



Final report
on the South-east Queensland
Drug Court pilot

by John J Costanzo

Magistrate

July 2003

PREFACE

By letter of appointment by the Chief Magistrate dated 19 May 2000, made pursuant to section 10 of the *Drug Rehabilitation (Court Diversion) Act 2000*, I am the pilot program magistrate responsible for the preparation of this report. Unless otherwise indicated in the text a reference to the pilot program magistrate is a reference to me.

This is the final report of the pilot program (Drug Court) magistrate pursuant to section 46 of the *Drug Rehabilitation (Court Diversion) Act 2000*. Section 46 provides:

46 Report on Act's operation by pilot program magistrate

- (1)** A pilot program magistrate must prepare a report on the Act's operation.
- (2)** The report may deal with any aspect of this Act's operation that the magistrate considers appropriate.
- (3)** A final report outlining the review must be prepared before the expiry of this Act.
- (4)** The magistrate must give a copy of the final report to the Minister.
- (5)** The Minister must table a copy of the final report in the Legislative Assembly within 14 days after receiving it.

This report, therefore, reviews the operation of the *Drug Rehabilitation (Court Diversion) Act 2000* and, in the process, details the development, implementation and progress of the Drug Court pilot program established under that Act, and examines options for further improvement and reform.

The report also includes case illustrations, not individual case studies. The general consensus among Drug Court team members and members of the Drug Court Reference Group (the government steering committee) was that irrespective of whether a person has graduated from the Drug Court program his or her recovery is ongoing. Consequently, it was thought, it may be detrimental to a person's recovery and future employment prospects if he or she found identifying material in a public report. The case illustrations are generalisations based on my practical knowledge of many participants with common experiences and bearing common personal histories.

The Cairns and Townsville pilot program courts have been in operation for only a little over 6 months, have a significantly different model and do not yet have statistically significant numbers for comparison purposes. Therefore, this report will mostly concentrate on the original south east Queensland model which has been in operation for a little over three years.

It has been an honour and a privilege to have been associated with the development of the Drug Court pilot from its inception, through policy

development, drafting legislation, being appointed as a magistrate, implementing the program and overseeing its evolution into an efficient working model.

I thank the present and former Attorneys-General, the Director-General of the Department of Justice and Attorney-General, the Chief Magistrate and current Acting Chief Magistrate for their timely actions and support as issues affecting the outcomes of this pilot arose.

I acknowledge the co-operation, work and dedication by all Drug Court staff and all government and non-government employees (past and present) associated with the Drug Court pilot over the last four and a half years (inclusive of the development stage), and to personally thank them for their efforts.

In particular, I would like to acknowledge the special contribution to the ongoing development of the Drug Court made by the co-ordinators (for Queensland Health, Department of Corrective Services, Queensland Police Service and Legal Aid Queensland) and the assistance received to research and edit this report from the Drug Court Manager Mr Greg Wiman and the Drug Court Co-ordinator (Justice) Ms Amanda O'Brien, and to personally thank each for their efforts.

Finally, I give special thanks to my wife, Dr Christine Eastwood, for her patience, wisdom and serenity.

John J Costanzo
Magistrate

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EXECUTIVE SUMMARY

This report is one of two evaluations of the Drug Court pilot required under the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act).

The Australian Institute of Criminology (AIC) was contracted by the Department of Justice and Attorney-General (the Department of Justice) to prepare the review required under section 45 of the Act. Section 45 requires the Minister to ensure the Act's operation is reviewed to decide whether the objects of the Act remain valid and to evaluate the effectiveness of the provisions of the Act for achieving the objects. The Minister must table the report in Parliament within 14 days after receiving it.

This report, by the pilot program magistrate pursuant to section 46 of the Act, also reviews the operation of the Act and details the development, implementation and progress of the Drug Court pilot program established under that Act, and examines options for further improvement and reform.

With these two reports in hand, it is anticipated the Attorney-General and the government will be armed with sufficient information to decide whether to continue the program and, if so, what form it should take.

MAJOR FINDINGS

The major findings by the pilot program magistrate follow, with cross-references to the body of the report in italics.

1. Demographics The cut-off date for new referrals for assessment to the Drug Court and for the evaluation by the AIC was 31 December 2002. Of 555 referrals, 84.5% were males and 15.5% were females. People who reported being Aboriginal or Torres Strait Islanders represented 11.5% of total referrals. Intensive drug rehabilitation orders were made for 264 individuals. While 43.2% had been terminated, 16.7% had graduated and 40.1% remained active participants. Of those remaining active, 67% were in Phase 1, 15% were in Phase 2 and 18% were in Phase 3 (*see page 92*).

At the time of publication, the Drug Court had produced over 60 graduates who successfully completed all three stages of the program and therefore achieved the aims of the Act.

2. Distribution Of 280 people granted an intensive drug rehabilitation order by the end of March 2003, 86.8% were males and 13.2% were females. While 47.9% of programs terminated, 18.9% graduated and 33.2% remained current active participants. Of those remaining current, 50.5% were in Phase I, 31.2% in Phase II, and 18.3% in Phase III (*see page 93*).

At 31 March 2003, a total of 242 people were determined to be ineligible because they were either—

- assessed not drug dependant,
- charged with disqualifying offences,
- remitted to the arrest court (usually to opt for committal proceedings) or

- dealt with in the usual way, that is, sentenced with other more appropriate options, because they were not facing imprisonment owing to the nature of their offending or criminal history (see page 12).

3. Excellent retention rates Compared to the usual retention rates in residential rehabilitation programs of between 4% and 21%, the Drug Court has achieved retention rates of over 50%. It has been said this is probably a function of the additional motivation produced through the Drug Court whereby premature absconding from treatment results in an inevitable sanction (see page 94).

4. Focused practices and procedures The Drug Court magistrates and department co-ordinators have adopted a number of practices and initiatives which have resulted in a downward trend in the average number of months participants take to achieve successful completion (graduation) from the program. These included—

- Queensland Health (QH) and Department of Corrective Services (DCS) assessors refined their assessment tools to detect who is not suitable for the rehabilitation program.
- Pre-sentence reports have become better focussed and more informative for the magistrate to make his or her own decision about the person's suitability for the rehabilitation program
- Case managers have become more experienced at seeing and foreseeing problems and addressing them efficiently and proactively with their power of issuing reasonable directions and by getting the person back into court quickly to have issues resolved.
- A Bailed Early Referral into Treatment (BERIT) program for defendants referred to the Drug Court who had to be placed on a waiting list (see below).
- A policy of ordering a re-assessment of any participant who has not graduated to the next phase within four months.
- Less non-conforming conduct is now tolerated, resulting in termination applications being made earlier than was previously the case.
- Regular inter-agency meetings to identify issues of concern to service providers and to enhance the interface between government and non-government organisations.
- Drug-testing procedures have been constantly updated to make it almost impossible for participants to provide 'bodgie' urine samples. Also, more randomisation of testing has made it more difficult for participants to attempt timing drug usage between tests due to the short half-life of most common drugs. In other words, such disincentives encourage participants to remain honest and motivated to change (see page 97).

5. Improved time to graduation The minimum time taken to complete the three phases of the Drug Court program was 9 months. The maximum time taken was 25 months. The average time taken to complete the three phases was 15 months. The median time taken was 14 months. The overall trend has been for participants who achieve graduation to have taken progressively less time to satisfactorily complete the whole program (see page 100).

Graduates from the Drug Court program, like others, had a history of breaching previous court orders. A total of 36 individuals out of the first 50 graduates committed a total of 65 breaches of court orders before being granted the intensive drug rehabilitation order. Ten out of the first 50 graduates had breached previous suspended sentences. Likewise, 25 had breached previous bail conditions, usually by failing to appear, 12 had not performed their community service and 17 breached probation orders, usually by committing further offences. By itself, the fact someone has breached a previous sentence is not sufficient grounds for exclusion (see page 102).

6. Alarming young age of first use There has been a very disturbing trend toward commencement of use of illicit drugs at younger ages.

For **amphetamine** users, the youngest age of first use was merely 11. By age 16, the peak age for first use, 41.3% of all amphetamine users had commenced amphetamine use. By age 17 more than half of all amphetamine users had commenced amphetamine use. Of those who classed amphetamines as their primary drug of choice, only 31% had attempted any prior treatment before being referred to the Drug Court. The longest period of amphetamine use among Drug Court participants had been for 24 years. (See page 103)

For **heroin** users, the youngest age of first use was merely 12. By age 17, the peak age for first use, 44.3% of all heroin users had commenced heroin use. By age 18 more than half of all heroin users had commenced heroin use. Of those who classed heroin as their primary drug of choice, 77.7% had attempted prior treatment (mainly due to the Methadone maintenance program) before being referred to the Drug Court. The longest period of heroin use among Drug Court participants had been for 30 years (see page 104).

For **cannabis** users, the youngest age of first use was merely 7. By the mere age of 13, the peak age for first use, 40.5% of all cannabis users had commenced cannabis use. By age 14 more than half of all cannabis users had commenced cannabis use. Only 8.4% of all cannabis users had attempted any prior treatment before being referred to the Drug Court. In all 78.9% out of the 469 assessed by QH said they had used cannabis at some time and only 3.5% of all cannabis users listed cannabis as their primary drug of choice. The longest period of cannabis use among Drug Court participants had been for 29 years (see page 107).

7. Non-graduate and community benefits Defendants whose programs have been terminated are returning voluntarily to the service providers for residential treatment. It should not be assumed that only graduates constitute 'successes' since it is highly likely that many who did not complete treatment have made positive gains and may well return to treatment of their own volition – which would probably not have happened had they not been exposed to treatment through the Drug Court pilot (see page 107).

As at 31 March 2003, a total 4,063 hours of unpaid community service had been undertaken by Drug Court participants. This equates to a \$60,945 benefit put back into the community. There were a total of 2,020 hours remaining to be completed (worth \$30,030) (see page 112).

The rate of offending has reduced dramatically during the period participants remained on the program and the longer a person could be retained the greater the reduction.

Although most offenders would have actually served an immediate term of imprisonment had there been no Drug Court, the majority of sentences were short enough to expect offenders to have been released without treatment for their drug addictions and to have continued to offend at a similar rate to their offending before being incarcerated (see *page 120*).

Other community benefits gained as a direct result of the Drug Court program, for which there is no accurate measure in monetary terms, included—

- Improvements in parenting skills;
- Family re-unification;
- A cessation of criminal activity, even where occasional drug use persists;
- Abstinence from drug abuse;
- A reduction on the pressure on prison resources;
- A reduction in the drain on Child Welfare funds;
- Payment of restitution to victims;
- Repayment of debts to QH and Residential Tenancy Authority;
- Independent accommodation and reduced drain on public housing funds;
- A reduction in the likelihood that children will follow their parents and siblings into a life of drug abuse and crime, and avoiding the future cost to society;
- Improvements in health and consequent reduction in the drain on public health funds in future;
- Birth of 6 drug-free babies;
- Less drain on the Department of Families and DCS as these babies could have been separated from their mothers causing more trauma for mother and child and brought other social ramifications in the future;
- Healthy settled children attending school;
- Adults and children learning respect for authority;
- Employment and less drain on unemployment funds; and
- Further education and consequent self-esteem and sustained motivation for improved employment and earning prospects (see *page 114*).

8. Bailed Early Referral into Treatment (BERIT) program By mid 2001, referrals to the Drug Court far exceeded the imposed cap of 141 participants by some 85 defendants and would have been greater had the Chief Magistrate not issued a Practice Direction to address the situation. These people were at high risk of relapsing while on a Drug Court waiting list doing little or nothing about their drug problem. An initiative of the pilot program magistrate was to implement a BERIT program with the use of resources volunteered by the Salvation Army (a Positive Lifestyle program) and by making efficient use of other existing programs and resources. Consequently, participants made an early start in their recovery process when reported readiness to do so and the court got to see if they were suitable for the more intensive Drug Court program. This early intervention probably also contributed to the reduction in the average time taken to complete the Drug Court program. The only shortfall was the inability of the DCS to drug test bailees due to a lack of legislative power (see *page 16*).

9. Aboriginals and Torres Strait Islanders Because the North Queensland Drug Court model only accepts defendants who have never been sentenced to a term of imprisonment of more than six months, it was already likely to disqualify many Aboriginals and Torres Strait Islanders because they represent a greater proportion of the prison population compared to the general population in the community. All four pilot

program magistrates in North Queensland are concerned that the exclusion of Palm Island residents, by recent deletion of the Palm Island postcode from the list of prescribed postcodes in the regulation, will exclude even more Indigenous Australians from the Drug Court program (see page 25).

More culturally relevant programs are also required in both North and South Queensland.

10. Terminations could be identified earlier The Drug Court pilot program has demonstrated that in a therapeutic model of jurisprudence many people simply need to be allowed more than one attempt to achieve rehabilitation. The difficulty is knowing how to strike the correct balance and when to draw the line. A non-performing participant who holds a position while the Drug Court is limited to a capped number of participants deprives others of an opportunity to seek recovery by this process. While the Drug Court team and magistrates have become more proficient at identifying those participants whose programs should be terminated, more work needs to be done in this area to maximize the efficient use of scarce resources, including a tighter policy concerning *ex parte* terminations for absconders (see pages 35, 45).

11. New technologies need to be exploited Any Drug Court program is reliant on technology to provide drug testing results quickly to ensure immediacy of consequences for breaches of the court's orders. Greater advantage needs to be taken of the availability of new technologies which can provide faster determination of urine test results and of the authenticity of urine samples. These include Liquid Chromatography/Double Mass Spectrometry instruments and testing for DNA and gender (see pages 52, 55).

12. Keys to success The close and personal contact between participants and magistrates (regular court reviews), immediacy of consequences for breaches of the order (sanctions) and the encouragement and recognition given (rewards) to participants have each proven to be integral and essential elements in the success of the Drug Court program. By treating participants as individuals (and calling them 'participants' instead of defendants'), with courtesy, praise, rewards and encouragement when earned, with swift but fair sanctions and polite censure or admonishment when deserved, the frequent and regular review process has been effective in teaching the value of honesty and in building or rebuilding trust and respect for authority among many Drug Court participants (see page 31, 58).

13. Whole-of-government and co-operation with NGOs Finally, the Drug Court pilot has developed into a show case model for achieving co-operation between government departments and between government and non-government organisations which share a common purpose.

RECOMMENDATIONS

This report identifies a number of improvements which could be adopted to further enhance the effectiveness and efficiency of the Drug Court program.

Many suggestions and recommendations in this report do not require additional funding. They may require a rethink about how some resources are allocated at present. Many of the recommendations also do not involve political decisions.

The full list of recommendations follows.

Recommendation No. 1 (see page 6)

The Drug Court program should be implemented separately in each court in the current pilot areas of Beenleigh, Ipswich and Southport.

Recommendation No. 2 (see page 6)

Each court should be presided over by a separate magistrate instead of the current arrangement of one magistrate travelling to all three courts for the past three years.

Recommendation No. 3 (see page 6)

The number of sitting days per week in each court should be determined according to any cap imposed on the number of treatment places available for inclusion in intensive drug rehabilitation orders.

Recommendation No. 4 (see page 7)

The Drug Court budget should in future include a sum for training of magistrates and other staff. This will be especially necessary if Drug Courts are to expand to other regions.

Recommendation No. 5 (see page 10)

The QPS should be encouraged to finalise the appointment of permanent prosecutors for each Drug Court. Also, the QPS may need to—

- a. Clarify the precise role of prosecutors in referring courts, including being part of the screening process
- b. Improve mechanisms for communicating information and feedback between prosecutors in the referring court and the Drug Court

Recommendation No. 6 (see page 10)

The QPS should be encouraged to provide appropriate training to prosecutors at the local level before commencement of Drug Court duties.

Recommendation No. 7 (see page 13)

The referral process in the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to require referring magistrates to consider the same criteria as at present but to order an assessment of dependency by Queensland Health and remand the defendant before the Drug Court magistrate. If the Drug Court magistrate does not then order a pre-sentence report by the Department of Corrective Services the defendant is to be remanded back to the arrest court.

This recommendation is predicated on acceptance of the recommendation to have one Drug Court magistrate in each Drug Court and on the magistrate being allowed sufficient sitting time to manage a lengthy call-over/remand list.

Recommendation No. 8 (see page 13)

The Drug Court manager should liaise with the Commissioner of Queensland Police and the Department of Justice and Attorney-General to establish a mechanism to notify the relevant Drug Court when a defendant who is subject to a Bail Act warrant issued by the Drug Court is arrested and dealt with elsewhere.

Recommendation No. 9 (see page 14)

Consideration should be given to amending the referral rules in the *Drug Rehabilitation (Court Diversion) Act 2000* to prevent a person who absconds while on bail from automatic referral back to the Drug Court for a period (for example, three months) from the date of arrest. If a person is the subject of a termination order he or she should be prevented from being re-referred to the Drug Court for a period (for example, six months) from the date of arrest.

Recommendation No. 10 (see page 17)

Consideration should be given to implementing the Bailed Early Referral into Treatment (BERIT) program in all courts so that drug dependant defendants have an opportunity to show the court how genuine they are about seeking rehabilitation prior to being sentenced. (Note: This recommendation is explored further below).

Recommendation No. 11 (see page 17)

The Positive Lifestyle Program (PLP) program should receive assistance from State funding for inclusion in the Drug Court and BERIT programs.

Recommendation No. 12 (see page 17)

The *Corrective Services Act 2000* should be amended to allow the Department of Corrective Services to conduct drug testing if ordered as a condition of a bail undertaking made in a BERIT Court or Drug Court.

Recommendation No. 13 (see page 18)

The Department of Corrective Services and other courts with no Drug Court jurisdiction and powers should still be encouraged to follow the Drug Court pre-sentence report format (as amended from time to time) in all matters in which a pre-sentence report is ordered for the purpose of determining the appropriate sentence and treatment conditions for a drug dependant defendant.

Recommendation No. 14 (see page 21)

The *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to allow the Drug Court magistrate to deal, at his or her discretion, with all offences that may be dealt with summarily, whether listed in section 552A or 552B of the *Criminal Code*, and irrespective of who would normally have the election to proceed summarily under those sections.

Recommendation No. 15 (see page 23)

The definition of 'disqualifying offence' in section 7 of the *Drug Rehabilitation (Court Diversion) Act 2000* needs to be expressed in clearer terms so they are not referred to the Drug Court. A legislative example could be inserted in section 7, referring to the offence of dangerous operation of a motor vehicle and how the referring magistrate should make a specific inquiry into and determination about whether the offence is an offence involving violence against another person. Facts for such an example could be derived from one of the rulings referred to in the report.

Recommendation No. 16 (see page 24)

The definition of ‘disqualifying offences’ in the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to remove the distinction between summary and indictable offences involving violence and allow the pilot program magistrate the discretion to decide whether the violence or injury is such that a person should be excluded from participation in the Drug Court program, including when the offence is assault occasioning bodily harm.

Recommendation No. 17 (see page 25)

The *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to clearly state the parliamentary intent of either limiting or expanding the areas from which Drug Court participants are drawn and in which they may reside at the time of selection *and* during participation in the program.

Note: This recommendation is subject to a further recommendation, below, about running two concurrent Drug Court models in Queensland.

Recommendation No. 18 (see page 25)

If the postcode method of selection is to be maintained, the postcode 4059 for Red Hill will need to be included to cover the Moonyah Drug Rehabilitation Centre. An alternative is for the definition of ‘eligible person’ in section 6(1)(d) of the *Drug Rehabilitation (Court Diversion) Act 2000* to be amended to provide for not only prescribed postcodes but also prescribed places. This would allow for rehabilitation centres to be prescribed outside the postcode areas otherwise applying to everyone else, for example, Moonyah at Red Hill and the Jesse Buddy Centre at New Farm.

Recommendation No. 19 (see page 26)

Palm Island should come within the prescribed postcodes in the *Drug Rehabilitation (Court Diversion) Regulation*.

Means of access to participants residing on Palm Island should be improved or more places made available for them in Townsville while they are participating in the intensive drug rehabilitation program.

Recommendation No. 20 (see page 29)

The Drug Court Reference Group should be given the task of developing a larger list of rewards for Drug Court participants. These could come from department funds and sought from businesses in each Drug Court district. One way to encourage businesses and community organisations to contribute may be to hold a community forum in each district to explain the benefits the Drug Court has delivered in the local community.

Recommendation No. 21 (see page 31)

Consideration should be given by the Reference Group to developing a larger number of alternative sanctions, for example, having a community custodial facility, similar to a half way house. In appropriate circumstances participants could be detained but not forced to mix with the general prison population. Importantly, they could also remain subject to random urine drug tests and keep attending counselling and programs.

Recommendation No. 22 (see page 33)

To remove any doubt, the *Drug Rehabilitation (Court Diversion) Act 2000* needs to be amended to make it clear that section 84 of the *Justices Act 1886* applies to remands and adjournments for the purposes of proceedings under the *Drug Rehabilitation (Court Diversion) Act 2000*.

Recommendation No. 23 (see page 36)

Following the release of the official evaluation by Dr Toni Makkai (Australian Institute of Criminology) the Department of Justice and/or the Reference Group should study all relevant data and give consideration to amending the Act or to assisting the development of Drug Court team policy which will help to sooner identify those programs which should be terminated.

Recommendation No. 24 (see page 37)

The Queensland Police Service and Department of Corrective Services should be directed to address the uniformity and consistency of their policies and guidelines for determining when to make an application to terminate a Drug Court participant's intensive drug rehabilitation program.

Recommendation No. 25 (see page 37)

The Act should be amended to give Queensland Health standing to apply for termination of a Drug Court participant's intensive drug rehabilitation program.

Recommendation No. 26 (see page 39)

The following procedure should be followed to deal with breaches of prior orders and the Chief Magistrate should be invited to formulate a Practice Direction in similar terms:

- a. At the first call-over after a person is referred to the Drug Court for assessment, the prosecution must provide to the defence a copy of the defendant's criminal history, highlighting any breaches of parole or suspended sentences.
- b. The defence is to consult with the client to decide if the assessment is to continue.
- c. If so, then at the following call-over date, or any other mention date granted for the purpose before a matter comes on for sentence (with an application to make an intensive drug rehabilitation order), the Prosecution is to deliver to the defence a copy of all relevant QP9 Court Briefs relating to any breach of suspended sentence imposed in the Magistrates Court.
- d. The Department of Corrective Services must be ready to prosecute any breach of a community based order at the time of initial sentence.
- e. The Department of Corrective Services must deliver the breach material to the defence within the same timeframe as applies to the Prosecution above.
- f. The prosecutor and defence counsel are expected to make submissions to the pilot program magistrate about the preferred options for dealing with such breaches and whether they should prevent a defendant from obtaining an intensive drug rehabilitation order.

Recommendation No. 27 (see page 40)

Section 36 of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to make it clear that section 161 of the *Penalties and Sentences Act 1992* applies to custody occurring during a Drug Court program other than sanctions of imprisonment, so that detention pending re-assessments, termination hearings or reserved decisions counts as pre-sentence custody.

Recommendation No. 28 (see page 42)

Funding should be provided to train all judges and magistrates about the nature and causes of drug dependency, available treatment programs for drug dependency and about drug testing.

Recommendation No. 29 (see page 46)

There should be consultation between the Drug Court Reference Group, relevant Ministers and the Chief Magistrate about what ongoing role is intended for the Reference Group. The Reference Group structure and its decision making process must continue to avoid affecting or influencing the pilot program magistrate's independent decision making about Drug Court participants (see further recommendations about the structure of the Reference Group, below).

Recommendation No. 30 (see page 46)

Unless a decision is taken by government before December 2003 to rollout the Drug Court program or extend the time for the pilot, the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to clarify what is to happen to people who would have a reasonable prospect of successfully completing the program if the Act was not due to expire at the end of 2003.

Recommendation No. 31 (see page 47)

The *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to provide legal status and recognition to the key roles of each department involved in the Drug Court program. It should give legal protection to Drug Court Officers from these departments who exercise powers or perform functions in relation to the Drug Court. It should also recognise and protect the important role of case reviews and team meetings (i.e. case conferences between team members and the magistrate). The Victorian *Sentencing Act 1991* may serve as a model.

Recommendation No. 32 (see page 49)

The current frequency of drug testing must be maintained as a minimum standard. Methods need to be found to further randomise the timing of the tests and to protect against false samples being provided. Such methods must also become standard Drug Court practice.

Recommendation No. 33 (see page 54)

The Queensland Health Scientific Services should be adequately resourced to be able to provide a turnaround time of no more than three days. *Alternatively*, the Department of Corrective Services should be permitted to send the urine samples interstate. *But preferably*, funding should be provided to the Drug Court program via the Department of Corrective Services for the purchase of its own GC/MS or LC/MS/MS instrument which is, in turn, to be provided to a laboratory such as QHSS on conditions including priority analysis for the Drug Court and Department of Corrective Services, subject to meeting agreed performance criteria such as a maximum turnaround time, plus other conditions as outlined in this report.

Recommendation No. 34 (see page 55)

To guard against, and to discourage, substitution of urine samples, funding should be allocated for DNA and gender testing of urine samples, limited to those cases where substitution is strongly suspected and on an occasional random basis, say three per month in each court.

Recommendation No. 35 (see page 59)

Weekly reviews should be maintained for all participants at the start of the program. Phase one participants in residential treatment should continue to be rewarded with fortnightly reviews after returning good results for about 3 to 6 weeks. Fortnightly reviews should be maintained for all phase two participants. Monthly reviews should be maintained for all phase three participants.

Recommendation No. 36 (see page 61)

The power to detain in section 24 of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to allow the magistrate to order a person to undertake detoxification at a stated place until detoxified in the opinion of a suitably qualified health worker, such as a clinical nurse consultant in charge of the unit. As a safeguard the legal aid Drug Court team lawyer should be given standing to apply, in the interests of justice, to have the defendant brought before the court at any time before detoxification is complete.

Recommendation No. 37 (see page 61)

Section 24(3) of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to allow up to 15 days at a time for an assessment of person's participation in the program so he or she can be returned to a relevant court to be dealt with.

Recommendation No. 38 (see page 62)

Section 24(3) of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to provide for a clear distinction between assessment of an offender's participation and a full re-assessment. The section should allow up to 22 days/three full weeks for a re-assessment and for further detention for up to 8 days/one full week at a time.

Recommendation No. 39 (see page 63)

Queensland Health and Drug Court co-ordinators, with assistance from the Reference Group, should decide the desired content (prescribed compliance information) of the Queensland Health drug and alcohol counsellors' court report for participant review purposes.

Recommendation No. 40 (see page 63)

Section 39 of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to require Queensland Health drug and alcohol counsellors to provide prescribed compliance information to prescribed persons for court reviews.

Recommendation No. 41 (see page 66)

The Chief Executive, Department of Corrective Services should be encouraged to direct sentence management to review the method of counting days being applied to ensure the day an order is made is not counted as a full day. *Alternatively*, the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended by omitting all references to 14 or 21 days and inserting 15 and 22 days.

Recommendation No. 42 (see page 66)

The approved forms for all relevant warrants also need amending by the Chief Executive, Department of Justice and Attorney-General, to reflect any changes in the legislation, and should also make provision to state the date of release, and where the defendant is to be released and, if necessary, who the defendant should be released to.

Recommendation No. 43 (see page 66)

The clerk of the court or his/her delegate (for example, the Drug Court co-ordinator) should be empowered to sign all such warrants after satisfying him/herself from the magistrate's notation on the Bench Charge Sheet or Drug Court file that the pilot program magistrate has made the order.

Recommendation No. 44 (see page 68)

The Methadone in prisons evaluation should be made public and a decision made whether the government will continue or discontinue the provision of Methadone to prisoners. Methadone and Buprenorphine should be able to be prescribed to all drug dependant prisoners.

Recommendation No. 45 (see page 70)

To avoid the incidence of absconding, funding should be allocated to provide transport of Drug Court participants from prisons to Drug Courts, a supported accommodation program house or to residential rehabilitation facilities, at the direction of the court.

Recommendation No. 46 (see page 72)

Queensland Health and the Reference Group should be required to investigate means of combating doctor shopping, including allowing the Drug Court to refer participants to specific doctors, for example, Government Medical Officers or Methadone clinics.

Recommendation No. 47 (see page 72)

A doctor shopping phone line should be re-established so the Health Insurance Commission and Queensland Health can monitor and combat doctor shopping for drugs of abuse.

Recommendation No. 48 (see page 72)

When a participant claims he or she is unable to attend court due to medical reasons doctors should be required to specifically certify the person is unfit to attend court.

Recommendation No. 49 (see page 76)

Resources should be allocated to establish residential programs specifically for women with children, to include family unit housing, child care, parenting programs and special medical/psychological care to cater for special clinical issues.

Recommendation No. 50 (see page 78)

Drug Court resources should be extended to include indigenous and culturally appropriate programs such as the Jesse Buddy residential program, the Youth Enterprise Trust Camp, and other employment and training programs. The Reference Group should be responsible for identifying appropriate and relevant programs and identifying the relevant state department to administer the funds and co-ordinate itself with the Drug Court.

Recommendation No. 51 (see page 79)

Queensland Health, with assistance from the Reference Group, should make an early decision about the data it will monitor from the recent initiative to employ an indigenous health worker and report trends and options to the Reference Group and to magistrates in relevant Drug Courts.

Recommendation No. 52 (see page 80)

Funding should be allocated to enable the Department of Corrective Services to supervise curfews for bailees and Drug Court participants.

Recommendation No. 53 (see page 80)

Funding should be allocated to enable supported accommodation program workers to better supervise their Drug Court client behaviour.

Recommendation No. 54 (see page 82)

The Reference Group and Queensland Health should investigate the need for and feasibility of funding a dedicated psychiatrist's services for the Queensland Health (Drug Court) clients.

Recommendation No. 55 (see page 83)

Funding needs to be made available for more outpatient positions at Logan House. The outpatient program is necessary for participants requiring intensive treatment but not such as would require the more expensive residential treatment.

Recommendation No. 56 (see page 84)

Funding needs to be made available for sexual abuse counselling programs. The programs must be accessible with sufficient frequency and regularity. The association between childhood sexual abuse and drug taking should be further examined in the context of providing sexual abuse counselling services in Queensland.

Recommendation No. 57 (see page 87)

The Department of Employment and Training should be invited to become a further stakeholder and partner in the Drug Court program and provide assistance to Phase Three participants to achieve the aims of obtaining further education and becoming employed or employable.

Recommendation No. 58 (see page 88)

Consideration should be given by the Drug Court Reference Group to inviting Queensland Transport to contribute to the whole-of government Drug Court program by amending the driver licensing laws to enable the Drug Court to reward true graduates with the right to apply for a driver licence. It could be a provisional licence or have other restrictions. For example, it could be limited to Drug Court graduates who have achieved a minimum period of being abstinent and crime free, say 9 months.

Recommendation No. 59 (see page 88)

More programs like the Indigenous Road Safety initiative are required to increase levels of licensing of drivers and decrease the levels of incarceration through repeat offending by unlicensed driving. People with a history of unlicensed or disqualified driving should be specifically targeted. The Drug Court would be a good starting place.

Recommendation No. 60 (see page 89)

Queensland Transport and the Queensland Drug Driving Prevention working group should be invited by the Drug Court Reference Group to examine the availability of driving courses to Drug Court participants and to advise the court accordingly. The Drug Court program should be funded to send carefully screened participants to such programs.

Recommendation No. 61 (see page 91)

Resources need to be allocated to build and enhance family assistance programs for the families of Drug Court participants. A specific Drug Court Family Support Service could be established to provide a wide range of counselling, information, referral and support services, including child minding subsidies. They should be conveniently located in areas of need such as within close proximity of each Drug Court.

Recommendation No. 62 (see page 95)

Further research should be conducted by an appropriately qualified academic or organisation for the development of strategies for motivating and keeping people in treatment longer and to reduce the rate at which individuals abscond while subject to an intensive drug rehabilitation order.

Recommendation No. 63 (see page 101)

All drug courts should have a uniform *ex parte* termination application policy set out in a regulation, as follows—

Two weeks after a bench warrant has issued—the Department of Corrective Services (DCS) sends a registered letter to the participant advising a warrant has issued for his or her arrest, and to make contact before an application is made to terminate his or her program in absentia and advising when the matter will be mentioned to seek an *ex parte* termination hearing date.

Four weeks after a bench warrant has issued—the matter is mentioned, an application for termination is made and an *ex parte* termination hearing date is set and DCS sends another letter to advise of the hearing date.

Six weeks after a bench warrant has issued—DCS file a termination summary report, prove service of the letter by post and the application is heard.

Recommendation No. 64 (see page 107)

Owing to the very young ages at which most people referred to the Drug Court began their drug use, drug education programs should be compulsory in all primary and secondary schools. They should start in at least year 5.

Recommendation No. 65 (see page 107)

Resources need to be improved for early intervention and counselling for issues causally related to drug use, such as childhood sexual abuse, child witnesses and victims of domestic violence, and children who suffer grief and loss issues such as the death of a parent.

Recommendation No. 66 (see page 110)

The objects of the Act should be amended to focus the Drug Court's activities on the needs of the individual which must be addressed to achieve the broader goals of protecting the community, that is—

- (a) to reduce the drug dependency of eligible persons, and
- (b) to promote the re-integration of such drug dependent persons into the community, and
- (c) to reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

Recommendation No. 67 (see page 110)

Section 34 of the *Drug Rehabilitation (Court Diversion) Act 2000*, should be amended to add in a more logical criterion to achieve graduation, namely, that the Drug Court may, on its own initiative, terminate the intensive drug rehabilitation program part of the order if it considers a participant has to date fully or substantially complied with the order and the continuation of the order is no longer necessary to meet the purposes for which it was made.

Recommendation No. 68 (see page 113)

The *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to allow the court to impose up to 240 hours community service (instead of just 120), irrespective of the number of outstanding hours under another court order. The Drug Court should be required to take into account any outstanding hours under another court order and when the defendant must have the hours completed under that order. The Drug Court should be restricted to imposing a maximum of 60 hours of community service per breach.

Recommendation No. 69 (see page 124)

A second magistrate stationed in each of the courts in Cairns and Townsville should be trained to become back-up Drug Court magistrates.

Recommendation No. 70 (see page 124)

If the model in North Queensland is to remain in pilot mode, the disqualifying criteria of a previous term of imprisonment of greater than six months should be amended to a term of imprisonment of at least 12 months. It should also apply only to previous convictions for indictable offences and not for simple offences such as traffic matters, for example disqualified driving.

Recommendation No. 71 (see page 124)

Instead of a mere supported accommodation model for defendants requiring residential treatment, the cities of Cairns and Townsville should be funded to establish holistic residential programs and therapeutic communities along the lines of those available in Brisbane, Logan and Gold Coast.

Recommendation No. 72 (see page 124)

As the number of Drug Courts has grown and is likely to continue to grow, a position of Co-ordinating Drug Court Magistrate should be created or designated. In order to maintain uniformity of practice between the various courts, the position could be accompanied by a power to issue guidelines (similar to the position of State Coroner). *Alternatively*, it may be thought the Chief Magistrate could continue to exercise the power to issue guidelines in consultation with the Co-ordinating Drug Court Magistrate.

Recommendation No. 73 (see page 130)

The State Government should examine the feasibility of implementing a Two Stream Drug Court model, overlaid by a BERIT program.

Like MERIT in NSW, the BERIT program (Bailed Early Referral Into Treatment as discussed above) could be established in all Queensland Health Area offices to accept referrals from any court, including superior courts. However, the shortcomings and concerns outlined in Annexure 1 of this report would need to be addressed, such as adequate and reliable drug testing and breaches of bail. BERIT would provide basic pre-sentence treatment regardless of whether a person wanted to apply for a Drug Court program. If a defendant had such an intention the Drug Court could take into account performance on the BERIT in deciding suitability.

It is proposed the current South East Drug Court model become the **Metropolitan** Drug Court model with all the infrastructure and resources to run both residential and outpatient programs without any disqualifying criteria related to previous terms of imprisonment. A plea of guilty and the other current Drug Court eligibility criteria will remain the same as they are at present.

It is proposed the current Northern model become the **Regional** Drug Court model. Preferably, there would be no disqualifying criteria based solely on prior imprisonment. However, if the government decides to retain such disqualifying criteria for the Regional Drug Court model the disqualifying criteria should be previous imprisonment for 12 or more months, instead of the current 6 months.

Assuming the government keeps the disqualifying criteria the two models would operate together as follows.

If a defendant has previously been sentenced to serve 12 or less than 12 months imprisonment he or she will qualify for both the Metropolitan and Regional Drug Court models.

If such a defendant is assessed to require an **outpatient** program, then depending whether the court is in a city or regional area the defendant can undertake either—

- a. The Bailed Early Referral Into Treatment (BERIT) program (a pre-plea program), and/or one of the post-plea programs, namely—
- b. The Regional Drug Court outpatient program, or
- c. The Metropolitan Drug Court outpatient program.

To sustain a Regional model a minor expansion of Queensland Health and Department of Corrective Services programs would be required in some towns, perhaps by reference to a pre-determined minimum population level. Larger towns could also have a supported accommodation program for outpatient program attendance.

