September 1998.

The scheme will be formally evaluated.

Cannabis cautioning for young offenders will be included in the Young Offenders Act scheme outlined at 6.5.

Drug Offenders Compulsory Treatment Pilot (Illawarra and Far North Coast)

6.8 The program referred to in 6.7 be considered and trialled for possession and use of other drugs.

Government response

The Government supports this recommendation. It will be implemented subject to the availability of Commonwealth funds under the National Illicit Drug Strategy.

The Government proposes to establish a **Drug Offenders Compulsory Treatment Pilot** next year. The scheme would provide for police to refer adult offenders apprehended for minor drug offences involving illicit drugs other than cannabis to undertake assessment and treatment rather than proceeding with a charge before a court.

The aim would be to use a combined response by the health and criminal justice systems to assist these offenders in overcoming their drug problems and prevent their relapse into further crime.

The scheme would be piloted in the Illawarra and Far North Coast for 12 months.

Key elements of the scheme are outlined as follows.

- It will apply to adults, apprehended by police, using or in possession of small amounts of a prohibited drug other than cannabis.
- It will allow police to caution the offender conditional upon the offender agreeing to attend mandatory assessment and undertake a treatment program.
- If the offender fails to attend assessment and commence treatment, the matter will be taken to court.
- The treatment services will be provided through NSW Health and non-government organisations.
- The Police Commissioner will issue guidelines for the exercise of police discretion under this scheme.

- Police will retain an overriding discretion not to caution if the circumstances suggest that court proceedings would be more appropriate.
- A person can only be cautioned if they have no prior convictions for drug offences or offences of violence or sexual assault.
- A person may not receive more than two cautions.

The scheme would be modelled on a Victorian scheme that was piloted in the Broadmeadow district for six months between September 1998 and March 1999, then extended to an adjoining district and is now being considered for implementation statewide.

The scheme would be formally evaluated.

Cautioning for young offenders for minor drug offences other than cannabis will be included in the Young Offenders Act scheme outlined at 6.5.

Removal of gaol penalty for cannabis use/possession

6.9 There should be no gaol penalty for possession of cannabis, cultivation of a small number of cannabis plants or the possession of implements used to administer the drug. Custodial penalties should be removed for the following offences:

- a) possession and use of not more than small quantities of cannabis,**
- b) possession and cultivation of not more than small quantities of cannabis plant,**
- c) possession of items of equipment for use in the administration of cannabis, and**
- d) sale, supply and display of water pipes.**

Government response

The Government will closely monitor the question of penalties for cannabis use in light of:

- a) medical and scientific data
- b) evidence from those jurisdictions which have moved to decriminalisation (South Australia and the Australian Capital Territory).

Adult conferencing program

6.10 An adult conferencing program be established in relation to drug-related and non-violent offences and evaluated after two years. This program

should have the following features:

- a) there should be discretion as to whether conferencing is appropriate**
- b) the offender must admit the offence and consent to their participation in the program**
- c) the victim should have a full right to participate in conferences and development of the “outcome plan”, and**
- d) the victim should have the right to veto the "outcome plan".**

Government response

The Government supports this recommendation.

The Government believes that adult conferencing schemes should be considered in relation to a range of offences, including drug related offences.

As indicated at 6.5, a youth justice conferencing scheme under the Young Offenders Act has been operating successfully for more than 12 months. These conferences provide a means for offenders to be confronted with the full impact of their crimes on victims and the community. Conferences give all those present including victims the opportunity to have input in determining an appropriate outcome to redress the damage caused and provide for the offender's rehabilitation.

The Government considers that it is now timely to consider applying this restorative justice approach to adult offenders, including those who commit drug related and non-violent offences.

The Government will bring forward a proposal to establish an adult conferencing program on a pilot basis. The pilot program will be closely monitored and reviewed to determine its effectiveness and quality.

Proposals for the pilot program will be developed over the next year by an interagency committee chaired by the Attorney General's Department reporting to the Cabinet Committee on Justice. These proposals will identify any necessary legislative changes and resourcing requirements, having regard to this recommendation.

