

## Directions Health Services submission to the ACT Government's Budget Consultation 2018-19

### Pre –Charge AOD Diversion Program for low level, non-violent offenders

#### Identified Service Gap and Proposed Response

Directions Health Services has identified a service gap in the diversion system for non-violent offenders whose alcohol and/or drug use has contributed to the commission of low-level offences that would result in criminal charges, fines and/or imprisonment.

Such diversion, prior to engagement in the judicial system, but premised on offender acknowledgement of responsibility, would enable more effective management of the substance dependency and other critical life circumstances for these offenders. This approach has proved very cost effective in reducing criminal recidivism; improving health, wellbeing and life outcomes for participants; significantly reducing economic cost of the judicial process and incarceration; and, reducing the cost of participants' future reliance on welfare and service supports across multiple life domains.

#### Context

Directions Health Services understand that the ACT Justice suite already includes a number of diversionary programs for people with alcohol and other drug issues.

#### Police Drug Diversion Programs:

- Simple Cannabis Offence Notice Scheme (SCON) - police notice and financial penalty for low level possession or cultivation of cannabis
- Police Early Intervention and Diversion (PED) - police referral to assessment and education / treatment for low level possession of cannabis, other illicit drugs or illicit possession of a licit drug (excluding alcohol)
- Early Intervention Pilot Program (EIPP) – police referral for education and support for young people (under 18 years) found intoxicated, consuming or in possession of alcohol

#### Court Drug Diversion Programs:

- Court Alcohol and Drug Assessment Scheme (CADAS) – pre-sentencing and sentencing assessment / treatment option to engage offenders in AOD assessment and treatment
- Youth Drug and Alcohol Court (YDAC) – pre-sentencing program for the Children's Court to address the AOD-specific needs of children and young people facing incarceration

None of these diversion programs, however, enable pre-charge diversion of chronic, low level, non-violent offenders whose alcohol and/or illicit drug use has informed or been a factor in their offending behaviour. This is an offender cohort for whom treatment and case management support for their dependency and associated wellbeing issues may offer a significant platform for successful change, diverting these offenders away from the criminal justice system and reducing recidivism.

Whilst Directions Health Services acknowledges that the existing CADAS program can potentially reach some of the identified participant cohort, the numbers are limited, with only 32% of potential diversion candidates across Drug, Theft/Burglary, Unlawful Entry and Public Order offences afforded the opportunity to undertake a diversionary program. Further, the protracted judicial and administrative pathway to CADAS services presents a barrier to engagement of chronic low level offenders who have severe dependence and have difficulty complying with a structured model.

The PED program recorded an average 99.6% uptake and treatment completion by recommended clients from 2007 - 2011, whilst, during the same period, CADAS recorded an average 46.3% rate of program completion for those recommended by the courts. Post program recidivism was monitored for PED program participants, with 12.3% detected for a drug offence within two years of program diversion and 37% detected for any other offence during the two year post program period. No data on CADAS post program drug use or offending was available for outcome analysis<sup>1</sup>. It is unfortunate that the PED program is currently only available for low level possession offences, as Directions Health Services believes that, for low level offenders whose AOD dependency is implicit in their offences, diversion away from the judicial system affords the best possible successful outcome.

### ACT Drug and Alcohol Court

Directions Health Services understands that the ACT Government has committed to establishing a Drug and Alcohol Court (DAC), and associated support programs, with this noted as one of the 2016/17 Judicial Priorities. Directions is encouraged by the ACT Government's continued progression of a comprehensive therapeutic jurisprudence framework, which acknowledges the integral relationship between substance dependency and criminal undertaking, and the multiple comorbidities and other domains of disadvantage (such as mental health, homelessness, unemployment) that are a significant factor in offending behaviour.

Directions welcomes the ACT Supreme Court's proposal for the establishment of a Drug and Alcohol Court as the most appropriate option for people who commit more serious offences. The intention that the DAC operate as a diversion at the top end of the criminal justice system, providing a response to people likely to be sentenced to between one and four years imprisonment, reflects the level of resource and intensity of supervision required in the DAC model and the demonstrated cost effectiveness of a drug court for this offender group in the US. Directions has participated in the consultations and will continue to contribute to the development of the DAC as opportunities arise.

However, Directions Health Services believes that significant benefit can also be delivered to the ACT community through the offering of an additional, low cost AOD diversionary program for lower level offenders. It is proposed that people with a substance dependence who are engaged in chronic low level offending are diverted by Police to drug and alcohol case management services prior to charges being laid, thereby averting their progression through the criminal justice system for relatively minor charges.