If the defendant is assessed as requiring **residential** treatment and intends to plead guilty to the offence, the court could transfer the defendant to a Metropolitan Drug Court program. If the defendant is not willing to do so he or she can be sentenced in the usual way. However, if the defendant has successfully completed the BERIT program he or she may have that fact taken into account when sentenced.

If a defendant has previously been sentenced to serve more than 12 months imprisonment he or she will qualify only for the Metropolitan Drug Court model.

However, if such a defendant is assessed to require an **outpatient** program the court could still keep the defendant in the town while he or she undertakes the Bailed Early Referral Into Treatment (BERIT) program before a plea is entered to the charges.

The same Queensland Health and Department of Corrective Services programs referred to in the first scenario would be relied upon.

If the defendant is assessed as requiring **residential** treatment the court could transfer him to a Metropolitan Drug Court. If he is not willing to do so he can be sentenced in the usual way.

In either scenario, the BERIT program would be offered before the defendant is asked to enter any plea. Performance on the program will determine whether the defendant requires further treatment, or whether the defendant is suitable for an intensive drug rehabilitation order. The results may also be taken into account on sentencing, irrespective of whether the defendant goes on to further treatment.

In either scenario, if a defendant is assessed to require residential treatment, and the defendant successfully completes a residential program, he or she could be rewarded, if it is desired, with a transfer back to the home town (or nearby town) to complete the Drug Court program as an outpatient. This would overcome the problem of not being able to offer treatment in regional areas to people who have previously been sentenced to lengthier terms of imprisonment.

Transfers would only happen if and when vacancies exist. A simple centrally co-ordinated administrative call-over system would sort out priority rankings among defendants.

Obviously, each model could operate just as effectively without any disqualifying criterion based solely on prior imprisonment. The only defining factor would then be whether the defendant needs residential or outpatient treatment, and perhaps whether the person failed to complete a BERIT program.

This two tier Drug Court model is better suited to roll out over time. Smaller towns can start with an inexpensive BERIT program followed by small Regional Drug Court Outpatient programs. As populations grow and resources become available, more small cities and large towns may be able to commence Metropolitan Drug Court programs.

Recommendation No. 74 *(see page 134)*

The State Government should examine the feasibility of implementing prison based drug rehabilitation programs and therapeutic communities for mainstream prisoners (pre-release) and for some Drug Court participants facing termination of their programs, along the lines described in this final report.

INTRODUCTION

THE DRUG PROBLEM

The relevance of Drug Courts as a vehicle for rehabilitation of serious offenders must be understood in the context of the drug problem in Australia in general, and in Queensland in particular.

Of the charges which come before the Drug Court, the majority of offences committed by drug dependant offenders are property offences. An offender's drug dependency may contribute to the commission of offences in a variety of ways. These can include obtaining property to sell or exchange for drugs, or to pay for past drug debts or to buy food and pay rent because their money has been spent on drugs.

The Drug Use Monitoring in Australia (DUMA) study for 2002¹ examined the extent of drug use among men and women detained in custody upon arrest at seven sites around Australia. The data is quite relevant here because two sites were in Queensland (Brisbane and Southport). Over the year, 88% of detainees (3634) volunteered interviews with the researchers and of those 79% also agreed to provide urine samples².

Males represented 84% and females 16% of the DUMA sample. By comparison, of 555 referrals to the Drug Court, 84.5% (469) were males and 15.5% (86) were females (virtually the same proportion).

Most detainees in the DUMA study (44%) were aged between 21 and 30 years. Over half had less than 10 years of formal education. Within 30 days before arrest almost half were living in someone else's house and only 23% had full time work while females were more likely than males to derive income from government benefits and sex work³.

Both males (28.7%) and females (41.2%) were most likely to be charged with property offences. Males (24.8%) were more likely than females (15.9%) to be charged with violent offences⁴.

¹ Drug Use Monitoring in Australia (DUMA) Annual Report 2002, Australian Institute of Criminology.

² DUMA 2002, p5.

³ DUMA 2002, p11.

⁴ DUMA 2002, p20.

However, it should be noted, under the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act), defendants guilty of offences involving violence against another person are disqualified from participating in the Drug Court program.

DUMA also found⁵ that of those male detainees whose most serious charge was a property offence—

- 36% tested positive to amphetamine (26.2% Brisbane, 27.4% Southport);
- 29% tested positive to benzodiazepines (24.1% Brisbane, 20.6% Southport);
- 64% tested positive to cannabis (54.6% Brisbane, 60.7% Southport);
- 26% tested positive to opiates (21.1% Brisbane, 14.8 % Southport);
- 81% tested positive to any drug (73.3% Brisbane, 72% Southport); and
- 60% tested positive to any drug excluding cannabis (48% Brisbane, 42.2% Southport).

While DUMA found Brisbane and Southport are a few percentage points below the national figures, there is still an obvious serious drug problem in each location.

Further, in the 12 months preceding their current detention, more than half (56%) of detainees had been arrested on other charges and 22% had been in prison. Of these 60% tested positive to either opiates or amphetamine.⁶

WHAT IS A DRUG COURT?

A Drug Court is a court-driven program that provides drug-addicted offenders with an opportunity to rehabilitate instead of being locked into the drug-crime-jail cycle. In the Queensland model the mechanisms for rehabilitation are provided for in an Intensive Drug Rehabilitation Order (IDRO). This is a new sentencing option, underpinned by the concept of *therapeutic jurisprudence*⁷. This option combines the *care* elements of the health system and the *control* mechanisms of the criminal justice system.

The Drug Court helps a drug dependant offender deal with his or her drug dependency by combining treatment services, corrections programs, frequent drug testing, a series of rewards or sanctions, and supervision by the court.

⁵ DUMA 2002 pp20, 60 and100.

⁶ DUMA 2002 p11.

⁷ At the Drug Court national conference in Sydney on 28 February 2002, in the Workshop 1 discussion: 'Therapeutic Jurisprudence and the Role of the Judicial Officer in a Therapeutic Court', Professor Arie Freiberg stated: '...the process is offender rather than offence oriented and ... aims to promote the offender's wellbeing rather than meting out punishment. It is prospective rather than retrospective. See further discussion at the NSW Drug Court website: www.lawlink.nsw.gov.au/drugcrt/drugcrt.nsf/pages/conference.

Some past interventions have not been as successful as planned because they did not accept relapses or set-backs as an integral step on the path to success and because of the past difficulties of government agencies effectively working together and working with non-government organisations.

HOW THE DRUG COURT ACHIEVES CARE AND CONTROL

The Drug Court program was designed recognising the target group needed a continuum of supervision, treatment and other interventions and was likely to respond only to immediate consequences and rewards. The program combines court processes with local drug, health and mental health services, specially funded residential and outpatient rehabilitation services, housing, employment and other services.

Key features which link together the elements of this continuum are frequent random drug testing and the incorporation of court monitoring and reviews into each offender's rehabilitation program.

The rehabilitation program consists of three phases (see Annexure 4) each with its own aims and methods of achieving those aims. The achievement of each of those aims was designed by the pilot program magistrate and Drug Court co-ordinators to achieve, in turn, the four objects of the Act.

BACKGROUND AND HISTORY

THE RELEVANT LEGISLATION

The *Drug Rehabilitation (Court Diversion) Act 2000* (Act No. 3 of 2000) (the Act) was passed by Parliament on 2 March 2000. It was assented to on 8 March 2000 and was proclaimed to start on 13 June 2000. The regulation also commenced on 13 June 2000. The Act and the pilot were due to expire 30 months later. The Act was amended by the *Criminal Law Amendment Act 2002*. Section 47 has been amended to extend the *Drug Rehabilitation (Court Diversion) Act 2000*, and therefore the pilot, to 42 months (to expire on 12 December 2003). Further, the amendment states 'However, a regulation made before the end of the 42 months may defer the expiry of this Act, but only for 1 year.' No such extension has been made to date.

OBJECTS OF THE ACT

Under section 3 of the Act, the objects are to reduce—

1. the level of *drug dependency* in the community; and
2. the level of *criminal activity* associated with drug dependency; and
3. *health risks* to the community associated with drug dependency; and
4. pressure on *resources* in the court and prison systems.

Section 3(2) states that the objects are to be achieved by establishing a pilot court diversion program to—

- (a) identify drug dependant persons who are suitable to receive intensive drug rehabilitation; and
- (b) improve the ability of those persons to function as law abiding citizens; and
- (c) improve the employability of those persons; and
- (d) improve the health of those persons.

PILOT PROGRAM COURTS AND PILOT PROGRAM MAGISTRATES

Section 9 gives the Governor-in-Council the power to declare one or more Magistrates Courts to be pilot program courts. A power of a pilot program magistrate may be exercised only in a pilot program court. Under section 9 of the Act, five magistrates courts (initially Beenleigh, Ipswich and Southport and subsequently Cairns and Townsville) have been declared by regulation to be pilot program courts. Further pilot program courts can be prescribed. They can be ceased by un-prescribing them.

Under section 10, the Chief Magistrate may allocate the functions of a pilot program magistrate (PPM) to any magistrate. The functions have now been allocated to eight magistrates as follows:

- Mr John Costanzo (Beenleigh, Ipswich and Southport),
- Ms Anne Thacker and Mr Craig Proctor (Backup to Mr Costanzo),
- Ms Tina Previtera (Cairns),
- Mr Rob Spencer and Mr Zac Sarra (Backup to Ms Previtera),
- Mr Graham Hillan (Townsville), and
- Mr David Glasgow (Backup to Mr Hillan).

SITTINGS GOVERNED BY CAP ON NUMBER OF IDROs

Due to the pilot nature of the program and the extent of the resources budgeted for the pilot, a cap of 141 concurrent IDROs was placed administratively (by government) on the Beenleigh, Ipswich, Southport pilot and 40 IDROs on each of the Northern pilot program courts.

Given smaller projected numbers in the Ipswich area, it was decided by the original Drug Court team that the Drug Court would distribute the 141 IDROs (give or take a few) on a ratio of 2:2:1; that is, 58 in Beenleigh, 58 in Southport, and 26 in Ipswich. The sitting days needed to be distributed in the same ratio; therefore the Drug Court sat two days per week in Beenleigh and Southport and one day per week in Ipswich. Owing to the number of reserved judgments generated by termination hearings, complex sentences and new points of law, the administrative duties associated with the nature of a pilot program running in three locations and the need for meetings with service providers, it was decided in April 2002 that Ipswich sittings would be reduced to one day per fortnight. The pilot program magistrate then initiated 'participant interviews' in the intervening week so the Drug Court team at Ipswich could foster a frank exchange, build a rapport and co-operation between the court team and participants and offer them support in their recovery.

Feedback after holding participant interviews establishes that participants prefer to appear in court to receive the encouragement, guidance and correction by the court and court team, acknowledgement of their efforts, to obtain rewards and even sanctions by the magistrate and to gain from group discussions.

It was originally intended one magistrate would conduct all three courts for the purpose of consistency, to oversee the development and evolution of the Drug Court model and for reporting purposes (like writing this final report). Consistency has been enhanced for the future by translation of the experience of the pilot program into operational practices and procedures.

The pilot model has inbuilt limitations while it remains in pilot mode and while it retains a target of 141 concurrent participants. That is, with only one or two days available to sit in each centre the court is left with insufficient time to list matters for sentence quickly enough to replace the defendants whose orders are terminated or who graduate successfully. Gains in consistency from having one

magistrate have been negated by the workload and travel time between courts. The time has come to have one Drug Court magistrate in each court.

In contrast, the Drug Court of NSW in Parramatta sits 4 to 5 days per week in one court, has two judges available at call and holds participant interviews (like ours in Ipswich) on Fridays. It deals with similar numbers to our South-east Queensland model, but does so in one place.

Recommendation No. 1

The Drug Court program should be implemented separately in each court in the current pilot areas of Beenleigh, Ipswich and Southport.

Recommendation No. 2

Each court should be presided over by a separate magistrate instead of the current arrangement of one magistrate travelling to all three courts for the past three years.

Recommendation No. 3

The number of sitting days per week in each court should be determined according to any cap imposed on the number of treatment places available for inclusion in intensive drug rehabilitation orders.

REASONS FOR CHOICE OF MAGISTRATES COURT JURISDICTION

It was appropriate that a controlled pilot program be undertaken to ascertain the practical and financial feasibility of providing intensive drug treatment to serious offenders as a diversion from the potentially harmful effects of expensive incarceration while still providing protection to the community.

For Queensland, the obvious choice of jurisdiction for the pilot was the Magistrates Court because the court—

- Is a defendant's first point of contact with the courts, therefore it would enable the courts to get the person into treatment sooner,
- Can avoid the delays there would be in getting matters before the District or Supreme Court while waiting for committal for trial or sentence or presentment of an *ex officio* indictment,
- Has jurisdiction anyway to hear all summary offences and many indictable offences of the type typically committed by drug dependant offenders (that is, drug and property offences), and
- Is the least expensive court to run on a daily basis.

REASONS FOR SELECTION OF BEENLEIGH, IPSWICH AND SOUTHPORT

The following factors were important considerations.

- These three courts had the highest rates of imprisonment anywhere in Queensland, outside Brisbane Central Magistrates Court, for drug and property offences, in the three years prior to the passing of the Act.
- The total number of defendants imprisoned for drug and property offences in these three courts provided a reasonable prospect of reaching a target of 300 referrals per year (an estimate based on proposed resources at that time).
- Fewer equity issues would arise if everyone who qualified for treatment got treated in the pilot area. If the pilot were conducted in Brisbane Central, for example, some 1000 people might have become eligible but more than half would have been forced to miss out. (Random selection of a control group for evaluation of the New South Wales Drug Court was conducted in this way.)
- These three courts are within about 30 to 45 minutes drive of each other and are convenient to the central administration in Brisbane.

THE KEY STAKEHOLDERS

Magistrates Court

The pilot program magistrate (PPM) presided in each of the three Drug Courts in South-east Queensland. There are two relieving PPMs appointed to act as and when required (for example, when the PPM is on leave, ill or needs relief due to the intensity and constancy of the work or to help clear any backlog). The second relieving PPM was trained in September 2002 along with the PPMs for Cairns and Townsville. There was no budget to provide that training (or for writing this report). Therefore, the training was brief and incomplete.

Recommendation No. 4

The Drug Court budget should in future include a sum for training of magistrates and other staff. This will be especially necessary if Drug Courts are to expand to other regions.

Department of Justice and Attorney General (Department of Justice)

A Drug Court manager oversees the pilots in South-east Queensland and North Queensland.

In South-east Queensland, the Department of Justice employs a Drug Court co-ordinator and two depositions clerks. The co-ordinator performs a management role in the three courts, maintains the law lists, and monitors the computerised recording of pilot program statistics on the Department of Justice site for evaluation and administrative purposes.

In North Queensland there is one coordinator based in Townsville and one depositions clerk in each of the two centres with shared Drug Court and magistrates court roles.

Department of Corrective Services (DCS)

DCS provides a co-ordinator to oversee community corrections officers who sit as team members at each Drug Court. The co-ordinator is also the state manager for all DCS drug testing services.

DCS functions include the provision of reports and advice to the Drug Court teams, assessment of defendant's suitability for rehabilitation as required under the legislation, case management, supervision of offenders, provision of programs, and drug testing for offenders subject to Intensive Drug Rehabilitation Orders (IDROs).

The Regional Director, Southern Region Community Corrections coordinates DCS involvement in the pilot program courts and is assisted by the Manager, Drug Advisory Services. Initial pre-sentence assessments are co-ordinated and conducted by senior community correctional officers (assessments) at Southern Regional Office, assisted by an assessment officer. Programs officers prepare and conduct programs for Drug Court participants. Community correctional officers (Drug Court) based at area offices are also required at times to conduct assessments.

Senior/area managers (Ipswich, Beenleigh, Logan, Southport, and Burleigh Heads) are responsible for the provision of DCS functions at each of the Drug Courts. All senior/area managers are responsible for the provision of staff and facilities to conduct all aspects of supervision of Drug Court participants. Senior/area managers are also responsible for liaison with residential rehabilitation centres located within their area.

Senior/area managers provide a Drug Court team member for each day the Drug Court operates in their area. The team member is expected to be an officer with substantial court experience. Community correctional officers performing case management may also be required at times in court or in team review meetings with the magistrate.

Queensland Health (QH)

QH provides a co-ordinator (a registered nurse with expertise in the field of drug and alcohol treatment/counselling) to oversee clinical nurse consultants (CNCs) who sit as team members at each Drug Court. The CNCs advise the pilot program magistrate and other team members regarding offenders' progress and

compliance with counselling and treatment, in health related matters and matters which affect QH. QH-ATODS⁸ co-ordinate drug dependency assessments of offenders who have been referred to the Drug Court, liaise with other areas of QH (for example, the Methadone program and detoxification services), and organise pre-admission assessments with various (non-government) residential and non-residential rehabilitation services.

Queensland Police Service (QPS)

The QPS has been an ardent supporter of the Drug Court program. A police co-ordinator has overseen the prosecutors in each Drug Court. For most of the pilot the police prosecutors were assisted by a junior police officer/assistant at each of the three Drug Courts. However, over six months ago a decision was taken within QPS to regionalise this service. The assistants were removed. Prosecutors with little or no training in Drug Court matters were allocated. Thankfully, they are experienced prosecutors and of a high calibre. They have managed to learn fairly quickly but it is unfair to them, the Drug Court team and the participants if they are thrown in the deep end. Only two of three permanent appointments have yet been made for the South-east Queensland Drug Court programs.

The QPS serves a dual role in the Drug Court, namely prosecution of offenders and the provision of 'intelligence'. Additional police officers are involved in the usual transport, escort, and watch-house duties. The co-ordinator sometimes shares the usual prosecution role during hearings, and sits as a team member advising the magistrate and other team members in matters affecting the QPS and the Drug Court.

Further training would also alleviate problems such as inappropriate referrals for assessment and with presentation of material to the court.

Better submissions to the referring magistrates could reduce the number of inappropriate referrals being made and therefore save resources. For example, a significant number of referrals were made for disqualifying offences (such as dangerous driving where the facts involve violence against another person) apparently because the prosecutors did not have the facts of the offences at the time of referral or if they did the magistrate was not informed.

Also, prosecutors sometimes omit to tender interstate criminal histories, even after the prosecution has been in possession for several weeks of a pre-sentence report which refers to interstate criminality or official records. Similarly, prosecutors have sometimes failed to see that a criminal history contains a suspended sentence or other order (by the same or a higher or interstate court) which is breached by the offences they are presenting to the court. The court then has to adjourn proceedings so the prosecution can obtain relevant

⁸ QH-ATODS is the Queensland Health Alcohol Tobacco and Other Drug Services.

information for the court and give the defence lawyer sufficient time to obtain instructions from a defendant.

Many of these problems would be resolved if permanent appointments of appropriately trained officers were made.

Recommendation No. 5

The QPS should be encouraged to finalise the appointment of permanent prosecutors for each Drug Court. Also, the QPS may need to—

- a. Clarify the precise role of prosecutors in referring courts, including being part of the screening process
- b. Improve mechanisms for communicating information and feedback between prosecutors in the referring court and the Drug Court

Recommendation No. 6

The QPS should be encouraged to provide appropriate training to prosecutors at the local level before commencement of Drug Court duties.

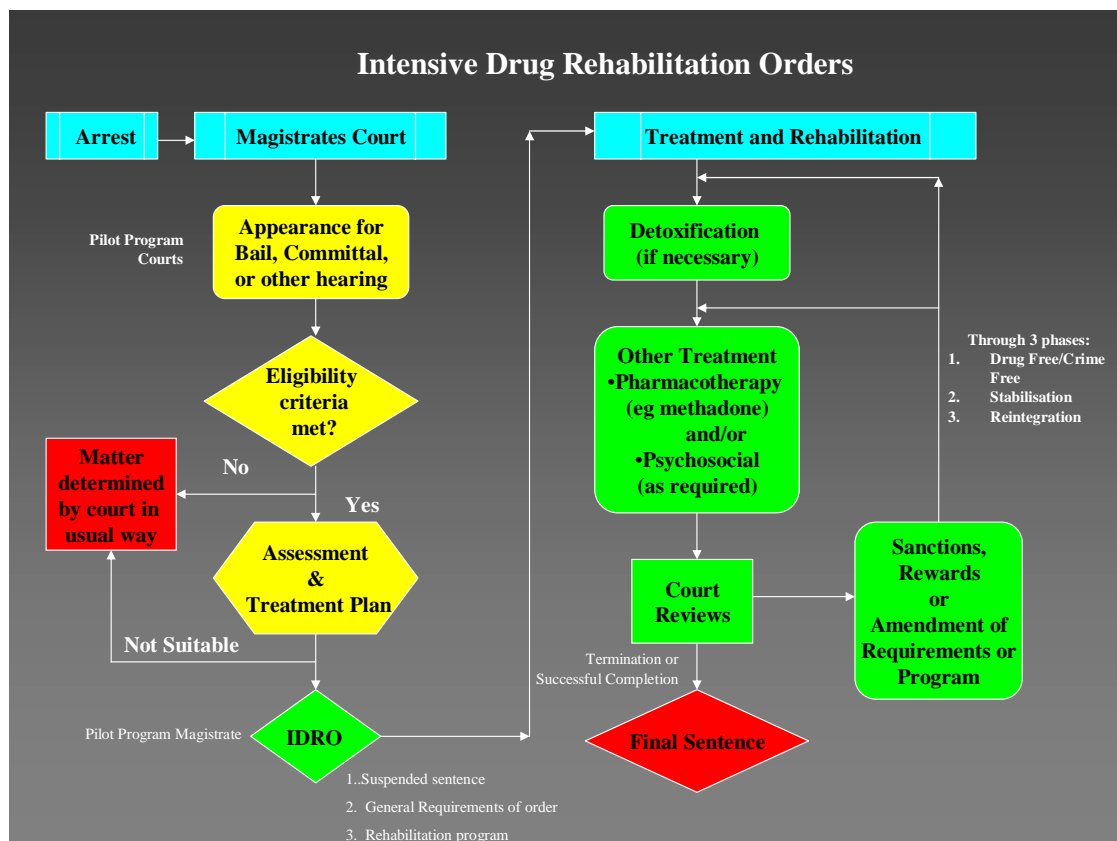
Legal Aid Queensland (LAQ)

LAQ has appointed a legal officer to assist in each Drug Court. Additional LAQ staff assists the courts as required. The legal officer performs the usual defence role during hearings, and sits as a team member in team meetings advising the pilot program magistrate in matters affecting LAQ or the defendant's recovery. The LAQ legal officers have each proved themselves to be well trained and educated. They are also very skilled at maintaining, in a professional manner, the fine balance between the adversarial and therapeutic roles of the drug court team members.

THE DRUG COURT REFERRAL and ASSESSMENT PROCESS

HOW REFERRALS ARE MADE

The flowchart below depicts how a person will potentially progress, after arrest, through referral, assessment and treatment under an intensive drug rehabilitation order (IDRO).



The first step is for the defendant to be referred to the Drug Court for assessment. After an offender is arrested, trained police prosecutors and duty lawyers inform and advise defendants about the Drug Court if they appear to be eligible. At any time before defendants are committed for trial or sentence they may elect to apply to the magistrate to be referred to the Drug Court for assessment. The magistrate must decide whether the defendant appears to be an 'eligible person'. If not, the matter will proceed in the usual way and the defendant will have the same choices he or she would have had in any case.

If a referral order is made, the referring magistrate must decide whether the defendant will be remanded in custody or released on bail. The referral order requires the Department of Corrective Services (DCS) to prepare a pre-sentence

report assessing whether the defendant is suitable for rehabilitation. However, as a matter of practicality, a clinical nurse from Queensland Health (QH) first assesses whether the defendant is in fact drug dependant and determines the history and extent of that dependency. Only then does the DCS gather information to assist the court to determine whether the dependency contributed to the commission of the offences and prepare the pre-sentence report.

As at 31 December 2002, when referrals to the court were stopped by an amendment to the Regulation, there were 555 referrals to the Drug Court. As at 31 March 2003, a total of 242 out of the 555 were determined to be ineligible because they were—

- Assessed not drug dependant, or
- Charged with disqualifying offences, or
- Remitted to the arrest court (usually to opt for committal proceedings) or
- Dealt with in the usual way that is, sentenced with other more appropriate options, usually because, owing to the nature of their offending or criminal history, they were not facing imprisonment.

PROPOSAL TO IMPROVE REFERRAL PROCESS

That so many people were not suitable for, or not prepared to undertake, the Drug Court program is testimony to the value of a filtering process.

However, assessment time and resources could have been saved had the defendants been referred firstly to an assessment of dependency by Queensland Health and if orders to obtain a pre-sentence report had been made in the Drug Court itself after due consideration by Drug Court personnel. Trained and experienced Drug Court defence lawyers could more accurately advise defendants whether they are likely to be eligible. The Drug Court Magistrate would be in a better position than Magistrates in a busy arrest court to be advised about eligibility and to make the judgment as to whether the person 'appears to be a suitable person' as required by the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act). Also, the Drug Court magistrate would be able to address recovery needs immediately at the first appearance and, if necessary, impose suitable bail conditions for that purpose. See the discussion about Bailed Early Referral into Treatment (BERIT), below.

Recommendation No. 7

The referral process in the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to require referring magistrates to consider the same criteria as at present but to order an assessment of dependency by Queensland Health and remand the defendant before the Drug Court magistrate. If the Drug Court magistrate does not then order a pre-sentence report by the Department of Corrective Services the defendant is to be remanded back to the arrest court.

This recommendation is predicated on acceptance of the recommendation to have one Drug Court Magistrate in each Drug Court and on the magistrate being allowed sufficient sitting time to manage a lengthy call-over/remand list.

ABSCONDING ON BAIL, WITHOUT IDRO BEING MADE

Absconding can occur when people are on bail awaiting a court hearing or after the intensive drug rehabilitation order is made.

A number of people absconded while on bail awaiting assessment or to apply for an intensive drug rehabilitation order. Many would no doubt have absconded whether waiting for a Drug Court order or not. Most were returned to other courts, after execution of a Bail Act warrant for the arrest of the person, and dealt with by way of committal to a higher court or by being sentenced.

However, 20 Bail Act warrants remain outstanding on the database but the Drug Court has no record of whether they have been arrested and dealt with in other courts.

Recommendation No. 8

The Drug Court manager should liaise with the Commissioner of Queensland Police and the Department of Justice and Attorney-General to establish a mechanism to notify the relevant Drug Court when a defendant who is subject to a Bail Act warrant issued by the Drug Court is arrested and dealt with elsewhere.

Further, measures need to be taken to protect the integrity of the Drug Court program by discouraging people from absconding from the program. Such measures will help the court to determine which potential Drug Court participants are sufficiently motivated and genuine about wanting recovery. For example, if a person absconds while on bail he or she could be prevented from automatic referral back to the Drug Court for a period of say three months from the date of arrest. If a person is the subject of a termination order he or she could be prevented for six months from the date of arrest from reapplying to be re-referred to the Drug Court. The longer period in the later case would be justifiable given

the generous ex parte termination policy and time frames adopted by the coordinators (discussed further below).

The counter-argument is that people abscond because they are vulnerable, unstable and lacking in the kinds of coping and relapse-prevention skills which the Drug Court program can teach them.

Recommendation No. 9

Consideration should be given to amending the referral rules in the *Drug Rehabilitation (Court Diversion) Act 2000* to prevent a person who absconds while on bail from automatic referral back to the Drug Court for a period (for example, three months) from the date of arrest. If a person is the subject of a termination order he or she should be prevented from being re-referred to the Drug Court for a period (for example, six months) from the date of arrest.

DISTINGUISHING BETWEEN DETOXIFICATION AND REHABILITATION

Lay people appear to be unaware of the important differences between detoxification and rehabilitation.

To begin with, most drug dependant people believe they can stop using drugs on their own. However, most attempts do not achieve long-term abstinence. If long-term drug abuse results in significant changes in brain function these changes may persist long after drug use has ceased. That is, people remain addicted in the absence of treatment because brain function may influence behaviour, including a defining characteristic of addiction—the compulsion to use drugs despite adverse consequences.

A medically assisted detoxification is a short process. It assists a person to remove the chemicals from their body. It does not always require detention or hospitalisation. Nor does detoxification remove the dependency, cravings or underlying causes of the person's dependency. Nor does it address associated mental health issues. Achievement of all those objectives is a prerequisite to rehabilitation.

In other Drug Court models (for example, NSW) defendants are remanded into detoxification units where the assessment process is conducted. In the South-east Queensland and North Queensland Drug Court models, detoxification is conducted while the defendant is in the assessment stage.

It is clear from our experience that rehabilitation can only be achieved if the offender undertakes long term rehabilitation programs like those discussed further throughout this report.

POSITIVE LIFESTYLE PROGRAM (PLP)

As a consequence of an approach from Salvation Army court chaplains, an offer was made to pilot a Positive Lifestyle program alongside the Drug Court pilot. The court already had similar programs for participants with an intensive drug rehabilitation order (IDRO). However, the pilot had become so popular that at its peak by mid 2001, referrals to the court far exceeded the cap of 141 (concurrent participants) by some 85 defendants and would have become greater had the Chief Magistrate not issued a Practice Direction to address the situation. Over half of these defendants had been released on bail when referred to the Drug Court for assessment.

The pilot program magistrate decided those defendants on the waiting list for assessment would be prime candidates to attend the PLP. (Later, participants on the intensive drug rehabilitation program were also accepted in the PLP when starting dates for Life Skills and Cognitive Skills programs provided by the DCS were too far off.)

The PLP program consists of 10 modules presented in weekly sessions. Because it is modular participants can enter and exit the program at any time. The modules are:

1. Self awareness
2. Anger
3. Depression
4. Stress
5. Loneliness
6. Grief and loss
7. Creative problem solving
8. Assertiveness
9. Self esteem
10. Goal setting

The court Chaplains who taught the modules for the Drug Courts at Beenleigh and Ipswich were also available to provide emotional support to family and friends of participants and defendants.

A Salvation Army self-evaluation dated 20 March 2003 reports that over a 48 week period an average of 12 people attended per week between 2 facilitators. Only 9% did not complete the course.

The Chaplain reports the PLP program is also conducted at the Arthur Gorrie and Borallon Correctional Centres in Queensland, in a number of Bail Courts in southern States and also in Canada and New Zealand.

BAILED EARLY REFERRAL INTO TREATMENT (BERIT)

The trial of the PLP led to the development of BERIT. Bail must be refused under the *Bail Act 1980*, section 16, if the court is satisfied there is an unacceptable risk the defendant would either, if released on bail, commit an offence or fail to appear when next required. Usually such a risk may be perceived to be high when a defendant admits he or she is drug dependant *and* that his or her offending was drug related. The court has taken the view in many cases that a risk which does exist is not an unacceptable risk if the defendant is willing and likely to undertake intervention or treatment for the drug addiction while on bail. The more effective the interventions are likely to be, the further those risks can be reduced.

Therefore, over time, the pilot program magistrate has developed a set of Drug Court bail conditions which can be considered on a case by case basis when bail is sought in the Drug Court. These can include—

- Residential requirements and curfews,
- No-contact conditions and no-go zones,
- Commencement of residential or outpatient programs,
- Drug and alcohol counselling,
- Counselling for other issues (for example, abuse, grief and loss, post traumatic stress),
- Methadone maintenance or Buprenorphine replacement therapy or other medication needs (for example, for depression),
- Back in Control— a QH relapse prevention program, and
- The positive lifestyle program with the Salvation Army.

There are similar bail schemes in operation for drug dependant defendants in New South Wales⁹, South Australia, Victoria and Western Australia. An outline of the NSW MERIT program appears at Annexure 1.

There are two worthwhile consequences of the BERIT system for Drug Courts. Firstly, participants make a start on their recovery process at the earliest possible opportunity when they say they are ready and ask for help. Secondly, the court gets to see if they are suitable for the more intensive Drug Court program. Potential participants are warned about these possible consequences before agreeing to such bail conditions.

The only shortfall for BERIT has been the inability of the DCS to drug test bailees due to a lack of legislative power. If DCS could use the same testing regime for bailees as it does for Drug Court participants there would not only be the benefit of uniformity of practice but also a useful deterrent and incentive for the defendants.

⁹ On 16 May 2003, the pilot program magistrate visited the Magistrates Early Referral Into Treatment (MERIT) program in Lismore, NSW to assist in the preparation of this report.

If the *Corrective Services Act 2000* were amended to allow DCS to conduct drug testing if ordered as a condition of a bail undertaking, the power could be limited initially to Drug Court bail orders to assess the costs and impact.

Recommendation No. 10

Consideration should be given to implementing the Bailed Early Referral into Treatment (BERIT) program in all courts so that drug dependant defendants have an opportunity to show the court how genuine they are about seeking rehabilitation prior to being sentenced. This recommendation is explored further below.

Recommendation No. 11

The Positive Lifestyle Program (PLP) program should receive assistance from State funding for inclusion in the Drug Court and BERIT programs.

Recommendation No. 12

The *Corrective Services Act 2000* should be amended to allow the Department of Corrective Services to conduct drug testing if ordered as a condition of a bail undertaking made in a BERIT Court or Drug Court.

ASSESSMENT FOR PRE-SENTENCE REPORT

Section 15 of the Act requires that the referral order is to contain an order for the preparation of a pre-sentence report for the pilot program magistrate about—

- The person's *suitability* for rehabilitation, and
- If assessed to be suitable, a proposed *rehabilitation program*.

Courts have been able to order a pre-sentence report (PSR) under various Corrective Services Acts for many decades. However, to cater for the complex and specialised needs of drug dependant people a special PSR has been developed for the Drug Court and refined over time. A typical PSR template appears at the end of this report at Annexure 2. It is included in case the Drug Court experience can assist other courts to gather relevant information.

The PSR now includes:

- Analysis of current offences and defendant's attitude towards the offending such as genuine victim empathy
- Examination of the offender's criminal history and the pattern of offending.
- Examination of known co-offenders, undesirable associates and frequented places which can be listed in 'no-contact' or 'no-go zone' clauses in the intensive drug rehabilitation order.

- Analysis of response to previous community based orders, including fine option orders, community service orders, probation orders, intensive correction orders, parole orders and suspended sentences.
- Whether the defendant's current offences breached any such order or whether the defendant has breached similar interstate orders or is wanted pursuant to interstate warrants.
- Assessment of accommodation prospects and suitability of proposed accommodation or whether to recommend referral to residential treatment or supported accommodation.
- Detailed family upbringing and history of the family of origin and current family arrangement and support structures.
- Education level, courses attended, work history and qualifications and future work or education interests.
- Intellectual functioning, mental health issues and whether a further psychological or psychiatric assessment is required.
- Relationship information such as whether partner also uses drugs or has a criminal history.
- Substance abuse history and other addictive behaviours such as gambling or kleptomania.

Recommendation No. 13

The Department of Corrective Services and other courts with no Drug Court jurisdiction and powers should still be encouraged to follow the Drug Court pre-sentence report format (as amended from time to time) in all matters in which a pre-sentence report is ordered for the purpose of determining the appropriate sentence and treatment conditions for a drug dependant defendant.

MAKING AN INTENSIVE DRUG REHABILITATION ORDER (IDRO)

A REHABILITATION PROGRAM IS MADE FOR THE DEFENDANT

Once the referral process is complete, and all known outstanding charges have been identified to ensure there are no outstanding charges for disqualifying offences, the defendant may enter a plea of guilty and proceed to be sentenced by the pilot program magistrate (PPM).

The PPM then decides whether the defendant is both eligible and suitable to undertake an intensive drug rehabilitation program. If so, the PPM will make a rehabilitation program as part of an intensive drug rehabilitation order. The order also includes a suspended initial sentence for each offence and a number of general conditions required by section 22 of the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act).

The defendant becomes a *participant* in either a residential rehabilitation program or a non-residential (or out-client) program living either at home or in supported accommodation. Out-clients may also take part in pharmacotherapy such as the Methadone or Buprenorphine program. For a typical rehabilitation program outlining the choices available to the court (see Annexure 3).

The participant must complete three phases of the Drug Court program (see requirements of each phase in Annexure 4).

ELIGIBILITY

Under section 6 of the Act, before a magistrate in a pilot program court can decide to refer for assessment, he or she must be satisfied the defendant—

- is an adult;
- is charged with relevant offences (see definitions below);
- does not have outstanding charges for any disqualifying offence (see definitions below);
- is not currently serving a term of imprisonment;
- is drug dependant and that the dependency contributed to the defendant committing the offences;
- would be likely to be sentenced to imprisonment for the relevant offences;
- lives within a postcode area prescribed in the Regulation (for Beenleigh, Ipswich and Southport the postcodes generally cover a radius of about 20 km from the court);
- has pleaded guilty, or indicated intent to plead guilty, to the relevant offences;
- is willing to be assessed for suitability for rehabilitation and to appear before a pilot program magistrate to be dealt with for the relevant offences; and
- satisfies any other criteria prescribed by regulation;

For Cairns and Townsville the Act requires that the person must not have previously, at any time, have been ordered to serve a term of more than 6 months imprisonment (sections 6, 7A). That creates a vastly different model to that being trialled in South-east Queensland where there is no such restriction and 45% of people given an intensive drug rehabilitation order have a prior sentence that is longer than 6 months imprisonment.

