



**MAKING IT HAPPEN 2009
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*Drugs, Pipe Dreams and Hard Realities:
addressing substance abuse through the justice
system*

address by

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Introduction

Given the topics which I am to address in this paper, it is especially appropriate that I commence by acknowledging the traditional owners of the lands upon which we meet, the Noongar people of south-western Australia, and by paying my respects to their Elders past and present.

It is impossible to overstate the impact of substance abuse upon the criminal justice system of Western Australia. By substance abuse I mean the use of illicit drugs, and the inappropriate use of alcohol, which is a drug which can be lawfully used throughout most (but not all) of Western Australia. As the statistics I will set out later in this paper reveal, it is reasonable to conclude that substance abuse is causally associated with much of the criminal offending in this State. Substance abuse is often associated with another characteristic of abiding concern relating to criminal offending in this State - namely, Aboriginality.

It therefore follows, as a matter of simple logic, that the extent to which public policies and programmes, including therapeutic programmes, are successful in reducing the extent of substance abuse in this State will have a profound effect upon law and order and upon the justice system of this State. And because those who abuse drugs and alcohol constitute many of the persons who come before our criminal courts, it also follows, logically, that the justice system provides an important opportunity for beneficial intervention aimed at behavioural modification.

In the course of this paper, I will review the statistical evidence which establishes the significance of the causal connection between substance abuse and criminal offending. I will also review the history of the

regulation and discouragement of drug and alcohol use in Australia and elsewhere. That history includes, at times, an emphasis upon a punitive model (prohibition) and at other times an emphasis upon a therapeutic response. These are not dichotomous models. While there is, as we will see, ample evidence to suggest that a purely punitive model is unlikely to significantly reduce substance abuse, a punitive regime can, and does, in contemporary Western Australia, provide a context for a variety of therapeutic regimes.

In this paper I will also pay particular attention to the role of substance abuse in offending by Aboriginal people, who are, tragically, so grossly over-represented in the justice system and prisons of Western Australia.

Illicit Drugs

History

During the 19th century in Australia a wide range of drugs which are now prohibited, were generally available to the public through doctors, pharmacists, grocers and vendors of proprietary medicines. Opiates and cocaine were legally available. In the early 20th century, opiates and morphine were standard ingredients in a variety of proprietary medicines which were freely available over the counter including Bonnington's Irish Moss, a substance known as Cherry Pectoral, another known as Winslow's Soothing Syrup, and another known as Atkinson's Royal Infant Preservative. Preparations containing cocaine and opiates were used to pacify infants and to treat alcoholism. The only legal controls on the distribution of drugs were those contained within the Poisons Acts of the various States. The exceptions were those laws which prohibited the sale of smokeable opium. It seems that those laws were largely driven by anti Chinese prejudice, because of the prevalence of opium smoking

among the Chinese migrants who entered Australia following the various gold rushes.

Of course, the founder of the colonies which became the States of Australia, Great Britain, had a long history in the international opium trade. Its commercial interest in that trade diminished enthusiasm for legal constraints. It was not until the Hague Convention for the Suppression of Opium and Other Drugs of 1912 that there was an organised international effort to confine the sale and use of opium, heroin, morphine and cocaine to medical purposes. An attempt by the United States to have cannabis included within the scope of that convention was unsuccessful. However, the Geneva Convention of 1925 required the signatories to enact domestic laws to restrict the manufacture and sale of those drugs, including cannabis, to medical and scientific purposes.

In response to these international moves, in 1914, the Commonwealth of Australia restricted the importation of opium, morphine, heroin and cocaine to that required for medicinal purposes. Between 1913 and 1930, various States passed laws prohibiting possession of those drugs.

Cannabis was used for medicinal purposes in Australia during the 19th century, and cannabis cigarettes were freely and legally available during the early part of the 20th century. However, it was little used until a resurgence in popularity during the 1960s, following trends in other countries. Nevertheless, legal prohibitions were gradually imposed - with the Commonwealth prohibiting importation in 1926. The States progressively prohibited possession of cannabis through their Poisons legislation - Victoria in 1927, South Australia in 1934, New South Wales

in 1935, Queensland in 1937, Western Australia in 1950, and Tasmania in 1959.

The medicinal use of heroin was gradually eliminated during the 20th century. In 1953, the Commonwealth introduced an absolute prohibition on the importation of heroin, and the States progressively prohibited its manufacture, despite opposition from the medical profession.

The 1960s and 1970s

Recreational use of illicit drugs grew exponentially during the 1960s and 1970s in Australia and other western nations. Initial public policy responses to this phenomenon were almost entirely punitive, with legislatures imposing substantially increased penalties for possession and sale of illicit drugs. Legislative controls were removed from the Poisons legislation and placed in criminal justice statutes. As new synthetic drugs were invented, they were added to the legislative prohibitions.

