



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**12th Assembly**

**'Ice' Select Committee**

**Public Hearing Transcript**

12.45 pm – 1.15 pm, Friday, 19 June 2015

Litchfield Room, Level 3, Parliament House

Mr Nathan Barrett, MLA, Chair, Member for Blain

**Members:** Ms Lauren Moss, MLA, Deputy Chair, Member for Casuarina  
Mr Gerry Wood, MLA, Member for Nelson

**Apologies** Mr Francis Kurrupuwu, MLA, Member for Arafura

**NT Legal Aid Commission**

**Witnesses:** Russell Goldflam: Barrister and Solicitor

**Madam Acting CHAIR:** On behalf of the committee, I welcome everyone to this public hearing into the prevalence, impacts and government response to the illicit use of ice in the Northern Territory. I welcome to the table to give evidence to the committee from the Northern Territory Legal Aid Commission, Russell Goldflam, Barrister and Solicitor. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee, and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee, and may be put on the committee's website. If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private. I will ask you to state your name for the record, and the capacity in which you appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions.

Can you please state your name and the capacity in which you are appearing?

**Mr GOLDFLAM:** My name is Russell Goldflam. I am appearing as an officer of the Northern Territory Legal Aid Commission, and I speak on behalf of the Northern Territory Legal Aid Commission today.

**Madam Acting CHAIR:** Thank you. Mr Goldflam, would you like to make an opening statement?

**Mr GOLDFLAM:** Madam Acting Chair, firstly I should indicate our director, Suzan Cox QC, sends her apologies. She is unavailable to attend and give evidence in person today, but we refer to and rely on the submission signed by Ms Cox dated 8 May 2015 which has been made to the committee and we understand the committee has received.

The take home message from the rather brief submission is we need more data, we need more rehabilitation, and we need more training for people working in the field of rehabilitation and identification of clients who have problems with ice. In particular in the criminal justice system, the most pressing need is more therapeutic justice.

Therapeutic justice is a term used amongst lawyers who work in the criminal justice system which I should explain because its meaning may not be obvious to the broader community. It means setting up specialist courts which are designed to deal with the underlying problems presented by people charged with criminal offences who have a substance abuse addiction or habit. We have had therapeutic justice courts dealing with substance abuse clients and offenders in the past in the Northern Territory. Firstly, there was the old Credit Court, then there was the Alcohol Court and then we had the SMART Court.

**Ms MOSS:** Thank you for pausing, Mr Goldflam. The Chair is now in the Chair.

**Mr CHAIR:** I apologise.

**Mr GOLDFLAM:** Good afternoon, Mr Chair. I am Russell Goldflam from the Northern Territory Legal Aid Commission.

I was just in the process of making an opening statement. A summary of our position from the Northern Territory Legal Aid Commission is there should be more data, more rehabilitation, more training for workers and more therapeutic justice, and I was just explaining what I meant by therapeutic justice.

Up until quite recently the SMART Court was run by magistrates specifically to work with offenders who had alcohol or other drug problems. Unfortunately, from our point of view, the SMART Court program was defunded and ceased to operate a couple of years ago I suppose. In our experience the SMART Court, although it takes a lot of time on the part of the magistrates running it, it involves offenders not appearing in court two or three times, pleading guilty, getting their punishment and being sent off again. It involves the offenders engaging with the magistrate and being supervised and supported by court clinicians over a period of sometimes up to a year. That engagement, intensive as it is, provides the criminal justice system with an opportunity not just to punish those people, but to treat them in a way which will reduce the risk of them reoffending by attacking the underlying cause of their offending, which in many cases it is the fact they have a substance abuse problem.

You will see in our submission that we conducted a survey amongst our staff and we have responses from 34 members of the commission's staff, three quarters of whom were legal practitioners. It is not a huge

sample of course, but nevertheless I am able to speak not just from my own personal experience, but with the corporate experience of the commission's legal practitioners and support staff.