Under section 8, relevant offences include those which are usually decided in the magistrates court anyway, such as—

(a) simple offences;

(b) indictable offences that may be dealt with summarily

They also include other offences prescribed in the Regulation—

(c) a prescribed drug offence (as defined in the dictionary);

(d) another offence prescribed under a regulation that is punishable by imprisonment for a term of not more than 7 years.

Further, a 'relevant offence' does not include a 'disqualifying offence'.

Under section 7, a 'disqualifying offence' is—

(a) an offence of a *sexual nature* (but the section states that this does not disqualify an offence by a prostitute in providing prostitution, or in offering or accepting an offer to provide prostitution), and

(b) an indictable offence *involving violence against another person* (but the section states that this does not disqualify a person charged with an offence against the *Criminal Code*, section 335 (common assault), or section 340(a) (but only if the offence is the assault of another with intent to resist or prevent the lawful arrest or detention of the person or of any other person) or section 340(b).

ISSUES CONCERNING ELIGIBILITY AND SUITABILITY

Simple or summary offences

The Drug Court can only make an IDRO if a person would otherwise be sentenced to a term of imprisonment.

If a defendant is charged with a simple/summary offence for which the statute does not provide a penalty of imprisonment the defendant should only be referred to the pilot program magistrate if the defendant is also charged with another offence (whether indictable or not) for which the statute does provide a penalty of imprisonment and for which the defendant is, in the circumstances, likely to face a term of imprisonment.

The phrase 'an indictable offence that may be dealt with summarily' in the context of section 8(1) was interpreted by Helman J. in *Commissioner of Police v Wass* [2002] QSC 001 (Supreme Court of Queensland, Application for Review No. S9427 of 2001, per Helman J., delivered 10 January 2002, unreported). Helman J. ruled:

While it may be accepted that the Act is intended to be remedial or beneficial, it is also clear that it is not intended to apply to all offenders. It follows that the general provisions of section 3 can not assist in deciding the construction issue before me. That issue concerns the line of demarcation between those offenders who may be given the benefit of the legislation and those who may not. It is clear that it is the intention of the legislature to provide for some leniency for offenders in the former category, but it is also quite evident that there is to be a line beyond which that leniency will not extend. The general provisions of section 3 give no guidance as to where the line is to be drawn.

His Honour went on to rule a pilot program magistrate has no jurisdiction to deal with an offence requiring an election by the prosecution under section 552A of the *Criminal Code* unless and until that election is made. His Honour was of that view even though the prosecution is thus put in a position to decide who can, or can not, apply for an intensive drug rehabilitation order.

Recommendation No. 14

The *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to allow the Drug Court magistrate to deal, at his or her discretion, with all offences that may be dealt with summarily, whether listed in section 552A or 552B of the *Criminal Code*, and irrespective of who would normally have the election to proceed summarily under those sections.

What is 'an indictable offence involving violence against another person'?

Dangerous operation of a motor vehicle

This issue has been litigated several times before the Drug Court. In two cases a more detailed analysis of the issue was published. They were *Police v Shane Paul Kelly*, Beenleigh Magistrates Court (SE Qld Drug Court Pilot), 15 May 2001, and *Police v Michael Fredrick Pignat*, Beenleigh Magistrates Court (South-east Queensland Drug Court Pilot), 29 May 2001, per Magistrate Costanzo.

In these two cases it was determined that an offence of *dangerous operation of a motor vehicle* may be a disqualifying offence under this heading.

The court examined a number of cases decided by the Drug Court of NSW at Parramatta. The court also took into account subtle differences between the *Drug Court Act 1998* (the NSW Act) and the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act). The NSW Act, section 5(2), provides that a person is not an eligible person if charged with 'an offence involving violent conduct or sexual assault'.

The following conclusions were drawn:

1. Section 7 of the Act is more restrictive than the NSW section, the legislature intending to exclude all sexual and other violent offences committed against other persons, except for those specifically mentioned in the section.
2. The Act is also beneficial legislation and the principle that it should, if possible, be construed so as not to deprive the opportunity of rehabilitation to drug dependant offenders who are otherwise suitably qualified under the Act (applying *R v Ranse* [1999] NSWDRGC 2 (15 March 1999) per Murrell (Senior Drug Court Judge)).
3. When conduct constituting the dangerous operation of the motor vehicle included the use of violence against another person (e.g. a police officer trying to apprehend the defendant), the violence was not merely incidental, but constituted a particular of the act of operating (not just driving) the vehicle dangerously.
4. The legislature contemplated that one needs to turn ones mind to the violent circumstances in which an offence is committed rather than to the question whether violence is expressed to be an element of the offence (applying *R v Sloane* [1999] NSWDRGC 3 (13 April 1999) per Murrell (Senior Drug Court Judge)).
5. If an offence charged does contain violence as an element of that offence then the person is clearly excluded. That is not to say, conversely, that for the offence to be a disqualifying offence it must by legal definition contain violence as an element of the offence (applying *R v Chandler* [1999] NSWDRGC 6 (16 June 1999) per Murrell (Senior Drug Court Judge) at paragraphs 17, 18).
6. One looks at the nature of the relevant conduct rather than the intent of the conduct to determine whether the offence charged involved violence against another person (applying *R v Chandler*, above).
7. What has to be considered is the behaviour or the conduct of the individual at the time of the commission of the offence being considered (applying *R v Horwood* [1999] NSWDRGC 8 (18 August 1999) per Milson (Drug Court Judge)).
8. Even if the conduct does not bring an offence within the definition of a disqualifying offence, the defendant's conduct may be taken into account if relevant to the exercise of a pilot program magistrate's general discretion under section 19 whether to admit someone to an intensive drug rehabilitation program, for example, because that person is someone who, if placed on a

program, might conduct himself or herself in a violent or seriously threatening manner (applying *R v Darrant* [1999] NSWDRGC 7 (18 June 1999) per Murrell (Senior Drug Court Judge)).

9. There is no evidence of a legislative intent in the *Drug Rehabilitation (Court Diversion) Act 2000* to include as eligible a person who has committed an act of great violence if violence is not a legal element of the offence and then exclude from rehabilitation and treatment offenders guilty of lesser degrees of violence where violence is, by definition, actually an element of the relevant offence.

In *Kelly's* case the defendant, having regularly taken Rohypnol and having used heroin a day earlier, dragged a police officer who was trying to apprehend him, for 30 metres along a roadway. The defendant accelerated, in reverse gear, while the officer had his right hand caught in the door frame. The officer held onto the centre pillar with his left hand. As the defendant reversed, he also deliberately tried to push the officer away from the accelerating vehicle.

Indictable offences involving violence against another person should **not** be referred to a pilot program magistrate. Despite the distribution of these decisions, referrals have continued to be made for dangerous driving offences which involved similar violence to that described above. A legislative example, as allowed under section 14D of the *Acts Interpretation Act 1954*¹⁰, could help clarify the situation.

Recommendation No. 15

The definition of 'disqualifying offence' in section 7 of the *Drug Rehabilitation (Court Diversion) Act 2000* needs to be expressed in clearer terms so they are not referred to the Drug Court. A legislative example could be inserted in section 7, referring to the offence of dangerous operation of a motor vehicle and how the referring magistrate should make a specific inquiry into and determination about whether the offence is an offence involving violence against another person. Facts for such an example could be derived from one of the rulings referred to in the report.

Assault occasioning bodily harm and domestic violence

The definition of 'disqualifying offence' excludes from eligibility any defendant charged with an *indictable* offence involving violence against another person. Consequently, people charged with the summary offence of breach of domestic

¹⁰ *Acts Interpretation Act 1954*, section 14D, Examples, provides:
If an Act includes an example of the operation of a provision—
(a) the example is not exhaustive; and
(b) the example does not limit, but may extend, the meaning of the provision; and
(c) the example and the provision are to be read in the context of each other and the other provisions of the Act, but, if the example and the provision so read are inconsistent, the provision prevails.

violence (a summary offence) are not excluded. Sometimes the facts include violence and injury as serious as or more serious than found in some offences of assault occasioning bodily harm (an indictable offence).

The eligibility criteria should be expressed in terms which will allow the referring magistrate or the pilot program magistrate to decide whether the violence was serious enough to exclude a person. One North Queensland pilot program magistrate (Mr Hillan) suggests the Drug Court should be given the discretion to deal with a defendant who is charged with assault occasioning bodily harm in connection with an incident of domestic violence. However, the above paragraph indicates the issue may have broader implications.

In Victoria, under section 18Z of the *Sentencing Act 1991*, as amended in 2002, the Drug Court can make a Drug Treatment Order if the court is satisfied actual bodily harm was of a minor nature.

The Victorian approach could address the issues which arise when a person is charged with a 'mere' summary offence but the violence or injury is quite severe.

Recommendation No. 16

The definition of 'disqualifying offences' in the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to remove the distinction between summary and indictable offences involving violence and allow the pilot program magistrate the discretion to decide whether the violence or injury is such that a person should be excluded from participation in the Drug Court program, including when the offence is assault occasioning bodily harm.

Prescribed eligibility criteria:

Point in time postcode requirement applies

The Act is unclear as to when the defendant must reside in a prescribed postcode area.

On the face of it, the person must reside there at the time of referral but the Act leaves open whether the person becomes disqualified by moving out of the area once on the Drug Court program. Also, one of the rehabilitation centres in which people can be ordered to reside and funded for this pilot is outside the prescribed postcodes.

The intent of the prescription appears to be to limit the number of eligible persons because—

- the program is still a pilot;
- there are limited funds;
- the government has imposed a cap of 141 participants between the three courts at any one time;

- the court sits only one or two days per week per town, thus limiting the number of participants who could be seen by the court in a week; and
- participants need to be close enough to attend programs and to be supervised by an authorised corrective services officer.

The requirement has been interpreted to apply at the time of referral. At times, it may be necessary to permit a participant with good prospects for further rehabilitation to live out of the postcode areas for reasonable/short periods. For example, this may be necessary for detoxification or to attend a residential rehabilitation program or to gain further education, training or employment. For some, removal away from specific triggers (people or places) is necessary.

For this reason participants are sometimes transferred from one pilot program court to another. However, it will not be possible to transfer between the South-east Queensland and the North Queensland Drug Courts while they each operate under different models. In North Queensland only defendants who have never had a term of imprisonment of more than 6 months imposed may be accepted into the program.

Recommendation No. 17

The *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to clearly state the parliamentary intent of either limiting or expanding the areas from which Drug Court participants are drawn and in which they may reside at the time of selection *and* during participation in the program.

Note: This recommendation is subject to a further recommendation, below, about running two concurrent Drug Court models in Queensland.

Recommendation No. 18

If the postcode method of selection is to be maintained, the postcode 4059 for Red Hill will need to be included to cover the Moonyah Rehabilitation Centre. An alternative is for the definition of 'eligible person' in section 6(1)(d) of the *Drug Rehabilitation (Court Diversion) Act 2000* to be amended to provide for not only prescribed postcodes but also prescribed places. This would allow for rehabilitation centres to be prescribed outside the postcode areas otherwise applying to everyone else, for example, Moonyah at Red Hill and the Jesse Buddy Centre at New Farm.

Effect on Aboriginals and Torres Strait Islanders

The pilot in Townsville commenced with Palm Island included in the prescribed postcodes. An amendment to the regulation deleted the 4,816 postcode for Palm Island (which has a population of over 2000 people¹¹) and in the process also disqualified a number of mainland areas.

¹¹ Australian Bureau of Statistics 2001 Census:

Because the North Queensland model only accepts defendants who have never been sentenced to a term of imprisonment of more than six months, it was already likely to disqualify many Aboriginals and Torres Strait Islanders because they represent a greater proportion of the prison population compared to the general population in the community. At 30 June 2001, the Indigenous imprisonment rate was 13 times higher than for non-Indigenous prisoners. In 2001, Indigenous prisoners comprised 20% of the total Australian prison population compared to 14 % in 1991¹².

Pilot program magistrates in North Queensland are concerned that the exclusion of Palm Island residents will exclude even more Aboriginals and Torres Strait Islanders from the Drug Court program.

Magistrate Hillan has expressed his concern that ‘...unless the disqualifying term of imprisonment is removed or alternatively the term is extended from 6 months to 12 months, or longer, there may be no referrals from this group’.

if the problem is one of access to and supervision of participants on Palm Island, then the means of access should be improved instead of further distancing those people from the advantages of living on the mainland in a white dominated community.

The model in Cairns and Townsville has allowed for 10 residential treatment places under a cap of 40 participants in each place. Therefore, it must be envisaged that up to one in four Drug Court participants in Cairns and Townsville will be placed in residential treatment. Others can be catered for in supported accommodation. Consequently, it is likely a significant number of Palm Island residents could be catered for on the mainland for the duration of their program, or at least in the earlier stages, yet they are excluded from being eligible for referral to the Drug Court.

Recommendation No. 19

Palm Island should come within the prescribed postcodes in the *Drug Rehabilitation (Court Diversion) Regulation*.

Means of access to participants residing on Palm Island should be improved or more places made available for them in Townsville while they are participating in the intensive drug rehabilitation program.

-
- population of Palm Island—2,098
 - 1,062 males
 - 1,036 females
 - indigenous population of Palm Island—1,798
 - 900 males
 - 898 females

¹² Australian Crime Facts and Figures 2002, Australian Institute of Criminology, 29 November 2002; viewable at <http://www.aic.gov.au/publications/facts/2002/fig70.html>

'Serving a term of imprisonment'

The *Drug Rehabilitation (Court Diversion) Act 2000* specifically does not disqualify a person who is serving a term of imprisonment 'by way of intensive correction in the community' under an intensive correction order made under the *Penalties and Sentences Act 1992*, section 112. However, by a recent amendment to the Act, persons on parole are ineligible because they are still 'serving' the remainder of the term and, sometimes, offences before the Drug Court breach parole conditions.

On the other hand, defendants under a wholly or partly suspended sentence are not taken to be disqualified because they are not actually 'serving' a term of imprisonment.

Therefore parolees are ineligible for referral, but persons subject to intensive correction orders and suspended sentences are eligible for consideration.

Each case which comes before the Drug Court should continue to be judged on its own merits to see if the person is at that time suitable for rehabilitation. There is no recommendation for change.

THE DRUG COURT PROCESSES

This part of the Final Report will outline the administrative and statutory processes available to the Drug Court to enforce its orders, to assist participants in intensive drug rehabilitation programs to achieve recovery and, therefore, to achieve the objects of the legislation. This part will also examine issues affecting the efficient operation of the statutory processes and functions in the *Drug Rehabilitation (Court Diversion) Act 2000*.

STATUTORY PROCESSES

Rewards

Section 31 of the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act) lists the following rewards for participants who are complying and achieving good results:

- specified privileges;
- a decrease in the amount of a monetary penalty;
- a decrease in frequency of drug testing;
- a decrease in the level of supervision;
- a change in the nature of courses or treatment;
- a decrease in the frequency of attendance at court or in counselling;
- a decrease in community service.

Other rewards have been built in over time, some of which may be described as specified privileges. These include

- applause;
- praise and encouragement by the pilot program magistrate;
- graduation between phases of the program;
- 'early-bird reward' to allow a participant to be reviewed early. This is also beneficial to other participants because they see the results of other people's commitment and effort and learn from the discussions shared with the magistrate and the group.

Participants thrive on rewards. Not being applauded or otherwise rewarded when someone is told their efforts are inadequate, although not deserving of a sanction, is taken forlornly as akin to punishment by some.

The program would benefit if there were a larger range of reward options, including books on relevant subjects. The pilot program magistrate has donated books on photography to a couple of participants who expressed an interest in obtaining further education and employment in that field. Both have now graduated from the Drug Court and are pursuing careers or further education in photography. Relevant rewards could include self-help books, meal vouchers, grooming classes, cooking on a budget classes, baby supplies, discounts or scholarships to TAFE courses or Youth Enterprise Camps, to name a few.

Case illustration # 1

Many Drug Court participants had disturbed childhood experiences in exceptionally dysfunctional families. Some were introduced to drugs by siblings or parents. Many more were victims of, or witness to, sexual and other physical abuse, often associated with alcoholic parents and domestic violence. With this model, many children turned to alcohol (often binge drinking) and other drugs from a very young age. Later in this report, statistics about age of first use are examined in detail. Once caught in the grip of addiction, a life of crime usually follows. Education and psychological development suffer greatly.

Many such Drug Court participants have no family and friends to offer support, or they have worn out the welcome mat, have been to prison several times, lack many life skills and have no access to accommodation. Often, these people develop a low self-image and poor self esteem.

A significant number of such Drug Court participants have responded well to the reward system offered by the residential programs and the Drug Court. Election by ones peers to a leadership position within a therapeutic community can boost self esteem, motivation and teach people to be role models.

Further benefits could be gained by funding, for example, scholarships to attend leadership camps. Our experience of one such program produced very positive outcomes. Participants were also able to integrate their experiences with their rehabilitation, via the pursuit of steps in a Personal Action Plan prepared by the participant during the experience.

Recommendation No. 20

The Drug Court Reference Group should be given the task of developing a larger list of rewards for Drug Court participants. These could come from department funds and sought from businesses in each Drug Court district. One way to encourage businesses and community organisations to contribute may be to hold a community forum in each district to explain the benefits the Drug Court has delivered in the local community.

Sanctions

Section 32 of the Act lists the following sanctions for participants who breach any condition in the intensive drug rehabilitation order:

- withdrawal of specified privileges;
- the imposition of a monetary penalty payable to the clerk of the court;
- an increase in the frequency of drug testing;
- an increase in the level of supervision by a pilot program magistrate or someone else;

- a change in the nature of the vocational education and employment courses or in the nature of medical, psychiatric or psychological treatment;
- an increase in the frequency with which the offender must attend the courses or treatment;
- the imposition of a term of imprisonment for up to 14 days for each failure to comply with the order;
- an increase in the amount of community service the offender must perform.

The Drug Court program provides the team and magistrate with an opportunity to use lateral thinking and innovative ideas in the treatment of drug dependant offenders. Imprisonment to the rising of the court has been a useful alternative to actual imprisonment. It is not always a popular option for the disposal of traditional cases. It is sometimes used to relay a message that no useful punishment can otherwise be imposed or that the matter is too trivial to warrant any other ongoing punitive measure. However, being detained until the rising of court can be a useful tool when a participant becomes recalcitrant or complacent.

Sometimes, as an alternative to actual imprisonment a number of days of detention to the rising of the court has more therapeutic benefit. By taking away their free time it teaches participants not to avoid responsibility. It makes them sit and listen to the whole of the day's proceedings which may include other reviews, sentences, legal argument and termination hearings. When the magistrate asked at the end of the day what they got out of it, several participants said they never realised how much was involved in providing the opportunity to be in the Drug Court program and how genuine and committed to helping them the Drug Court team is.

Section 23 also empowers the court to add, with the participant's consent, any requirement in the order which the pilot program magistrate 'considers may help the offender's rehabilitation'. Therefore, in appropriate circumstances, additional requirements may be imposed in lieu of and in addition to sanctions. A few examples follow.

Writing essays (to present orally the following week) has been another useful tool either for a first breach, a minor breach or to re-focus the participant's attention on a specific issue. The topic will be selected by the magistrate in consultation with the Drug Court team to suit the needs at the time. Examples include:

- The harmful effects of using cannabis.
- Ten things I will do to say NO to drugs.
- The importance and benefits of random drug testing.
- Why I am worthy of recovery?
- Highlight your commitment to the program and explain recent poor compliance.
- What are the benefits of being responsible for my well-being?
- How I will manage pain without self-medicating?

- The value of honesty with the court and to myself and how I am working to overcome the things I face when tempted to use drugs.

Participants have frequently expressed surprise at learning things by this process. For example, that cannabis has more cancer causing toxins than tobacco. The fact they are all asked to read it aloud to their peers also helps the development of communication skills, confidence, assertiveness and self esteem.

While all available sanctions have been exercised, imprisonment has been the most frequently used sanction for breaches. There are a number of reasons, including a lack of alternative sanctions.

For example, this report examines the need for curfews and funding for curfew checks and other improvements to supervision. Additional alternatives to the sanction of imprisonment need to be explored. Some may require amendments to legislation.

Another problem with imposing a sanction of imprisonment is that the prison does not continue to drug test according to Drug Court standards and requirements, the participant misses counselling sessions and program attendance. For example, if a person misses two Cognitive Skills program sessions he or she will be excluded. The program contents are not presented in modules. You can not enter it at any time. It must be done from start to finish. It depends on group work and group dynamics.

Recommendation No. 21

Consideration should be given by the Reference Group to developing a larger number of alternative sanctions, for example, having a community custodial facility, similar to a half way house. In appropriate circumstances participants could be detained but not forced to mix with the general prison population. Importantly, they could also remain subject to random urine drug tests and keep attending counselling and programs.

Another reason for the frequent use of the sanction of imprisonment is that some participants simply need a reminder of what imprisonment was like and that the Drug Court program is not a 'get out of jail free' card or soft option. Only offenders who would otherwise be imprisoned are diverted into an intensive drug rehabilitation order. It is an alternative to imprisonment and that is where most of them would be but for the Act.

Indeed, in a few instances, upon their return from a custodial sanction, participants have actually thanked the magistrate for the wake-up call and reaffirmed their commitment.

Use of rewards and sanctions is sometimes called the 'carrot and stick' approach. Sometimes one is needed and sometimes the other. It is the

immediacy of consequences for breaches and of recognition and reward for effort which makes the Drug Court concept work. In any case, the Drug Court strives to fashion both sanctions and rewards in a way that is aimed at getting participants back on track and keeping them there.

One young man (who has since successfully completed the program) had lied about going to counselling. He was too anxious about dealing with past abuse issues. After a sanction of one week imprisonment he took to counselling so enthusiastically, once he gave the counsellor a chance to build some rapport and trust, he even asked the counsellor to provide extra relapse prevention programs for him as well as the one-to-one counselling.

Remand powers

Under section 40 of the Act, a pilot program magistrate may issue a warrant for the offender's arrest if the magistrate reasonably suspects an offender has failed to comply with his or her rehabilitation program or terminates the offender's rehabilitation program. Typically, the first ground is relied upon if a participant absconds from a rehabilitation program or fails to appear in court without good reason. The second ground for issuing an arrest warrant is relied upon where the department of corrective services makes an application for an *ex parte* termination.

Subsection (3) provides that The *Bail Act 1980* does not apply to an offender who is arrested on the authority of a warrant under section 40. Typically, the offender will be brought before the Drug Court in custody. No application can be made for bail because the Bail Act does not apply. This is a logical proscription because the defendant is under a sentence of the court requiring him or her to be doing something which he or she is not complying with.

The Act must clearly state what power the court has to further detain the person once the person is brought before the Drug Court. Section 41 provides that a pilot program magistrate may issue a warrant of commitment for the purposes of section 21 (Delaying suspension of sentence) or section 32(1)(g) (Sanction of imprisonment). Under section 24(3) a pilot program magistrate may, at any time, commit the offender to a prison for up to 7 days at a time if, in the magistrate's opinion, the committal is necessary to facilitate detoxification of the offender or assessment of the offender's participation in the program.

However, detention may be required in other circumstances. It needs to be made clear that a remand warrant under section 84 of the *Justices Act 1886* may be issued to remand a defendant and adjourn cases where, for example, a defendant is to be remanded in custody pending a termination hearing or pending a reserved decision in such a case. The Department of Justice has provided advice which agrees with this application of section 84.

It would be unsatisfactory to rely solely on section 11 of the Act for this power. Section 11(3) provides a pilot program magistrate has power to do all things necessary or convenient to be done for the performance of the magistrate's functions.

Section 84 of the Justices Act is relied upon because, although the person is under sentence of the Drug Court, it is an initial sentence and the matter is not finally disposed of by way of a final sentence under section 36 of the Act.

Recommendation No. 22

To remove any doubt, the *Drug Rehabilitation (Court Diversion) Act 2000* needs to be amended to make it clear that section 84 of the *Justices Act 1886* applies to remands and adjournments for the purposes of proceedings under the *Drug Rehabilitation (Court Diversion) Act 2000*.

Termination

Under section 34 of the Act, a pilot program magistrate may, on application or on the magistrate's own initiative, terminate a rehabilitation program if—

1. the offender asks the magistrate to terminate the program; or
2. the magistrate proposes to amend the order and the offender either does not agree to the order being amended or does not agree to comply with the amended order; or
3. the offender does not attend before a pilot program magistrate as required under the offender's order; or
4. the offender has otherwise failed to comply with the order; or
5. the magistrate 'is satisfied, on the balance of probabilities, there are not reasonable prospects of the offender satisfactorily complying with the offender's intensive drug rehabilitation order'.

The *Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002* (Act No. 41 of 2002) amended the fifth ground into its current form. The previous test required the magistrate to be 'satisfied, on the balance of probabilities; the offender's further participation in the rehabilitation program would serve no useful purpose'.

The new test places its focus on the ability and willingness of a participant to comply with the program in a manner satisfactory to the court, that is, in such a manner that he or she has a reasonable prospect of success. The previous test had its focus on whether any useful purpose could be served in continuing the program for the participant. There are many useful purposes which could be served, even if the participant had no reasonable and realistic prospect of succeeding in terms of the four objects of the Act.

As at 31 March 2003 the Drug Court database reveals about one-third of participants whose programs terminated had absconded straight after being

granted their intensive drug rehabilitation order. This could be contrasted with only 5 out of 51 graduates who had absconded straight after being granted their orders. Clearly whether participants abscond is a large factor (among many) in predicting chances of success.

Theoretically the new test should assist the court to identify, at an earlier stage, those participants who are not likely to succeed and therefore save resources.

A further amendment made by the *Criminal Law Amendment Act 2002* inserted a new section 35A into the Act. That section applies when an offender is brought before a pilot program magistrate after the offender's rehabilitation program has been terminated *ex parte* by a magistrate, that is, in the offender's absence. The pilot program magistrate may amend the intensive drug rehabilitation order to include a new rehabilitation program only if satisfied of the matters mentioned in section 19 (that is, all the matters that had to be satisfied when the order was first made) and "is satisfied the offender has reasonable prospects of successfully completing the new rehabilitation program",

Therefore it would seem Parliament has made it harder for those who abscond from the program to make a return once the program is terminated *ex parte*. In theory, this is meant to deter participants from absconding or to give encouragement to absconders to surrender as soon as possible.

This would seem to be a higher test than that required to decide terminations in the defendant's presence.

In respect of each reason for termination stated in the Act, as at 31 March 2003, of 280 intensive drug rehabilitation orders made—

1. Six participants asked the magistrate to terminate the program. None had progressed beyond phase one.
2. No orders were terminated because of a refusal to accept an amendment to the order.
3. *Ex parte* terminations (in absentia) occurred in 16 cases after offenders absconded. Only one had progressed beyond phase one.
4. The fourth reason ('otherwise failed to comply with the order') was never specifically relied upon by itself.
5. In all, 118 orders were otherwise terminated, after a hearing to determine applications for termination, in reliance on the last ground.
6. Of the 118 terminations, 12 had graduated to phase 2, and only 5 had made it to phase 3. The remaining 101 were all terminated in phase 1.

The following case illustration demonstrates the impact an imminent termination may have on some participants. The fact the Act does provide for termination if a participant does not agree to comply with a desirable amendment to a rehabilitation plan can be a strong motivating factor.

Case illustration # 2

Several Drug Court participants had voluntarily admitted themselves to residential drug rehabilitation programs before coming to the Drug Court. The programs were not always completed fully. They are often familiar with or even well versed in the relevant recovery concepts and have good insight into their own drug use and offending. However, many were self saboteurs each time they came close to re-entering society. For example, they sometimes self-report a low self-worth and a perceived inability to cope with parenting and personal issues.

In several cases of this nature the magistrate has told the participant it was the unanimous view of the team and of the court that he or she should repeat the residential rehabilitation program, perhaps with more emphasis on the transition stage. They were made aware by the legal aid team member and by the court that refusal to accept an amendment to the order to give effect to such a plan would possibly result in *termination* of the program and imposition of a final sentence.

Most have agreed to the amendment. Some have graduated successfully from the Drug Court program and have permanent employment, contributed something toward paying restitution, and improved relations with their partners and children. At their graduation and day of final sentence, they have thanked the court and team for the last chance and explained how it took them a few months to realise everyone was trying to help him.

Cost reductions if terminations identified sooner

One would expect everyone associated with such a pilot to ascend a steep learning curve. This has certainly been true of this Drug Court pilot. However, as shown below under the heading 'Graduate studies' it is clear the efficiencies have vastly improved over time and that the trend has been for participants to be taking less and less time to graduate through every phase. Of course, this is expected to level out at some point.

The Drug Court has also demonstrated that in a therapeutic model of jurisprudence many people simply need to be allowed more than one attempt to achieve rehabilitation (something the health professionals have known all along). The difficulty is in knowing how to strike the correct balance and when to draw the line.

The decision may be easier to reach if a participant absconds and commits further serious offences. The aims of the legislation are not being met, in those circumstances, because it may not be likely the community will be protected if a further opportunity is given. If a participant absconds persistently, or for a very long time, it may indicate a lack of interest, motivation or resolve. It may also indicate a lack of coping skills, most of which can be learned in the correct environment.

Maybe in future we need to be less generous. The following statistics should be studied by the policy makers and the Drug Court Reference Group to identify means by which the balance can be struck or the line drawn.

As at 31 March 2003, among the 118 people whose orders were terminated (not including *ex parte* terminations), there were 207 instances of failing to appear—

- 14 never failed to appear
- 40 failed to appear once
- 38 failed to appear twice
- 15 failed to appear three times
- 9 failed to appear four times
- 2 failed to appear five times

More than half remained at large for less than 4 weeks. Of the 207 instances of warrants issued, 169 resulted in arrests and 38 were withdrawn following the person's surrender.

There appears to be an arguable case to exclude people who fail to appear twice and who remain at large for more than 4 weeks. There may be a number of choices as to how to achieve such a result, for example—

- allow magistrates to retain full discretion.
- legislate to require magistrates to take these factors into account.
- legislate to automatically disqualify people who come within such criteria.

Recommendation No. 23

Following the release of the official evaluation by Dr Toni Makkai (Australian Institute of Criminology) the Department of Justice and/or the Reference Group should study all relevant data and give consideration to amending the Act or to assisting the development of Drug Court team policy which will help to sooner identify those programs which should be terminated.

Uniformity of practice

Also of some concern to the pilot program magistrate and the LAQ officers is the perception that there is no uniform or consistent approach within the QPS and DCS or as between the two departments as to the circumstances for making applications for termination. Most commonly this is evident when a matter is transferred from one pilot court to another. The different team members there may have a different approach to making the application.

Recommendation No. 24

The Queensland Police Service and Department of Corrective Services should be directed to address the uniformity and consistency of their policies and guidelines for determining when to make an application to terminate a Drug Court participant's intensive drug rehabilitation program.

Standing to apply for termination

Section 35 of the Act enables applications for termination to be made by the offender, the Director of Public Prosecutions, the Commissioner of the Queensland Police Service or an authorised corrective services Officer. It seems anomalous that Queensland Health is left out when that department is such a key stakeholder in the Drug Court program, with as much day to day involvement in a participant's program as the DCS. It is just as likely the health workers will come into possession of information upon which an application can be made. From a legal standpoint, it may be safer for such officers to make the application and to be tested directly instead of another department relying on second-hand information.

Recommendation No. 25

The Act should be amended to give Queensland Health standing to apply for termination of a Drug Court participant's intensive drug rehabilitation program.

Graduation

Before a person can graduate and be said to have achieved the aims of the Act, a person must complete all three phases of the program. As a participant nears the end of each phase an assessment is ordered by the magistrate to ascertain whether and to what degree each aim of that phase has been met.

If participants take any longer than four months in one phase a re-assessment is ordered to determine if there is anything more or different that can be done to assist the participant or whether a party will apply for termination of the program.

If a participant has met all the aims of all three phases he or she is allowed to graduate. A certificate is presented by the magistrate on behalf of the whole team, the initial sentence is vacated and a final sentence is imposed. In most cases a probation order with varying conditions is imposed instead of the term of imprisonment because the defendant has remained totally abstinent and crime free for a significant period and achieved all of the rehabilitative aims of the program.

Final sentence

Whether a program is terminated with or without successful completion of the Drug Court program, section 36 of the Act requires the imposition of a final sentence.

Once the intensive drug rehabilitation program has been terminated, the magistrate must reconsider the offender's initial sentence for each offence, then vacate the intensive drug rehabilitation order and impose a final sentence.

Under subsection 36(3), when reconsidering the initial sentence, the magistrate must consider the extent to which the offender participated in his or her rehabilitation program, including, for example, whether any rewards or sanctions were given to or imposed on the offender.

The final sentence may be any sentence that the magistrate could have imposed for the offence when the initial sentence was imposed. However, under subsection (6), if the magistrate sentences the offender to serve a term of imprisonment with or without suspending the sentence, the term of imprisonment must not be greater than the term imposed in the initial sentence.

This is usually an uncomplicated procedure because all the facts and circumstances of the offences do not have to be revisited. The magistrate may be a different one to the one who imposed the initial sentence. These provisions prevent the second magistrate from sitting in a de facto appeal or review of the first magistrate's decision.

However the issues raised under the two following headings do need to be addressed.

Breaches of suspended sentences, ICOs and probation orders

Despite discussion at several co-ordinators meetings, there are still a considerable number of cases where the prosecution and DCS are not ready, at the time of initial or final sentence, to present to the magistrate the facts of the previous offences for which suspended sentences, intensive correction orders or probation orders were made.

In future, the pilot program magistrate will require the procedure referred to in the following recommendation to be adhered to. The Chief Magistrate should be invited to formulate a Practice Direction in similar terms.

These procedures will give court officers sufficient time to obtain relevant court files in the event the magistrate decides to re-sentence the offender or make any other order in relation to the charges on that file.

Recommendation No. 26

The following procedure should be followed to deal with breaches of prior orders and the Chief Magistrate should be invited to formulate a Practice Direction in similar terms:.

a. At the first call-over after a person is referred to the Drug Court for assessment, the Prosecution must provide to the defence a copy of the defendant's criminal history, highlighting any breaches of parole or suspended sentences.

b. The defence is to consult with the client to decide if the assessment is to continue.

c. If so, then at the following call-over date, or any other mention date granted for the purpose before a matter comes on for sentence (with an application to make an intensive drug rehabilitation order), the prosecution is to deliver to the defence a copy of all relevant QP9 Court Briefs relating to any breach of suspended sentence imposed in the Magistrates Court.

d. The Department of Corrective Services must be ready to prosecute any breach of a community based order at the time of initial sentence.

e. The Department of Corrective Services must deliver the breach material to the defence within the same timeframe as applies to the Prosecution above.

f. The prosecutor and defence counsel are expected to make submissions to the pilot program magistrate about the preferred options for dealing with such breaches and whether they should prevent a defendant from obtaining an intensive drug rehabilitation order.

Pre-sentence custody

Where a defendant is arrested pursuant to an arrest warrant issued under section 40 of the Act (for example, because a participant absconded), he or she may or may not be facing charges for fresh offences. If he or she subsequently spends time in custody pending a termination hearing, it is not clear whether the time in custody can be declared to be taken to be imprisonment already served under section 161(1) of the *Penalties and Sentences Act 1992* in relation to the final sentence.

Section 161(1) provides:

If an offender is sentenced to a term of imprisonment for an offence, any time that the offender was held in custody in relation to proceedings for the offence and for no other reason must be taken to be imprisonment already served under the sentence, unless the sentencing court otherwise orders.
[emphasis added]

The uncertainty arises when the defendant has been sentenced, albeit to an initial sentence, and the custody is not strictly in relation to proceedings for the offence *and for no other reason*. This may be because the defendant is also facing fresh charges by re-offending while on the program or because the

proceeding is in relation to a termination hearing and not for the fresh offences. A defendant might remain in custody until the program is terminated and a final sentence considered.

Fairness would seem to require that all pilot program magistrates should be able to have a uniform practice of declaring all days spent in custody pending a termination hearing as imprisonment already served. This should still be the case when a person is also in custody for fresh offences which are proceeding to trial because if the person is acquitted he or she will lose the opportunity to be given credit for the custody period.

Sanctions of imprisonment are different. The Drug Court is directed to take them into account under section 36(3) but has discretion as to how much weight to place on them when deciding a final sentence. If sanctions of imprisonment were always given full weight it would, arguably, be seen as a disincentive to fully participate because a person could continue to misbehave, use up all the sentence time and then quit the program, especially where the initial sentence is a relatively short one. The genuineness and quality of the participation are factors which the magistrate can, and should be able to, weigh in deciding whether to reduce the initial sentence.

Recommendation No. 27

Section 36 of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to make it clear that section 161 of the *Penalties and Sentences Act 1992* applies to custody occurring during a Drug Court program other than sanctions of imprisonment, so that detention pending reassessments, termination hearings or reserved decisions counts as pre-sentence custody.