An illustration of the increasingly punitive approach over this period is found in the Commonwealth legislation prohibiting the importation of narcotics. In 1967, the penalty for unlawful importation was increased from a maximum of \$1000 or 2 years imprisonment, to \$4000 or 10 years imprisonment. In 1979, the penalty for importation of a commercial quantity was increased to life imprisonment (which remains the penalty). And those penalties have been augmented by legislation providing for the forfeiture of profits generated by drug trafficking or property used in the course of drug trafficking or, indeed in WA, any property if a person is a declared drug trafficker, which some have described as wide ranging, and others as draconian.

The 1980s

The 1980s saw the emergence of a substantial public policy debate in Australia and elsewhere in relation to the merits of a purely punitive approach to illicit drug use. Advocates of decriminalisation pointed to the adverse consequences of criminalisation, including, in particular, the opportunities for profiteering which criminalisation provided to drug traffickers, and the motivation for drug users to commit property crime in order to pay the high prices demanded by traffickers. The emergence of the HIV/AIDS epidemic also focused attention upon harm reduction, rather than prohibition, and the obstacles which criminalisation placed in the path of therapeutic programmes aimed at diminishing the spread of the virus.

The arguments in favour of decriminalisation were given effect in some legislation relating to cannabis around Australia. In 1986, the South Australian parliament decriminalised the cultivation and use of cannabis in small quantities. In some other States, the penalties for possession of small quantities of cannabis were reduced, while at the same time, the penalties for trafficking in commercial quantities of any prescribed substance were generally increased.

The 1990s and Beyond

While there have been some further legislative changes during the 1990s and more recently, the laws regulating illicit drugs around Australia retain their punitive focus, with the exception of some laws relating to possession of small quantities of cannabis. They are augmented by the property confiscation laws to which I have referred. However, a number of studies conducted during this period concluded that, having regard to the prevalence of illicit drug use in Australia, and the substantial period of

time over which the predominantly punitive legislative approach had been adopted, it could be reasonably concluded that the punitive approach had failed to prevent the substantial use of illicit drugs in Australia. That conclusion is amply reinforced by the statistics relating to contemporary illicit drug use to which I will now turn.

Contemporary Statistics - Illicit Drugs

The National Drug Strategy Household Survey conducted in 2007 revealed that 38% of Australians aged 14 years and over responding to that survey had used an illicit drug at least once in their lifetime, and 13% had used an illicit drug at least once in the last 12 months. Recent illicit drug use was most prevalent among persons aged between 20 and 29 years, with almost one in three people (27.7%) in this age bracket having used at least one illicit drug in the last 12 months.

However, the Western Australian data suggests that there may have been a reduction in illicit drug use in recent years, with one survey showing that for those aged 14 years and over, in 2007, 16.2% reported use of an illicit drug within the last 12 months, compared to 25.4% in 1998. The 2007 survey suggested that the most commonly used illicit drugs in Western Australia were cannabis (10.8%), methylamphetamine (4.2%), ecstasy (4.1%), pain killers/analgesics (2.5%), cocaine (1.8%) and tranquillisers/sleeping pills (1.6%). Except for pain killers/analgesics, the rates were all higher than the national rates. In particular, the rate of use of methylamphetamine in Western Australia has in recent years been the highest in the country, while the rate for cannabis use has been the second highest in the country (after the Northern Territory).

School Students

A survey of school students conducted in 2005 suggested that, in relation to 12 to 17-year-olds in Western Australia, there was a substantial decrease in the proportion who had used cannabis in the last 12 months over the last decade or so (36.4% in 1996, 26.8% in 2002, 19% in 2005). However, each of these rates was greater than the equivalent national rate.

Further, fewer Western Australian school students reported the use of amphetamines in 2005 (6.5%) in comparison to 2002 (10.3%), although these rates were still significantly higher than the national averages. Surveys suggest that amphetamine use amongst WA school students may have peaked in 1999. As the legislative regime relating to the use of these drugs has not altered materially over this period, it seems reasonable to infer that changes in the rates of usage are related to things other than legislated penalties. Nevertheless, surveys consistently show overwhelming public support for increased penalties for the sale or supply of illegal drugs.

Police Detainees

The 2007 annual report on the use of drugs in Australia reported that 43% of persons detained in police custody could be considered dependent on illicit drugs, compared to 32% who could be considered dependent upon alcohol. However, across the six police stations or watch-houses which had been monitored long term for the purposes of this report, the percentage of detainees dependent on alcohol had increased, while those dependent on illicit drugs had decreased.