Drug Court expansion

6.11 The current Drug Court trial be expanded to be available at other venues in NSW and the Children's Court be given comparable diversionary powers to the Drug Court

See also 2.5, 7.1, 9.17 and 11.28.

Government response

The Government supports this recommendation.

Youth Drug Court

The Government is committed to extending the Drug Court program to young people and plans to implement a Youth Drug Court in Western Sydney on a two year pilot basis from July 2000.

The Youth Drug Court will be based largely on the adult Drug Court. It will combine intensive judicial supervision and case management of young offenders who are charged with criminal offences that result from drug misuse. These young people will be referred to programs aimed at eliminating or reducing their drug misuse and related criminal behaviour and increasing their ability to function as law abiding members of the community.

For the purposes of the pilot program, it is envisaged that the Youth Drug Court will be conducted within the existing framework of the Children's Court with Drug Court type powers.

The Youth Drug Court would use a team similar to the adult Drug Court but modified for young people. It is envisaged the team would include legal representatives, juvenile justice officers and health representatives.

The pilot will involve the development of eligibility criteria and a reward and sanction philosophy suitable to young people. Unlike the adult Drug Court, it will target alcohol abuse as well as illicit drugs.

The Youth Drug Court will include enhanced and new treatment services tailored especially to the needs of young people, including culturally appropriate services. Research suggests that young people will need more intensive general lifestyle interventions through education, employment, housing, and peer/parent relationship services.

The Government is seeking Commonwealth funding under the National Illicit Drug Strategy in order to provide enhanced services in Western Sydney for young people with drug problems dealt with in the Youth Drug Court and under the Young Offenders Act (see 6.5). These services would include:

- additional rehabilitation beds for young people in Western Sydney
- an extra five full time youth and family workers operating in Western Sydney
- expansion of the Department of Juvenile Justice Intensive Program Units operating at Blacktown and Liverpool (which provide intensive counselling and group therapy, usually as an alternative to a detention order for serious young offenders)
- a trial scheme of integrated services and support to be run by the Department of Community Services which will purchase treatment, counselling, housing, education and other support services for young offenders.

In developing the program, the Government will work closely with key stakeholders including the Commissioner for Children and Young People and the Senior Children's Court Magistrate.

As with the adult Drug Court, the Youth Drug Court will be subject to full evaluation.

Adult Drug Court

The Drug Court was established in February 1999 as a two-year pilot program, with entry restricted to 300 adult offenders who are drug dependent and likely to be sentenced to imprisonment upon conviction. Progress is being closely evaluated by the Bureau of Crime Statistics and Research, measured against a control group. The final evaluation results are expected by October 2001.

The Government has also established an interagency committee chaired by the Attorney General's Department to address any operational and policy issues associated with the Drug Court pilot program.

The Government will closely examine the results of the Drug Court pilot program. Subject to the Drug Court's successful evaluation and an assessment of need, the Government will consider a strategy for expansion of the Drug Court to other locations.

Self-administration and possession of equipment

6.12 Section 11 of the Drug Misuse and Trafficking Act 1985 dealing with use or possession of equipment for use in the administration of a prohibited drug should be repealed.

6.13 Section 12 of the Drug Misuse and Trafficking Act 1985 dealing with self-administration of a prohibited drug should be repealed.

Government response

The Government does not propose at this stage to repeal the offences of self administration of a prohibited drug or possession of drug administration equipment. The offences serve a useful public purpose including allowing police to prevent people using illicit drugs in public places.

The Government will put in place schemes to allow police and courts to refer users into treatment in appropriate cases (see 6.4, 6.5, 6.7, 6.8, 6.11).

In addition, the Police Service, in consultation with relevant agencies, will establish guidelines for the exercise of police discretion when attending incidents of drug overdose based on the Victorian Chief Commissioner's Instructions. These guidelines will be included in the Police Service Handbook (see also 9.6).

The Government will continue to monitor the law and its effectiveness as well as evaluating the effectiveness of the Government's diversion schemes.

