

Building an evidence base

The promotion of harm reduction strategies in
the criminal justice system

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Law Council
OF AUSTRALIA

About the Law Council of Australia



- The Law Council is the peak national representative body of the Australian legal profession.
- We exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.
- The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community.

The

JUSTICE PROJECT



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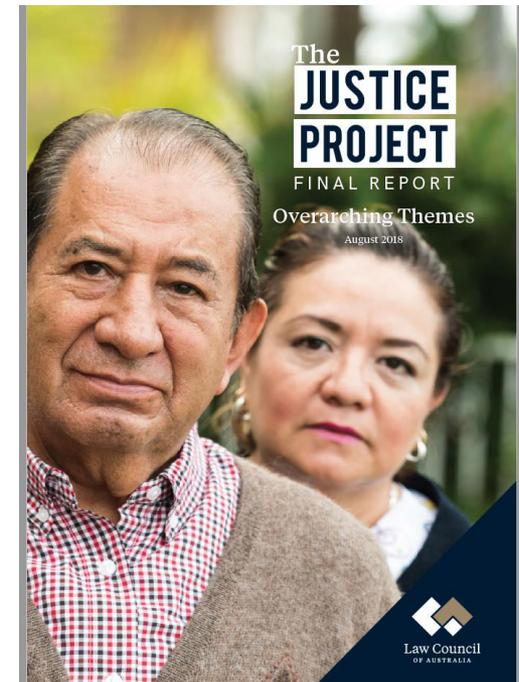
The Justice Project: an overview

- A national review into the impediments to access to justice in Australia
- Focusing on those facing significant social and economic disadvantage
- Concentrating on 13 groups, while recognising that disadvantage is often intersectional and cumulative
- An extension of LCA's work promoting equality before the law, and advocacy for legal assistance and court resourcing to ensure effective access to justice



The Justice Project: the process

- Project broken up into work phases:
 - Literature review, expert review (March to July 2017)
 - Release of consultation papers (August 2017)
 - Over 150 consultations conducted (August to October 2017)
 - 130 submissions reviewed (Sept to Nov 2017)
 - Progress Report (March 2018)
 - Final Report (August 2018)
 - Implementation (ongoing)
- A focus on what is working in the justice system, and what improvements are required.



The Justice Project: the stories

“ We had contact with an Aboriginal lady at the Greenough Regional Prison who stated that she had tried very hard to access drug rehabilitation programs prior to her incarceration but had been unsuccessful. She was so desperate to get off drugs that she deliberately committed some offences, hoping to be imprisoned, to give her the opportunity to detox and perhaps access a program while inside.

- Regional Alliance West, submission no. 94 ”



The Justice Project: the findings

- Identifying the links between substance abuse and the criminal justice system.
- The need to continually focus on root causes when developing policy responses, not just symptoms.
- The importance of critical support services underpinning justice responses.
- The success of therapeutic, problem-solving and diversionary strategies.

“ In order to advance an approach that addresses causes rather than symptoms, it is necessary to resource social services and prioritise programs that reduce the likelihood of entry into the justice system, including drug and alcohol rehabilitation programs, health, disability, family violence and housing services.

- Justice Project ”

The Justice Project: the findings

- Three examples of progressive policies that are working in relation to drug and alcohol dependence and the criminal justice system:
 - i. Justice reinvestment towards treatment and diversion programs.
 - ii. The use of specialist courts and non-custodial supervisory sentencing options.
 - iii. The rise of health justice partnerships.



The Justice Project: the challenges

- The lack of investment in therapeutic and specialist courts remains a key areas of concern.
- This is particularly pronounced in regional areas and applies disproportionately to younger people.

“ Support services such as drug and alcohol rehabilitation and mental health services are necessary to ensure the availability and effectiveness of community-based sentences, and alternatives to fines. Unfortunately, these services are not equally available in regional, rural and remote areas, which leads to situations of ‘postcode justice’ in which individuals in these areas may be more likely to be imprisoned in the absence of alternative options.

- Justice Project ”

The Justice Project: the challenges

“Due to insufficient counselling and drug rehabilitation programs in Mildura, magistrates do not have the same sentencing options compared to cities.”

“There are few options for perpetrator programs and alcohol rehabilitation shelters in the Northern Territory. This results in a lack of any real alternatives to incarceration in remote areas.”

“The lack of drug and alcohol rehabilitation services, mental health services, and the absence of refuges for young people in Bourke leads to a ‘general lack of sentencing options.’”

“There is nowhere for kids to detox in rural areas: you can go to juvie at 10, but can’t go somewhere to detox.”

“In Tasmania, whole cohorts of children at risk are falling through the cracks. There is little accommodation outside detention.”

Barriers to reforming criminal law

- Recognising the historic role of legal formalism in criminal law and the policy reasons behind this.

“

Our dual commitments to equality and to the reduction of the human damage that drug abuse inflicts suggest that we should reduce our reliance on the criminal justice system. Alternative approaches, such as treatment and rehabilitation, promise to be both more effective and more fair.

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- Empirical data has the benefits of being regarded as objective, however stories and personal narratives are increasingly powerful in driving reform in the criminal justice sphere.
 - E.g. youth justice reforms following media exposure.

Where to from here?

- The Law Council will continue to push for greater emphasis on criminal justice reform, from preventative approaches to successful exit strategies.
- Key Justice Project recommendations in this area include:
 - Courts should support the development and implementation of therapeutic jurisprudence and problem-solving approaches to judging for appropriate matters (Rec 4.13).
 - Governments must invest in accessible, disability-responsive and culturally appropriate support services that underpin non-custodial supervisory sentences – especially in rural, regional and remote areas (Rec 5.5).
 - Prioritise support for prevention and early intervention approaches through a range of critical support services (Rec 5.1).
 - Expand justice reinvestment pilots as part of a preventative, early intervention approach and establish a national justice reinvestment body (Rec 5.2).
 - Prioritise prison-based rehabilitation or therapeutic programs, throughcare programs and access to post-release housing (Rec 5.7).

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