The same report observed that 48% of detainees who said that they had been charged with an offence during the past 12 months had taken drugs

prior to committing at least one of those offences, and 15% advised that they were looking for drugs prior to their arrest. One-third of detainees attributed at least some of their offending to their drug use (excluding alcohol). 44% of adult male detainees whose most serious offence was a property offence tested positive to an illicit drug (excluding cannabis), compared to 34% of adult male detainees whose most serious offence was an offence of violence.

However, in Western Australia, at East Perth lockup (where most persons arrested in the Perth metropolitan area are taken), it was reported that 73% of male detainees and 77% of female detainees tested positive for illicit drugs. The drugs for which they tested positive were as follows:

	Males	Females
cannabis	53%	45%
methylamphetamine	31%	39%
benzodiazepines	19%	30%
other drugs (total) (including cocaine and heroin)	14%	10%

(One-third of detainees tested positive for multiple drugs.)

Of the adult males detained at the East Perth lockup who had been charged with an offence of violence, 75% tested positive for an illicit drug - 63% for cannabis, 44% for a drug other than cannabis - 30% tested positive for methylamphetamine and 20% for benzodiazepine.

Over 10% of the persons in prison in Australia on the night of 30 June 2008 were held because of illicit drug offences.

The Courts

Illicit drug use generates much of the business of the criminal courts of Western Australia. That business is generated in two areas - firstly, cases in which the accused is charged with possessing or selling illicit drugs, and secondly, the myriad range of other offences caused by the use of illicit drugs, including homicide, armed robbery, burglary, car theft, money laundering, assault and public disorder offences. There is no reliable data readily available which quantifies the extent of the second category, but the first category (drug offences) represented 10.8% of the offences tried in the higher courts of Western Australia and about 6.6% of the offence counts tried in the Magistrates Court in 2005. Anecdotal experience suggests that the number of offences induced by illicit drug use will be significantly greater than the number of drug offences. It is therefore reasonable to conclude that drug offences and offences induced by the use of illicit drugs constitute a sizeable proportion of the work of our criminal courts.

Alcohol

History

Alcohol has had a profound influence upon Australian life since colonial settlement. The New South Wales Corps, based in Sydney, became known as the Rum Corps. Rum was a dominant feature of the early Australian economy. Coins were scarce and commerce was growing, so spirits were used as a substitute. Convict workers were paid with rum. The profits derived from rum running (by the government and private profiteers) built hospitals, houses, and churches. During the 19th century, spirit consumption in New South Wales was four times higher than that in Britain.

Drinking levels declined considerably during the latter part of the 19th century, although by 1890, by far the highest drinking rate was in Western Australia, which also had the highest number of single men - no doubt due to the gold rush.

During the latter part of the 19th and early part of the 20th centuries, the growing temperance movements had an effect upon the regulation of the sale of alcohol. Sunday trading by hotels was prohibited and closing hours at night reduced - in most States to 6 pm - although in WA to 9 pm and in Queensland 8 pm. In many jurisdictions a form of local option - or vote by members of a local district as to whether the number of licensed premises in that district should be increased was introduced.

Prohibition

Prohibition came into effect in the United States on 1 January 1920, pursuant to the *Volstead Act* which was enacted pursuant to the 18th amendment to the US Constitution. Initially alcohol consumption dropped, following a trend which had been established during World War I. However, the middle class was able to afford to purchase illegal alcohol, and it became fashionable to do so. While alcohol consumption did not return to pre-prohibition levels, by the mid to late 1920s, prohibition was widely flouted. It had spurred the growth of gangster activity and organised crime, and huge profits were being derived from the illegal trade. During the Great Depression, American opinion turned decisively against prohibition and it was repealed in 1933.

Analysis of the history of prohibition in the US illustrates the connection between prohibition and the encouragement of other forms of criminal offending. One analyst has expressed the connection in these terms:

The ban spawned an extensive illicit alcohol market that was associated with far reaching corruption and violence. Murder rates provide one indication of the extent of the social disruption caused by prohibition. In the years leading up to the federal alcohol prohibition murder rates were gradually increasing. However, the introduction of the new laws coincided with a sharp spike in the homicide rate that was sustained throughout the prohibition years. After the laws were repealed, the homicide rate dropped abruptly and only rose to similar levels in the 1970s with the advent of President Nixon's war on illicit drugs. Other factors appear to have contributed to the trends in the 1920s and 1930s, but most analysts agree that alcohol prohibition was a major contributing factor¹.