### Intensive Case Management Model

This model is designed to meet the needs of people with severe dependence who commit relatively minor offenses that relate to their inability to earn an income, manage their finances and meet their daily living needs. Directions Health Services strongly advocates for consideration of a program

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<sup>1</sup> Hughes, Shanahan et al (2013) *Evaluation of the Australian Capital Territory Drug Diversion Programs*

offering for these offenders which has been demonstrated to achieve good outcomes for this cohort, including to:

- reduce recidivism,
- improve individual participant outcomes relating to safety, stability and self-sustainability (ie. housing, employment, health & wellbeing),
- reduce the harm resulting from substance dependency,
- reduce public costs associated with judicial administration, prosecution and/or incarceration as well as costs associated with other health and community services

Drawing from the LEAD (Law Enforcement Assisted Diversion) program operating in the United States, Directions Health Services notes that significant positive outcomes have been recorded across each of these domains through the provision of wrap around service support to substance dependent offenders. The LEAD program recorded significant reductions in criminal recidivism for program participants, with a 58% reduced likelihood of arrest subsequent to engagement in the program. Intensive case management is particularly noted as an essential element of programs that precipitate significant reductions in recidivism.<sup>2</sup>

The provision of flexible case management, underpinned by a harm reduction philosophy and respect for the participant's stage of change, coupled with brokerage support where needed, is lauded as the success component of the program, leading to improvements in psychosocial, housing and quality of life outcomes. Employing a trauma informed, harm minimisation approach which informs individualised, collaborative case management towards client driven goals, the LEAD program 'promotes self-efficacy and motivation to change'. The effectiveness of this approach with cohorts struggling with substance dependency, homelessness and/or mental health issues has been espoused through a number of studies<sup>3</sup>. By engaging and retaining participants, the LEAD program is facilitating significant, improved life outcomes for participants and proving itself to be a productive judicial alternative.

With whole of government priorities focused upon supporting safer communities, and reduced re-offending rates identified as a primary indicator of success, introducing a diversionary program, modelled upon the LEAD program, offers a cost effective alternative to the judicial process and potential incarceration. This offers a means of addressing the AOD issue(s), identified as an integral input to the crime, as well as enhancing the capacity of eligible offenders to address issues across other critical life domains which may also act as precursors to crime.

This proposal represents an innovation within the Australian legal system in addressing adult substance dependent offenders who engage in low level, non-violent criminal activity. Where other current adult diversion programs offer potential engagement in AOD education and/or treatment **after** the offender has been absorbed into the judicial system, this proposal mirrors the EIPP process, where **pre-judicial engagement** operates as a diversionary incentive to address the life circumstances informing the criminal undertaking and a provides stimulus to maintain engagement in an intensive case management, treatment and support program.

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<sup>2</sup> Warner T, Kramer J (2009) 36:89-109; Braga A et al (2009) 46(4):411-436; Loveland & Boyle (2007) 51(2): 130-150

<sup>3</sup> Cited Collins S, Lonczak H & Clifasefi S (2015) *Lead Program Evaluation: Criminal Justice and Legal System Utilisation and Associated Costs* (footnotes 15, 20, 2, 26)

A significant difference in the model compared to other diversion programs is that, whilst the offender is encouraged and supported to reduce or stop their use of substances, it is not an eligibility requirement for participation in the program. The case management model enables participants to address the areas of concern that are a priority for them across multiple life domains, for example, homelessness. This approach facilitates development of trust and provides a platform for the case manager to work with them to address their substance use.

## Outcomes and Benefits

The cost benefits of such an approach are potentially significant. An evaluation of the impact of the LEAD program on participant utilisation of the judicial system and associated costs indicated that participation in the LEAD program resulted not only in reduced recidivism, reflected through lower post-intervention engagement with the justice system, but also a 31% reduction in average system costs per participant, compared to a 104% increase in those costs associated with the comparative evaluation control group, post charges. This offers potential for significant systemic cost benefit.

McCollister, French & Fang cogently note, in their estimation of the cost of crime to society<sup>4</sup>, that **‘even modest reductions in criminal activity can generate economic benefits that significantly outweigh the cost of treatment’**.

Further, the LEAD program has recorded significant improvement in health and wellbeing outcomes for LEAD program participants, with 46% of participants more likely to be on the employment continuum 18 months after commencing with the program; 33% more likely to have regular income and 89% more likely to have obtained permanent housing during this time. Each of these factors also parlays into significant public welfare cost savings.

