

It has long been said that "Insanity is doing the same thing over and over again and expecting different results."

The 14-month, independent Special Commission of Inquiry into the drug 'Ice', noted that our country has the highest rate of amphetamine dependence in the world, and our region the highest rate of associated deaths. Further, more than \$7 billion worth of crystal methamphetamine is consumed in Australia every year.

Despite the best efforts of those involved in law enforcement, they have been unable to reduce supply or production in NSW.

Illicit drug use puts lives in danger, causes families distress, harms our community and funds further criminal enterprise.

Each year, hundreds of thousands of people who need help are unable to receive the treatment they need.

Something needs to change.

For decades, the New South Wales Bar Association has advocated for personal drug use and possession of small quantities to be treated as a health issue requiring a properly resourced health intervention and treatment strategy, instead of putting drug users – as opposed to drug dealers – into the criminal justice system.

That is because those working in the criminal justice system - police, prosecutors, judges and lawyers - have long known the current approach is not working. It is time to do something about it. That is particularly so with the inevitable backlogs that COVID-19 has placed on our Local Courts, courts that could dedicate precious time and resources to pressing matters such as domestic violence.

Former NSW Police Commissioner Andrew Scipione told a roundtable on drug law reform in September 2019 that "Things have to change, because, necessarily, what's happening at the moment isn't working". He supported a depenalisation model (also known as diversion), for personal drug use.

NSW Police Commissioner Mick Fuller has reportedly said "We are supportive of diversions and NSW has done a lot ... around juveniles ... because everyone certainly doesn't need to go to jail obviously". He further noted "There has to be another journey for people than the justice system."

In a damning indictment, the Ice Inquiry, which heard from multiple experts and took evidence from across the State, found in February that "The current stance of our criminal law towards use and possession of drugs has failed to have any significant impact on the prevalence of illicit drug use in NSW".

The Ice Inquiry found that criminalising drug use encourages our society "to stigmatise people who use drugs as the authors of their own misfortune" and "turn a blind eye to the factors driving most problematic drug use". These factors include trauma, childhood abuse, domestic violence, unemployment, homelessness, dispossession, entrenched social disadvantage, mental illness, loneliness and despair.

The Ice Inquiry further recommended increased resourcing for specialist drug assessment and treatment services and, based on the evidence, that the NSW Government should implement a model to decriminalise use and possession for personal use of prohibited drugs. This would include removing the criminal offences of use and possession of prohibited drugs for personal use, and

referring people detected in possession of drugs to appropriately tailored health, social and education intervention.

Alternatively, the Inquiry recommended that in addition to increasing resourcing for specialist drug assessment and treatment services, the NSW Government should introduce a legislated police diversion scheme for use and possession of prohibited drugs for personal use. Such a scheme should involve mandatory referral by police of people detected in possession of a prohibited drug to an appropriately tailored health, social and/or education intervention.

The Bar Association endorses all 100+ recommendations of the Ice inquiry and calls on the Government to implement them. However, we also welcome steps in the right direction.

Shortly, the NSW Cabinet will reportedly consider a pre-court diversionary scheme proposal. All other states except Queensland, have implemented diversionary schemes - the sky has not fallen and drug users can begin to turn their lives around with proper resourcing.

The Bar Association supports, in principle, the use of diversionary schemes for possession of small quantities of drugs for personal use as swift, proportionate and efficient responses to minor criminal acts committed by those who pose little risk to the community as long as safeguards are in place and diversion is administered by police in a non-discriminatory manner. We note that drugs do not discriminate when it comes to age and nor should a diversionary approach.

Diverting drug users towards health intervention, education and rehabilitation is not being 'soft on crime', nor does it mean this behaviour does not have consequences. It is about being smart on crime with the focus on harm reduction for drug users – not drug dealers. It is about saying yes to making our communities safer.

To be clear, from what little is known, the proposal currently under consideration by Government, falls far short of the considered recommendations of the Ice Inquiry. Yet, apparently, it is still a bridge too far for some. We would ask opponents to honestly answer a simple question – would you prefer your son, uncle or neighbour's daughter be diverted away from the revolving door criminal justice system, to get education and treatment for drug abuse, or keep doing the same thing over and over again and expecting different results?

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