The same connection is seen between the policy of prohibition of illicit drugs and the encouragement of other forms of criminal conduct, including most noticeably the robberies, armed robberies and burglaries that are carried out in order to obtain the funds required to purchase drugs, the price of which is massively inflated by their illegality.

As we approach yet another referendum on daylight saving, it is interesting to note that there have been a number of referenda in Western Australia concerning the regulation or prohibition of alcohol. In 1921, a

¹ Andrew McIntosh *Drug Law Reform - Beyond Prohibition* - The Australia Institute Discussion Paper No 83 February 2006

referendum was held, giving voters the option of State ownership and control of all liquor outlets (the Gothenburg system) or prohibition. No district achieved the necessary vote in favour of Prohibition. In 1925, a referendum was held in relation to prohibition. The proposal was rejected. A similar proposition was put to a referendum in 1950, and again rejected.

Contemporary Alcohol Use - the Statistics

The Australia Institute of Health and Welfare reported in 2006 that the pattern of alcohol consumption by the Australian population remained relatively unchanged over the period 1991 to 2004. Overall, males were more likely to consume alcohol daily (12%) or weekly (48%) compared with females (6% and 35% respectively). Around one in three Australians (35%) aged 14 years and over consumes alcohol at risky or high risk levels for short-term risk on at least one occasion each 12 months. One in ten Australians consumes alcohol at levels that are considered risky or high risk for alcohol-related harm in the long term.

Per capita consumption of alcohol appears to have declined in Australia over the last 30 years or so. In 1975, Australia was ranked 10th in the world for per capita consumption, whereas in 2003, we had dropped to 22nd highest. In 1985, alcohol consumption per capita per annum was 9.4 litres, whereas by 2003, it had dropped to 7.2 litres. However, the rate of consumption of alcohol in Western Australia is generally higher than the national average - for example, in 2007 a survey reported that 9.8% of Western Australians drank daily, the second highest of any State or Territory (the highest being the Northern Territory at 10.7%), and the national average 8.1%.

School Students

Surveys suggest that alcohol consumption by secondary school students may be declining. A survey conducted in 2005 reported that 67% of secondary students in WA consumed alcohol in the last year, compared to 73% in 2002, 43.5% in the last month, compared to 49.2% in 2002, and 28.9% in the last week, compared to 33.2% in 2002.

However, the proportion of 12 to 17-year-olds who were drinking at "at risk" levels increased from 23.3% in 2002, to 26.9% in 2005. A similar trend was seen at a national level. In Western Australia, the increase in "at risk" drinking in that age group was almost entirely attributable to the increase in "at risk" drinking by 12 to 15-year-old females, where the rate of increase was significant - from 16.1% in 2002 to 24.5% in 2005. Viewed over a longer time span, the increase in "at risk" drinking among secondary students is of concern. In the 12 to 15 year age group, the 1993 estimate was 10% drinking (at risk) compared to 19.5% in 2005. In the 16 to 17 year age group, the equivalent figures were 26.7% in 1993, and 37.3% in 2005.

The Consequences of Alcohol Misuse

Conservative estimates suggest that in 2005/06 there were 30,202 alcohol related injury and assault attendances at metropolitan hospital emergency departments in Perth - representing 7.8% of the total emergency department presentations during that period.

A report from the Office of Road Safety estimates that just over a third (36%) of fatal crashes in 2007 involved a driver with a blood alcohol concentration greater than the legal limit of 0.05g/ml. These drivers were most likely to fall in the 25 to 29 years age group.

A report from the DAO of WA estimates that alcohol misuse is associated with:

- 50% of deaths from assaults
- 44% of deaths from fire injuries
- 34% of falls and drownings
- 25% of car crashes
- 18-24% of mental health disorders
- 16% of child abuse deaths
- 12% of suicides
- 10% of industrial accidents

Police Detainees

The 2007 annual survey on alcohol and drug use among police detainees reported that three-quarters of male detainees and two-thirds of female detainees reported heavy alcohol use in the year preceding their detention. Half of the male and one-third of the female detainees reported having drunk heavily in the 48 hours prior to arrest. 32% of detainees could be considered dependent on alcohol (compared to 43% who could be considered dependent on illicit drugs). Half of those detained for offences of disorder and violence had consumed alcohol in the 48 hours prior to arrest.

In Western Australia, the survey showed that 55% of adult male detainees and 42% of adult female detainees at the East Perth lockup had drunk heavily in the 48 hours prior to their arrest. When those figures are considered with the figures I have set out above in relation to use of illicit

drugs by detainees at the East Perth lockup, it is apparent that only a very small minority of those arrested in metropolitan Perth do not use illicit drugs or misuse alcohol.