ADMINISTRATIVE PROCESSES

Role of the Pilot Program Magistrate (PPM)

The judicial officer's role in a typical Drug Court is vastly different to that in a traditional court. In Queensland, the PPM's role has grown to include not only presiding over court hearings (deciding sentence, jurisdiction, termination and other legal issues) but also presiding over team meetings, participant reviews in court and co-ordinators meetings to determine administrative and policy matters.

For example, in other parts of this final report reference is made to the extra-judicial role of the pilot program magistrate in conceiving, developing and establishing—

- sexual abuse counselling services,
- treatment options and services for people on bail awaiting Drug Court assessment,

- continuing education, training for staff and magistrates,
- fortnightly co-ordinators meetings, and
- regular inter-agency meetings.

At the same time, the PPM has to guard against the perception of bias or discrimination and has to uphold judicial independence. Therefore, it was decided by the PPM, even before the pilot began, not to sit in team meetings if the subject for discussion is possible termination of a participant's program or about a defendant who has been referred to the court for assessment but is not yet subject to an IDRO.

The PPM has written a Bench Book (a practice and procedures manual) for use by other magistrates who may need to sit as a Drug Court magistrate. The Bench Book covers almost every aspect of the Drug Court's operation.

The role of the PPM is discussed further below under the heading 'Court reviews'.

Inter-agency meetings

One PPM initiative was to hold regular informal inter-agency meetings. The directors and senior staff of service providers such as the residential drug rehabilitation centres and supported accommodation providers are all invited to attend. An agenda is established in the intervening period and minutes are kept so that further improvements can be made to the program. The pilot program magistrate attends most of these meetings to ensure there is a clear mutual understanding of the needs of the service providers and of the court.

Until the first of these meetings was held in December 2000, the heads of the various residential rehabilitation centres had never met each other. Now they have an opportunity to have input into the development of the Drug Court program and to share thoughts and ideas with each other.

Further initiatives and improvements which grew out of these inter-agency meetings include—

- standardisation and randomisation of urine testing in rehabilitation centres for Drug Court participants;
- provision of transport to court for reviews;
- provision of transport to the rehabilitation centres from court for new participants;
- an agreement by the Drug Court team not to require new participants in rehabilitation centres to report to court for three weeks during their settling-in no-contact period;
- an alteration to the program's phases to allow phase one participants to come to court fortnightly instead of weekly if compliant for a few weeks after their first review;

- establishment of a clear and reliable line of communication between all rehabilitation centres and the Queensland Health Drug Court co-ordinator to relay to the court all information about the progress of participants, breaches, absconding and weekly written review reports;
- standardisation of journals for court purposes;
- clarification and standardisation of information required for court reviews while maintaining confidentiality with counsellors;
- drafting of memoranda of understanding with Queensland Health;
- drafting of house rules and accommodation agreements for use with participants in the supported accommodation program (as they are not subject to the Residential Tenancies Act);
- delivery of in-custody defendants to court in possession of all their belongings on days they are being released to be admitted to a residential program.

Continuing education, training of staff and magistrates

The PPM has also been directly involved in the education of staff from various departments and organisations about court processes and protocols. The PPM and the DCS Drug Court co-ordinator also arranged an eight day training program for magistrates, consisting of three days in seminars (covering counselling, programs, drug testing) and five days in court with the PPM. Five magistrates have been trained for North Queensland and two as back-ups for South-east Queensland.

Each magistrate also sits most of the time as an ordinary magistrate without Drug Court jurisdiction. Some have commented, after the training, it would be very useful for other judicial officers to receive similar training. It would assist in deciding how to sentence drug dependant offenders in courts where intensive drug rehabilitation orders are not available. Many things learned in the establishment of the Drug Court pilot would be beneficial to other judicial officers who do not have exposure to the same information and intensity of experience.

Recommendation No. 28

Funding should be provided to train all judges and magistrates about the nature and causes of drug dependency, available treatment programs for drug dependency and about drug testing.

Role of co-ordinators

The respective Drug Court co-ordinator for each department is responsible for all communications and dealings between the court and their respective departments about all practical and policy issues. The pilot program magistrate initiated fortnightly meetings with the co-ordinators. Those meetings are held to

discuss and decide major administrative and policy issues of relevance to the integrity and operation of the program, the administration of the court and which affect other stakeholders and service providers.

All decisions by the magistrate and co-ordinators are made by consensus. No decisions are made which impinge upon judicial discretion or on individual cases. Minutes are kept of every meeting.

Ex Parte terminations

An example of the type of decisions made in such meetings is the policy about *ex parte* termination applications.

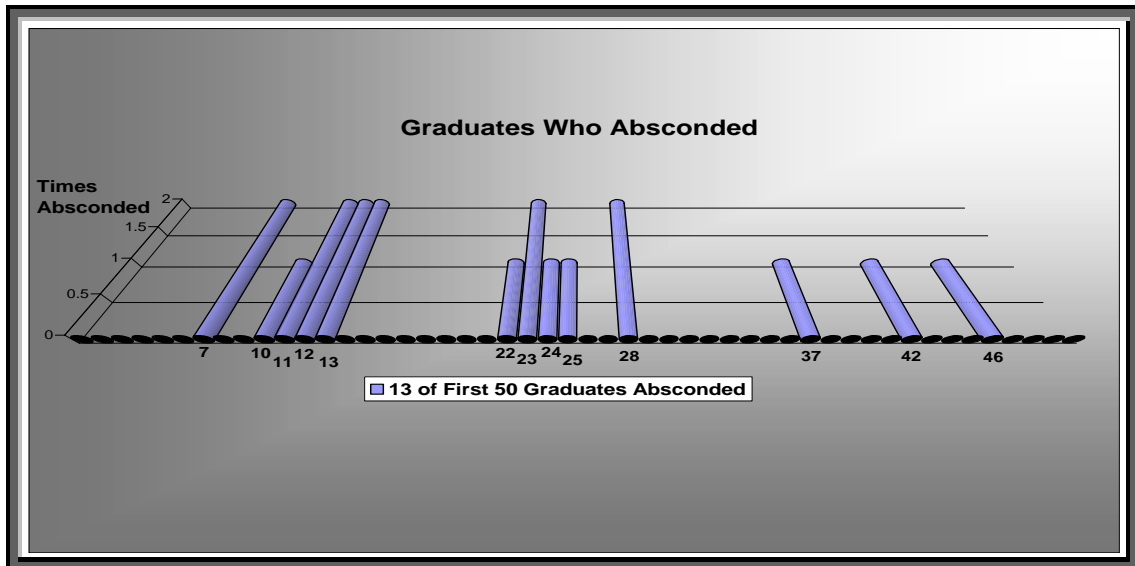
The Act contemplates such applications but is silent about when they can or should be made.

The policy has had a number of transformations as experience with absconders grew.

The initial policy, developed in January 2002, was that if a participant absconded, then—

- two months after a bench warrant issued, DCS would send a letter to the participant at the last known address (checking with LAQ for any different address) advising the participant his/her order may be terminated in his/her absence if they do not immediately surrender to the court or a relevant authority; and
- if the person did not surrender within one further month, DCS tendered the letter, a short report and applied for termination.

For the preparation of this report the pilot program magistrate presented data (represented in the chart below) to the co-ordinators on 16 April 2003. The chart presents the first 50 graduates, in the order in which they came onto the program.



Out of the first 50 graduates, only 13 ever absconded from the program. Also,

- the 13 people accounted for only 19 absconding episodes:
 - Seven absconded once
 - Six absconded twice.
- none absconded more than twice.
- the shortest absence was for one day.
- the longest absence was for 4 months—this participant absconded only once, he gained full time employment while absent and agreed with his employer and girlfriend to come back to ask to finish the program).
- the next longest absences were for 14 and 12 weeks (3.5 and 3 months) respectively—these two participants also absconded only once and had progressed very well before absconding at a crucial and delicate point in their recovery.
- two absconding episodes were for 2 months.
- five absconding episodes were for two to four weeks.
- nine absconding episodes were for one to seven days.
- three-quarters of the absconding episodes (14 out of 19) by eight people (only 16% of the first 50 graduates) were for four weeks or less.

Once the pilot program magistrate presented these statistics it was agreed by the co-ordinators there was a need for change. Now their policy is that:

- two weeks after a bench warrant has issued—DCS sends a letter of concern to the participant advising a warrant has issued and to make contact.
- four weeks after a bench warrant has issued—a registered letter is sent by DCS advising when the matter will be mentioned to seek an *ex parte* termination hearing date.

- eight weeks after a bench warrant has issued—the matter is mentioned, an application for termination is made and an *ex parte* termination hearing date is set, and
- twelve weeks after a bench warrant has issued—the application is heard.

The above statistics supported a policy which sent the message sooner that an order might be terminated. It was hoped the policy would encourage people to come back sooner because it is often reported by absconders upon their return, that it became harder and harder to return the longer they stayed at large, the longer they relapsed into drug abuse and the more trouble they figured they were in. Also, if returned sooner, they will be less likely to re-offend to support a resurgent habit.

Nothing in the policy requires the magistrate to terminate the order. Nor does it limit the circumstances in which the magistrate may decide to continue or terminate the order. Obviously, the mere fact a person absconds is not sufficient reason to terminate that person's program in his or her absence.

See the further discussion about this policy below under the heading 'Graduate studies'.

Role of the Drug Court Reference Group

A reference group was established in early 2001 to assist in the co-ordination of all government agencies involved in the Drug Court pilot and has managed high level government policy development in relation to the Drug Court pilots. The Drug Court Reference Group consists of senior officers from each government department involved in the pilot. Monthly meetings are chaired by the Department of the Premier and Cabinet.

The Department of Justice's South-east Queensland Drug Court co-ordinator is the only co-ordinator who regularly attends Reference Group meetings. The other stakeholder co-ordinators, with all their practical coal face experience, could play a much more useful role in liaison between Drug Courts and the Reference Group.

There should also be consultation with the Chief Magistrate and the pilot program magistrates about what ongoing role is intended for the Reference Group and to see how such decisions may affect the pilot program magistrate's decision making. For example, there was no consultation with the pilot program magistrates about extending the pilot by 12 months to the end of 2003. Further, the court has not been given a clear timetable for decision making about the continuation of the program. This affects the court's ability to administer existing orders and programs, and to make decisions about continuation or termination of orders.

Therefore, in cases involving serious breaches of an intensive drug rehabilitation order the court may be forced to take the view that as there are only several months left before the Act is due to expire, the orders should be terminated and participants returned to prison to serve a final sentence because there is insufficient time left for the participants to complete the program even though they could possibly succeed if they had a few more months available.

Recommendation No. 29

There should be consultation between the Drug Court Reference Group, relevant Ministers and the Chief Magistrate about what ongoing role is intended for the Reference Group. The Reference Group structure and its decision making process must continue to avoid affecting or influencing the pilot program magistrate's independent decision making about Drug Court participants (see further recommendations about the structure of the Reference Group, below).

Recommendation No. 30

Unless a decision is taken by government before December 2003 to rollout the Drug Court program or extend the time for the pilot, the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to clarify what is to happen to people who would have a reasonable prospect of successfully completing the program if the Act was not due to expire at the end of 2003.

Role of the Drug Court teams

The Drug Court pilot program has been conducted by the Department of Justice and Attorney-General (Department of Justice) as lead agency, with the assistance of the Department of Corrective Services (Community Corrections) (DCS), Queensland Health—Alcohol, Tobacco and Other Drugs Services (QH—ATODS), the Queensland Police Service (QPS), and Legal Aid Queensland (LAQ).

The Drug Court team in each court consists of the Magistrate and a representative from each of these departments. As discussed above, except for the Department of Justice (with responsibility for the magistrate's budget), each department has evolved a separate team in each court.

The Drug Court team participates in proceedings in the Drug Court, including review meetings before court each morning to give the pilot program magistrate updates on each participant's activities throughout the reporting period. The design and content of the weekly review report by DCS has been under constant review.

This is one of many developments which could be implemented in other Drug Courts if more are established.

Tying It All Together

The whole-of-government Drug Court model has managed to deal effectively with philosophical and traditional differences between government departments. It has relied largely on the goodwill of the organisations and their officers in developing a working partnership to achieve common goals. The partnership is embodied in the functional co-ordinators team and the court teams and is overseen by the pilot program magistrate and Reference Group (comprised by high ranking officers from each department). This has provided an effective mechanism for the sharing and dissemination of advises and information in two directions, i.e. to the Magistrate and to the government and its departments.

The Drug Court manager provides an administrative axis point. Through this point the relevant departments have been able to achieve unity, focus and definition of respective and joint roles via the ongoing development of Joint Practice and Procedures and Memoranda of Understanding.

The evolution of the team structure occurred after the Act was passed. The Act does not give formal recognition to the contribution or role of each partner-stakeholder. Inevitable tensions will always be experienced between traditional departments when acting in non-traditional and overlapping roles. They could be alleviated by enhancing the supporting role of the Reference Group and by providing legislative definition and support for the crucial roles of departments, co-ordinators and team members which have all equally contributed to a transparent, balanced, accountable and effective program. The *Sentencing Act 1991* in the State of Victoria goes some way toward achieving such legislative definition and support¹³.

Recommendation No. 31

The *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to provide legal status and recognition to the key roles of each department involved in the Drug Court program. It should give legal protection to Drug Court officers from those departments who exercise powers or perform functions in relation to the Drug Court. It should also recognise and protect the important role of case reviews and team meetings (i.e. case conferences between team members and the magistrate). The Victorian *Sentencing Act 1991* may serve as a model.

¹³ The *Sentencing Act 1991* (Vic), section 18ZI, provides:

Case conferences

- (1) For the purpose of being informed from time to time about the progress being made by an offender subject to a drug treatment order, the magistrate constituting the Drug Court may convene a case conference.
- (2) A case conference may be attended by a legal practitioner, a prosecutor, a health service provider, a community corrections officer or anyone else whom the magistrate thinks should attend.
- (3) For the purposes of section 91 of the *Corrections Act 1986*, an officer referred to in that section who discloses at a case conference information about an offender subject to a drug treatment order is taken to be performing his or her official duties.
- (4) No objection can be taken to a magistrate subsequently constituting the Drug Court in a proceeding on the ground that he or she had previously convened a case conference in relation to the proceeding.

Phases in the rehabilitation program

As in many other Drug Court models, participants are required to achieve a staged progression through the rehabilitation program.

This report has outlined the four objects of the *Drug Rehabilitation (Court Diversion) Act 2000*. The pilot program magistrate and Drug Court co-ordinators unanimously developed a three phase program, modelled on common Drug Court standards around the world. The aims and methodology in each phase are designed to help each participant acquire sufficient skills to overcome the addiction, prevent relapse and reintegrate back into society and family. By this process it was also intended, overall, to achieve the four objects of the Act.

Offenders begin in Phase 1 with more frequent court reviews and more frequent drug testing. Once the person is detoxified and achieves a significant period of abstinence (phase 1) and a further significant period of abstinence and stabilisation of accommodation, personal and family issues (phase 2) the intensity of the supervision diminishes and the other interventions and reintegration measures are increased (phase 3). These are designed to provide life skills and, ultimately, employment opportunities.

The phase requirements have been refined as the pilot has progressed. For example, after gaining the court's trust participants in residential rehabilitation facilities are not required to report to court for review as often as non-residents because they are already subject to heavy supervision. Drug tests are now conducted more randomly than previously. For a detailed list of current phase requirements see Annexure 4.

Drug testing

The efficacy of the Drug Court pilot would have been severely impaired had it not been for the drug testing expertise provided by the DCS and QHSS. DCS ensured that cutting-edge on-the-spot drug testing technology was applied to all participants throughout the program, randomly and in sufficient numbers to ensure compliance or early detection.

Frequency of drug testing

The earlier drug use is detected the earlier treatment can be given and compliance restored. QHSS ensured that any question regarding legitimate or illicit drug use was answered determinatively. Confirmatory laboratory testing has ensured fairness and equity when non-compliance has been detected by the on-the-spot test but is then challenged or in doubt.

The agreed phase plan requires that unless the court otherwise orders or a case manager directs, defendants are to be tested a minimum of:

- twice weekly during Phase 1,

- once weekly during Phase 2, and
- twice fortnightly during Phase 3.

Under section 38 of the Act, participants may also be required by their case manager to report for further random testing.

Drug Court urine testing has become more and more random over time in order to keep a step ahead of drug dependant defendants. With court guidance and approval the DCS has devised failsafe practices to prevent and discourage the giving of 'bodgie' (non-genuine) urine samples. As many participants have themselves commented, such tight practices also help to motivate participants to stay clean.

To facilitate random testing, all participants are required to be able to be contacted between 7:00am and 8:00am 7 days a week. The participant must be prepared to be directed to report for a urine test or receive a home visit (by a mobile drug-testing van).

DCS has, on occasion, omitted to inform the pilot program magistrate about changes in drug testing procedures, for example, whether urine taking procedures involve observation, whether their officers are using single drug test kits or using multi-test kits and whether the drug van is restricted to following the court around or out and about doing random tests. The pilot program magistrate and Drug Court co-ordinators should be consulted about such procedures so that lawyers and the court can maintain confidence in the evidentiary value of urine test results.

Recommendation No. 32

The current frequency of drug testing must be maintained as a minimum standard. Methods need to be found to further randomise the timing of the tests and to protect against false samples being provided. Such methods must also become standard Drug Court practice.

Timeliness of drug testing results

Transparent drug testing procedures have been developed which must be strictly adhered to in order to ensure a clear chain of custody and identification of the samples. Observations and readings are made for creatinine, specific gravity, colour and temperature in order to ensure the sample is genuine. Finally, the sample is tested for the presence of drugs.

False positive readings are rare, accounting for only about 3% of all drug tests conducted using immunoassay on-the-spot testing devices. In such cases, if no admission of drug use is forthcoming, the urine samples are usually sent to the QHSS laboratory for the Gas Chromatography/Mass Spectrometer (GC/MS) level testing.

In such circumstances the immediacy of results and consequences is paramount.

This goal is sometimes hampered when QHSS is unable to provide a quick turnaround of GC/MS confirmation and analysis of specific levels found. It has frequently taken 4 to 6 weeks and at best takes 2 to 3 weeks. Quicker and less expensive services are available outside Queensland.

Case illustration # 3

As already illustrated, overcoming self-sabotage is a critical factor in rehabilitation. In some cases, just when participants reach a critical stage in their rehabilitation when self-sabotage is likely, an immunoassay (on-the-spot) test returns a presumptively positive or equivocal result¹⁴. In such cases the sample is sent to a toxicology laboratory (QHSS) for confirmation of the chemical content and levels in the urine. In such circumstances it is imperative the result be known quickly for a number of reasons. If the participant has in fact used drugs again and is still in denial it may be time to terminate his or her program and give someone else a turn (as there has been a cap on the intake). A positive result may have given some indication of whether a change in his or her treatment is required, depending on the actual drug used and the level and frequency of intake.

More importantly, if the result is confirmed to be negative, as has sometimes been the case, a participant with a history of self-sabotage and who has made a recent strong recovery effort, deserves to know quickly. The possible stigma associated with the result must be removed and the pressure and worry over the presumptive positive result will not then cause him or her to panic or use drugs or otherwise hinder his or her recovery. Far too often the laboratory test results have taken more than 2 weeks to return¹⁵.

The solution is obviously to either invest more funding and resources at QHSS or to purchase a separate instrument for expanding Drug Court use.

Latest technology

There is new technology which is not being made available for drug testing in Queensland. It is the Liquid Chromatography/Double Mass Spectrometry test (LC/MS/MS).

¹⁴ Different on-the-spot urine tests are variously around 97–99% accurate, so they can obviously return a false-positive or false-negative.

¹⁵ In discussions attended by the pilot program magistrate at the QHSS an undertaking was given to achieve a two week turnaround from the time a sample is delivered. There have been many cases where the result has taken over a month to arrive. Apparently, the reason is that the laboratory needs to accumulate a sufficient number of urine samples requiring the same type of analysis to make a batch before proceeding.

GC/MS (see below) and LC/MS/MS alike are instrumental chemical analysis techniques which allow an analyst to separate a mixture of chemical compounds (for example, urine) and unequivocally identify specific chemical compounds (for example, amphetamines and metabolites of cannabis and heroin) as well as their individual concentrations in that mixture. In the hands of an experienced operator the results obtained are capable of supporting a finding of fact to the evidentiary standard of being beyond a reasonable doubt.

Gas Chromatography/Mass Spectrometry (GC/MS)¹⁶

The GC/MS instrument has two components—the gas chromatograph (GC) and the mass spectrometer (MS). The former separates the chemical compounds and the latter identifies the separated compounds and calculates their individual concentrations in the mixture.

The gas chromatograph consists of a long, very thin, flexible, hollow silica glass tube (a capillary column) through which flows a stream of helium gas (the mobile phase). The column is contained within a heated oven. Permanently chemically bound to the interior walls of the capillary column is a very high boiling point polymer (the stationary phase). The liquid mixture to be analysed is introduced to the beginning of the column by injecting it by use of a syringe into a heated gas tight injection port. The compounds in the mixture are volatilized and swept into the column by the helium gas and begin to separate as they partition between the mobile and stationary phases. Some compounds have a high affinity for reversibly adsorbing onto the stationary phase and hence will take longer to progress through the column than compounds which would prefer to be swept along by the helium gas (the mobile phase).

The end result is different types of compounds elute from the terminal end of the column at different times. The transit time in the column (the retention time) of a particular compound is characteristic of that compound under a given set of operating conditions i.e. oven temperature, gas flow rate, type of stationary phase, and can be used to identify compounds by reference to a standard.

After eluting from the column the compounds are placed under a high vacuum and subjected to bombardment by an electron beam. This beam can knock electrons off the chemical compounds and make them electrically charged (ions). Initially the molecular ion is formed but the energy present is sufficient to break chemical bonds within the molecule and fragment ions will form. The ions are focussed (one atomic mass at a time) and detected by their impinging on a phosphor screen (similar to a television screen) and recording the light current produced from that screen. It is the atomic masses of and the relative abundances of these fragment ions to one another which characterise the compound.

¹⁶ The source of these technical specifications was Mr Warren Hamilton BSc (Hons), Member of the International Association of Forensic Toxicologists and Director of RapidTox Pty. Ltd.

The fragmentation pattern (mass spectra) produced is unique i.e. it is a fingerprint of the chemical compound and allows for unequivocal identification. The mass spectra obtained can be compared with a standard or a spectral library of compounds for identification. It is also possible to run a number of standards of the compound and obtain the concentration of the particular compound by using the response data obtained.

Mass spectrometers date from the 1930s and gas chromatographs from the 1950s. The combination of the two into an instrument capable of standing on a bench top dates from the 1970s. Since that time there have been great advances in gas chromatography and mass spectrometry as well as the computer systems which control the instrument. At present, it is considered a fully mature technology and is wide spread throughout the world. There are hundreds of these instruments in Australia and their locations include forensic laboratories, sports testing laboratories, universities, research institutes, hospitals, pathology laboratories and drug manufacturing plants.

The cost of an instrument is approximately \$100,000 to \$120,000 depending upon chosen options, with a working life of greater than 10 years if properly supported. Running costs for these instruments can be relatively high with the need to replace expensive vacuum pumps periodically as well as using expensive helium gas.

Liquid Chromatography/Mass Spectrometry/Mass Spectrometry (LC/MS/MS)¹⁷

The theory relating to LC is similar to the GC except the mobile phase is an organic solvent under high pressure not helium gas. The stationary phase is again a high boiling point polymer permanently bonded to an inert support material contained within the interior walls of a wider and shorter metal tube (column). Separation takes place in the same manner as the GC, that is different types of molecules partition differently between the stationary and mobile phases and reach the terminal end of the column at different times. The MS is slightly different with a more efficient system needed to remove solvent rather than gas at the interface between the LC and the MS. The ionization is not by electron beam but collision with charged gas molecules (chemical ionization as opposed to electron impact).

The typical soft ionization of LC/MS produces predominately only the molecular ion and little fragmentation however if the ions isolated from the first stage MS are subjected to a more energetic form of ionization in a second stage MS then a fragmentation pattern with characteristic relative abundances emerges. This results in the same form of unequivocal identification as in GC/MS.

It is only from the mid 1990s that LC/MS/MS has become a viable option and emerged from research laboratories. LC/MS/MS instruments are currently not

¹⁷ Warren Hamilton, above.

widely spread but are to be found in Australia in some forensic laboratories, sports testing laboratories, universities and research institutes.

Cost is the factor holding back more widespread use, not acceptance of the technique. The cost is currently around \$350,000.

However, there are some impediments to the efficiency of drug testing by GC/MS which are not found in LC/MS/MS—

- An essential requirement for the analysis of a mixture of chemical compounds by gas chromatography is the compounds must be volatile and unfortunately this is not true of all compounds. Therefore, it is frequently necessary to extract the compounds under investigation from their mixture and convert them by chemical reaction to a more volatile compound. This technique, called *derivatization*, is commonly used for virtually all drugs of abuse analyses by GC/MS. This procedure is quite time consuming and needs to be performed by an individual who has acquired the skills which are necessary for successful application of this technique.
- The other main problem relates to the thermal stability of a compound to be analysed. Some compounds can actually break down in the injection port and so elude identification. Derivatization must again be used to overcome this problem. However in liquid chromatography (LC) the only necessity is that the compounds can dissolve into the organic solvent (the mobile phase) used in the LC which circumvents the need for derivatization. As there is no heating required thermally unstable compounds can also be analysed without derivatization. Because it is possible to use solvent systems (the mobile phase) containing water such as Methanol/Water, you can simply dissolve a sample such as urine containing high concentrations of drug/metabolites in the mobile phase and analyse it without extraction or derivatization.

Therefore, the LC/MS/MS has quite distinct advantages over GC/MS which are particularly relevant to the efficient operation of a Drug Court—

- Easier preparation of samples which can be achieved by relatively junior laboratory personnel saving large amounts of a skilled senior scientist's time and cost per service.
- It is possible to analyse different drug classes simultaneously whereas GC/MS requires separate runs (at additional cost per run) for each drug being tested for.
- A faster turnaround time.

A funding proposal

This report proposes Drug Court funding be increased to purchase an instrument which is, in turn, to be provided to a laboratory such as QHSS on conditions—

- The Drug Court or DCS would receive priority analysis.
- Agreed performance criteria must continue to be met, for example, required turnaround times.

- Regular review of those performance criteria.
- Meeting of such criteria within the review period would maintain the instrument at that site but failure would allow the Drug Court to place the instrument at another laboratory of its choice.
- In return for a GC/MS, the Drug Court should be entitled to the cost of the instrument in free of charge analyses over the lifetime of the instrument i.e. \$120,000 over 10 years or approximately 250 per year (unused cumulative) or 5 single chemistry analyses per week (\$50 per analysis at current costs, for a 50 week year excluding public holidays).
- Alternatively, in return for an LC/MS/MS, the Drug Court should be entitled to the cost of the instrument in free of charge analyses over the lifetime of the instrument i.e. \$350,000 over 10 years or approximately 750 per year (unused cumulative) or 15 single chemistry analyses per week (\$50 per analysis at current costs, for a 50 week year excluding public holidays). Note: the cost should be much less than the \$50 assumed for this proposal from the cost of GC/MS analysis, because the Drug Court budget would be supplying the funding, laboratory costs should only reflect staff time and consumables with no allowance for instrument depreciation.
- In exchange the laboratory may use the instrument for other purposes when it is not being used on Drug Court work.
- The laboratory would also meet maintenance costs including replacement turbo pumps (\$5000 each) and all consumable costs such as helium and capillary columns for the GC/MS and LC columns and LC-grade solvents for the LC/MS/MS.

If several state government departments are interested in work-place drug testing, they could also get access to the instrument and further defray the costs. Also, such an instrument could be used by other Drug Courts as they are put into operation and by DCS for all drug testing in all prisons.

The proposed approach would also further evidence and enhance the collaborative whole-of-government approach to the Drug Court program.

Recommendation No. 33

The Queensland Health Scientific Services should be adequately resourced to be able to provide a turnaround time of no more than three days. *Alternatively*, the Department of Corrective Services should be permitted to send the urine samples interstate.

But preferably:

Funding should be provided to Drug Court program via the Department of Corrective Services for the purchase of its own GC/MS or LC/MS/MS instrument which is, in turn, to be provided to a laboratory such as QHSS on conditions including priority analysis for the Drug Court and Department of Corrective Services, subject to meeting agreed performance criteria such as a maximum turnaround time, plus other conditions as outlined in this report.

DNA and gender testing

Despite being advised to the contrary just three years ago, the pilot program magistrate is now advised it is now possible to obtain DNA and gender confirmation via urine samples. Urine samples are already being obtained from Drug Court participants with their consent. However, as tight and comprehensive as the practices and procedures are for collection of urine samples (including watching a person urinate), no system can be completely protected against substitution. Many internet sites now openly advertise for profit about how to beat the drug tests using various devices and substances. Fortunately, their information is not always correct.

Participants have occasionally been suspected of obtaining their bodgie urine samples from their very young children. In one case, a man who did not suffer depression was found to have anti-depressant medication in the urine sample according to the on-the-spot immunoassay test kit. Not surprisingly, the partner had been prescribed anti-depressant medication. Substitution of another person's urine was suspected. Similarly, Methadone has sometimes shown up in urine purportedly taken from people not on the Methadone program. A gender test could determine if the sample was provided by a member of the opposite sex. A DNA test could conclusively determine whether the sample was genuine.

Gender and DNA testing would discourage dishonesty and protect the integrity of the Drug Court drug testing regime. The tests could be limited to those rare cases where substitution is strongly suspected and on an occasional random basis. The additional expense would be minimal and, indeed, could save the cost of laboratory confirmations if more clean samples are produced.

Recommendation No. 34

To guard against, and to discourage, substitution of urine samples, funding should be allocated for DNA and gender testing of urine samples, limited to those cases where substitution is strongly suspected and on an occasional random basis, say three per month in each court.

Court reviews

Like other Drug Court models, the South-east Queensland Drug Courts have conducted regular court reviews, i.e. a participant makes a regular appearance before the pilot program magistrate to have his or her matter reviewed. Defendants know before an intensive drug rehabilitation order is made that they will be tested frequently, will be required to speak about their learning and progress, and will be responsible and answerable to the court and Drug Court Team from week to week.

The frequency of appearances is determined by the phase they are in, and also by rewards and sanctions. Generally, defendants are required to appear for

reviews—

- Weekly during Phase 1,
- Fortnightly during Phase 2, and
- Monthly during Phase 3.

A participant may be rewarded with less frequent reviews or sanctioned with more frequent reviews. Phase 1 participants in residential programs are often rewarded with fortnightly reviews soon after settling in because they are subject to intense in-house supervision and knowing their instructors are in constant contact with the court, their community correctional officer (i.e. individual case manager) and the Drug Court team.

The participants are called forward in an order determined by the magistrate and Drug Court team. Sometimes, participants are called up in the first group because he or she has an essay to read which may benefit others, or because what the magistrate has to say to the person will also have relevance to others. Sometimes they will be called up first because they have earned an 'early bird reward' for making a good effort.

At a typical review, once the participant is called forward, the pilot program magistrate quickly reads the participant's one page journal entry for that reporting period while the participant sits with team members at the bar table. A discussion about his or her progress or issues then follows. It is an opportunity for the court to test the *bona fides* of the participant and for the participant to prove he or she is experiencing growth and is developing and learning the skills required to stay clean. By witnessing these developments first hand, the magistrate is in a stronger position to be satisfied as to when to allow the participant to graduate and that a participant is not just going through the motions.

The review is also an opportunity to impose sanctions for breaches, give rewards for good progress and compliance, and to make amendments to the intensive drug rehabilitation order if circumstances call for it to enhance participants' chances for success.

Participants are also reminded the Drug Court program is not just about them. They are told it is about protecting the community, that one good way to protect the community from future offences is to identify drug dependant offenders genuinely wanting recovery and to help them as long as they remain committed.

The PPM is seen by participants not only as a disciplinarian but also, by some, as mentor, or a quasi-parental figure. Each PPM has made a concerted and deliberate effort to build the trust and respect of each participant. Past experience of the justice system by most Drug Court participants has been limited to arrest, admonishment and imprisonment. However, years of incarceration, drug abuse and running from responsibility and authority build distrust of authority, lack of respect for others and their property and diminishes self esteem and self respect.

These experiences also deprive human beings of the opportunity to experience better relationships, better education, better health and better job prospects. They also deprive the person of the opportunity to experience the joys of personal growth. Many lack the basic life skills and coping mechanisms that many Australians are fortunate to have learned in a stable and secure home environment.

There are many participants who were introduced to drugs by parents or siblings.

In all, almost 1 in 5¹⁸ self-disclosed having suffered sexual abuse as children. These disclosures came when defendants were interviewed for the preparation of pre-sentence reports. More disclosures came later while people attended counselling, probably taking the level of sexual abuse among the Drug Court group above the level of sexual abuse in the general community.

Case illustration # 4

Some participants with low self esteem (for example, after suffering years of physical abuse) often unwittingly deprive themselves of progress made, usually at a high point in their recovery (such as graduating a phase). This is self-sabotage. On several occasions the pilot program magistrate has suggested to such individuals they read the UN Charter of Human Rights and said words to the effect: 'This great international organisation with representatives from every nation had spelled out rights which every single human being on this earth is entitled to, including you'. A trip to the library is then arranged and has led to such reported experiences as using newly acquired communication skills to seek assistance from the librarians, using computer skills learned while on the Drug Court program, seeing others studying and being productive, and attaining the motivation to self enrol in educational courses to further a personal ambition which may have been put off for many years.

Participants, male and female, have stood weeping in the dock, sometimes after absconding from a residential program, explaining why counselling had begun to get to the root of their problem, pleading to be returned to the program and even thanking the magistrate for imposing a sanction of imprisonment because they said they needed it as a reminder.

In some cases, especially among younger participants, the magistrate is looked up to as a quasi-parental figure. The Drug Court team and the pilot program magistrate will remind each other that some young individual needs to be spoken to a bit longer or in this way or that about various aspects of his life, culturally sensitive issues or about certain program activities. Others come in proudly stating their achievements, often being the only thing they have stuck to and

¹⁸ The Department of Corrective Services database shows 68 out of the 372 who had a pre-sentence report done, i.e. about 18.3%, self disclosed having been sexually abused.

succeeded in doing, such as a cognitive skills program or learning about numeracy and literacy.

In another case, two participants who were soon due to graduate the drug court program, announced they planned to get married as soon as they both graduated (they had been partners for many years). The pilot program magistrate was asked if he could officiate. They were disappointed to learn the magistrate had no such power.

Therefore, the treatment of participants as individuals (and calling them 'participants' instead of defendants'), with courtesy, praise, rewards and encouragement when earned, with swift but fair sanctions and polite rebukes or admonishment when deserved, all help to build or rebuild trust and respect for authority.

The participants we have dealt with are all people with significant problems and disadvantages. For most, the Drug Court support and approbation may be the first real support and approbation they have ever had or the first in a long while.

It is not until they are able to trust the process being offered that they are able to engage it. This has been born out daily in our Drug Courts. It usually takes up to 12 weeks to start achieving this level of trust and for the participants to realise the team and court are trying to help them achieve recovery from addiction and not merely trying to catch them out doing something wrong. Several graduates have also mentioned this experience when delivering their graduation speeches.

There was also consensus about the pivotal role of the judicial officer in Drug Court programs at the Drug Court national conference in Sydney on 28 February 2002, see Workshop 1 discussion: *Therapeutic Jurisprudence and the role of the Judicial Officer in a Therapeutic Court*⁹, at the NSW Drug Court Web Site; www.lawlink.nsw.gov.au/drugcrt/drugcrt.nsf/pages/conference.

From our experience the most important tool for developing this level of trust and respect has been the court reviews, assisted by the presentation of journals and the sanction and reward system.

Being rewarded with less frequent reviews has been a powerful means by which to allow the participant to comprehend he or she has been acknowledged by the team and justice system for doing something good, and for doing it well.

A small number of participants also resisted being rewarded in this way as they had become used to receiving the support and acknowledgment of their peers and by the Drug Court team. Once they were assisted to widen their support network they were keen to move on.

Finally, the reviews and the trust built over time teach participants the value of honesty. Bearing in mind the vast majority of offences committed to support drug habits are offences involving gross dishonesty, it is to be expected that it will take considerable time and effort on the part of the court, Drug Court team and participants all working together to overcome the learned behaviours of a lifetime of crime and deception revolving around surviving from one hit to the next.

Once the trust and respect is established, participants learn to open up, disclose the issues which led them into or kept them in drug dependency, and to tackle those issues with their counsellors and in group therapy. Honesty is also encouraged with regard to drug use lapses and relapses and about any breaches of the order. We regularly see participants come to court, even on days not set for their review, to say they have lapsed and to 'face the music'. Those participants have come to learn not only that the sanction is likely to be less harsh but that it is okay to ask for help and that their cry for help will be heard and acted upon swiftly.

Recommendation No. 35

Weekly reviews should be maintained for all participants at the start of phase 1. Phase 1 participants in residential treatment should continue to be rewarded with fortnightly reviews after returning good results for about 3 to 6 weeks.

Fortnightly reviews should be maintained for all phase 2 participants.

Monthly reviews should be maintained for all phase 3 participants.

Journals

Some residential rehabilitation centres require residents to complete daily journals of their activities and dairies to keep themselves organised and punctual.