**Mr CHAIR:** How many staff do you have? It is 34 out of how many?

**Mr GOLDFLAM:** I am not sure off the top of my head Mr Chair, but I think it is about 50 staff. I know how many there are in the Alice Springs office where I work, but that is not so important. I think the number of legal practitioners - they are the ones who deal mostly with the clients rather than secretarial staff or other people who are behind the scenes - we had a very high participation in this survey from our practitioners because 27 legal practitioners would represent most of the lawyers who work in the Legal Aid Commission.

One of the key things that emerged from this survey - and it is the position the commission takes - is that although we are alarmed and concerned by the recent very significant upswing in the incidence of ice use by our clients and family members of our clients, we are keenly aware that we must not take our eye off the bigger ball, which is alcohol. Alcohol is still by far the most serious drug problem in the criminal justice system, the family law system and the child protection law system in the Northern Territory. We must not allow ourselves to be distracted from that, and it would be a terrible mistake in our submission to lose sight of the central importance of dealing with alcohol-related harm because that is by far the biggest problem.

A second thing we say is yes, the incidence of ice does seem to be increasing quite rapidly. From a personal point of view, in my practice - I am in charge of the criminal law practice in the Alice Springs office of the commission - over the last six months we have seen a marked upturn in the number of clients charged with criminal offences, some of them drug offences, some violence offences, some property offences, and the number of clients who were affected by other people using ice. For example, clients whose family members are using ice which have resulted in family law problems or children being taken away from families by welfare agencies. I have seen a very marked upswing over the last six months.

Looking at the survey we did amongst our staff, it would appear that we have clearly identified a significant increase over the last 12 to 18 months. I do not know whether my personal experience in Alice Springs is a bit different from the commission as a whole or not, but either way we agree there is a big problem. The big problem is getting a lot bigger right now, and for that reason we strongly welcome the initiative taken by the Assembly to set up this inquiry. We have also participated in the Senate inquiry conducted by the Assistant Minister for Health, who recently came to Alice Springs with her team. I had the opportunity to make submissions to that inquiry as well.

That is really what I wanted to say by way of an opening statement. I am happy to take any questions the committee has.

**Mr WOOD:** Russell, I want to ask you about the survey you raised in your opening statement. It says that 38% said prevention should be the highest priority in combating ice, followed closely by treatment and rehabilitation at 35%. Does that mean 72% thought it should not be a high priority?

**Mr GOLDFLAM:** No, the way we ran the survey is we were given a multiple choice of how we rank - I have the survey with me. It is quite lengthy and hard to read because there are tables of figures, but from memory and looking at it we were given a list of six or seven, perhaps more, different responses and asked to rank them one to five or one to seven, whatever the number was. We were given five options - prevention, supply reduction, law enforcement, harm reduction and treatment and rehabilitation - and we were asked to rank those one, two, three, four and five.

The fact that two, being treatment and rehabilitation and prevention, scored higher than the other three does not mean nobody thought the other three were worth doing; they just ranked lower on that test. I hope that answers your question.

**Mr WOOD:** When they say prevention should be the government's highest priority what are they saying? What prevention are they highlighting, what type of prevention?

**Mr GOLDFLAM:** I cannot answer that question because the survey was conducted with SurveyMonkey online and we were simply given that question, which I am looking at as I am speaking. We simply ranked those four measures without any explanation as to what was meant by them.

I do not know what the 38% of us who said prevention should be our highest priority means. Nobody ranked law enforcement as being the measure which was given the number one ranking ahead of the others.

**Mr WOOD:** When you are defending someone, do you get cases where the offence is definitely related to the use of a particular drug like ice? Someone smashed a window of a shop so do you have a case where there are two offences, one being someone has been using an illegal drug and someone has smashed a window? You or the police cannot identify whether a person was affected by a drug when they smashed a window?

**Mr GOLDFLAM:** That depends. Sometimes we can sometimes we cannot. Sometimes the person volunteers to the police, 'I'm out of control. I'm smoking ice and have been on an ice binge for the last two weeks. Lock me up.' Other people will not admit they have been using ice at all and it is only something we suspect because of other evidence that is found when their house is searched or something like that. I cannot really generalise.

**Mr WOOD:** I was wondering if ice is identifiable in the courts as a reason the person's actions occurred. Is that not able to be done?