Foetal Alcohol Spectrum Disorder

The term Foetal Alcohol Spectrum Disorder includes a range of disorders associated with damage to the foetus as a result of alcohol consumption by a mother during pregnancy. The most common features of foetal alcohol syndrome are a characteristic facial appearance in infancy, mental retardation and central nervous system dysfunction, reduced body weight and head circumference, hyperactivity, poor life skills and judgment. In early school years the effects include inattention, memory and learning problems associated with generally low IQs. Behavioural problems in adolescence for those affected by the syndrome include a failure to consider the consequences of their action, lack of initiative, lack of response to social cues, uninhibited and impulsive behaviour.

Unsurprisingly, these behavioural characteristics greatly increase the chances of those affected by this syndrome intersecting the criminal justice system. Recent research in Canada has indicated that foetal alcohol disorders are associated with one-quarter of young offenders. Anecdotal evidence suggests that the incidence may be at least this high in some regions of Western Australia. Such offenders pose a significant problem for the criminal justice system because their capacity to respond to programmes aimed at behavioural modification is inhibited by their condition.

Juvenile Offenders

The surveys to which I have referred suggest that illicit drug use and alcohol misuse is widespread among young Australians. Happily however, the surveys suggest that such usage may be decreasing, although the apparent increase in "at risk" drinking is of concern.

However, in the case of the minority of young Australians who intersect with the criminal justice system, illicit drug use and alcohol misuse is prevalent. A report by the Australian Institute of Criminology dealing with the drug use careers of juvenile offenders in 2005 reported that almost all juvenile detainees reported having used alcohol (97%) or cannabis (94%) and half reported the use of amphetamines. Two-thirds of juvenile detainees reported being intoxicated (either drunk or high) at the time of committing the offences for which they were detained, and the majority reported that drug use had a definite impact on their criminal offending. The same report found no clear evidence of a causal connection between drug use and the commencement of offending behaviour (with most offenders committing their first offence prior to commencing substance abuse). However, there appears to be a clear correlation between continued offending and substance abuse.

The desirability of programmes intended to break the cycle between illicit drug use and/or alcohol misuse and criminal offending by juveniles is obvious. However, in 2008, the Auditor-General of Western Australia reported that there was no structural process to ensure that substance abuse problems associated with repeated offending by juveniles were identified and treated. The Auditor-General reviewed the histories of seven young people who had had over 20 contacts with police over 5 years. Six of those had substance abuse problems. However, the Auditor-General noted that there was no formal cross-agency structure or

process for identifying and case managing young people whose substance abuse problems were causing repeated offending. It is to be hoped that the identification of this problem by the Auditor-General will lead to appropriate corrective action by the relevant agencies.

Aboriginal People and Alcohol

As Professor Marcia Langton has pointed out, a common stereotypical image of Aboriginal persons in Australia is "the drunken Aborigine". Like many stereotypes, it is flawed in fact, as surveys have shown that the proportion of non-drinkers in the Aboriginal population is roughly the same as the proportion of non-drinkers in the general population. The prominence of the image of "the drunken Aborigine" is no doubt due in part to the greater tendency of Aboriginal people to drink in open and public areas for a variety of reasons, including the inadequacy of housing.

The dominant policy response to the issue of Aboriginal drinking has been that of prohibition. As early as 1843, the *Publicans Act of WA* attempted to prohibit the supply of liquor to Aboriginals. The *Wines, Beer and Spirit Sale Act 1880* (WA) explicitly prohibited the sale of alcohol to Aboriginals. In 1902, the Act was amended to include "part Aborigines". Similar prohibitions were contained in the *Licensing Act 1911*, which also prohibited Aboriginal people from "loitering on licensed premises". The infamous (and despicable) *Aborigines Act 1905*, which later became the *Native Administration Act*, enabled specific Aboriginal people to obtain exemption from the prohibition. However, such exemptions were not easily obtained. A non-Aboriginal man was sentenced to 3 months imprisonment for supplying his Aboriginal wife, who did not have an exemption certificate, with a glass of beer.

Albert Namatjira

The case of Albert Namatjira provides an example of the impact of legislation of this kind. Under the welfare ordinance of the Northern Territory of 1957, the Administrator was empowered to declare an Aboriginal person to be a government ward. Most Aboriginal people in the Territory were declared to be such wards. However, Albert Namatjira, a famous painter, along with about eight others, was considered to be sufficiently assimilated to not be declared. He therefore enjoyed all the rights normally associated with citizenship, including access to alcohol.