An early innovation was to require all literate Drug Court participants (and some in literacy classes) to present journals to the magistrate each time they appear for a court review. They must follow a set one page form which requires them to state:

- The most important event(s) in my rehabilitation since I last came to court were...
- I had/have the following feelings about these events...
- Examples of what I learned from this experience...
- Examples of how I have, or can, put what I learned into practice...
- My main goal for this week is...
- The positives for me this week are...
- My affirmation (or declaration) this week is...

These journals provide to the court a very revealing insight into the issues concerning each participant's recovery and what motivates each of them. They

provide a lead in for the magistrate to discuss with the participants their progress and to test their motivation, learning, growth and development. Journals provide a further avenue for building trust and rapport and provide many participants with the opportunity to focus structure and express their thoughts rationally in ways they had not attempted or had not been able to do before.

Some novices to the program will try to tell you what they think you want to hear. However, after reading thousands of journal entries the magistrates have become adept at discovering the true level of commitment and learning once the participant is asked to expand orally on the content of the journal. If they put no effort or a poor last-minute effort into writing the journal they are sent to the end of the review list and asked to write another one.

The journals are capable of producing a number of beneficial outcomes. They help the author of the journal identify the issues they are facing or need to face. The issues themselves become topics for discussion and the other participants can learn and benefit from the discussions held. For example, several participants have written about their experiences when running into an old mate who used to supply or share drugs. The journal is a means by which they can detail the use of skills learned in a relapse prevention program, or the assertiveness skills learned in a life skills program, or overcoming compulsiveness discovered in a Cognitive Skills program when dealing with the offer to use drugs. Some have also got into a discussion about how this empowered them, that the decision showed strength instead of weakness and that the 'friend' actually respected that strength.

Other participants have used the journal to practice what they had been learning at literacy classes and volunteered to provide a journal despite having no such condition in the order.

The journals and court reviews have clearly assisted to improve many participant's communication skills, confidence and self esteem.

OTHER PROCESS ISSUES AFFECTING THE OPERATION OF THE ACT

Remand for detoxification, assessment or re-assessment

Under section 24(3) of the Act the pilot program magistrate 'may, at any time, commit the offender to a prison for up to 7 days at a time if, in the magistrate's opinion, the committal is necessary to facilitate either detoxification of the offender, or an assessment of the offender's participation in the program'. Also, under subsection (4) the offender 'must not be committed to a prison for detoxification unless the pilot program magistrate is satisfied no other suitable facilities are immediately available'.

This report has addressed the difference between detoxification and rehabilitation. The duration of detoxification will depend on many factors including, whether the defendant is a poly drug user, how long he or she has been using drugs and in what quantity. Therefore, detoxification can take anything from three days to three months. However, most detoxes are relatively short because the half-life of drugs such as heroin and amphetamine is only 2 to 3 days. The likely time frame can only be ascertained by an assessment of the defendant under medical supervision.

In our experience, detoxification should not be interrupted by a visit to court to have the period extended. Detoxification can not be completed in a hospital facility such as the Hospital Alcohol and Drug Service (HADS) unit at the Royal Brisbane Hospital if a person leaves the premises (self discharges) without being assessed. The court needs more flexibility in the orders it can make to facilitate detoxification, such as in the following recommendation.

Recommendation No. 36

The power to detain in section 24 of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to allow the magistrate to order a person to undertake detoxification at a stated place until detoxified in the opinion of a suitably qualified health worker, such as a Clinical Nurse Consultant in charge of the unit.

As a safeguard the legal aid Drug Court team lawyer should be given standing to apply, in the interests of justice, to have the defendant brought before the court at any time before detoxification is complete.

The court is in an even more difficult position when it comes to assessments and re-assessments.

Some assessments of an offender's participation in the program may be possible within the 7 days required under section 24(3) of the Act. However, due to the method of counting days adopted by DCS (discussed further below), the intent of the legislation to bring the offender back to court at the end of the assessment period is not always achievable. The prison will release the person the day before he or she is due to be back in court, increasing the risk of relapse and absconding. Furthermore, because the South-east Queensland Drug Court sits only one or two days per week in each place, it will not be possible to have the person released to the court on the earlier day because it will be in a different town to that where the order was made or where the participant resides.

Recommendation No. 37

Section 24(3) of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to allow up to 15 days at a time for an assessment of person's participation in the program so he or she can be returned to a relevant court to be dealt with.

Some assessments are not possible within such a short period. For example, after a participant absconds and surrenders or is returned to the court, it is usually necessary to conduct a full re-assessment. This can take almost as long as the original assessment. It may also be a more complex task once more is known and understood about the offender's recovery issues. A period of up to three weeks is always required by the DCS.

Recommendation No. 38

Section 24(3) of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to provide for a clear distinction between assessment of an offender's participation and a full re-assessment. The section should allow up to 22 days/ three full weeks for a re-assessment and for further detention for up to 8 days/ one full week at a time.

Reports by Queensland Health ATODS

Despite constantly asking, the pilot program magistrate is still not provided with many written reports by H drug and alcohol counsellors. This is despite the protection given by section 39 of the Act. Section 39 imposes a duty on a 'prescribed person' to promptly give the corrective services' chief executive, or to a pilot program magistrate, any information the prescribed person has about the offender's compliance with, or failure to comply with the requirements of an IDRO or rehabilitation program. The prescribed person is not liable, civilly (e.g. for defamation) or under an administrative process, if the information is given in good faith. A prescribed person is defined to mean a person involved in the administration of, or who provides services in connection with, an offender's rehabilitation program who is prescribed under a regulation.

The QH Drug Court coordinator is the only prescribed person for QH. That way confidentiality between participant and counsellor can be maintained to promote candour. However the Drug Court should be regularly advised in weekly reports whether the defendant is attending counselling sessions as ordered by the court, including punctuality, duration of sessions, attitude, progress and in broad terms what is being covered and achieved. Most counsellors are co-operative but a few others are obstructing the ability of the court to enforce its own orders due to their interpretation of their duty of confidentiality. They are not to blame if Queensland Health does not direct them to supply the information to the court or if duty of confidentiality under the Health Act is unclear or left in conflict with the Act.

Some further work also needs to be done to standardise the content and sufficiency of information being provided by the residential rehabilitation centres and supported accommodation programs.

Recommendation No. 39

Queensland Health and Drug Court co-ordinators, with assistance from the Reference Group, should decide the desired content (prescribed compliance information) of the Queensland Health drug and alcohol counsellors' court report for participant review purposes.

Recommendation No. 40

Section 39 of the *Drug Rehabilitation (Court Diversion) Act 2000* should be amended to require Queensland Health drug and alcohol counsellors to provide prescribed compliance information to prescribed persons for court reviews.

How prisons count days

Section 32(1)(g) of the Act empowers the Drug Court to impose a term of imprisonment for up to 14 days for each failure to comply with the order. Section 21 empowers the pilot program magistrate to direct that the commencement of the suspension of the initial sentence be delayed for not more than 14 days if, for example, appropriate detoxification or rehabilitation facilities are not immediately available but will be by the end of the nominated period. Other periods, mentioned above, are set out for other purposes such as ordering assessments.

The prison system counts the first and last days on the warrant as two full days. The pilot program magistrate believes the day a sanction of imprisonment is ordered should not be counted as a full day.

The following scenario, frequently experienced in the Drug Court, will highlight the problem.

Scenario: DT absconds from a residential rehabilitation facility or uses drugs. As there is only one breach the maximum sanction of 14 days imprisonment is imposed. If it is imposed on a Tuesday afternoon at Beenleigh, DT is likely to be released on early on a Monday morning (when the Drug Court sits at Southport). If it is imposed on a Monday (at Southport) DT is likely to be released on a Friday (when the Drug Court sits at Beenleigh again) because of the operation of section 82 of the *Corrective Services Act 2000* which disallows a release on a weekend. The court has no power to direct the prison to hold DT for an extra day or two and have DT released to the court for transport back to the rehabilitation facility.

This outcome is of no value to any Drug Court, let alone a Drug Court which sits only one or two days per week in each town. Unless the sanction ends on a day the court is sitting in a relevant town the prisoners will be released at the prison gates and many will then abscond. It has become well known that many released prisoners will make their first stop at Centrelink where they are met by a welcoming committee who is only too happy to take the person's money in

exchange for drugs. After using the drug defendants usually panic and run or hide until police catch up with them or they surrender to the court. Meanwhile more damage is done. They are then set back in their recovery and, depending on the circumstances, are either allowed to continue or the program is terminated and a final sentence imposed.

Section 6(1) of the *Corrective Services Act 2000* (CS Act) provides that a 'person sentenced to a period of imprisonment, or *required by law to be detained for a period of imprisonment*, must be detained for the period in a corrective services facility'.

Section 32(4) of the Act states that a "term of imprisonment imposed under subsection (1)(g) is not a sentence within the meaning of the *Penalties and Sentences Act 1992*'.

A person sanctioned under section 32(1)(g) is, therefore, a person 'required by law to be detained for a period of imprisonment'.

There is nothing in the CS Act to then guide or direct the chief executive, general managers of prisons or the commissioner of police how to count the days of imprisonment ordered and as stated in a warrant.

Neither remissions under section 75 nor conditional release under section 76 of the CSA apply to persons sanctioned under the Act.

Section 38(1) of the *Acts Interpretation Act 1954* (AIA) does provide:

- (1) If a period beginning on a given day, act or event is provided or allowed for a purpose by an Act, the period is to be calculated by excluding the day, or the day of the act or event, and—
 - (a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and
 - (b) in any other case—by including the day on which the purpose is to be fulfilled.

The relevant provisions of the Act are not expressed in terms of 'at least x days' or 'x clear days'. Subsection (b) would therefore seem to apply. In any case the day the order is made should not be counted as a full day.

The pilot program magistrate asked on several occasions to be provided with a written legal opinion justifying the DCS counting method. Although promised at a meeting with sentence management staff, and other DCS officers at Beenleigh in the early stages of the pilot, a written opinion was not provided until 17 April 2003. It was provided for the purpose of this report.

The opinion states:

It is clear that a term of imprisonment imposed under section 32(1)(g) of the *Drug Rehabilitation (Court Diversion) Act 2000* (DRCDA) is not a 'sentence' within the meaning of the *Penalties and Sentences Act* (PSA) however the DRCDA does not provide that a term of imprisonment under

section 32(1)(g) is not a “term of imprisonment” within the meaning of section 4 of the PSA.

The department is of the view that a sanction is clearly a term of imprisonment as defined in the PSA and therefore section 154(b) of the PSA applies so that the day the sanction is imposed is counted as a day served.’

Section 4 of the PSA states:

‘sentence’ means any penalty or imprisonment ordered to be paid or served, or any other order made, by a court after an offender is convicted, whether or not a conviction is recorded.

and

‘term of imprisonment’ means the duration of imprisonment imposed for a single offence, and includes the imprisonment an offender is serving, or is liable to serve—

- (a) for default in payment of a single fine; or
- (b) for failing to comply with a single order of a court.

Section 154(b) of the PSA states:

‘...a term of imprisonment—

- (a) on conviction on indictment—starts on the day the court imposes imprisonment on the offender.
- (b) on a summary conviction—starts at the beginning of the offender’s custody for the imprisonment.

There is nothing in section 154 to justify counting the first day as a whole day. It merely confirms when the counting starts. In any case, under section 32 of the Act, the Drug Court imposes sanctions of imprisonment, not sentences of imprisonment which section 154 is clearly aimed at. The incongruity of the department’s argument would be seen easily if the court were to impose a sanction of 24 hours imprisonment. Would the Department seriously argue the person could be released on the day the order is made because the law states a day is shorter than 24 hours?

The DCS further argues section 38 of the AIA has no application as it is aimed at calculation of time by which something has to be done, such as filing an appeal.

The answer to the argument is plain. Imposition of a term of imprisonment requires the calculation of the time by which the defendant must be released.

The Drug Court pilot has had to go along with the department’s method of calculation and, for example, written eight days on the warrant instead of seven, when the intent is to sanction until, and to have the person released back to court on, the same day in the following week.

Therefore, the Drug Court pilot statistics are skewed by overstating the actual days of imprisonment imposed as sanctions. This will have also, possibly, overstated the cost of imposing sanctions in any cost study.

If the Act is amended the approved forms will need updating. Also, provision should be made to release the prisoner either to the Court, a specified person, a rehabilitation centre, a police officer, a community correctional officer or to allow the person to go at large.

Because the pilot program magistrate may be in another pilot program court when a warrant is typed and ready to issue, the clerk of the court (or delegate, such as the Drug Court co-ordinator) should be empowered to sign all such warrants after satisfying him/herself from the magistrates notation on the Bench Charge Sheet or Drug Court file that the pilot program magistrate has made the order.

The pilot program magistrate has no power to direct officers how to count days. If the chief executive at the DCS disagreed with the pilot program magistrate's interpretation it has been open to him or her to apply under section 247 of the *Corrective Services Act 2000* (CSA) to a Supreme Court judge for an interpretation of a warrant, which could have settled the question.

Recommendation No. 41

The Chief Executive, Department of Corrective Services should be encouraged to direct Sentence Management to review the method of counting days being applied to ensure the day an order is made is not counted as a full day.

Alternatively, the Drug Rehabilitation (Court Diversion) Act 2000 should be amended by omitting all references to 14 or 21 days and inserting 15 and 22 days.

Recommendation No. 42

The approved forms for all relevant warrants also need amending by the Chief Executive, Department of Justice and Attorney-General, to reflect any changes in the legislation, and should also make provision to state the date of release, and where the defendant is to be released and, if necessary, who the defendant should be released to.

Recommendation No. 43

The clerk of the court or his/her delegate (for example, the Drug Court co-ordinator) should be empowered to sign all such warrants after satisfying him/herself from the magistrate's notation on the Bench Charge Sheet or Drug Court file that the pilot program magistrate has made the order.

Methadone in prisons

A Methadone trial was conducted by the government in the Brisbane Women's Correctional Centre and the Townsville Men's Correctional Centre. The program was evaluated in early 2000. Several attempts have been made by the pilot program magistrate to obtain a copy or information about the evaluation.

At a meeting on 17 March 2000 attended by the Director-General, Department of Corrective Services, the Director-General, Department of Justice and Attorney-General, and respective departmental officers during the planning phase of the Drug Court pilot, the Director-General, Department of Corrective Services undertook to provide his department's Policy on Withdrawal and the Methadone Trial Evaluation. The requested material was not sent.

The Drug Court pilot was commenced on 13 June 2000.

A reminder letter was sent on 21 June 2000. The requested material was not sent.

At a meeting on 18 September 2000 attended by the Director Health and Medical Services, Department of Corrective Services, the pilot program magistrate and others, the possibility of an extension to the Methadone trial was discussed. On 29 September 2000, the pilot program magistrate wrote to the Manager, Drug Advisory Service, Department of Corrective Services, with projections of the number of Drug Court participants who may require Methadone if imprisoned during their participation on an intensive drug rehabilitation program. The Trial did not continue.

The Chief Magistrate wrote to the Honourable the Attorney-General and Minister for Justice in February 2002. On 5 April 2002 the Attorney-General replied, agreeing there were merits in having Methadone available to incarcerated drug court defendants and that he had drawn this to the attention of the Honourable the Minister for Police and Corrective Services.

Since then, and after several further requests by the pilot program magistrate, the Methadone in prison trial evaluation has not been made public and no decision has been made known by Cabinet whether the government will continue or discontinue the provision of Methadone to prisoners.

For the Drug Court program this state of affairs has resulted in the following inconsistencies.

If a male participant in a South-east Queensland Drug Court program is on the Methadone Maintenance program while on the intensive drug rehabilitation program, he does not have access to Methadone if sanctioned to up to 14 days

imprisonment. However, a female participant who gets the same sanction for the same breach does.

Conversely, if a male participant in the Cairns or Townsville Drug Court pilot is on the Methadone Maintenance program while on the intensive drug rehabilitation program, he does have access to Methadone if sanctioned to up to 14 days imprisonment under this Act. However, a female participant who gets the same sanction for the same breach does not.

These inconsistencies are not only inequitable. They have the potential to cause unnecessary pain and suffering to the participants. Those who miss out on their prescribed dosage are forced into withdrawal. They frequently come back to court at the end of a sanction looking and feeling very ill. This is unnecessary, cruel and unusual punishment, yet sometimes no other option is left except for the custodial sanction. Therefore, some sanctions have had to be made for shorter periods than would otherwise have been the case. Other parts of this report address the need for a larger range of alternative sanctions.

There will always be participants for whom the time has come to face a custodial sanction. If these factors are allowed to influence the court's decision about the length of a custodial sanction for someone who will not have Methadone available, it will cause further perceptions of inequity, i.e. when another participant believes he or she is being dealt with more harshly for the same breach because he or she will have access to Methadone. This forces the court into a dilemma as to how to dispense justice with actual (not merely perceived) equity and fairness.

Recommendation No. 44

The Methadone in prisons evaluation should be made public and a decision made whether the government will continue or discontinue the provision of Methadone to prisoners. Methadone and Buprenorphine should be able to be prescribed to all drug dependant prisoners.

Transport to court and programs

The above issue relating to counting of days also highlights the problem with transporting prisoners to court, a supported accommodation program house and to residential rehabilitation facilities. The issue arises in a few different contexts.

When an intensive drug rehabilitation order is first made, the court has power and discretion to delay the commencement of the suspension of the initial sentence; *Drug Rehabilitation (Court Diversion) Act 2000*, section 21. Sufficient grounds must exist. For example, facilities such as a supported accommodation program house, a rehabilitation bed or a placement for detoxification may not be immediately available. Once the facility is available the person may be released from the prison gates to make his or her own way to the facility. They rarely make it if met by the 'welcoming committee'. This is never a good option but is

sometimes unavoidable because one Drug Court magistrate must travel to three places in a week and is not always likely to be sitting in the place where the person is due to be released.

Also, each residential rehabilitation facility associated with the South-east Queensland Drug Court program usually requires admission before 3 p.m. and none accept admissions on Fridays.

If the Drug Court is sitting in the place on the day of release, an order can be made to return the person to court where they can be collected and transported to the rehabilitation facility by staff from that centre.

The residential drug rehabilitation facilities have each been providing a voluntary transport service. Some received funding to purchase a vehicle for the purpose of doing assessments. None receive recurrent cost for the vehicles. None have specific funding for transporting participants. They also transport Drug Court participants to court for their periodic court reviews. As it is a voluntary service, it is not always available. Therefore, again, release from court or from prison without supervised transport remains unavoidable and undesirable.

None of the government departments involved in the Drug Court pilot has had transport of Drug Court participants as an element of its core business

In another context, a person who ends a sanction of imprisonment is often, unsurprisingly, ordered by the court to return immediately to a residential rehabilitation centre or to supported accommodation provided by the Drug Court program. If a sanction of imprisonment ends on a day the Drug Court sits in a particular place, the warrant can state the prisoner is to be released to that court. The prisons have been co-operative in this regard. Sometimes the rehabilitation centre will have someone available to collect the prisoner from court and transport him or her to the centre.

However, if the sanction of imprisonment ends on a day the Drug Court does not sit at the particular place near to a residential rehabilitation facility, the prisoner will be released at the front gates of the prison or watch-house and may be distracted as described above.

It would not be appropriate to inflate or deflate a sanction solely for the purpose of getting a defendant back to court on a particular day of the week.

The main aim of looking for a way to transport people is to avoid the risk of further drug use on the way back to court or rehabilitation centres before the person has had a chance to benefit from treatment.

Drug Court data shows 9.5% of participants required to go to a residential rehabilitation facility failed to arrive. The rate has, however, declined each year. Of those who failed to arrive—

- 50% were in the first financial year,

- 31% were in the second financial year (decreased possibly due to the Department of Corrective Services attempting to transport participants for a period during that year), and
- 19% were in the third financial year (decreased possibly due to fewer referrals and the court releasing participants on a day that the rehabilitation facility can attend and transport them).

Transportation services would enhance the operation of the Act in South-east Queensland by diminishing the rate of absconding from the program.

In North Queensland, the problem may be even more difficult.

In Cairns and Townsville, transport of newly sentenced participants to the rehabilitation centres is required to be provided by 1pm on a given day to allow the new people to be inducted into their program. Transport to rehabilitation centres and supported accommodation is provided by DCS if the rehabilitation worker is unavailable to provide it.

All female Drug Court participants in Cairns or Townsville who are sanctioned to more than 7 days imprisonment are transferred from the respective watch-houses to the Townsville Correctional Centre.

For Cairns, where the Lotus Glen prison is situated outside Mareeba some 2 hours drive from Cairns, released male prisoners are transported to Mareeba by DCS prison staff and issued with a bus ticket to their place of origin. The manager of the centre has advised the DCS that transport all the way to Cairns for Drug Court participants would only be possible if the prison vehicle was going there anyway to transport other prisoners to a Cairns court, and if there is spare room in the vehicle.

For Townsville, released prisoners are transported by prison staff to the appropriate community corrections office if they have ongoing community based supervision. Drug Court participants will be transported to the DCS office, for further transfer to a rehabilitation centre or the supported accommodation program house.

Such unpredictability is counterproductive to a therapeutic approach to sentencing.

However, for the North Queensland model, the new drug testing vans were designed with seats for transporting a maximum of two extra passengers. On the other hand, current funding and geographical issues preclude drug testing vans from transporting participants from prisons to court or to rehabilitation centres on release from a sanction of imprisonment. This is especially true with transports from Mareeba to Cairns and from Townsville to Cairns for female Drug Court participants released from the Townsville Correctional Centre.

Recommendation No. 45

To avoid the incidence of absconding, funding should be allocated to provide transport of Drug Court participants from prisons to Drug Courts, a supported accommodation program house or to residential rehabilitation facilities, at the direction of the court.

Doctor shopping and lack of co-ordination

Many drug dependant people who abuse illicit drugs also abuse prescription drugs, especially MS Contin (Morphine), Pethidine and Benzodiazepines (such as Valium). This was even more evident than usual when there was a reported heroin shortage in 2002. The task of achieving the aims of the Act is made more difficult when it is too easy to go doctor shopping and obtain prescription drugs in substitution for the unattainable illicit drug.

In some instances the Drug Court has noted the ease with which participants are able to obtain prescriptions and medical certificates from certain doctors. In some cases, charges involving forged prescriptions or prescriptions obtained by doctor shopping have numbered in scores and hundreds but always involved multiple visits to a fewer number of doctors or surgeries.

In one case, a man was prescribed a drug for management of moderate to severe pain. Medical staff at the ATODS Methadone clinic advised the prescribing doctor it would not be appropriate, in their opinion, for the man to keep taking the particular drug while on a very high dose of 120 milligrams of Methadone per day. It was prescribed again anyway. The man was also abusing cannabis and other drugs. The court had to order the man into a detox unit to stabilise his medication and to reduce his Methadone. He was stabilised under medical supervision. He made a decision to cease his Methadone altogether. Then there was no conflict with the prescribed pain medication.

The pilot program magistrate and Drug Court Co-ordinators support a case for having one or more medical officers funded or allocated in each Drug Court area to provide a service to Drug Court participants. However, Queensland Health would need to be satisfied as to the conditions under which a participant could be restricted to use a Government Medical Officer (GMO) GP service while subject to an intensive drug rehabilitation order.

Participants should be able to be directed and referred to only one prescriber to avoid abuse of all drugs, otherwise some participants will lack the mental clarity and stamina required to successfully participate in the program. A single prescriber could also dose those persons genuinely requiring the drug and requiring closer scrutiny or supervision until stabilised and trusted to take the correct dosage.

A doctor shopping phone line, which ended operations in August 2002, should also be revamped so the Health Insurance Commission and Queensland Health can monitor and combat doctor shopping for drugs of abuse¹⁹. The database formally held by the HIC was accessible by prescribing doctors.

¹⁹ See also article '*Doctor shopper' loophole on drugs*: in Sunday Mail newspaper, 11 May 2003, page 31.

Unfitness to work and unfitness to attend court may be two wholly different things. Participants should be required to obtain a medical certificate specifically excusing attendance at court when they are unable to attend.

The Drug Court co-ordinators have also agreed it may be a good idea to have Drug Court participants registered along with the Methadone clients on the database managed by the Drugs of Dependency Unit but this cannot be accessed by any Drug Court staff and would serve no useful purpose to the Drug Court while that restriction remains.

The QH Drug Court co-ordinator advises that databases currently available to hold information on clients registered as having a drug dependency are used to monitor the GP prescribing patterns rather than the client patterns of GP use.

However, it would still be useful to monitor GP prescribing patterns so that doctors could be made aware of developing trends they may not be aware of, and their assistance sought to combat drug addiction and doctor shopping.

Recommendation No. 46

Queensland Health and the Reference Group should be required to investigate means of combating doctor shopping, including allowing the Drug Court to refer participants to specific doctors, for example, Government Medical Officers or Methadone clinics.

Recommendation No. 47

A doctor shopping phone line should be re-established so the Health Insurance Commission and Queensland Health can monitor and combat doctor shopping for drugs of abuse.

Recommendation No. 48

When a participant claims he or she is unable to attend court due to medical reasons doctors should be required to specifically certify the person is unfit to attend court.

THE DRUG COURT PROGRAMS

This part of the final report examines the components of the rehabilitation programs initiated by, and available to, the Drug Courts. It demonstrates the utility of a growing partnership between a whole-of-government approach and non-government organisations (NGOs).

The Drug Court provides participants with access to many programs they would not otherwise attend. The whole of government approach has assisted the court and the team to take a holistic view of the specific needs of each individual participant.

RESIDENTIAL PROGRAMS

How assessments and recommendations for residential treatment are made

An assessment or recommendation for residential treatment may be made at any stage in the process, including initial assessment or if the participant does not do as well as expected in an out-patient program.

The table below lists the factors relevant to officers deciding whether to recommend to the court that a defendant should undertake either residential or non-residential treatment programs. It was compiled by the pilot program magistrate and Drug Court co-ordinators on 24 August 2000. At the time of compilation supported accommodation was not available. It was from this that seeds were planted and bore fruit as the supported accommodation program. Now, if a defendant is assessed with a score of 6 or more, excluding the accommodation items, he or she will be assessed as requiring a residential rehabilitation program. If a score of 6 is inclusive of accommodation items the defendant would require supported accommodation. The defendant can argue otherwise and the final decision rests with the court.

Primary criteria	Score
Long term chronic drug abuse with few breaks	2
Lack of family/social supports	2
Lack of stable accommodation	2
Lack of appropriate accommodation	2

Secondary criteria	Score
Poly drug dependence	1
History of sexual/other abuse	1
History of institutionalization	1
History of incarceration	1
History of recent failure/breaches of other community based orders	1
Lack of literacy skills	1
Lack of life skills	1
Minimal previous drug intervention	1
Primary care of children	1
Requiring detoxification	1
Dual diagnosis (drug dependence & mental illness)	1
Prior failure on outpatient rehabilitation programs	1
Not suitable for pharmacological intervention	1
Age	1
History of violent behaviour	1
History of sexual offences	1

The Department of Corrective Services (DCS) will also consider whether the offender can be kept safely in the community while addressing his or her drug related problems. If so, the assessor then does a home assessment at the proposed accommodation. If the home is not considered appropriate the supported accommodation program will be recommended for that person.

If a defendant cannot be left safely in the community because of a likelihood of relapse and consequent re-offending, and appear sufficiently capable of dealing with the demands of a residential rehabilitation program and sufficiently motivated, or likely to become motivated, then the DCS assessor will request Queensland Health (QH) to refer the person for assessment for residential rehabilitation.

Each residential rehabilitation centre has a different program. Therefore the assessors strive to match defendant's needs with the program most suited to addressing those needs. They are staffed or serviced by professionals with graduate and post-graduate qualifications, including nurses, psychologists, social workers, psychotherapists, counsellors, doctors and psychiatrists.

The centres offer various holistic programs focused on biological, psychological and social factors which may underlie a person's use of drugs. A range of treatment components are offered including: group psychotherapy, 12-step programs and self-help groups, didactic (psycho-educational) groups focusing on life-skills (such as anger management, assertion training), and relapse-prevention groups).

An important aspect for some centres is the operation of the program by a therapeutic community (TC). In a TC the members of the residential community themselves are vehicles for change. They give mutual feedback to each other on their behaviours, and confront behaviours which may be damaging to a resident's recovery and/or the community itself. This assists the offender to re-integrate into the wider community.

Beenleigh, Ipswich and Southport

The South-east Queensland Drug Courts now have funding for 46 positions (a ratio of 1:3 on a cap of 141 maximum concurrent intensive drug rehabilitation orders) at 5 residential drug rehabilitation centres as outlined in the following table.

Name and location	Type of program	Duration of program	Drug Court places (beds) available
<i>Fairhaven</i> Salvation Army Southport	12-step program	32 weeks and transition care as required	11 places, 8 male, 3 female
<i>Goldbridge</i> Southport	Therapeutic community	3 months and 3 months aftercare	5 places male and female
<i>Logan House</i> Alcohol and Drug Foundation of Qld Chambers Flat	Cognitive-based therapy (Harvey Milkman program)	3 months and 3 months aftercare	7 places male and female
<i>Mirikai</i> Gold Coast Drug Council Burleigh Heads	Therapeutic community	6 months and 3 months aftercare	8 places male and female, under 30 years of age only
<i>Moonyah</i> Salvation Army Red Hill	12-step program	32 weeks and transition care as required	15 places male only

Cairns and Townsville

In North Queensland, Drug Courts have funding for 20 positions (a ratio of only 1:4 on a cap of 40 maximum intensive drug rehabilitation order's in each city) at 3 residential drug rehabilitation centres. They are—

- 10 places at St Vincent's Community Services, Cairns.
- 8 places at St Vincent's Community Services, Townsville.
- 2 places at Stagpole Street Drug and Alcohol Rehabilitation Service, Townsville specifically for indigenous offenders.

Mothers with children

There is a total absence of residential rehabilitation facilities suitable for drug dependant women with infants or young children. There have been several cases where women have been unable to gain access to residential programs although they were assessed as requiring residential treatment.

The profile of an addicted mother who requires residential treatment is similar to any other resident. However, she will usually exhibit more social disadvantage and poor socialisation or immaturity. Usually her partner will have also left her with the burden of child rearing. Additional services may need to be provided in a therapeutic community for disadvantaged women with children. These can include family unit housing, child care, parenting programs and special medical/psychological care to cater for a mother's special clinical issues.

Recommendation No. 49

Resources should be allocated to establish residential programs specifically for women with children, to include family unit housing, child care, parenting programs and special medical/psychological care to cater for special clinical issues.

Indigenous needs

Residential rehabilitation programs

A primary principle in establishing residential placements for the Drug Court has always been that additional beds (i.e. placements) be State funded so that the Drug Court program does not take beds away from the general community (i.e., so that community members do not feel compelled to say they have to commit offences to get into rehabilitation). There are no Drug Court pilot residential placements funded in South-east Queensland for those indigenous participants who have specific indigenous and cultural issues needing to be addressed to assist their recovery.

The *Jessie Buddy Healing Centre*, at Llewellyn Street, New Farm, is run by QAIAS (Queensland Aboriginal and Islander Alcohol Service). It is NOT State funded. It has Commonwealth funding under ATSIC. Drug Court participants may be accepted. However, participants would have to make their own arrangements for admission and travel to and from the facility for placement and court reporting.

The facility caters for up to 25 residents and has a half-way house next door for up to seven residents. Participants can be male or female but must be aged 17 or over. Non-residential clients may also undertake the structured group and counselling sessions.

The residential and non-residential programs focus on—

- Education about harmful affects of drugs and alcohol
- Relapse prevention
- Stress and anger management
- Social skills
- Budgeting
- Personal growth
- Emotional problems
- Sexual abuse (individual and group; usually weekly but also on a needs basis)
- Family re-unification
- Family therapy and couples counselling.

Culturally appropriate programs

The Drug Court does not have ready access to culturally appropriate programs. The recent employment of an indigenous health worker by QH (see below) may assist the Drug Court to find appropriate programs. However, unless government and non-government organisations connected to such programs are willing to volunteer their services, funding will be required. Also, to expect them to do so would run counter to the policy adopted thus far, i.e. that the Drug Court should have its programs specifically funded and should not take scarce places away from other members of the community who do not come via the courts.

Case illustration # 5

Several Aboriginal men and women would have benefited if the Drug Court had access to more culturally appropriate programs. It is cliché to say Aboriginals and Torres Strait Islanders have experienced many alcohol related problems. Now, there appears to be a disturbing trend toward use of illicit drugs among young Aboriginals and Torres Strait Islanders, especially amphetamines.

Typically, the criminal convictions commence when they are juveniles. Convictions as an adult include property and drug offences. Many of them left school early and have limited literacy skills. Some have never been employed.

In at least one case, the pilot program magistrate refused a request by an Aboriginal participant that the program be terminated, and offered encouragement and support to continue with the conditions imposed by the IDRO. One such participant has since graduated. In the Drug Court's experience, grants from community development funds and from other sparse sources have helped indigenous Drug Court participants to gain qualifications and work in projects which also teach them about their own cultural heritage.

Recommendation No. 50

Drug Court resources should be extended to include indigenous and culturally appropriate programs such as the Jesse Buddy residential program, the Youth Enterprise Trust Camp, and other employment and training programs. The Reference Group should be responsible for identifying appropriate and relevant programs and identifying the relevant State department to administer the funds and co-ordinate itself with the Drug Court.

As recently as May 2003 QH employed an indigenous health worker at the West Moreton Community Health Service District office of the Alcohol Tobacco and Other Drug Services (ATODS).

This position is not a dedicated Drug Court position. Queensland Health was funded to provide an extra resource in Health Service Districts where ATODS provides services not only to Drug Court clients but also QH clients from other courts who are given bail conditions requiring attendance at QH drug treatment and counselling services.

The QH Drug Court co-ordinator sees this role as not having a formal therapist component but rather that, if provided, any therapy would be opportunistic. It is intended the Drug Court related duties will be—

- to assist the ATODS counsellors to identify the culturally appropriate health case management needs of the identified indigenous Drug Court participants
- to assist the Drug Court Health Assessor to identify the health case management needs of the identified indigenous clients and assist the assessor to develop a culturally appropriate treatment plan to be recommended the court.
- to offer suggestions via the Drug Court Health assessor (or co-ordinator) for culturally appropriate sanctions and rewards for the Indigenous Drug Court participants.
- to assist other West Moreton HSD indigenous workers to effectively case manage community health indigenous clients who may have problems with alcohol and other drugs.
- to be available to the Gold Coast and Logan Beaudesert Health Service Districts' Drug Court Health Assessors on a consultative basis as needed to assist with the development of treatment plan options for indigenous clients appearing in the Southport and Beenleigh Drug Courts.
- to periodically provide feedback to, and have discussion with the Drug Court health co-ordinator/health assessor, about the need for, and availability of, culturally appropriate services for indigenous participants.

It is hoped this position will vastly improve service delivery and the health outcomes for indigenous Drug Court participants.

Recommendation No. 51

Queensland Health, with assistance from the Reference Group, should make an early decision about the data it will monitor from the recent initiative to employ an indigenous health worker and report trends and options to the Reference Group and to magistrates in relevant Drug Courts.

SUPPORTED ACCOMMODATION PROGRAMS

Why accommodation is provided

At the start, the Drug Court assessors discovered that too many defendants were being recommended for residential treatment because they totally lacked suitable or stable accommodation and support structures. Many had lost everything through drug use and incarceration, including their partners, children, homes and jobs. To reduce the demand on residential rehabilitation centres a supported accommodation program was established in each area.

Beenleigh, Ipswich and Southport

For **Beenleigh**, the Youth and Family Services organisation provides support for six houses and 16 beds for participants.

For **Southport**, the Mirikai Intensive Supported Out-clients (MISO) project integrates an outpatient program and accommodation with the existing Drug Court programs contracted to the Gold Coast Drug Council. MISO includes—

- Group therapy
- Relapse prevention
- Didactic life skills groups (cyclic, allowing entry at any point)
- Individual counselling
- Supervised urinalysis
- Parent education & support program and
- Attendance at support groups

For **Ipswich**, as at 12 March 2003, the St Vincent's Community Services Turnaround program has provided cognitive skills programs, support and accommodation to 34 Drug Court participants since December 2001. The program is suitable for those participants for whom a Live-in Rehabilitation Centre would be the only alternative but-for a supported accommodation program being available, or where Live-in Rehabilitation would be preferable but the participant is not suitable under the centre's rules, for example, because the person is on Methadone, is the wrong gender or too old. At full capacity the

Turnaround program will have four (4) homes in the Ipswich area able to accommodate ten (18) IDRO participants.

Of the 34 Drug Court participants assisted, 18 were in the supported accommodation program and 16 were in the outreach program. At first point of contact with the supported accommodation program, 75% were in phase one of the Drug Court program. Of these, 88% had never had any form of assisted intervention such as an illicit drug recovery program. St Vincent's report that, accordingly, 35 % used drugs or relapsed (meaning as many as 65% of phase one people in the supported accommodation program did use drugs or relapse) and 54% were transferred to residential rehabilitation, absconded or were terminated.