**Mr GOLDFLAM:** It can be done, and it often is done, but as far as the courts are concerned the fact that you are under the influence of a drug when you commit an offence does not make the offence less serious and does not make the punishment any less or more. The courts have said in some ways you can say you are less responsible because you are off your face, but in another sense you should be found to be more culpable because you have made the decision to take the drug and those two factors cancel each other out.

That is what the Court of Criminal Appeal found in an important case which is often referred to in our courts, the case of Pappin about ten or 12 years ago. In that case the drug was alcohol and the court said, generally speaking, the fact that a person is drunk does not make it more or less serious for the purpose of punishment than if they had been sober. Exactly the same principle applies when people are under the influence of ice or some other illegal drug.

**Ms MOSS:** The submission talks about the recommendation for social and health infrastructure and investment to address the underlying causes of intergenerational trauma and reasons why the use of methamphetamines might be occurring. Do you have a view on what these social and health infrastructure investments would look like?

**Mr GOLDFLAM:** I do, but these are big picture approaches to addressing problems. I feel like I am in a beauty contest and am asked what I you want and I say world peace. I want world peace. In fact, world peace would also help address the social and health infrastructure problems, but we need to deal with poverty. We need to deal with inadequate housing, particularly in remote areas. The overcrowding, the lack of proper facilities in many people's houses - we need to get children to school so they get an education and employment skills, we need to create employment in the bush and in regional and urban areas where there are pockets of very high unemployment so people have meaningful productive activity to be engaged with.

There is nothing new about any of this and government, opposition and all politicians are keenly aware of the enormous problems of social structural systemic disadvantage faced in the Northern Territory. They are the type of things we are talking about.

Some of the research we have referred to in our submission, and in particular the passage dealing with ice use by parents on page 5 of our submission under the heading, 'Family Law and Child Protection' - there is a reference to a New Zealand medical journal study which is not written out so I will read it for you, *Maternal methamphetamine use during pregnancy and child outcome: what do we know?* That study is now a little dated because it was written in 2004, but the point we draw from that study is mothers who smoke ice are often terrible mothers, but in many cases - there is a pattern to this - they also live in very impoverished circumstances and are subject to all types of other psychosocial disadvantage. The drug use is side by side with the poverty, being victims of domestic violence and inadequate housing and so on. It is not that simple to tease out the drug use and say, 'That's what's caused this person to be a bad mother'. It might be one of a suite of circumstances which, together, provide a very high level of risk for a person being unable to parent effectively.

**Mr WOOD:** Russell, there is a question commenting on a prohibition-based drug policy. What does your commission think about the depenalisation of illicit drugs? Do they have a view that has a place in what we are dealing with today?

**Mr GOLDFLAM:** Yes. We are very sceptical about the effectiveness of the war on drugs, as it is often referred to, which has been waged for decades and has spectacularly failed for decades.

We have referred, in our submission, to what I respectfully submit is an extremely useful paper by Don Weatherburn from the New South Wales Bureau of Crime Statistics and Research called The pros and cons of prohibiting drugs. This was published in 2014 in the *Australian and New Zealand Journal of Criminology*. Weatherburn is a highly credentialed criminologist in Australia and probably one of the most respected members of that profession in this country. His paper does not advocate an end to prohibition of criminalisation. He says it is really complicated - I am summarising his article – and we do not know what works. We have seen lots of things that do not work. We are currently spending \$0.5bn a year on law enforcement against drugs and it does not seem to have solved any problems. He is not advocating that we suddenly legalise heroin, cocaine, ice or anything else.

He is saying that in countries like Portugal, where that has been depenalisation - Mr Wood, I appreciate you using that word rather than decriminalisation because Mr Weatherburn says there is an importance distinction between depenalisation and decriminalisation – to not get rid of prohibition altogether but stop locking people up for being drug users and instead punish them therapeutically, in a nutshell. The evidence in Portugal seems to be that drug-related harm is going down. That is the most radical of the big social experiments conducted anywhere in the world.

The commission's view is we do not favour measures which will see people being locked up for longer periods more frequently. As of the figures published last week by *The Australian Bureau of Statistics*, we now have eight times the national rate of incarceration. The last thing we need do is add to that.