By 1958, Namatjira was allegedly drinking heavily and living in a camp on the fringe of Alice Springs. Many of the people living at his camp were declared wards of the State. Namatjira was supplying alcohol to them. There were incidents of violence at the camp, including a homicide in the course of a bout of heavy drinking.

In due course, Namatjira was charged with supplying rum to an Aboriginal ward (his cousin Raberaba). He was sentenced to 6 months imprisonment by the magistrate. He appealed against conviction and sentence. His counsel argued that the law was unconstitutional. Justice Kriewaldt rejected the argument. However, he allowed an appeal against sentence and reduced the sentence to a period of 3 months. Namatjira's application for special leave to appeal to the High Court was refused. Sir Owen Dixon, then Chief Justice of the High Court, in refusing the application, stated that considerable weight should be given to the decision of an experienced Judge of the Northern Territory familiar with the environment and conditions of life in that jurisdiction. However, as a

result of public disquiet, the government directed that Namatjira's sentence should not be served in prison, but in the bush.

The policy of prohibition of alcohol consumption by Aboriginal people was gradually removed throughout Western Australia between 1964 and 1971. In 1964, the south-west region was proclaimed to be "a non-restricted area" which meant that Aboriginal people could have access to alcohol in that region. In 1966 the proclamation was extended to cover the land south of Port Hedland, and in July 1971, the proclamation was extended to include the Kimberley and the eastern goldfields. Localised prohibition has returned under the *Aboriginal Communities Act*, with many remote communities passing by-laws which prohibit the possession or consumption of alcohol in the area controlled by the community. The newly formed Indigenous Implementation Board chaired by Lieutenant General John Sanderson AC (retired) has issued a statement expressing its view that prohibition alone does not offer a lasting solution to the problem of Aboriginal drinking. The Board accepts that prohibition may be needed in the short-term, but has been unable to identify any case in which prohibition has worked in the longer term. That observation is, with respect, entirely consistent with all the evidence relating to the consequences of a policy of prohibition, some of which is referred to in this paper.

It must be emphasised, loudly and clearly, that not all, or even a majority of Aboriginal Western Australians misuse alcohol. However, it must be said equally loudly and clearly that alcohol misuse is destroying the health and lives of a distressingly large number of Aboriginal people, including perhaps most tragically of all, the children of those who misuse alcohol.

Between 2000 and 2004, it is estimated that 1145 Indigenous Australians died from injury and disease attributable to alcohol. In 2004, the death rate attributed to alcohol in the central Northern Territory (14 per 10,000) and northern Western Australia (10 per 10,000) were more than double the national Indigenous rate (4 per 10,000). Suicide and alcohol attributable liver cirrhosis accounted for almost 40% of deaths among Indigenous men. The average age at death from alcohol attributable causes among Indigenous people was 35 years. A number of researchers have highlighted the causal link between alcohol consumption and violence.

The Royal Commission into Aboriginal Deaths in Custody investigated 32 deaths. 10 of the deceased had alcohol in their bodies at the time of death. 19 of the 32 were in custody as a result of an alleged alcohol-related offence.

Anecdotal evidence suggests that there is a strong relationship between misuse of alcohol and sexual abuse, in both Aboriginal and non-Aboriginal communities. The government intervention in the Northern Territory, following publication of the Little Children are Sacred Report, reinvigorated the policy of prohibition in that Territory, although, unlike in Western Australia, without prior consultation with, or the support of the communities affected by the bans. In many instances, the prohibitions overrode previous management plans that had been established by agreement between local communities, alcohol providers and police. The recent review of the emergency intervention in the Northern Territory noted that as a result of the intervention, the reported incidence of domestic violence has increased significantly. Because

many of the communities previously lacked a police presence, it is difficult to know whether the increase in reports came about as a result of that presence, accompanied with reduced tolerance to violence which was associated with reduced alcohol consumption. Similarly, it has been suggested that the ban on the sale of take-away full strength alcohol in Fitzroy has reduced tolerance to domestic violence, and thus increased rates of report.

The evidence to hand strongly suggests that the restrictions imposed in Fitzroy have had a beneficial effect upon the health and living conditions of the residents of that town. That is one of the reasons why I was very pleased to see the announcement earlier this week to the effect that similar restrictions will be imposed in Hall's Creek.

Mobilisation and Displacement

Localised bans upon the sale or possession of alcohol will always give rise to issues concerning the displacement or mobilisation of persons affected by those bans to other places where the bans are not in force. The extent of that effect is a matter of some controversy. Data drawn from hospital admissions in the Kimberley suggests that following the restrictions imposed in Fitzroy, hospital admissions in that town declined, whereas hospital admissions in other towns increased (but not to the same extent). On the other hand, the review of the Northern Territory intervention has not identified any administrative data showing a significant flow of Aboriginal people from communities affected by the bans into urban centres where alcohol is more readily available. Conversely, anecdotal evidence provided to me during my visit to the Pilbara last week suggested that following the imposition of the restrictions in Fitzroy, a number of people from that town moved to

communities in the Pilbara, although perhaps not in the numbers estimated at the time of introduction of the restrictions.