Results in the other two supported accommodation programs are similar. From the pilot program magistrate's viewpoint one key factor contributing to this poor result is the lack of supervision in supported accommodation. This is not the fault of the St Vincent's, Mirikai or YFS workers. More resources for supervision, including daytime and night-time checks, are needed if better results are to be achieved.

The pilot program magistrate has often expressed to participants his frustration with breaches of the house rules, and lack of respect and appreciation for the opportunity being offered in supported accommodation, evidenced by stealing private and public property from the houses, allowing drug use by friends on the premises or sharing secret PIN numbers for illicit use of phones provided in the houses. Consequently, the pilot program magistrate asked all service providers to change the house rules to ban all visitors from the premises and impose further restrictions on phone use.

Indeed, if adequate funding can be obtained for this supervision, the Drug Court would also be able to make good use of curfews on bail conditions and in intensive drug rehabilitation orders. Curfews are of no value if compliance is not monitored. However, they could be useful as a sanction, as an alternative to imprisonment. Curfews would also be useful for new participants to help stabilise behaviour and build responsibility, reliability and trust.

Cairns and Townsville

For **Townsville**, *Mission Australia* has been funded to provide a co-ordinator and support worker with 3 housing units (9 bedrooms).

For **Cairns**, *The Addiction Health Agency (AHA)* is funded to provide a co-ordinator and support worker with 3 housing units (9 bedrooms).

Recommendation No. 52

Funding should be allocated to enable the Department of Corrective Services to supervise curfews for bailees and Drug Court participants.

Recommendation No. 53

Funding should be allocated to enable supported accommodation program workers to better supervise their Drug Court client behaviour.

OUTPATIENT PROGRAMS

Government out-patient programs

Depending on individual needs, the court may require a participant to attend programs provided by either DCS or QH or by some other department or non-government organisation (NGO).

Department of Corrective Services programs

DCS provides the following core programs which most participants attend.

- **Substance abuse relapse prevention program**, including for example, making and committing to resolutions, avoidance skills, problem solving, and lifestyle change and group closure.
- **Cognitive skills development program**, including for example, self control, critical thinking, problem solving, empathy and perspective taking.
- **Anger management program**, including for example, understanding anger, consequential thinking, expressing emotion, managing and expressing anger.
- **Ending offending program**, including for example, aboriginal culture and alcohol use, self-monitoring skills, developing personal insight and personal values.
- **Life skills programs**, including for example, cooking healthy meals on a low income budget, budgeting, relaxation skills, self esteem, assertiveness, appropriate communication style and skills, interviewing skills for gaining employment and accommodation.

Queensland Health programs

QH provides—

- **Drug and alcohol counselling and relapse prevention education** services for individuals, couples and families, through the various branches of QH—ATODS (the Alcohol Tobacco and other Drug Services).
- **Methadone** maintenance program.
- **Buprenorphine** (Subutex) opioid replacement therapy.

Psychiatric and psychological needs

So far, Drug Court graduates do not include any person who was diagnosed as having an organic mental health disorder. Some people with such disorders are still on the program. Most have been terminated. Section 19 (f) of the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act) requires that before an intensive drug rehabilitation order can be made, a pilot program magistrate must

be satisfied 'the offender is not suffering from any mental condition that could prevent the offender's active participation in a rehabilitation program'.

The problem arises at two stages—either during initial assessment or during participation in a rehabilitation program.

Firstly, there is a need to determine whether a mental health condition exists at the time of initial assessment upon referral to the Drug Court. While the QH assessors have some training in mental health issues, reports from psychiatrists and psychologists are obtained in only a few cases where there is an obvious mental health issue such as self reporting by the interviewee.

Secondly, more people have been referred for psychiatric or psychological examination after an intensive drug rehabilitation order is made than before the order is made (no figures were available from the Drug Court database or from QH). The Drug Court must then determine how to treat the person or whether the order should be terminated.

QH needs to investigate how many cases in the second category should have been investigated by a psychiatrist and psychologist, and how they could have been earlier identified. Otherwise the current practice may be perceived as being biased against these individuals.

If there was funding for a dedicated psychiatrist's or psychologist's services the Drug Court or QH could better manage, or have more consistent management of, these health clients.

The QH co-ordinator advises that because many of these clients have poor education and abusive backgrounds together with the history of substance abuse, it often requires a formal psychologist's assessment to identify underlying behaviours and the client's capability to comply with the rigours of an intensive drug rehabilitation order. Participant's intellectual performance may have been damaged from abuse of some kind. Previous performance in education, training and work may not always be indicative of current capability. Hence the need to have some dedicated formal psychology services available in each area.

There may also be the issue of the cost of transporting people to the professional rooms and travel costs of a psychiatrist or psychologist to a custodial facility.

In the NSW Drug Court, the Correction Health Services employs one psychiatrist, one nurse and a women's health doctor. This model should be further investigated and considered.

Recommendation No. 54

The Reference Group and Queensland Health should investigate the need for and feasibility of funding a dedicated psychiatrist's services for the Queensland Health (Drug Court) clients.

Holistic non-government out-patient programs

In **Southport** participants may be required to attend the Mirikai outpatient program (Burleigh Heads) which is funded for 40 places per year. It provides:

- Support groups,
- Relapse prevention,
- Psycho-educational life-skills groups (cyclic in nature allowing entry at any point), and
- Individual counseling.

In **Beenleigh** there is only one outpatient place funded at Logan House even though Beenleigh has the same number of Drug Court participants as in Southport. The participant attends the same daytime programs as residents do, but as an outpatient. Because of the lack of programs for participants in the Beenleigh supported accommodation there is a need for more outpatient places at Logan House.

In **Ipswich** the Drug Court is funded to send up to 18 participants to the Turnaround Outreach program conducted by St Vincent's Community Services.

Recommendation No. 55

Funding needs to be made available for more outpatient positions at Logan House. The outpatient program is necessary for participants requiring intensive treatment but not such as would require the more expensive residential treatment.

Other non-government programs

AA, MA and NA

Participants are often required to build their knowledge of relapse prevention and their support network by attending regular Narcotics Anonymous and Alcoholics Anonymous meetings. To meet the specific needs of Drug Court participants, Mirikai has also commenced a Marijuana Anonymous Group.

Sexual abuse counselling services

The court has often noted there are simply not enough places in the pilot areas to send people to counselling (other than drug counselling), especially for sexual abuse issues and even less if the victim is male.

For example, the pilot program magistrate found there were no facilities to provide counselling for adult males who were victims of childhood sexual abuse in the Beenleigh district. Therefore he led a delegation to the Youth and Family Services (YFS) organisation at Logan. YFS then obtained funding from the

Families Department and developed an appropriate counselling program for male participants to be referred to.

As stated earlier, more than 1 in 5 participants have self-disclosed having suffered sexual abuse as children. We now know from experience, and from the reports by counsellors and case managers, that the number of individuals actually attending to abuse issues at counselling sessions is significant. High levels of anxiety and depression in survivors of childhood sexual abuse can lead to self-destructive behaviours, such as alcohol and drug abuse.

The association between childhood sexual abuse and drug taking has been identified in previous studies²⁰ and deserves further examination in the context of providing counselling services in Queensland. Sexual abuse counselling is usually not immediately available to Drug Court participants and is not able to be offered with sufficient frequency or regularity.

Recommendation No. 56

Funding needs to be made available for sexual abuse counselling programs which can be accessed with sufficient frequency and regularity. The association between childhood sexual abuse and drug taking should be further examined in the context of providing sexual abuse counselling services in Queensland.

Other counselling and medical assistance

Counselling is often required for many other issues which are either relevant to the person's reasons for drug use or which hinder their recovery, including—

- sexual and other physical abuse (as child and as adult),
- grief and loss, often because of unresolved issues from childhood or adolescent years, or from a death that occurred while previously in prison, or inability to move on after relationship breakdown,
- domestic violence, arising from victim and perpetrator relationships,
- relationship counselling,
- positive parenting,

²⁰ For example, Mammen, G. 'Young and troubled: childhood abuse, substance use and suicidal intent'; Australian Family Physician v.28 no.12 Dec 1999: 1288–1289, available from the Royal Australian College of General Practitioners, 1 Palmerston Crescent, South Melbourne Vic 3205. Internet <http://www.racgp.org.au>. See also Kendler, K.S., et al. 'Childhood sexual abuse and adult psychiatric and substance use disorders in women: An epidemiological and co-twin control analysis' Archives of General Psychiatry 57(10):953–959, 2000. The study, of 1411 women born between 1934 and 1974, concluded women who are sexually abused during childhood are at increased risk for drug abuse as adults. See also Harrison, P, Fulkerson, J., and Beebe, T. (1992) *Multiple substance abuse among adolescent physical and sexual abuse victims*. Child Abuse and Neglect, 21, 529–539.

- children being removed to foster care,
- post traumatic stress disorder (other than above). For example, after witnessing a suicide or from suffering years of abuse such as domestic violence,
- kleptomania,
- insomnia,
- self-harming behaviour or current suicidal ideation, and
- dual diagnosis, including depression, Bi Polar disorder, schizophrenia, and paranoia (which we have seen as a symptom of drug withdrawal).

The programs conducted by DCS are very well planned and delivered. However, they are not run often enough. Participants are often left waiting up to three or four months before the next program is available in their area. Participants are frequently excluded from programs if they miss two sessions. This is because some programs are not modular and are conducted using group dynamics. Reasons for missing a session can vary, including deliberate failure to attend (usually resulting in a sanction being imposed) or simply being sick.

OTHER WHOLE OF GOVERNMENT CONTRIBUTORS

Department of Families

The Department of Families has also become a stakeholder in the Drug Court program to fill two specific needs.

Firstly, the department provides child protection. Some manipulative drug-dependant defendants have been known to bring children to court when they expect to receive a custodial sanction. In such cases the Drug Court team nurse contacts the Families Department officers in his or her court area. If a family member such as a spouse/partner or grandparent can not be found to take the child the Families Department officers attend court in case the child needs to be placed in the department's care.

Secondly, officers from the local Community Rent Schemes are each responsible for signing up participants on Drug Court Accommodation Agreements and the respective House Rules for each house in the supported accommodation program.

Department of Housing

The Department of Housing has assisted with the establishment of the supported accommodation program. The department is responsible for administering funding for the leasing and maintenance of private rental accommodation which

is managed by community tenancy organisations. Mirikai, YFS and St Vincents are funded to supply the support workers for the supported accommodation.

POSSIBLE ROLE FOR MORE GOVERNMENT DEPARTMENTS

Department of Education and the Department of Employment and Training

Centrelink, Work Net, Employment Plus and other employment agencies have been tapped into for people in phase three of the Drug Court program to be provided with vocational assessments, counselling and training. However the extent of the service is very limited and no specific funding has been provided for them to provide this service.

It is encouraging (and surprising to some) to learn that one of the first things that most Drug Court participants actually look for as soon as they are becoming abstinent is work. Some participants even need to be held back from seeking employment so that they can successfully complete a significant part of the program and build the foundation needed to maintain an abstinent lifestyle. They each require the work not only for money to support families but also to improve their self-esteem.

Twenty-two of the 51 graduates as at 31 March 2003 were in employment. Some of the others were at TAFE or undertaking other courses, but the database can not provide a figure.

There is not enough being done to assist graduates and those approaching graduation to achieve better education and employment. For example, most participants are unable to meet the cost of TAFE courses they would like to attend before or after graduation. There have been people in the program who are quite physically and intellectually talented. They need better access to apprenticeships, catering and hospitality courses, computer courses and many others. There is room for more government departments to become involved in the whole-of-government approach which has made the Drug Court a success to date.

The co-ordination of employment initiatives for Drug Court Phase 3 participants could be a task for the Department of Employment and Training. The development of new initiatives such as the Group Training Mature Aged project for people aged over 45 (part of the Breaking the Unemployment Cycle) and projects like the Brisbane City Council traineeship program for drug dependent youth in recovery are to be encouraged.

Recommendation No. 57

The Department of Employment and Training should be invited to become a further stakeholder and partner in the Drug Court program and provide assistance to Phase 3 participants to achieve the aims of obtaining further education and becoming employed or employable.

Queensland Transport***Driver licences***

Many Drug Court referrals involve people who are charged with, or who have previous convictions for, traffic offences including driving whilst unlicensed or disqualified driving. Alternatively, the traffic laws sometimes require the mandatory disqualification of a defendant before the Drug Court.

While a person is in active addiction he or she may have little regard for traffic laws. Indeed it seems part of the drug culture to ignore driver licensing laws.

However, once a participant has taken part diligently for 12 to 18 months in an intensive drug rehabilitation program and achieved abstinence for a significant period he or she develops better reasoning skills and insight. They start to think about clearing all debts and getting a fresh start. They develop more respect for the law and start to think more about the need for a driver licence because it will assist to obtain and hold employment. Then they are confronted by their mandatory disqualification.

In some cases, where the defendant is not licensed but also not disqualified or soon able to regain a license, the pilot program magistrates will actually make it a condition of the intensive drug rehabilitation order that the person attend defensive driving courses, take driving lessons or sit for a driving test. This is done to assist their reintegration.

It would be a huge benefit if graduates, having spent a considerable period being crime free and drug free and having put a genuine effort for a considerable period in an intensive drug rehabilitation program, could regain some form of driver licence as a reward for their rehabilitative efforts.

Also, more programs like the Indigenous Road Safety Initiative are required. At present the initiative is restricted to Aboriginals and Torres Strait Islanders in correctional facilities in North Queensland. The aims²¹ are to—

- test Indigenous inmates for Learner Licences while in prison,
- improve road safety through increased levels of licensing of drivers, and

²¹ The aims were explained in a letter dated 5 August 2002 from the Executive Director (Land Transport and Safety), Queensland Transport to the Chief Magistrate, and distributed to all magistrates.

- decrease the levels of incarceration for Indigenous people for unlicensed driving.

The Drug Court has similar aims for all participants, especially having regard to the level of known drug-driving, discussed in the next section of this report.

Recommendation No. 58

Consideration should be given by the Drug Court Reference Group to inviting Queensland Transport to contribute to the whole-of-government Drug Court program by amending the driver licensing laws to enable the Drug Court to reward true graduates with the right to apply for a driver licence. It could be a provisional licence or have other restrictions. For example, it could be limited to Drug Court graduates who have achieved a minimum period of being abstinent and crime free, say 9 months.

Recommendation No. 59

More programs like the Indigenous Road Safety initiative are required to increase levels of licensing of drivers and decrease the levels of incarceration through repeat offending by unlicensed driving. People with a history of unlicensed or disqualified driving should be specifically targeted. The Drug Court would be a good starting place.

Driving and defensive driving courses

An obvious parallel issue is the need to get participants qualified to drive, to enhance their driving skills and to improve their respect for road rules.

A considerable number of Drug Court participants come to the court charged with driving offences. As at 31 March 2003, of the 12,276 offences referred to the Drug Court, 737 (6%) were traffic offences equating to 6%.

Of these, 120 (just under 1% of the total) were dangerous driving offences. Many were associated with amphetamine use. Amphetamine use poses a significant public health problem in Australia generally and in Queensland particularly²². Markedly abnormal mental states occur following the use of amphetamines and amphetamines can also induce an acute or chronic psychotic state. The drug helps the user to feel invincible, one even commenting it seemed like time had slowed down and that he felt he could evade the police. Some are suffering a drug induced psychosis while they drive, perhaps believing everyone or the police are out to get them.

²² Dr Russ Scott and Dr William Kingswell, *Amphetamines, Psychosis and the Insanity Defence: Disturbing Trends in Queensland*, 23 Qld Lawyer 5, p151 (2003).

There is nothing new in this. Recent studies by the Centre for Accident Research and Road Safety—Queensland (CARRSQ)²³ suggest that drug driving is on the increase. It is even suggested that drug driving may be more common than drunk driving.

The Queensland Parliamentary Travelsafe Committee report on drug driving in 1999²⁴ concluded drug driving may contribute to 6.5 % of Queensland road fatalities. It also noted a further 9% of fatally injured drivers have alcohol and drug combinations in their bodies. In 1996, 'alcohol/drugs' were detected in 9% of drivers involved in all reported crashes in Queensland. In its report, the committee makes 16 recommendations for the government to implement.

These issues are being examined by a Queensland Drug Driving Prevention working group, chaired by Queensland Transport.

The Drug Court is playing its part to reduce the likelihood of recidivist behaviour. In some cases, to break the driving culture evident among drug users, the pilot program magistrate has actually ordered participants to take driving and defensive driving courses or to take other steps to prepare themselves to obtain a licence. This is not always possible due to the defendant being previously disqualified or now facing mandatory disqualification.

Greater flexibility is required where a person actually puts in the hard yards to seek rehabilitation.

However, Queensland Transport no longer conducts defensive driving courses. Private organisations charge fees which are not likely to be affordable to the majority of Drug Court participants. Courses as short as one day may cost over \$160. Some have age restrictions. Sometimes they are free if, for example, a parent is insured with a certain insurance company.

Recommendation No. 60

Queensland Transport and the Queensland Drug Driving Prevention Working Group should be invited by the Drug Court Reference Group to examine the availability of driving courses to Drug Court participants and to advise the court accordingly. The Drug Court program should be funded to send carefully screened participants to such programs.

²³ Reported by the Royal Automobile Club of Queensland (RACQ) in *The Road Ahead*, April/May 2003, p7.

²⁴ Travelsafe Committee of the 49th Parliament, Drug Driving In Queensland, tabled 9 November 1999, paras 20, 83.

FORGOTTEN FAMILIES

Partners and parents of Drug Court participants regularly come to court with the participants. Sometimes they ask for assistance to cope with a number of issues. For example, recently one participant's partner asked if she could speak in court and was allowed.

The woman endorsed the Drug Court program and asked if consideration could be given to establishing a family support group. She said her young child was also afflicted (although not physically abused) by her partner's years of crime and drug abuse and was receiving abuse counselling and that more services were needed for the families.

A number of profit and non-profit organisations have been established for this purpose, including—

- *Holyoake* (Alcohol and Drug Foundation, Queensland).
- *Personal Support Program* (Sisters Inside Inc.).
- *Family Drug Support*.
- *HART* (Home Assessment and Response Team) (Drug Awareness and Relief Movement—Drug Arm).
- *GROW* (World Community Mental Health Movement).
- *Relationships Australia*.

These organisations offer a wide range of referral and support services but have very limited resources. They have few offices, in few locations.

Many participants have no such support from a parent, partner or significant other. There can be no doubting that a lack of family support services has been a related issue in the breakdown of these relationships.

Other families have requested assistance for child minding so they can attend to Drug Court commitments but no stakeholder in the Drug Court program has standing to offer the help. Rather than tackle the complexities of establishing child care centres a subsidy scheme may be preferred. Sometimes, such a Drug Court family support service would merely need to provide an information and referral service.

Recommendation No. 61

Resources need to be allocated to build and enhance family assistance programs for the families of Drug Court participants.

A specific Drug Court Family Support Service could be established to provide a wide range of counselling, information, referral and support services, including child minding subsidies.

They should be conveniently located in areas of need such as within close proximity of each Drug Court.

CONCLUSION

The intensive drug rehabilitation program is an intensive holistic program designed to build, or re-build, individuals who have been damaged by serious and complex life issues and who have been chronically addicted for lengthy periods.

By way of contrast, probation orders vary from between six months and three years duration. Offenders report to a community correctional officer weekly until their level of risk has been assessed; then they usually report less often. There may be special conditions such as programs, counselling and drug testing. Unless specifically ordered by the court, the offender is likely to be sent to no more than one program every six months.

Participants take an average of approximately 14 to 15 months to complete an intensive drug rehabilitation program. However, Intensive Correction orders (ICOs) may not be any longer than 12 months. Offenders must report twice weekly to a community correctional officer and can perform no more than 12 hours of community service per week. They are also required to attend programs. There may be special conditions such as attending counselling. If directed by the officer, the offender must reside at community residential facilities for periods (not longer than a mere 7 days at a time) that the officer directs. The length of an ICO has nothing to do with the time the court or treatment providers believe it will take for a defendant to deal with the underlying issues related to drug addiction. Instead the length of an ICO is determined by the length of a term of imprisonment a judge or magistrate would have otherwise imposed.

As this report demonstrates, the intensive drug rehabilitation order has proved an effective means of addressing the complex issues of drug dependency in ways not able to be catered for by more conventional sentencing options.

THE PARTICIPANTS

DEMOGRAPHICS

Most of the essential demographic data is probably examined in the official evaluation by Dr Toni Makkai of the Australian Institute of Criminology and will not be repeated here.

As at 31 December 2002 (when the last referrals were allowed), of 555 referrals to the Drug Court, 84.5% (469) were males and 15.5% (86) were females. People who reported being Aboriginal or Torres Strait Islanders represented 11.5% (64) of total referrals.

Of 280 people granted an intensive drug rehabilitation order by 31 March 2003, 86.8% (243) were males and 13.2% (37) were females.

As there have been questions raised by observers about whether the number of female Drug Court participants is disproportionate, the pilot program magistrate asked the Department of Justice to compare the rate of imprisonment of females in the magistrate courts at Beenleigh, Southport and Ipswich for drug and property offences for the three years preceding the start of the Drug Court pilot. The figures provided were:

- 1997–98: 10.7% females
- 1998–99: 5.3% females
- 1999–00: 9.6% females

The average annual proportion of females imprisoned over the three years was 8.5%.

Therefore the proportion of females referred to the Drug Court and given intensive drug rehabilitation orders is higher than the rate of imprisonment over three preceding years in the same courts.

Reasons for the higher proportion may include motivation levels and the fact that people who would normally qualify for a suspended sentence or an intensive correction order also qualify for an intensive drug rehabilitation order.

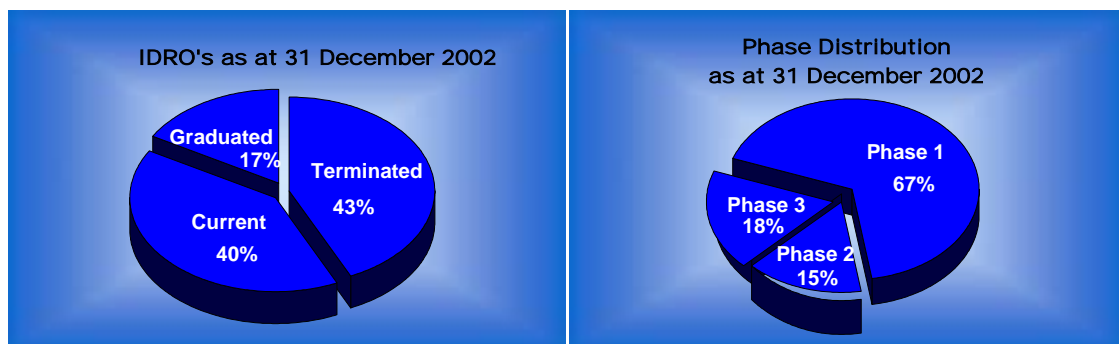
CURRENT WHEREABOUTS

For the purposes of this report it is felt that it could only be fair to examine statistics about participants' whereabouts on the program as at 31 December 2002, when referrals were stopped by amendment of the regulation. A considerable number of participants continued to graduate, but once all people referred before 1 January 2003 were sentenced to new intensive drug

rehabilitation orders no further new orders could be made to replace graduates and terminates. Current figures would otherwise be distorted, for example, by representing the number of current graduates as a higher proportion of all orders made.

As at 31 December 2002, 264 intensive drug rehabilitation orders had been made. As depicted in the charts below, while 114 (or 43.2%) had been terminated, 44 (16.7%) had graduated and 106 (40.1%) remained current active participants.

Of those remaining current, 71 (67%) were in Phase 1, 16 (15%) were in Phase 2 and 19 (18%) were in Phase 3.



For completeness, and by way of contrast, as at 31 March 2003, there were—

- 280 IDROs made
- 134 terminated (47.9%)
- 53 graduated (18.9%)
- 93 current (33.2%)
 - 47 in Phase 1 (50.5%)
 - 29 in Phase 2 (31.2%)
 - 17 in Phase 3 (18.3%)

Throughout the life of the Drug Court pilot since the first graduation, the proportion of participants in Phase 3 has been a consistent predictor of the proportion likely to graduate.

RETENTION RATES

Many drug dependant people withdraw from treatment before receiving all the benefits it can provide. As with other treatment options such as the Methadone program and residential programs, our experience has shown that most people require more than one treatment episode to achieve success. Each attempt has a cumulative effect.

Therefore, even individuals who did not achieve graduation are likely to have gained something positive which will enhance prospects for success next time they are ready to try.

Achieving successful outcomes will depend on keeping the person in treatment long enough to gain the full benefits. Strategies for motivating and keeping people in treatment longer need to be further researched and developed. These may be related to the program content and methodology or to the individual factors such as—

- Personal motivation to change,
- Extent and depth of support structures (e.g. family, friends, NA meetings) and
- Whether there is effectual pressure of personal relevance to stay in treatment (e.g. from the justice system, child and family protection services, or employers and family members).

Nevertheless, excellent improvements in retention rates have been achieved in residential rehabilitation programs associated with the Drug Courts.

Mr Clive Lloyd, a psychologist and the Clinical Director of the *Goldbridge* Rehabilitation Centre (and former Deputy Director of *Mirikai* Rehabilitation Centre) has researched this issue comprehensively and published several articles examining the retention rates in residential rehabilitation programs. In 1999, Mr Lloyd wrote.²⁵

'Retention rates in therapeutic communities

While all studies have demonstrated that Therapeutic Community programme attrition is high (e.g. Condelli and Dunteman, 1993; Pompei and Resnick, 1987; Siddal and Conway, 1988), a survey of Therapeutic Communities (TC) revealed that retention rates varied between 4% and 21% (De Leon and Schwartz, 1984). It has been suggested that the wide variability of retention rates reflects differences in individual TCs' admission policies, staff attitudes and behaviours, and toughness of the program (Powell, 1984).'

As at 25 March 2003, *Mirikai* and *Goldbridge* reported retention rates of 54% and 66% respectively. Mr Lloyd wrote:

'As you can see, both *Mirikai* and *Goldbridge*'s retention rates are significantly higher than the norm, which is probably a function of the additional motivation produced through the Drug Court whereby premature absconding from treatment results in an inevitable sanction.'

These are excellent results. All rehabilitation centre staff and Drug Court staff should take pride in their achievement and their ability to work co-operatively in

²⁵ Lloyd, C.F. and O'Callaghan, F.V. (1999). *Hierarchical therapeutic communities: The jewel in the crown, or the poor relation among treatment approaches to chronic addiction? Therapeutic Communities*, 20(4), p.274.

the interests of their clients and of the wider community. They certainly have the thanks of the court for doing so.

Recommendation No. 62

Further research should be conducted by an appropriately qualified academic or organisation for the development of strategies for motivating and keeping people in treatment longer and to reduce the rate at which individuals abscond while subject to an intensive drug rehabilitation order.

GRADUATE STUDIES

When the then Attorney-General and Minister for Justice, the Hon. Mr M.J. Foley introduced the *Drug Rehabilitation (Court Diversion) Bill* into Parliament he said:

‘This is a package which addresses not only the needs of the offender. It also addresses the concerns of ordinary Queenslanders, the mums and dads of drug addicted offenders who deserve more than rhetoric. If this pilot can save the life of just one of their sons or daughters, they will call it a success.’

Source: Second Reading Speech, *Hansard*, 23 November 1999, p5150.

The sentiment can be appreciated when one listens every day to long term chronic addicts describing their own situation as *suicide by instalment* and health professionals description of *a chronically relapsing disorder*.

The Drug Court has made 280 intensive drug rehabilitation orders. Sadly, two deaths occurred while participants were in treatment, due to overdose, probably because their tolerance to the drug had diminished following a period of abstinence. Out of the balance of 278, the Drug Court pilot has succeeded in producing 65 graduates as at the time of publishing this report. This figure represents 23% (or better than 1 in 4.5) of the 280 orders made.

This percentage would be less if new referrals and new orders had continued to be made.

Graduate trends

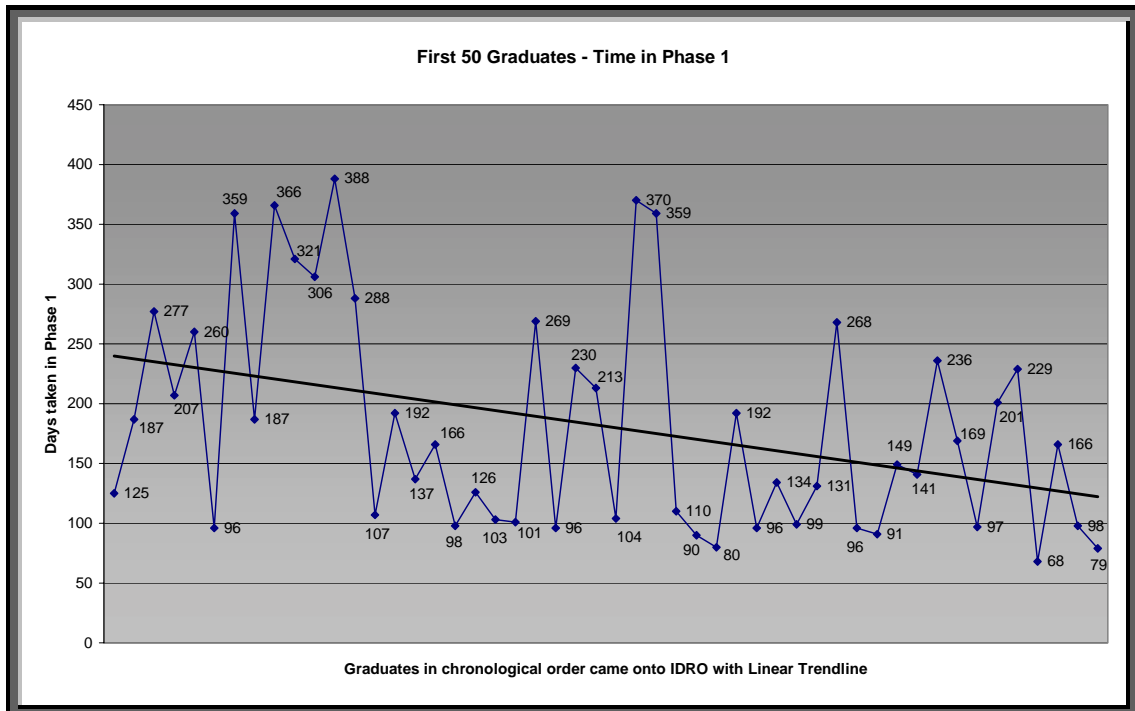
It was to be expected that this pilot program, being the first of its kind in Queensland, would have a number of teething problems and that those responsible for its development, and evolution, would find improvements in practices, procedures and cost effectiveness. In turn, this would assist new drug courts to avoid the same developmental issues.

A measure of improved efficiencies can be found in the statistics about the first 50 graduates produced in South-east Queensland.

Time in phase 1

The chart below plots the time taken by each of the first 50 graduates to complete phase 1.

The data for each graduate is presented in the order in which each person came onto the program.



The minimum time taken to achieve a significant initial period of being drug free and crime free was 68 days. This was by a person who had already been in residential rehabilitation for 3 months (under Supreme Court bail conditions) before obtaining an intensive drug rehabilitation order. Only three graduates took less than the minimum period of 12 weeks (or three months) usually required.

The maximum time taken was 388 days (or 13 months) after a number of periods of good progression and set-backs. It is noteworthy that although this person absconded twice, each was for a short period of 7 and 14 days respectively.

The average time taken to complete phase 1 was 181 days (or 6 months). Only seven took more than 300 days. Such spikes drive up the average. The median time taken was 157 days (or 5 months).

The trendline shows the overall trend has been for participants who achieve graduation to have taken progressively less time to satisfactorily complete the first phase of the intensive drug rehabilitation program. The trend began at 230 days (or 7.6 months) and ended at 130 days (or 4.3 months).

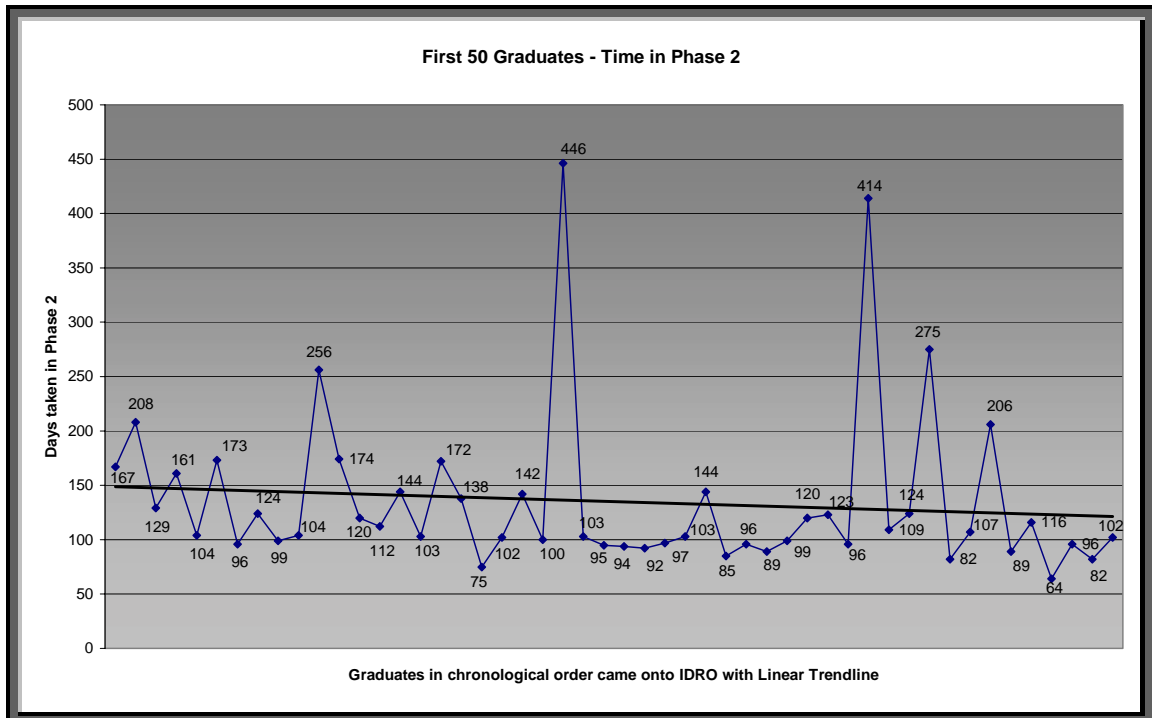
The downward trend has probably resulted from a number of revised practices and initiatives. For example:

- DCS and QH assessors have refined their assessment tools to detect who is not suitable for the rehabilitation program.
- Pre-sentence reports have become better focussed and more informative for the magistrate to make his or her own decision about the person's suitability.
- Case managers have become more experienced at seeing and foreseeing problems and addressing them efficiently and proactively with their power of issuing reasonable directions and by getting the person back into court quickly to have the issue resolved.
- The pilot program magistrate made a similar study of the first 25 graduates. Consequently, the pilot program magistrate and co-ordinators adopted a policy of ordering a re-assessment of any participant who has not graduated to the second phase after four months.
- Less non-conforming conduct is now tolerated, resulting in termination applications being made earlier than was previously the case.
- Drug testing procedures have been constantly updated to make it almost impossible for participants to provide 'bodgie' urine samples. Also, more randomisation of testing has made it more difficult for participants to attempt timing drug usage between tests due to the short half-life of most common drugs (except cannabis sativa). In other words, such disincentives encourage and motivate participants to remain honest.

Time in phase 2

The chart below plots the time taken by each of the first 50 graduates to complete phase 2.

The data for each graduate is again presented in the order in which each person came onto the program.



The minimum time taken to achieve stabilisation of their abstinence, accommodation (and other individual stabilisation issues) was 64 days (or two months). Only four graduates took less than the minimum period of 12 weeks (or three months) usually required.

The maximum time taken to complete phase 2 was 446 days (or 15 months) by a person who, after a significant period of good progress and abstinence, had absconded twice (for two days and two months respectively).