Quantifying in the local context, in the last three financial years, the average number of detainees in ACT correctional facilities at any given time for low level, non-violent offences were as follows:

Offence	2016	2015	2014
Illicit Drugs Offences	8	8	5
Theft (Other – not motor vehicle)	8	10	8
Unlawful Entry	24	16	17
Other Offences Against Good Order	2	4	2
Total	42	38	32

It is likely that a minimum of 80%<sup>5</sup> of the 42 low level offenders incarcerated in 2016 at any one time were substance dependent - that is 34 people at any one time in 2016. Applying the average daily

<sup>4</sup> McCollister K, French M & Fang H (2010) *The Cost of Crime to Society: New Crime Specific Estimates for Policy and Program Evaluation in Drug Alcohol Depend* 2010 Apr 1: 108 (1-2) 98-109

<sup>5</sup> Stoove & Kirwan noted that 79% of inmates at the Alexander Maconachie Centre reported that their offence was committed whilst under the influence of alcohol, drugs or a combination of both

operating cost of \$296.04<sup>6</sup> to maintain incarcerated offenders equates to more than \$3.5 million, invested purely in incarcerating these offenders, without addressing the impetus for their offending. Significant cost savings could potentially be achieved in the management of this offender cohort, were a LEAD type program available to offer an intensive case management alternative to incarceration.

It should be noted that, whilst there were **939 drug related arrests and summons** and **1301 drug related separate charges** during the 5 year period to September 2016, only 446 adults and 245 young people were directed to drug specific diversions. Available data on CADAS completion rates from 2007 - 2011 indicate that only 36% of referrals initiated by the courts resulted in program completion; 46% of offenders recommended to the program completed, whilst 70% of offenders ultimately engaged in the program completed. This indicates significant participant attrition along the pathway to treatment. For the PED program, however, completion rates were substantially higher, with an average 96% completion rate for those referred; 99.5% for those recommended for treatment and 99.5% of those engaged in treatment. It could be suggested that the pre-charge aspect of the PED program may offer significantly greater incentive for offender engagement.

The ACT Criminal Justice Statistical Profile as at September 2016 indicates that, of all charges (63,282) laid in the ACT in the 5 year period to September 2016, **alcohol was involved in 15,090** (almost **24%**). Alcohol has also been a factor in the apprehension of 12,053 people during the 5 year period, with young men in the 18 -21 year and 25 – 29 year age groups particularly prevalent (14.6% and 14.3% respectively). Significantly, this data also indicates that the 18 – 21 year age group is significantly over-represented in charges laid from apprehensions for Illicit Drug Offences (23%), Unlawful Entry with Intent (22.7%), Theft and Related Offences (19.6%) and Public Order Offences (20.7%) across the 5 year period. The 25-29 year age group similarly registers significantly across these offence areas.

In this context, the LEAD program may also offer currency for early career, low level, not violent offenders with substance dependency, as a means of addressing their AOD and other life issues and preventing their escalation to chronic offending. Given that illicit drug use continues to be most highly subscribed to by these same age cohorts,<sup>7</sup> the lifetime value of early drug diversion for these low level offenders cannot be underestimated.

The challenges, as noted in the *2013 Evaluation of the Australian Capital Territory Drug Diversion Programs*<sup>8</sup>, are:

- for the system to recognise the beneficial role that drug diversion plays for young offenders, in particular;
- to enhance support for, and subscription to, drug diversion programs from all stakeholders along the judicial continuum;
- to ensure that clear program objectives, eligibility and protocols exist to guide stakeholders and to ensure that allocated resources are channelled efficiently;
- to create a synergistic suite of drug diversion programs in the ACT

It is to these challenges that Directions Health Services speaks with this proposal, recognising that the ACT has long been recognised as an adaptable jurisdiction, with an emphasis on maximising best

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<sup>6</sup> Report on Government Services 2016 - Justice Vol C

<sup>7</sup> National Drug Strategy Household Survey 2016

<sup>8</sup> Hughes, Shanahan et al 2013 *Evaluation of the Australian Capital Territory Drug Diversion Programs*

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practice opportunities.<sup>9</sup> By engaging multiple opportunities for diversion, at differing entry points along the judicial continuum, targeting different cohorts of offenders and levels of offence, the ACT justice system would be exercising best practice protocols around not only diversion practices, but also around systemic accessibility and equity. Such practices also offer the potential for significant, long term, social cost benefits to the ACT community, as well as to the public health and welfare systems.

The estimated cost of a trial LEAD program in the ACT, with three full-time case managers working intensively with the specified offender cohort, would be in the vicinity of \$500, 000 per annum. The cost benefit to the ACT community in the long term, over and above the direct cost saving to the judicial system, could be significant.

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<sup>9</sup> Hughes & Ritter 2008, cited Hughes, Shanahan et al 2013 *2013 Evaluation of the Australian Capital Territory Drug Diversion Programs* p78