For my own part, I would add to Lieutenant General Sanderson's proposition that prohibition is not a satisfactory long-term solution, the further proposition that localised restrictions are equally unlikely to provide satisfactory long-term outcomes. The town of Roebourne provides a good example of the limitations upon localised solutions. Some years ago, a foundation representative of the local community purchased the Roebourne Hotel and closed it. There are therefore no liquor outlets in the town itself, so no question of a Fitzroy style restriction arises. However, Wickham is about 12 kms from Roebourne, and Karratha about 30 kms away. Each of those towns comprise mostly non-Aboriginal residents. General restrictions on the sale of alcohol in those towns would not be accepted and could not be justified. Restrictions on the sale of alcohol in those towns which discriminate against Aboriginal people because of their Aboriginality, would of course be unacceptable, and in any event, unlawful. What is needed then is not prohibition, but a management plan and strategy for the region which diminishes the harmful effect which alcohol misuse is, tragically, having upon the people of Roebourne.

Liquor accords and sensible policing strategies are important parts of such management plans, as are community patrols, and the provision of sobering up shelters and safe houses for women and children. Community education programmes and behavioural modification programmes for those who have shown an inability to control their behaviour when affected by alcohol are also important components or a lasting solution. Unfortunately, drug and alcohol programmes for

convicted offenders are in limited supply in the regions of the State most affected by these issues.

Another important management strategy, which I believe has the potential to greatly contribute to appropriate alcohol management, is the point of sale system which I believe will shortly be trialed in Newman. This system, which has been developed and implemented in the Northern Territory with significant success, requires prospective purchasers of take-away alcohol to produce photo identification. The computer system will then identify, instantaneously, whether or not the purchaser is subject to any restrictions imposed under the *Liquor Control Act* - for example, whether an order has been made preventing that person from acquiring alcohol, or the amount and strength of alcohol which can be acquired. If a sale is made, that sale is instantaneously entered onto the system, preventing the purchaser from going to another outlet nearby to exceed the daily prescribed limit. The system also has the capacity to identify "sly groggers", by identifying individuals who appear to be acquiring suspiciously large quantities of alcohol. The other advantage of such a system is that it could be implemented throughout an entire region, such as the north of the State, thus reducing the risk of mobilisation and displacement. It is a system which is discriminatory, but not on racial grounds. It discriminates against those who have, by their past conduct, shown a propensity to misuse alcohol, and targets those individuals, rather than an entire community. It will be very interesting to see if the system is successful in Newman.

The Courts and Illicit Drug Use and Alcohol Misuse

It is appropriate to now briefly summarise the conclusions which I would draw from the material which I have set out above that are pertinent to the

proper role of the courts and the justice system in relation to illicit drug use and alcohol misuse.

The first conclusion I would draw is that a very large proportion of the offending behaviour which results in offenders being brought before our courts is the consequence of illicit drug use and alcohol misuse. Unless and until something is done to change the patterns of substance abuse which have contributed to this offending behaviour, it is highly likely and perhaps inevitable that the offending behaviour will continue. The imposition of sentences which are focused purely upon punishment or deterrence (such as heavy fines or imprisonment) is unlikely to modify the substance abuse which is inducing the offending behaviour, and therefore equally unlikely to reduce the incidence of offending behaviour in the future.

The second conclusion I would draw is that, at least in the case of illicit drugs, the dominant legislative policy which the courts are required to enforce is that of prohibition. That is a policy which long experience tells us is unlikely to be successful of itself. Plainly, it has not been successful in preventing the increased use of illicit drugs in Australia over the last 40-50 years. It is also a policy which tends to encourage other forms of offending behaviour by the incentives which it provides for organised crime and profiteering from illegal sales, and the need for illicit drug users to obtain the funds required to meet the high prices demanded by traffickers. There seems a reasonable body of evidence in support of the proposition that profits derived from the sale of illegal drugs have provided a major source of revenue for organised crime in Australia - so large in fact that it seems likely that without those profits, organised crime would be much less extensive.

By these observations I do not mean to suggest that the legislative sanctions which attach to the sale of commercial quantities of illicit drugs should be relaxed or diminished in any way. Far from it. What I do mean to suggest is that we must recognise the incapacity of those sanctions to curtail the use of illicit drugs in our community, of themselves. In other words, in addition to the policy of prohibition, we must actively encourage and implement other policies which are designed to discourage the use of illicit drugs and the misuse of alcohol and to diminish the adverse social consequences of substance abuse in our community.