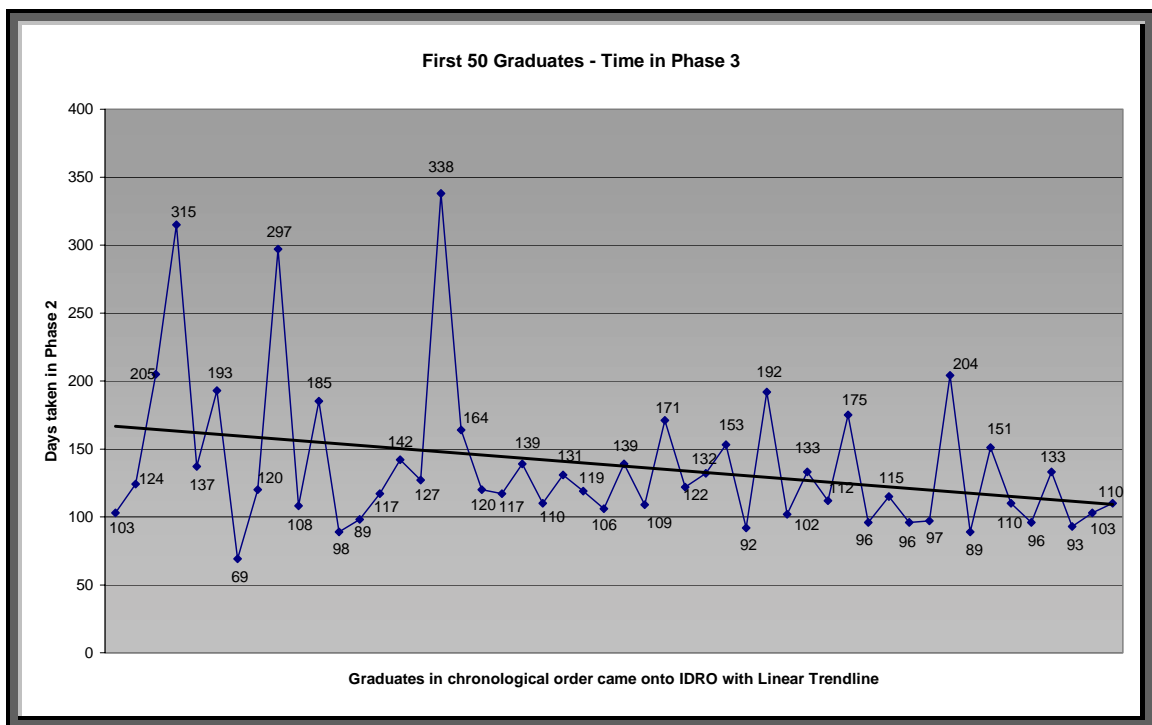
The average time taken was 135 days (or 4.5 months). Only six participants took more than 200 days. Of these, only two took longer than 300 days. Such spikes again drive up the average. The median time taken was 105 days (or 3.5 months).

The trendline shows the overall trend has been for participants who achieve graduation to have taken progressively less time to satisfactorily complete the second phase of the intensive drug rehabilitation program. The trend began at 150 days (or 5 months) and ended at 125 days (or 4.2 months).

Time in phase 3

The chart below plots the time taken by each of the first 50 graduates to complete phase 3.

The data for each graduate is again presented in the order in which each person came onto the program.



The minimum time taken to achieve reintegration in Phase 3 was 69 days (a little over two months). Only one graduate took less than the minimum period of 12 weeks (or three months) usually required.

The maximum time taken was 338 days (or 11.3 months) by a man who, after a significant period of good progress and abstinence, struggled to maintain the motivation required to attend all appointments. He did however remain drug free and crime free the whole time.

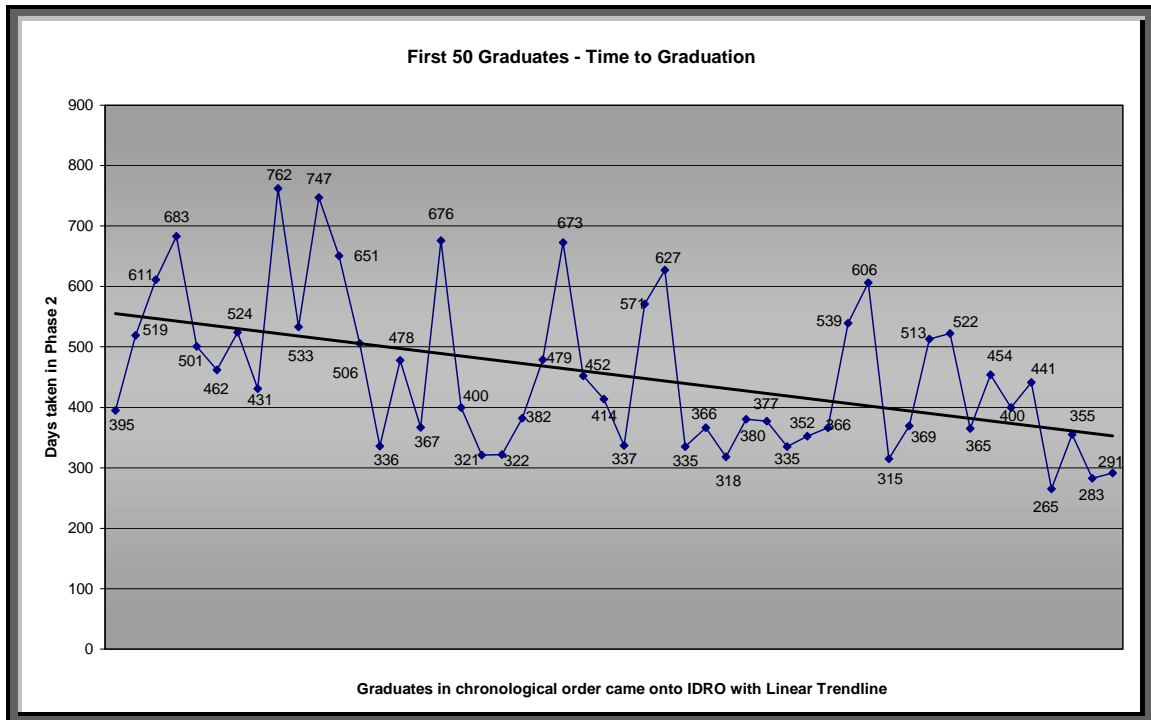
The average time taken was 138 days (or 4.5 months). Only four participants took more than 200 days. Of these, only two took longer than 300 days. Such spikes again drive up the average. The median time taken was 120 days (or 4 months).

The trendline shows the overall trend has been for participants who achieve graduation to have taken progressively less time to satisfactorily complete the third phase of the intensive drug rehabilitation program. The trend began at 160 days (or 5.3 months) and ended at 110 days (or 3.6 months).

Total time to graduation

The chart below plots the time taken by each of the first 50 graduates to complete the whole program from Phase 1 to Phase 3.

The data for each graduate is again presented in the order in which each person came onto the program.



The minimum time taken to complete the three phases was 265 days (8.8 months). No graduates took less than the minimum period of 36 weeks (or approximately nine months) usually required.

The maximum time taken was 762 days (or 25.4 months) by a person who suffered a few minor lapses and a marriage breakdown after significant periods of good progress and abstinence and who then struggled to maintain her motivation.

The average time taken to complete the three phases was 454 days (or 15 months). The median time taken was 422 days (or 14 months).

The trendline shows the overall trend has been for participants who achieve graduation to have taken progressively less time to satisfactorily complete the whole program. The trend began at 550 days (or 18.3 months) and ended at 350 days (or 11.6 months).

From the beginning, the Drug Court program target was for participants to take between 12 and 18 months to complete the three phases. The trend line shows that the majority of graduations are in fact achieved within the expected time-frame (30 falling below the trend-line). Also, efficiency has obviously improved along the way.

***Ex parte* terminations**

This report has addressed the Drug Court team's current policy regarding applications for *ex parte* terminations. The policy is based on statistics about the number of absconding episodes by participants who managed to graduate as a measure of the likelihood of a person successfully completing the program.

The statistics support a further refinement of the *ex parte* termination policy. In the view of the pilot program magistrate, the policy should be as outlined in the following recommendation:

Recommendation No. 63

All drug courts should have a uniform *ex parte* termination application policy set out in a regulation, as follows—

Two weeks after a bench warrant has issued—the Department of Corrective Services (DCS) sends a registered letter to the participant advising a warrant has issued for his or her arrest, and to make contact before an application is made to terminate his or her program in absentia and advising when the matter will be mentioned to seek an *ex parte* termination hearing date.

Four weeks after a bench warrant has issued—the matter is mentioned, an application for termination is made and an *ex parte* termination hearing date is set and DCS sends another letter to advise of the hearing date.

Six weeks after a bench warrant has issued—DCS file a termination summary report, prove service of the letter by post and the application is heard.

This policy will still allow participants an opportunity to apply for a new program to be inserted in their intensive drug rehabilitation orders. However, they will bear the onus of satisfying the court that he or she has reasonable prospects of successfully completing the new rehabilitation program. See section 35A of the Act.

Criminal histories of graduates

Graduates and others alike had serious criminal histories, including many breaches of previous court orders such as bail, probation and suspended sentences.

The following table gives a full account of previous breaches by graduates. All descriptions are taken from the Drug Court database.

Order breached	First time	Second time	Third time	Severe repeat offender	Total
Bail	7	4	9	5	25
Community service order (excluding Fine option orders)	4	4	3	1	12
Probation order	8	5	4	0	17
Intensive correction orders	1	0	0	0	1
Suspended sentence	8	0	1	1	10
TOTAL					65

According to the database, a total of 36 individuals out of the first 50 graduates committed a total of 65 breaches of court orders before being granted the intensive drug rehabilitation order.

Ten out of the first 50 graduates had breached previous suspended sentences. Obviously, by itself, the fact someone has breached a previous suspended sentence is not sufficient grounds for exclusion. Likewise, 25 had breached bail conditions, usually by failing to appear, 12 had not performed community service and 17 breached probation orders, usually by committing further offences.

In our experience, a majority of graduates had been in prison before. Many of these kinds of breaches often attract prison sentences. So do many of the other offences they committed previously, especially the property and dishonesty offences.

It is important to also ask how these graduates would have fared if the North Queensland Drug Court model eligibility criteria had been applied. The Drug Court database shows that of the 53 graduates to 31 March 2003—

- 25 graduates had a sentence history of less than 6 months (and would have been included in the NQ trial),
- 5 graduates had (exactly) a 6 month sentence history (and would also have been included in the NQ trial),
- 23 graduates (43.4% of all graduates) had a sentence history of greater than 6 months and would have been excluded from the NQ trial, and
- Of the 23 graduates who would have been excluded, 8 had a sentence history of exactly 12 months and 11 had a sentence history of greater than 12 months.
- Also, of the 23 graduates who would have been excluded—
 - 6 had previously been sentenced to a term of imprisonment once,
 - 8 had previously been sentenced to a term of imprisonment twice, and
 - 9 had previously been sentenced to a term of imprisonment three or more times.

By itself, previous criminal history is not a predictor of success.

AGE AT FIRST USE

The following statistics look at the age at which defendants commenced their illicit drug use. They are calculated on the basis of 469 Queensland Health assessments conducted out of the 555 people referred to the Drug Court²⁶.

Age at first use—Amphetamine

QH data shows that 431 (92%) out of the 469 assessed by QH said they had used amphetamines at some time and 196 (45.5% of all amphetamine users) listed amphetamines as their primary drug of choice and a further 70 out of the amphetamine users were listed as poly-drug users, often making their treatment more complex.

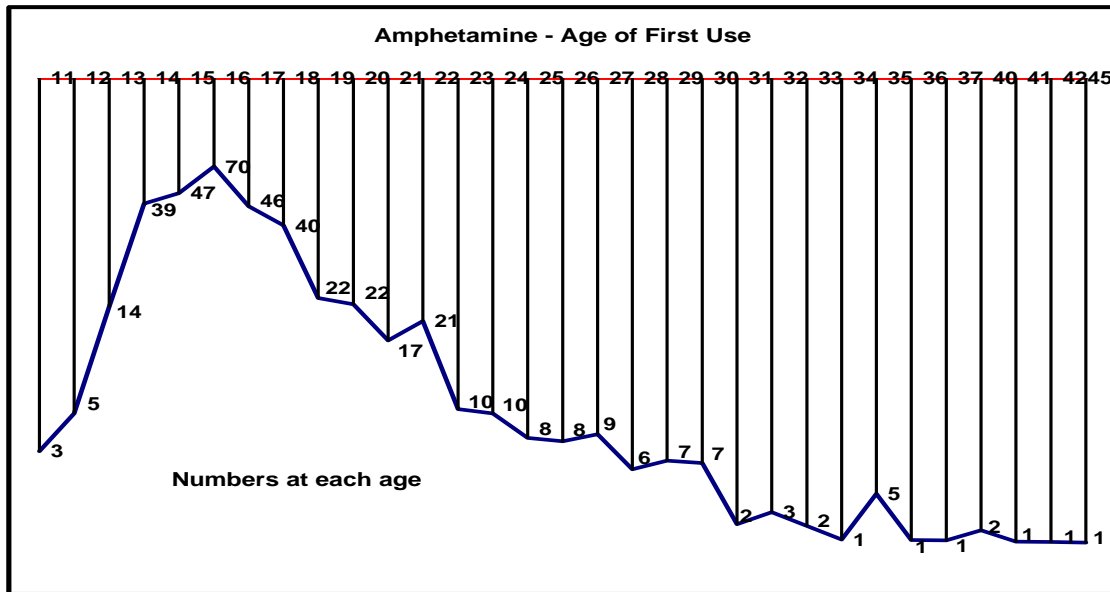
The chart below examines the self disclosed age of first use of amphetamines. The chart shows a very disturbing trend toward use of amphetamines at younger ages.

The youngest was aged 11 and the oldest 45 at first use. Indeed, by age 16, the peak age for first use, a total of 178 (41.3% of all amphetamine users) had commenced amphetamine use.

By age 17 more than half of all amphetamine users (224 or 52%) had commenced amphetamine use. QH Drug Court data also shows that of the 196 who classed amphetamines as their primary drug of choice, only 61 (31%) had attempted any prior treatment before being referred to the Drug Court²⁷. The longest period of amphetamine use among Drug Court participants had been for 24 years.

²⁶ No assessments were conducted for the remaining 86 mostly because they changed their minds about seeking a Drug Court order following legal advice and were remitted to the arrest court, usually for committal proceedings to proceed.

²⁷ This fact is even more disturbing when taken together with the fact, according to Wodak and Moore, only one in three Australian drug users seeking treatment is able to enter treatment owing to a lack of resources. See A Wodak and T Moore, *Modernising Australia's Drug Policy*, UNSW Press, p 66 (2002).



Age at first use—Heroin

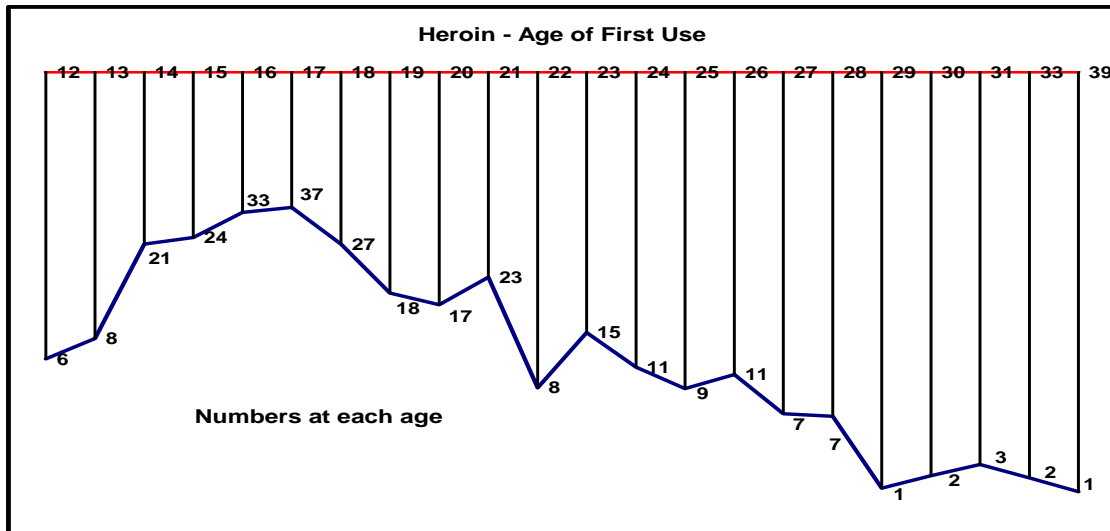
Queensland Health data also shows that 291 (62%) out of the 469 assessed by QH said they had used heroin at some time and 157 (54% of all heroin users) listed heroin as their primary drug of choice and a further 56 out of the heroin users were listed as poly-drug users, making their treatment more complex.

The chart below examines the self disclosed age of first use of heroin among the 555 people referred to the Drug Court for assessment. The chart, again, shows a very disturbing trend toward use of heroin at younger ages.

The youngest was aged 12 and the oldest 39 at first use. Indeed, by age 17, the peak age for first use, a total of 129 (44.3% of all heroin users) had commenced heroin use.

By age 18 more than half of all heroin users (156 or 53.6%) had commenced heroin use. QH Drug Court data also shows that of the 157 who classed heroin as their primary drug of choice, 122 (77.7%) had attempted prior treatment (mainly due to the Methadone maintenance program) before being referred to the Drug Court. The longest period of heroin use among Drug Court participants had been for 30 years.

The statistics above do not take into account 64 people who had abused morphine, pethidine and other opiates.



Age at first use—Cannabis

The pilot program magistrate can say with confidence, having read more than 400 health assessments and accompanying pre-sentence reports, many drug users had commenced using cannabis before moving on to amphetamines, heroin or other drugs of abuse. Also, many commenced at about the same time as smoking tobacco or drinking excessive quantities of alcohol (often amounting to binge drinking).

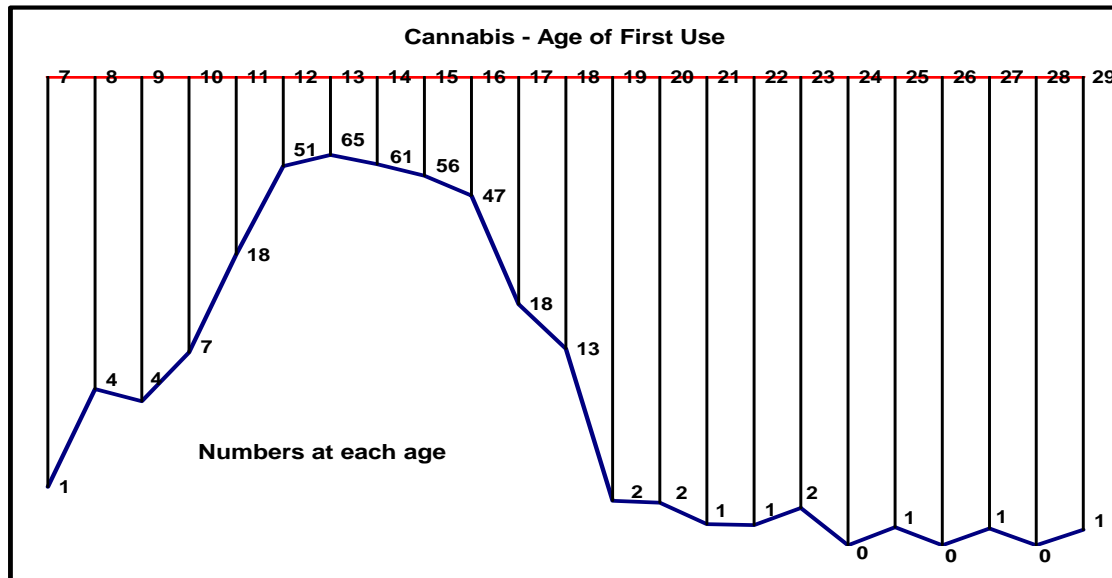
Queensland Health data also shows that 370 (78.9%) out of the 469 assessed by QH said they had used cannabis at some time and only 13 (3.5% of all cannabis users) listed cannabis as their primary drug of choice and 125 (26.7%) as their secondary drug of choice. A further 62 out of the cannabis users were listed as poly-drug users.

The chart below examines the self disclosed age of first use of cannabis. It is by now cliché to say the chart shows a very disturbing trend toward use of cannabis at younger ages.

Out of the 370 cannabis users, 14 could not recall their age of first use. Of the 356 remaining, and shown in the chart below, the youngest recorded was aged 7 and the oldest 29 at first use. By the mere age of 13, the peak age for first use, a total of 150 (40.5% of all cannabis users) had commenced cannabis use.

By age 14 more than half of all cannabis users (215 or 58%) had commenced cannabis use. Only 31 (8.4%) had tried prior treatment for cannabis abuse.

The longest period of cannabis use among Drug Court participants had been for 29 years.



Cocaine

Only 30 of the 469 had tried cocaine. None listed it as a primary drug of choice while 6 were poly drug users and 3 listed cocaine as a secondary drug of choice.

Benzodiazepines

Thirty-one people out of 55 who had abused benzodiazepines were listed as either poly-drug users or as secondary choice users.

CONCLUSION Clearly, preventative measures such as drug education programs and legal sanctions were not enough to deter these individuals. Preventative programs will need to be better targeted to younger age groups. The issue is not whether drug education is needed. It is a question of having age appropriate information and an effective delivery method.

There also needs to be a greater focus on early intervention and counselling for causally related factors such as child sexual abuse, other physical and verbal abuse and the absence of a significant adult in the formative years.

The nurturing and development of life skills at a young age is also imperative. If the causes of drug abuse are left unchecked, it usually takes many years of personal suffering from drug abuse, and of consequential social harm, before treatment is even attempted for the first time. In the meantime, as one insightful Drug Court community corrections officer reflected, these people “miss out on the lessons many Australians are fortunate to have learned by their mother’s knee”.

However, not all families are functional and nurturing. What hope is there for some youths when, as we have seen frequently in the Drug Court, they are introduced to drugs by a mother, father or sibling? These are the very people they trust to provide comfort, shelter, love and direction. Many Australians believe

their home is a castle, a family safe haven to return to when life bears down on them. Where does a young girl go when she is repeatedly witness to, or victim of, domestic violence or sexual abuse perpetrated within the family (where most sexual abuse in fact occurs)? Their homes are not safe places.

Recommendation No. 64

Owing to the very young ages at which most people referred to the Drug Court began their drug use, drug education programs should be compulsory in all primary and secondary schools. They should start in at least year 5.

Recommendation No. 65

Resources need to be improved for early intervention and counselling for issues causally related to drug use, such as childhood sexual abuse, child witnesses and victims of domestic violence, and children who suffer grief and loss issues such as the death of a parent.

BENEFITS GAINED BY NON-GRADUATES

At the most recent inter-agency meeting held on 13 March 2003, a number of residential rehabilitation agencies revealed defendants who had been terminated from the Drug Court program are returning voluntarily for residential treatment. Also, those who become parolees are coming voluntarily to residential rehabilitation programs for treatment. The agencies reported the increase in self-referrals from this group appears to be an outcome of the Drug Court program.

On 25 March 2003, Mr Lloyd, a psychologist and the Clinical Director of *Goldbridge* (and former Deputy Director of *Mirikai*) wrote:

‘While those clients that graduate obviously tend to do better than those who terminate treatment prematurely, in my experience the person benefits from his/her brief time in the Therapeutic Community—at *Goldbridge* we have had numerous calls from ex-Drug Court clients who were returned to custody wanting to come back to treatment because of the “seeds that were sown” in rehab. Thus it should not be assumed that only graduates constitute “successes” since it is highly likely that many who did not complete treatment have made positive gains and may well return to treatment of their own volition—which would probably not have happened had they not been exposed to treatment through the Drug Court pilot.’

The following case illustration demonstrates the point raised by Mr Lloyd.

Case illustration # 6

It is not uncommon for Drug Court participants to have started using tobacco and alcohol between the ages of 10 and 12. They soon progressed to cannabis and then to what are considered by some to be harder drugs²⁸. After several attempts

²⁸ However, many participants have described cannabis as the hardest drug for them to give up.

at rehabilitation some participants were still unable to achieve total abstinence. On occasion, the court was told a participant felt he or she was not right for the order. A few claimed to be uncomfortable with so many people around, and uncomfortable with the 'drug talk'.

Some participated and tried hard in the program, however found it difficult because of their own personality or mental health issues. However, many participants reported that even though they did not attain a drug free lifestyle and graduate from the Drug Court, they had started on their journey toward that goal and were able to articulate their belief that the Drug Court has helped them, that they intended to use that knowledge while gaining counselling in custody. Sometimes they said they felt they had let the Drug Court down by not being able to be successful.

Indeed, in a significant number of cases discussed further below, instead of the imprisonment they originally faced, participants earned final sentences of probation or suspended sentences of imprisonment owing to the real advancements they had made, especially when they had not re-offended while participating in the program.²⁹

A possible alternative approach (no silver medal)

While the graduation figures are considered to be first-rate, the numbers could have been higher if the Drug Court had the ability to 'graduate' participants who remained drug free and crime free for a significant period but who could not continue to comply with the strictures of the intensive program.

The last case illustration above is a good example. A significant number of participants had fulfilled two or three out of the 4 aims of the Act. Residual concerns remain, however, about a person's ability to sustain a new lifestyle if the person is unable to complete the whole program and in the process demonstrate abstinence for a substantial and sustained period.

Magistrate Thacker has raised the possibility of having the ability to conduct a 'positive termination' to recognise the person's substantial efforts but which does not carry with it the taint of failure.

In **Victoria**, under the *Sentencing Act 1991*, section 18ZK, the Drug Court may, on its own initiative, cancel the treatment and supervision part and custodial part of a drug treatment order if it considers a participant has, to date, fully or substantially complied with the conditions attached to the order and the continuation of the order is no longer necessary to meet the purposes for which it was made.

²⁹ Indeed, in some cases the court was told participants simply found the Drug Court program too hard or that it was 'easier to do their time'. In such cases they usually served their full initial sentence.

In **New South Wales**, as in Queensland, the *Drug Court Act 1998* originally listed aims and objects but no test or criteria for graduation such as those in Victoria. In Queensland, as in NSW, it was left to the court to develop the criteria as set out in the list of current phase requirements document (see Annexure 4).

In NSW, the process evaluation report states:

‘The criteria for graduation were considered to be too onerous, resulting in the small number of graduates from the Program to date. Substantial, sustained improvements are achieved by some participants who are unlikely to ever achieve the current criteria for Program graduation.’³⁰

One question raised by the NSW evaluation, which is also raised by the Queensland Drug Court experience, is whether a person who switches to a less expensive or less addictive drug and who has ceased offending to support a habit should expect to graduate from the program. It would, arguably, be open to do so under the Victorian section 18ZK test.

Indeed, the *Drug Court Act 1998* (NSW) was amended by Act No. 93 of 2002. Section 11 now provides:

‘11 Termination of program

- (1) The Drug Court may terminate a drug offender’s program:
 - (a) if the Drug Court is satisfied on the balance of probabilities that, having regard to the objects of this Act, the drug offender has substantially complied with the program...’

Further, the objects of the **NSW Drug Court Act**, section 3, were also relaxed, as follows:

Section 3 Objects

- (1) The objects of this Act are:
 - (a) to reduce the drug dependency of eligible persons, and
 - (b) to promote the re-integration of such drug dependent persons into the community, and
 - (c) to reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

In **Victoria**, the *Sentencing Act 1991* was amended in 2002 to create the Drug Court. The objects are listed in section 18X:

18X. Purposes of drug treatment order

- (1) The particular purposes of a drug treatment order are--
 - (a) to facilitate the rehabilitation of the offender by providing a judicially-supervised, therapeutically-oriented, integrated drug or alcohol treatment and supervision regime;

³⁰ See the Executive Summary, page ‘x’ and Discussion, pages 64-65, in *The New South Wales Drug Court Evaluation: A Process Evaluation* by the NSW Bureau of Crime Statistics and Research, February 2002.

- (b) to take account of an offender's drug or alcohol dependency;
- (c) to reduce the level of criminal activity associated with drug or alcohol dependency;
- (d) to reduce the offender's health risks associated with drug or alcohol dependency.

All pilot program magistrates support the call for clearer graduation criteria. However, they must not be expressed in a way that could result in the award of silver medals, that is, a reward for being second best which could encourage participants to aim for the lower standard. Because Drug Court participants were all supporting their habits through crime they should be encouraged at all times to achieve total abstinence. The nature of addiction is such that near enough is not good enough. The risk of relapse must be minimized by requiring most participants to complete the whole program.

The NSW approach to listing the objects is preferred because it ensures the achievement of the wider goals of reducing the level of drug dependency and associated criminal activity in the community (as currently listed in Queensland) while focusing the Drug Court's activities on the needs of the individual which must be addressed before that goal can be achieved.

The Victorian approach to the graduation criteria is preferred because it clearly states a logical test for determining whether to continue or terminate a program, taking into account the objects of the Act and the needs of the individual which must be addressed before the objects of the Act can be achieved.

Recommendation No. 66

The objects of the Act should be amended to focus the Drug Court's activities on the needs of the individual which must be addressed to achieve the broader goals of protecting the community, that is—

- (a) to reduce the drug dependency of eligible persons, and
- (b) to promote the re-integration of such drug dependent persons into the community, and
- (c) to reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

Recommendation No. 67

Section 34 of the *Drug Rehabilitation (Court Diversion) Act 2000*, should be amended to add in a more logical criterion to achieve graduation, namely, that the Drug Court may, on its own initiative, terminate the intensive drug rehabilitation program part of the order if it considers a participant has to date fully or substantially complied with the order and the continuation of the order is no longer necessary to meet the purposes for which it was made.

Other benefits

Other benefits which Queensland Health had been asked (in March) to quantify, but which were not able to be prepared in time for this report, included—

- **Reduced reliance on Methadone.** Even Drug Court participants who did not graduate were often reported by the Methadone clinics to be reducing their Methadone doses.
- **Longest drug-free periods.** When information given in pre-sentence reports is compared to the urine test results, many Drug Court participants who did not graduate experienced the longest period of abstinence they had ever had or had in many years.
- **Health and well-being improvements.** A direct result of achieving abstinence and an indirect result of attending treatment programs (often for the first time) produced visible improvements in the health and well-being of many participants.

Whether or not all participants graduate through all three phases, the Drug Court pilot program has still been able to impart to participants more knowledge and skills than they would have received in prison and they will be better equipped to try rehabilitation again in the future. This report demonstrates that whether or not all participants graduate through all three phases, the Drug Court pilot program has, overall, achieved the objects of the Act. It is to be hoped that the methodology of any further evaluation or analysis takes into account these types of benefits.

BENEFITS TO THE COMMUNITY

As well as achieving a decent number of graduations by offenders who became drug free and crime free, the community benefited significantly from the pilot Drug Court program in other ways.

Any further Drug Court evaluation or analysis must look at publicly funded costs as 'opportunity cost' resources.

An opportunity cost approach estimates resources which might be available for use in other contexts. For example, if substance abuse treatment reduces the number of times a defendant is subsequently imprisoned, the local prison or watch-house may see no immediate budgetary saving but will have an opportunity cost resource in the form of an available bed.

Indeed, if more Drug Courts are established in Queensland, it would take only 10 courts with a cap of 40 or 50 participants in each to empty one prison or relieve the pressure to build another prison for many years. There are, in effect, five Drug Courts already.

It is to be hoped such assets, and any efficiencies they may produce, are considered in the methodology for any future cost studies.

COMMUNITY SERVICE

A participant may be ordered to perform unpaid community service either as part of the initial intensive drug rehabilitation order, or at a later time as a sanction for a breach of the order. The number of hours to be performed can be increased as a sanction or reduced as a reward. The total number of community service hours must not exceed 120 hours.

Community service has been a useful tool as a non-custodial alternative when sanctions need to be imposed. It can provide therapeutic benefits to the participant. Many Drug Court participants have been unemployed for lengthy periods. The court often tells them the work will provide exposure to various occupations and can provide a sense of self-worth after seeing the fruits of their labour. They are also told they can start putting something back into the community straight away as part of their rehabilitation.

In fact, as at 31 March 2003, a total 4,063 hours had been undertaken. Calculated at the same rate as fines converted to fine option orders under the *State Penalties Enforcement Act 1999* (currently a cut-out rate of \$15 per hour), this equates to a \$60,945 benefit put back into the community. There were a total of 2,020 hours remaining to be completed (worth \$30,030).

The community in each Drug Court district benefited as follows—:

Beenleigh 1,419 hours (\$21,285)
Ipswich 1,244 hours (\$18,660)
Southport 1,400 hours (\$21,000)

(Source: Department of Corrective Services COSM database).

The limit to the number of hours of community service that can be ordered and remaining to be performed concurrently under the *Penalties and Sentences Act* 1992, section 107, is 240 hours. Under the *Drug Rehabilitation (Court Diversion) Act* 2000, sections 23(1) and 32(1)(h) the maximum hours under an intensive drug rehabilitation order is limited to 120 hours.

When the drafters set this limit, there may have been concern about participants having outstanding community service orders or fine option orders at the same time. There may have been concerns about the number of available work projects. Whatever the reason, the lack of sanction options and the limit of 120 hours have contributed to the high rate of imprisonment sanctions imposed.

Having a 240 hour limit would clearly provide further benefits to the community, provide an alternative to imprisonment in appropriate cases and save on costs of imprisonment. It is always possible the hours may be reduced in a particular case if the participant is rewarded for improved compliance and progress.

The approach in Victoria, under section 18ZL of the *Sentencing Act* is to empower the Drug Court to impose a maximum of 20 hours of community service per breach, without limiting the total number of hours that can be imposed. This approach does not address the risk of over-burdening a defendant with community service where other hours have been ordered by another court.

On the other hand, having a limit of 20 hours per breach also means there will be cases where 20 hours will not be an adequate punishment for the breach so that imprisonment becomes the next viable option. The court should retain the discretion as to how many hours to impose. If a maximum were to be applied it would need to be high enough to give the court the flexibility to avoid imprisonment if appropriate.

Recommendation No. 68

The *Drug Rehabilitation (Court Diversion) Act* 2000 should be amended to allow the court to impose up to 240 hours community service (instead of just 120), irrespective of the number of outstanding hours under another court order. The Drug Court should be required to take into account any outstanding hours under another court order and when the defendant must have the hours completed under that order. The Drug Court should be restricted to imposing a maximum of 60 hours of community service per breach.

NUMBER OF PRISON DAYS SAVED

While defendants must be facing a term of imprisonment to qualify for an intensive drug rehabilitation order, the final sentence for graduates, as one would expect, has always been non-custodial.

The Drug Court State Manager advises that the production of 53 graduates as at the end of March 2003 saved the government 68 years worth of imprisonment costs³¹. Of course, the government still had to bear the cost of imprisoning many of those who did not graduate and who would have been imprisoned anyway had there been no Drug Court.

However, even then, final sentences of imprisonment were, on average, for periods of 19% less than the initial sentences owing to the benefits the program gave some people who were not able to achieve complete recovery.

PARENTING AND FAMILY REUNIFICATION

Although several participants took over 18 months to graduate from the Drug Court program, they succeeded in stabilising their domestic environment and regained the custody of their children.

There are innumerable and immeasurable benefits to be gained by the community when improvements in parenting skills and family reunification are achieved.

Case illustration # 7

The Drug Court program can take credit for several cases where families had been torn apart by drugs and violence and rebuilt via achieving abstinence and improvement of parenting, budgeting and other life skills. The parents and children were obviously hugely rewarded. Society gained even more.

In some participants' extended families, almost all family members were, or had been, in prison (some saying they did not want to be the same). Many were thus introduced to drugs by a parent or family member. Some had good high school, college or university education. Some had unique artistic, musical or other talents. Some had the house, job and car (even a large lottery win) which many Australians aspire to earn yet lost it all to drugs. Some participants received intensive weekly counselling for unresolved grief and guilt issues involving their own abandonment or the death of children and other loved ones, marriage breakdown, sexual or other physical abuse. Women have had to give up children

³¹ Mr Wiman, Drug Court State Manager, advised as follows: 'The total number of days that the 53 graduates (to 21 March 2003) spent on sanction prior to their graduation was 558 days (and 5 hours) or 18.3 months. The total (initial) sentence given to graduates to this date was 836 months. Savings in prison months was therefore 836 minus 18.3, or 817.7 months. This represents 68.1 prisoner years.'

at birth. Men and women had lost custody of their children to the State or had been reduced to living on the streets or in cars, sometimes relying on social security or the earnings of male and female prostitution. During the formative years, their children were sometimes left without proper supervision and were not regularly attending school. They were sowing the seeds of despair and failure for another generation, spending any money they had on drugs. They were frequently being evicted and losing their capacity to secure private or public housing in future.

The Drug Court ensured participants who were also parents undertook programs such as the Positive Lifestyle program and Positive Parenting program. Families were able to be assisted with the Drug Court's Supported Accommodation program until the parent(s) was/were ready to graduate.

The Department of Corrective Services officers worked closely with Department of Family Services (DFS) personnel to initiate co-ordination of information between the two departments so that DFS could become familiar with obligations imposed on participants by the Drug Court. Similarly, if a participant's partner was the subject of a probation order the Drug Court correction officer and the partner's correction officer were able to co-ordinated their efforts,

Whilst on the IDRO many such participants have managed to repay their debt to Queensland Housing to enable them to secure a Queensland Housing property. Once they had secured stable accommodation, a significant number progressively regained care of their children and obtained employment before graduating.

Several female participants gave birth to healthy drug-free babies. Scores of children became well behaved and well dressed when accompanying their parents to court and are now well nourished and attending school or pre-school.

CONCLUSION From this case illustration, the obvious personal and social benefits of the Drug Court program include—

- ✓ A cessation of criminal activity.
- ✓ Abstinence from drug abuse.
- ✓ A reduction on the pressure on prison resources.
- ✓ A reduction in the drain on Child Welfare funds.
- ✓ Payment of restitution to victims.
- ✓ Repayment of debts to Queensland Housing.
- ✓ Independent accommodation and reduced drain on public housing funds
- ✓ A reduction in the likelihood that children will follow their parents and siblings into a life of drug abuse and crime, and avoiding the future cost to society.
- ✓ Improvements in health and consequent reduction in the drain on public health funds in future.