We did not support the amendments to the *Misuse of Drugs Act* passed over a year ago now which saw meth becoming a Schedule 1 drug instead of a Schedule 2 drug because that, in effect, simply increased the penalties for meth possession, meth use and any other offences involved with methamphetamine. Just increasing penalties- there is no evidence that helps is our position and our submission.

**Mr WOOD:** Do you know if the Portuguese example - do they have something similar to a SMART court?

**Mr GOLDFLAM:** I will check what Mr Weatherburn says because he discusses what they do in Portugal. Page 180 of the journal article says:

*... it is still possible to be sanctioned for drug use and possession. The sanctions include community service, fines, suspension of professional licenses, and bans on attending certain places ...*

He does not say if they have something like the SMART court and I do not know.

**Mr WOOD:** Okay, thank you.

**Ms MOSS:** Mr Goldflam, the Northern Territory Legal Aid Commission supports therapeutic justice approaches. You have talked about them in your submission and they came up in the survey as well. Can you outline therapeutic justice approaches successfully employed elsewhere that you consider might be beneficial here?

**Mr GOLDFLAM:** In New South Wales there have been therapeutic justice approaches in the drug courts. I think in Victoria there has been and in South Australia there has been. Some of those programs - the Victorian one - I am not sure if that was cut last year, but I know those three states have had them in recent years and may still be using them now. I commend that the terms of reference for your inquiry includes looking at what is being done in other jurisdictions. That is, with respect, an extremely sensible thing to do - take advantage of the wisdom that has been accumulated from our brother and sister counterparts in the states and territory.

**Ms MOSS:** Are there any other issues that you would like to raise with the committee, Mr Goldflam?

**Mr GOLDFLAM:** This week we have seen an announcement by government about a plan to introduce measures similar to the South Australian drug transit route provisions which enables a declaration to be made over a particular area for a limited period in South Australia - up to 5 km - and only three such declarations can be enforced at any one time. If a vehicle is on that stretch of road, police can stop that vehicle and search it for drugs without requiring reasonable suspicion that there are drugs on board. That would be an extension of existing police powers.

Existing police powers permit police to stop cars without a warrant provided that - and search them, and they do it every day of the week and every week of the year. Police do that if they have a reasonable suspicion that there are drugs on board. As the *Northern Territory News* reported earlier this week, police currently have to get a warrant from a magistrate if they want to search a car. That is wrong.

I have not had the opportunity to speak to Ms Cox about these new proposed provisions, so what I am saying now is more from a personal perspective than necessarily from the commission's point of view, but my perspective is that these proposed measures may be good measures. They will introduce a curtailment of the individual freedoms of perfectly innocent Territorians who use our roads because some of them will be - if these measures are introduced - stopped and subjected to searches and have dogs going through their car with all the embarrassment and time it takes for that, and the inconvenience. However, it may, on the other hand, mean we manage to prevent more drugs getting into the community, which will be a good thing.

It will be very useful to find out from South Australia, which is the only place in the country which currently has these provisions in place, if it has been effective? It has been in place since 2008, so we have had plenty of time to see if it has been effective. If it has been effective then there is an arguable case for introducing these provisions. If it has not been effective that would, in my submission, tilt the balance against introducing such measures.

I have not been able to find anything to see whether these measures in South Australia have been evaluated or whether there are any reports on them having proved to be useful or not. I would caution against introducing further curtailments on individuals' liberties unless it can be shown a practical benefit will result from them.

The other thing I will say about the announcement this week is that there is a lot more to dealing with drug problems than simply beefing up police powers. Beefing up police powers may well be part of the suite of things that needs to be done to address this problem, but we also look forward to government taking the initiative to provide more resources, for example for rehabilitation, the training of people for the early detection of ice problems and things of that nature.

Thank you very much for taking the time to listen to the commission's submissions. Once again, I commend the Legislative Assembly for initiating an inquiry on this extremely important issue.

**Mr CHAIR:** Thank you, Mr Goldflam, for your time.

**Ms MOSS:** Thank you so much for your time.

**Mr GOLDFLAM:** Thank you, Mr Chair.