It is in this context that the policy of prohibition, and the penal sanctions which go with that policy can provide a propitious context for therapeutic intervention. In particular, the threat of penal sanctions provides an incentive for offenders to participate in diversionary programmes, or to participate in the programmes offered by problem-solving courts, such as the drug court and the domestic violence courts.

Diversiory Programmes

There are a range of programmes in operation in Western Australia and other parts of Australia aimed at diverting offenders away from the traditional court system in cases where their offending behaviour can be more appropriately addressed in other ways. These policies and programmes recognise and reflect the fundamental truth to which I have already referred - namely, that unless and until steps are taken to address the problem which is causing the offending behaviour (such as substance abuse), little benefit is likely to be derived from the punitive or deterrent penalties traditionally imposed through the court system.

These diversionary policies and procedures include the issue of informal warnings, the issue of more formal written cautions, in the case of young offenders, diversion to a Juvenile Justice Team, or court conferencing and, in cases involving the possession of small quantities of cannabis, the cannabis infringement notice scheme. Specific programmes available in Western Australia, and which are intended to address illicit drug use, include the Pre-sentence Opportunity Programme (POP), and the Supervised Treatment Intervention Regime (STIR).

Diversionary policies and programmes are, in general, in my respectful view, to be encouraged. There are I think two difficulties in relation to the current availability of such diversionary programmes and initiatives. The first concerns regional areas, and in particular the limited availability of programmes, and community supervision in such areas. The second concerns the limited availability of these programmes in relation to alcohol misuse, which tends to be dealt with more through the traditional court system than through diversionary approaches. Given the significant contribution which alcohol misuse makes to offending behaviour in Western Australia, it is arguable that there may be a significant gap in our programmes.

Problem-solving Courts

The diversionary programmes to which I have referred are augmented and enhanced by court-based systems which generally work by the imposition of programmes prior to sentence. The most prominent examples of such problem-solving courts in Western Australia are the drug court, the domestic violence courts and, to a lesser extent, the community court operating in Kalgoorlie and Norseman.

These courts utilise the incentive which an offender has for reduced sentence by deferring sentence until a prescribed programme has been completed under the supervision of the court. If the programme is successfully completed, a lesser sentence - often a non-custodial sentence - will be imposed. If the programme is not successfully completed, the offender will be sentenced in the usual way - often to a term of imprisonment.

Therapists have expressed reasonable concerns about the coercion involved in such processes, and the consequent lack of voluntariness which can inhibit the likely success of the therapeutic programme. Those concerns are reasonably held. However, what can be said by way of partial response to those concerns is that these processes appear to work by reducing reoffending. A relatively recent review of the Perth Drug Court concluded that it had been successful in reducing reoffending, as compared to more traditional court outcomes, and at a cost to the community which was substantially less than the cost associated with the imposition of imprisonment. Similar results have been found when similar processes have been utilised in other jurisdictions.

As with diversionary programmes, however, there are gaps in our existing systems. One gap in relation to the Perth Drug Court has recently been filled, and that concerned the limited availability of the Drug Court to those charged with indictable offences. Following the amphetamines summit, funds have been made available to make places in the Drug Court programme available to offenders facing charges in the District and Supreme Courts.

Another significant gap, in my view, concerns the limited availability of these processes and procedures to those whose offending behaviour has been caused by alcohol misuse. While some of those within the Drug Court programme will be poly drug users, including those who use alcohol in conjunction with other illicit drugs, and many of those involved in the domestic violence court programmes will be abusers of alcohol, there are no specific problem-solving court programmes, and in particular no pre-sentence programmes aimed at those whose offending behaviour is specifically caused by the misuse of alcohol. Given the proportion of offenders which that group represents, it is I think arguable that this constitutes a significant gap in our approach to a significant problem.

Conclusion

Notwithstanding the depressing character of some of the statistics to which I have referred in this paper, I would like to end on an optimistic note. The approach of our policy makers, and our courts, to the problems of illicit drug use and alcohol misuse is increasingly sophisticated and diverse. The policy of prohibition, which is of limited utility, is now substantially augmented by a variety of other policies and programmes administered by a number of agencies in different areas of government, including justice, health and education. While the impact of illicit drug use and alcohol misuse on offending behaviour within our community is profound, there is reason for cautious optimism, and for the belief that we may be making progress in identifying solutions and remedies which are capable of providing long-term benefits in these important areas of social development.