- ✓ Birth of drug free babies.
- ✓ Healthy settled children attending school.
- ✓ Adults and children learning respect for authority.
- ✓ Employment and less drain on unemployment funds.
- ✓ Further education and consequent improved employment and earning prospects.

Some of these benefits are examined in more detail below.

BABIES BORN DRUG-FREE

A total of 6 babies were born drug-free and outside of prison-custody while their mothers participated in the Drug Court program.

Two mothers were on Methadone at the time so one still had a controlled situation where the risks were minimised due to the medical and clinical intervention and monitoring

Also, without Drug Court intervention, these women would have more than likely had intervention by the Department of Family Services (as many had in the past) and could have been separated from the babies causing more trauma for mother and child and brought other social ramifications in the future.

PAYMENT OF DEBTS OWED TO PUBLIC PURSE

Most Drug Court participants are impoverished or rely on Centrelink benefits. To obtain and maintain stable accommodation after gaining a drug-free and crime-free lifestyle requires that participants clear as many debts as possible, learn to budget and regain credibility and acceptance by real estate agents and government housing and rental agencies. They are therefore assisted by the Drug Court program to identify all debts, learn budgeting skills and are encouraged to pay off Housing Commission and Residential Tenancy Authority debts.

In the same way, participants are encouraged to identify outstanding fine warrants and to pay off all outstanding fines or to seek conversion to community service through the State Penalties Enforcement Registry (SPER). In fact, most participants nearing graduation come to a self-realisation of the need to 'clear the decks' so that they will not be over-burdened or suddenly arrested again, after graduation. They start to talk about re-starting their lives with a 'clean slate'.

RESTITUTION

The aim of rehabilitation is to enable defendants to become drug-free and in turn crime-free. They should become better parents and productive members of society. While they are subject to the intensive drug rehabilitation order they are encouraged to develop victim empathy. Participants are encouraged to make regular affordable fortnightly payments towards restitution. If the total restitution owed to all victims of one person's crimes is a large sum, then at graduation and final sentence the court will usually order a proportion of the restitution to be paid. However, the court must be careful not to order payment of such a large sum of restitution as to be insurmountable or crushing to the graduate. The community will be best served if the former offender can get on with providing for him or her self and family without falling back to old coping mechanisms such as using drugs and committing offences.

Indeed, graduates are usually people for whom victim empathy has re-emerged and who make serious efforts to pay as much restitution as they can afford before coming forward for graduation. In some graduation speeches graduates have apologised to their victims and to the community for all the trouble they have caused.

EDUCATION

Drug Court graduates have benefited from completing or entering various classes and courses at TAFE and universities. These have included literacy, numeracy, hospitality and catering, computer programming and networking, introduction to computers, horticulture, physical instruction, drug and alcohol counselling, heavy machinery tickets, defensive driving, to name a few.

The obvious benefit is to enhance employment prospects. However, the sense of achievement in completing these courses, and in becoming employed or more employable also raises self-esteem and sustains motivation.

Case illustration # 8

Many visitors to the Drug Court program³² have commented that the literacy levels and verbal communication skills among participants was higher than they expected. However, for a significant minority of Drug Court participants, literacy remains a glaring issue.

³² The Drug Court has attracted many visitors, including Queensland magistrates, over 20 Government Ministers and MLAs, health professionals including psychiatrists and nurses, interstate and international justice officials, interstate and international judicial officers, academics, Drug Court graduates, interested parents and other members of the public. The pilot program magistrate always tries to make time to speak with any such visitors and answer their questions about the Drug Court. Comments by some of the visitors appear at the end of this report under the heading 'Testimonials'.

Some participants were referred to the Drug Court with a lengthy history of substance abuse which started at a very young age (see discussion above about 'Age at first use'). As well as affecting psychological development the drug abuse also meant missing a lot of education.

It has not been uncommon to find defendants within the grip of addiction well into their 30s and 40s after dropping out of school in their early teens being left with reading and writing difficulties. In turn, this affects their confidence, comprehension and ability to undertake the cognitive programs.

As well as the usual array of conditions for counselling and other programs these people need to be ordered to attend literacy classes. However, despite the number of programs being funded by the State and Commonwealth, it still seems too difficult to get into one and the courses do not seem to commence often enough. One-on-one tutoring would be even better.

The Drug Court has had reasonable success with several illiterate Drug Court participants. They improved their respective reading and writing levels to a higher grade level. They went from getting family members to write the weekly court journal to writing their own. They took pride in their achievements when the pilot program magistrate asked them to bring the course material to court.

In the process they learned to trust, and work with, authority figures. At one court review a participant spoke about going to the police to seek assistance (which was verified) to resolve a dispute instead of taking matters into his own hands as he would previously have done. At another review a participant spoke about advising a relative about the virtues of seeking counselling for a personal issue. Through gaining several new skills whilst on the program these Drug Court participants are now able to set realistic goals and have demonstrated the dedication to work towards reaching them.

REDUCTION IN OFFENDING

At last count, as at 6 May 2003, there were a total of 12,403 offences referred to the Drug Court. The distribution of these referrals is shown in the following Table.

Number of referred charges as at 06.05.2003			
Assessment stage	Phase 1	Phase 2	Phase 3
11,517	760	96	30

There were a total of 11,517 offences referred to the Drug Court during the preliminary assessment stage before an intensive drug rehabilitation order was made or refused for each individual. The majority of those offences were property offences of one sort or another. This represents an average of 20 offences per referred offender. While offenders were participants in phase 1 of the Drug Court

program a further 760 total offences were referred. This dropped dramatically to 96 offences while in phase 2 and a mere 30 offences while in phase 3.

These figures do not accurately reflect the true (greater) level of reduction in offending while participants remain on the Drug Court program because they include some offences committed before the person originally came to the Drug Court. Many offenders had further charges for such pre-IDRO offences referred to the Drug Court while they participated. Therefore, many participants felt encouraged to have these matters cleared up and dealt with before the pilot program magistrate while they were in recovery mode. Indeed, those undertaking the 12 step program are actively encouraged to acknowledge and address past wrongs.

Unfortunately the Drug Court database figures for referred offences can not distinguish between those offences committed before and after an IDRO was made.

However, on any view of the figures, the rate of offending has reduced dramatically during the period participants remained on the program and the longer a person could be retained the greater the reduction.

Although most offenders would have actually served an immediate term of imprisonment had there been no Drug Court, the majority of sentences were short enough to expect offenders to have been released without treatment for their drug addictions and to have continued to offend at a similar rate to their offending before being incarcerated.

A BRIEF WORD ABOUT THE NORTHERN PILOT

For Cairns and Townsville, the amendments to the legislation commenced operation on 1 November 2002. Referrals for assessment were then able to be made. The pilot program magistrates commenced sitting as Drug Court magistrates on 15 November 2002. In this part, the pilot program magistrates for each of the North Queensland pilot program courts provide what relevant information could be contributed to this report, as at 2 May 2002, in the short time they have been operational.

CAIRNS

Magistrate Previtiera provided the following information for inclusion in this report:

'The Drug Court Pilot Program commenced in Cairns on 15th November 2002. There have been 22 referrals to the Court; 9 participants have received an IDRO; 4 defendants are awaiting sentencing; 5 defendants have been remitted back to the Magistrates Court for sentencing (the pilot program magistrate sitting as a magistrate); 3 people have absconded whilst awaiting sentencing, one person has absconded whilst on an IDRO and no persons have yet been terminated from an IDRO.

'Ms Tina Previtiera, Magistrate at Cairns, presides over the court except for a week each month when she is required to preside over circuit courts elsewhere. ...

'The Cairns Pilot Program Drug Court is currently undertaking some research through the prosecutor in relation to the number of persons who would have been referred to the drug court but for the criteria that a defendant cannot have previously served a term of imprisonment greater than 6 months. The number in April who would have been eligible, but for the disqualifying term of imprisonment criteria, is 9.

'This criteria is resulting in the majority of persons referred to and/or sentenced in the Drug Court being those charged with actual drug offences (usually possession of small amounts of marihuana or possession of a utensil), the commission of which breaches a community based order or orders; or such offences combined with minor dishonest offences. There are only 2 participants currently on IDROs who have been charged with a large number of property offences and sentenced to 18 and 28 months imprisonment respectively, suspended for an IDRO. Otherwise, only one other participant has been sentenced to a term of imprisonment greater than 6 months, and 3 participants have been sentenced to terms of imprisonment of 2 months only.

'It is therefore considered that the disqualifying criteria of a previous term of imprisonment of greater than six months be amended to a term of imprisonment of at least 12 months.

'There are some concerns regarding the rehabilitation centre model adopted in Cairns. Initially, Queensland Health funded St Vincent's rehabilitation centre to house participants (on an IDRO and awaiting sentence) in 2 separate accommodation arrangements.

...

'There are now 2 residential dwellings in the inner city in which 3 of the participants on IDROs reside. Two participants reside in one dwelling with a single participant in the other. It is not known whether or not these dwellings will provide permanent accommodation arrangements but this should be a priority to ensure as much stability to these participants as possible.

'The zoning of the 2 residential dwellings, however, means that no formal programs can be conducted on site and these activities must take place instead at ATODS premises. One of the residential dwellings is utilized as the core meeting location for all of the clients on the program between 8.00am and 10.00pm. At approximately 8.00am, the participants are picked up and delivered to this dwelling for the day. The other locations serve as sleeping locations and the clients are dropped back at these respective addresses at approximately 10.00pm. It is also understood that a large part of each day for any participant involves transportation to and from ATODS given the restriction upon activity at the residential dwellings. It is not known whether or not this time could be more beneficially utilised by the participants.

'The residences are each visited only randomly through-out the overnight period. There are also only random visits between the hours of 4.00pm and 7.00pm. Otherwise there is no supervision during this period.

'There have been unsubstantiated complaints that during these periods of random supervision, participants have been leaving the premises and past participants have visited the premises at various times of day and night.

'There have been confirmed complaints of a participant taking a non-participant to stay at the premises overnight and taking drugs into the premises and offering them to other participants.

'This rehabilitation centre model does not differ markedly from the Supported Accommodation program. There are, however, high risk/high need/unstable/chaotic clients who will only be able to benefit from a more structured environment than that offered by the St. Vincent's model. There is a risk, therefore, that there will be participants who will not be aided by this model.

'On that basis, the court will not be able to place participants on IDROs due to the inadequacy of the facilities required to meet those special needs participants.

'It is therefore recommended that funding be made available to staff the centre with workers overnight on an awake basis.

'These matters referred to above have been ongoing since the commencement of the court. There are, however, many positives to the program. These include the members of the drug court team. Each member is highly committed and motivated to the program and has the best interests of each participant in mind when making recommendations in team meetings. The experience of the ATODS and corrective services officers is invaluable and creative options are being generated by all team members to meet the individual participants' needs.

'On the whole, the program is working very well given the limitations and difficulties referred to above. Accommodations have to be made to meet the inadequacies and team members and all agency workers are fully aware of this and acting to tailor the program accordingly.'

TOWNSVILLE

Magistrate Hillan provided the following information for inclusion in this report:

1. 'Six Months Disqualification period of Imprisonment. I consider that it should be abolished. If this was to remain in the legislation it should relate to criminal offences only and not simple offences such as Traffic matters e.g. disqualified driving.
2. 'The pilot program in Townsville has been in operation from November 1, 2002. Since that time there has only been one referral from...Aboriginals and Torres Strait Islanders. After the program was explained, he withdrew his application as he considered it too onerous. No further applications have been received. My concern is that unless the disqualifying term of imprisonment is removed or alternatively the term is extended from 6 months to 12 months, or longer, there may be no referrals from this group.
3. 'Resources were wasted on some occasions when a referral is made to the Drug Court. Queensland Health conducts a drug dependency test. At the same time the Department of Corrections begin their investigation for a pre-sentence report. Shortly thereafter the applicant indicates he is no longer interested in the program. There should be a better way. No suggestions offered at this stage.
4. 'The postcode 4816 has been deleted from the Regulations. The postcode 4816 takes in mainly Palm Island. Whilst I understand the reason for the deletion is one of logistics (the island is a 20 minute plane flight from the mainland and it would be both difficult and expensive for the Drug Court van to travel by barge) the deletion has effectively prevented Aboriginals on the island from applying to get onto the program.
5. 'I would submit that the Act should be amended in respect of where there is a reference to 7 days and 14 days imprisonment to 8 days and 15 days respectively. This is required because of the calculations by the prison authorities. Example if detoxification is required for 7 days the prison authorities calculate that the participant is to be brought back to the drug court

in 6 days time (that being a non drug court date in Townsville). Drug Court days conducted in Townsville are only held on Wednesdays and Fridays.

6. 'The Act presently requires reviews to be held monthly unless otherwise directed by the Court. In Townsville I have been directing participants to appear every 4 weeks. Should the participant breach the order, a reasonable direction has been given to attend on the next drug court date. At this stage I have some reservation about 4 weekly reviews. However I will continue to do so at this stage.
7. 'There are only two Rehabilitation Centres used in Townsville. Both centres do not have 24 hours supervision of inmates. I have concerns about it. Recently I have had a couple of participants leave the premises after hours which were not authorised for which sanctions were given. One participant has now been deemed not welcome back at both Centres and is presently the subject of a termination hearing.'

The Townsville back-up Drug Court magistrate (Mr David Glasgow) has also suggested the creation or designation of position of Co-ordinating Drug Court Magistrate with the power to issue guidelines.

This report endorses the recommendations by each of the magistrates quoted above. Some of these recommendations are dealt with in more detail in other parts of this report.

Recommendation No. 69

A second magistrate stationed in each of the courts in Cairns and Townsville should be trained to become back-up Drug Court magistrates.

Recommendation No. 70

If the model in North Queensland is to remain in pilot mode, the disqualifying criteria of a previous term of imprisonment of greater than six months should be amended to a term of imprisonment of at least 12 months. It should also apply only to previous convictions for indictable offences and not for simple offences such as Traffic matters e.g. disqualified driving.

Recommendation No. 71

Instead of a mere supported accommodation model for defendants requiring residential treatment, the cities of Cairns and Townsville should be funded to establish holistic residential programs and therapeutic communities along the lines of those available in Brisbane, Logan and Gold Coast.

Recommendation No. 72

As the number of Drug Courts has grown and is likely to continue to grow, a position of Co-ordinating Drug Court Magistrate should be created or designated. In order to maintain uniformity of practice between the various courts, the position could be accompanied by a power to issue guidelines (similar to the position of State Coroner). *Alternatively*, it may be thought the Chief Magistrate could continue to exercise the power to issue guidelines in consultation with the Co-ordinating Drug Court Magistrate.

ROLLING OUT DRUG COURT PROGRAMS

COMMON GOOD v. GREATEST GOOD

The South-east Queensland Drug Court pilot began in June 2000. Since November 2002 the Queensland State Government has been trialling a second Drug Court model concurrently in Cairns and Townsville.

Of concern are the financial, political and social difficulties associated with the formulation of a Drug Court policy which will achieve the broadest benefits for the greatest numbers in a decentralised State with diverse concentrations of infrastructure, counselling services, treatment programs and other resources. There may be a difference between a policy which aims to achieve the common good and one which aims to achieve the greatest good. Resources and other circumstances will sometimes understandably limit governments and policy makers to achieving the common good.

It is recognised that in metropolitan areas, such as Cairns, Townsville and South-east Queensland, there are likely to be many more rehabilitation resources (for example, counselling services) and infrastructure (e.g. residential rehabilitation facilities) than in regional and rural communities. Of concern to the author, is the ongoing discussion about finding even cheaper programs when it has been reported to the pilot program magistrate that the Drug Court program is cheaper than imprisonment. This is also corroborated by evaluations of other Drug Courts, including the NSW Drug Court upon which the Queensland Drug Court was modelled.

The North Queensland model has been discussed above. It is acknowledged it may be too early to make a proper evaluative comparison. However, while a different model continues to run and remains subject to a comparative evaluation which can not realistically be completed for another two years or so (the South East model has been going for three years), it would not be legitimate to radically change the South-east Queensland model toward a North Queensland model. Meanwhile, many staff members in government and non-government stakeholders are on secondment or temporary contracts and have no certainty of career prospects. Some have left and others may follow, diminishing the pool of experience and expertise which has been nurtured.

Further, the North Queensland model appears to discriminate against Aboriginals and Torres Strait Islanders and others who have been previously sentenced to more than six months imprisonment. Therefore even if the imprisonment was for something unrelated to their drug use (for example, unlicensed driving) they will be disqualified. The model is well intentioned, i.e. to try to get people into treatment before they become institutionalised or entrenched in a criminal lifestyle. However, the reality is there is no predictable and dependable

correlation between a person's prison history and the extent of that person's addiction.

The North Queensland model is more likely to attract people facing shorter sentences because they may be facing imprisonment for the first time. This will not always be a motivating factor for rehabilitation.

While the South-east Queensland model has had success with some people who had short sentences, many also decided they could be out of jail much sooner than it would take to do the Drug Court program and elected to be remitted to the referring court or to be sentenced without an intensive drug rehabilitation order.

While well intentioned, the North Queensland model would discriminate against people with longer previous sentences if the South-east model is simply discontinued.

The time taken by participants to complete the Drug Court program bears no relationship to the length of the sentence the court would otherwise impose for the offences. There appears to be little correlation between the length of previous sentences (taken by itself) and the likelihood of the offender successfully completing the intensive drug rehabilitation program. Nor in the long run is there much difference between legally coerced and voluntary treatment outcomes³³.

Other factors may be better predictors of engagement, including age, number of years addicted, which drugs are involved, length of criminal history, severity of offences and severity of likely sentence, and level of family and other support. In a study of the Brooklyn Treatment Court from 1996-2000³⁴, Rempel and DeStefano examined the predictors of engagement in the court-mandated treatment program. They found prior misdemeanour convictions predicted drop-out, whereas prior felony convictions had no effect. While they felt more research was required they also said research would benefit from distinguishing between types of offending instead of using aggregate measures such as total prior convictions.

Rempel and DeStefano also listed the level of coercion, rapid initiation into treatment, older age, and facing more incarceration time as the stronger predictors of positive engagement.

The NSW Drug Court evaluation was consistent with the later view (facing more incarceration). To see if there were any predictors for retention on the program

³³ See Krazlin et al (1999) 'An Evaluation of the WA Court Diversion Service', a paper presented at the ANZSOC Conference, Perth, WA. See also W. Hall (1997) 'The role of legal coercion in the treatment of offenders with alcohol and heroin problems', *Australian and New Zealand Journal of Criminology* 30: 103-120.

³⁴ See J. Hennessy & N. Pallone (ed), 'Drug Courts in Operation: Current Research' Haworth Press, pp 87-124, (2001); co-published simultaneously as *Journal of Offender Rehabilitation*, Volume 33, Number 4 (2001).

the evaluation examined gender, age drug of choice, relationship status, ethnicity, highest level of school achieved, prior convictions and length of suspended sentence on entering the Drug Court program. The evaluation report states that 'only the length of suspended sentence was a significant predictor of a participant staying at least 12 months on the program or graduating within 12 months'³⁵. This conclusion was also derived from the fact 56% of the baseline sample were given a suspended sentence of 6 months or greater on commencing the NSW Drug Court program. Of those, 47% remained on the program after 12 months or had graduated compared with only 25% of those given a suspended sentence of less than 6 months. Prior convictions were not said to be a significant predictor of retention.

The NSW findings are mirrored in South-east Queensland where only one out of 53 graduates to 31 March 2003 was given an initial Drug Court sentence of less than 6 months imprisonment. Indeed, in the South-east Queensland pilot those who had served prior sentences of more than 6 months imprisonment and who had initial sentences of more than 6 months imprisonment had a higher likelihood of achieving graduation. For all intensive drug rehabilitation orders made as at 31 December 2002 the mean initial sentence was 478 days or 15.7 months.

It is said by professionals who work with drug addiction that addicts often need to reach a low point in their life before becoming sufficiently motivated to change. That low point may be something different for every person, for example, the impending birth of a child, loss of custody of children, facing imprisonment for the first time, having been imprisoned once too often already, discovering you are Hepatitis C positive or some other major health crisis, loss of a relationship, loss of a house, a business, or loss of employment, to name a few.

Before committing to a Drug Court program, it would be logical for each individual to ask 'what do I stand to gain?' and 'what do I stand to lose?' Some reasons why prior convictions or short prior sentences (taken by themselves) may not predict positive engagement include—

- The defendant may see greater benefits in simply serving out a short sentence.
- If the likelihood of imprisonment is borderline, the defendant may take a chance the sentence will not involve imprisonment.
- The defendant may wish to enter prison to wear a badge of honour or as part of a right of passage.

METROPOLITAN AND REGIONAL DRUG COURTS

A simple solution to rolling out Drug Court programs would be to take advantage of the infrastructure and resources available in metropolitan areas and keep

³⁵ See *The New South Wales Drug Court Evaluation: Health, Well-being and Participant Satisfaction* by the NSW Bureau of Crime Statistics and Research, February 2002, at pp 25–26.

running the South-east model in those cities as it has evolved in South-east Queensland with the improvements and modifications recommended in this final report or as otherwise thought necessary. Alongside this model the current North Queensland model and BERIT could be established in other centres where there is no infrastructure or if it is too expensive or impractical (e.g. because of low population) to establish a full Drug Court program.

The pilot program magistrate proposes that the current South-east model would become the Metropolitan Drug Court model. The current North Queensland model would become the Regional Drug Court model. For reasons stated by the Northern pilot program magistrates themselves earlier in this report, it is proposed the disqualifying criteria for the Regional Drug Court model be removed (preferably) or raised from six months previous incarceration to at least 12 months.

The proposal is explained below in greater detail in **Recommendation No. 74**.

It is accepted there will always be a cap on the number of participants any therapeutic program can handle, especially for a South-east Queensland model, due to the scarcity of resources or the impracticality of establishing further infrastructure in some areas of the State. Transfers would only happen when vacancies exist. A simple centrally co-ordinated administrative call-over system would sort out priority rankings among defendants.

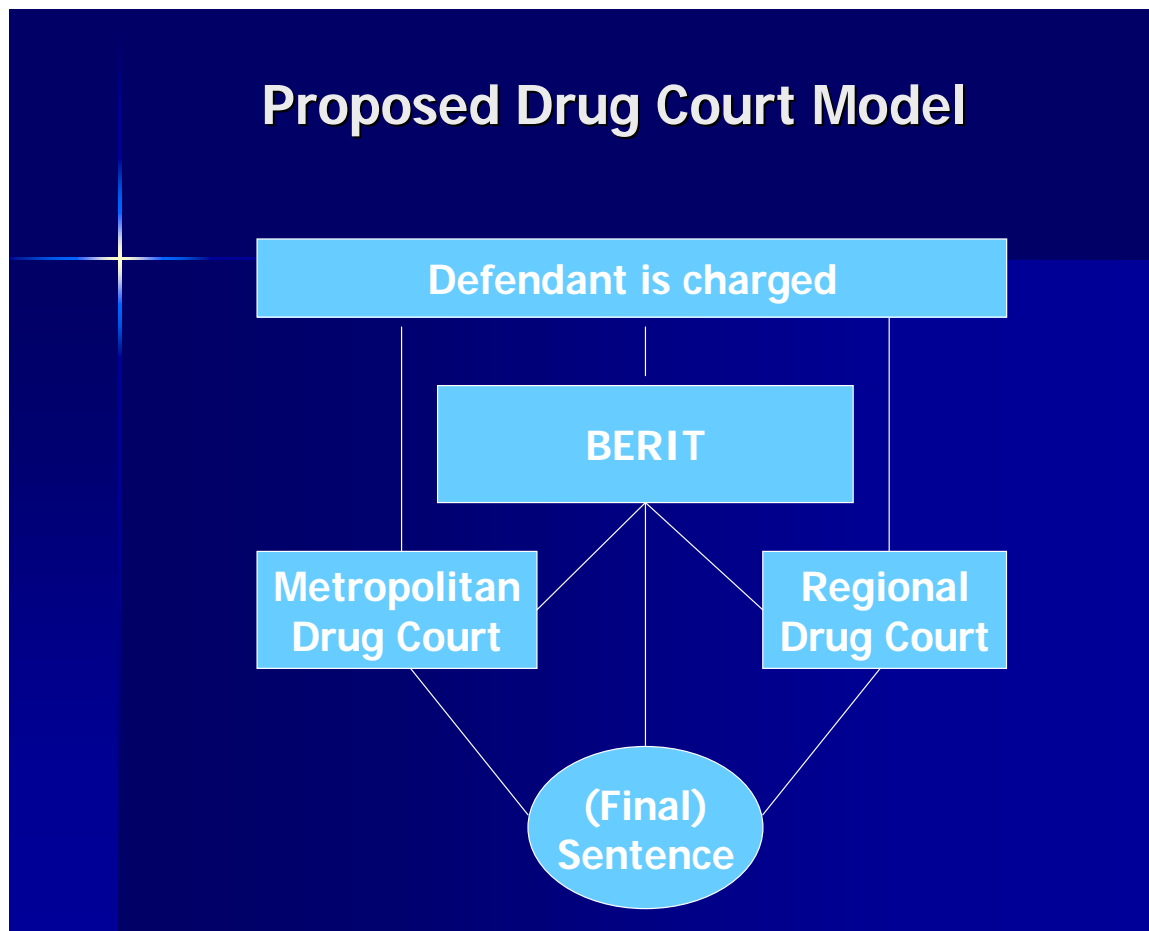
The proposed two-stream Drug Court model would alleviate many of the problems associated with making rehabilitation available to as many people as possible in a vast decentralised State with diverse rehabilitation services and scarce resources. This model would not be difficult to implement and co-ordinate, over time. Smaller towns can start with an inexpensive BERIT program followed by small Drug Court Outpatient programs. Over time, as populations grow and resources become available, more small cities may be able to commence Metropolitan Drug Court programs along the same lines as the current South-east model.

This proposed approach would, as in other States, provide a broad continuum of policy initiatives targeting drug dependent defendants at most stages of their contact with the criminal justice system and defendants with different levels of need. It would add logically to the developing range of diversion options now available in Queensland along with Police Diversion, Court Diversion and Drug Courts. The expanded health services would also benefit the wider community as they would not need to be limited to Drug Court participants.

In the USA, many Drug Court programs are now expanding their targeted population, based on the success of their initial implementation experience.³⁶

It would clearly be counter-productive to now whittle down or scrap the South-east Drug Court model, despite its success, by limiting the targeted population to people who have only slight criminal histories. The experience of the Courts is that many drug dependant offenders are doomed to relapse and re-offend after serving a term of imprisonment unless lengthy and intensive rehabilitation measures can break the cycle.

The detail of the proposed Drug Court model is set out in the recommendation below. The following chart depicts the recommended model which offers an affordable way to achieve the greatest good.



³⁶ See the evaluation report *Drug Courts: An Overview of Operational Characteristics and Implementation Issues* at the Judicial Council of California website at : <http://www.courtinfo.ca.gov/programs/collab/drug.htm>

Recommendation No. 73

The State Government should examine the feasibility of implementing a Two Stream Drug Court model, overlaid by a BERIT program.

Like MERIT in NSW, the BERIT program (Bailed Early Referral Into Treatment as discussed above) could be established in all Queensland Health Area offices to accept referrals from any court, including superior courts. However, the shortcomings and concerns outlined in Annexure 1 of this report would need to be addressed, such as adequate and reliable drug testing and breaches of bail. BERIT would provide basic pre-sentence treatment regardless of whether a person wanted to apply for a Drug Court program. If a defendant had such an intention the Drug Court could take into account performance on the BERIT in deciding suitability.

It is proposed the current South East Drug Court model become the **Metropolitan** Drug Court model with all the infrastructure and resources to run both residential and outpatient programs without any disqualifying criteria related to previous terms of imprisonment. A plea of guilty and the other current Drug Court eligibility criteria will remain the same as they are at present.

It is proposed the current Northern model become the **Regional** Drug Court model. Preferably, there would be no disqualifying criteria based solely on prior imprisonment. However, if the government decides to retain such disqualifying criteria for the Regional Drug Court model the disqualifying criteria should be previous imprisonment for 12 or more months, instead of the current 6 months.

Assuming the government keeps the disqualifying criteria the two models would operate together as follows.

If a defendant has previously been sentenced to serve 12 or less than 12 months imprisonment he or she will qualify for both the Metropolitan and Regional Drug Court models.

If such a defendant is assessed to require an **outpatient** program, then depending whether the court is in a city or regional area the defendant can undertake either—

- a. The Bailed Early Referral Into Treatment (BERIT) program (a pre-plea program), and/or one of the post-plea programs, namely—
- b. The Regional Drug Court outpatient program, or
- c. The Metropolitan Drug Court outpatient program.

To sustain a Regional model a minor expansion of Queensland Health and Department of Corrective Services programs would be required in some towns, perhaps by reference to a pre-determined minimum population level. Larger towns could also have a supported accommodation program for outpatient program attendance.

If the defendant is assessed as requiring **residential** treatment and intends to plead guilty to the offence, the court could transfer the defendant to a Metropolitan Drug Court program. If the defendant is not willing to do so he or she can be sentenced in the usual way. However, if the defendant has successfully completed the BERIT program he or she may have that fact taken into account when sentenced.

If a defendant has previously been sentenced to serve more than 12 months imprisonment he or she will qualify only for the Metropolitan Drug Court model.

However, if such a defendant is assessed to require an **outpatient** program the court could still keep the defendant in the town while he or she undertakes the Bailed Early Referral Into Treatment (BERIT) program before a plea is entered to the charges.

The same Queensland Health and Department of Corrective Services programs referred to in the first scenario would be relied upon.

If the defendant is assessed as requiring **residential** treatment the court could transfer him to a Metropolitan Drug Court. If he is not willing to do so he can be sentenced in the usual way.

In either scenario, the BERIT program would be offered before the defendant is asked to enter any plea. Performance on the program will determine whether the defendant requires further treatment, or whether the defendant is suitable for an intensive drug rehabilitation order. The results may also be taken into account on sentencing, irrespective of whether the defendant goes on to further treatment.

In either scenario, if a defendant is assessed to require residential treatment, and the defendant successfully completes a residential program, he or she could be rewarded, if it is desired, with a transfer back to the home town (or nearby town) to complete the Drug Court program as an outpatient. This would overcome the problem of not being able to offer treatment in regional areas to people who have previously been sentenced to lengthier terms of imprisonment.

Transfers would only happen if and when vacancies exist. A simple centrally coordinated administrative call-over system would sort out priority rankings among defendants.

Obviously, each model could operate just as effectively without any disqualifying criterion based solely on prior imprisonment. The only defining factor would then be whether the defendant needs residential or outpatient treatment, and perhaps whether the person failed to complete a BERIT program.

This two tier Drug Court model is better suited to roll out over time. Smaller towns can start with an inexpensive BERIT program followed by small Regional Drug Court Outpatient programs. As populations grow and resources become available, more small cities and large towns may be able to commence Metropolitan Drug Court programs.

THERAPEUTIC COMMUNITIES IN PRISONS

Along with the current continuum of drug policy initiatives including Police Diversion, Court Diversion and Drug Courts, the Drug Court experience in South-east Queensland also calls out for the introduction of therapeutic communities or other intensive interventions which are not currently available in correctional centres.

What is a therapeutic community?

Many residential drug rehabilitation programs in Australia are constructed around a therapeutic community. By 2001 there were therapeutic communities in more than 50 countries. The following definition was given in 1991 at a general meeting of the European Federation of Therapeutic Communities.

‘A therapeutic community is a drug-free environment in which people with addictive (and other) problems live together in an organised and structured way in order to promote change and make possible a drug-free life in the outside society. The Therapeutic Community forms a miniature society in which residents, and staff in the role of facilitators, fulfil distinctive roles and adhere to clear rules, all designed to promote the transitional process of the residents. Self-help and mutual help are pillars of the therapeutic process in which the resident is the protagonist principally responsible for achieving personal growth, realising a more meaningful and responsible life, and of upholding the welfare of the community. The program is voluntary in that the resident will not be held in the program by force or against his/her will.’³⁷

Prison-based therapeutic communities around the globe

In recent times a growing number of governments have adapted Therapeutic Community models to prison settings. This has come about as a result of overcrowding in prisons, the growing number of prisoners in jail for drug related offences and the documented successes of early Therapeutic Community prison models which identified a reduction in recidivism to crime, a reduction of relapse to drug use and an increase in employment—

- in New York (the *Stay’n Out* program), 1984, and
- In Oregon (the *Cornerstone* program), 1984 and again in 1989.³⁸

In the **USA** by 1991 30% of prisoners with moderate to severe drug problems are treated in 34 residential therapeutic communities. The evaluations have reported a lower drop-out rate than in community-based therapeutic communities.

In **England and Wales** from 1995 to 1997 (following the Home Secretary’s visit to prison therapeutic communities in the USA in 1996) three therapeutic communities were established in prisons as well as 18 other drug treatment and rehabilitation pilot programs in 19 prisons.

In **Australia**, therapeutic communities have been established in—

- Bendigo Community Prison, Victoria
- Cadell Prison, South Australia.
- Long Bay Prison, NSW.

³⁷ Ottenberg D., Broekaert E., and Kooyman M. from the Ghent University, Belgium, quoted in *Therapeutic Communities for the Treatment of Drug Users*, edited by Barbara Rawlings and Rowdy Yates, Ch 1, by Eric Broekaert, p 29; Jessica Kingsley Publishers (2001).

³⁸ A concise description of each program and evaluation is cited in Rawlings and Yates (2001), Ch 9, by Mason, Mason and Brookes, p 165.

The Australian models each accommodate approximately 20 or more inmates who enter the therapeutic communities during the final stage of their sentence for a three or four month program. If adopted in Queensland, a therapeutic community model would focus on developing a prison community which operates according to the same or similar rules as apply in the general community.

In **Victoria**, the Bendigo Prison community model has been designed to incorporate management, prisoners, officers, education, industry, and programs into a single functioning entity. It can cater for up to 85 prisoners separated into four smaller 'living communities' of approximately 20–25 prisoners made up of a mix of prisoners from each level of the program and from all tiers of the prison.

The living community groupings also have a dedicated staff team as part of each community, including prison officers, Drug and Alcohol program staff and an industry or education representative.

The role of prison officers at Bendigo Prison involves all of the usual duties and responsibilities of prison officers. However, in addition, it involves case management of prisoners including liaising with the prisoner's current program providers to ensure that they can extend the effectiveness of that program through their knowledge of the prisoner's current program and issues, and through support of the prisoner throughout their time at Bendigo prison.

An evaluation of the Victorian model found that one year after completing the program, graduate's recidivism rates were 25% lower than before doing the program. It found 62% of graduates had not re-offended in that period.³⁹

In **New South Wales**, the *Ngara Nura*⁴⁰ program at Long Bay has been operating for three years and is currently being evaluated.

The Departments of Corrective Services, Justice and Queensland Health should examine these evaluations for the purposes of the next recommendation below.

A proposal for Queensland prisons

As well as the obvious potential for lasting benefits to mainstream prisoners from the introduction of a prison-based therapeutic community, the Drug Court program could also be enhanced.

A logical progression from the establishment of a *Stay'n Out* style program would be to give the Drug Court a further bow in its armoury to achieve long term diversion from imprisonment. Therefore, a therapeutic community in selected

³⁹ Pead J., (1996) *New Directions in Drug Treatment. An Evaluation of the Drug Treatment Unit Metropolitan Reception Prison, Department of Justice, Victoria.* Cited in Rawlings and Yates (2001), Ch 5, by Clive Lloyd and Frances O'Callaghan, p 118.

⁴⁰ *Ngara Nura* (from the Dharawal language) means 'a listening place'.

prisons could also be suitable for defendants who seem to qualify for an intensive drug rehabilitation order but who, for good reason such as past absconding, can't be trusted to remain at a community-based therapeutic community like *Goldbridge* or *Mirikai*.

It could also be used for those entering the Drug Court at the start of an intensive drug rehabilitation order or who abscond during the program where the court decides it is too early to terminate the order (perhaps because the person showed good potential and progress for a significant period before lapsing). The defendant could remain subject to court reviews but reside in the prison therapeutic community to complete a three to six month program (where the defendant can not abscond again), becomes stabilised and earns his or her way back to the Drug Court in either residential or outpatient programs. It would certainly cut the level of absconding and even further improve the retention rates.

It is relevant to note in this context the aims of the *Ngara Nura* therapeutic program in Long Bay Prison include assisting participants' transition into residential and community based treatment programs after their release from prison. This could be achieved in parole conditions

Recommendation No. 74

The State Government should examine the feasibility of implementing prison based drug rehabilitation programs and therapeutic communities for mainstream prisoners (pre-release) and for some Drug Court participants facing termination of their programs, along the lines described in this Final Report.

CONCLUSION

This report has outlined the four objects of the *Drug Rehabilitation (Court Diversion) Act 2000* (the Act). The pilot program magistrate and Drug Court coordinators (with the assistance of departmental experts) have unanimously developed a three phase program, modelled on common Drug Court standards in the USA, Canada, Great Britain and Australia. The aims and methodology in each phase are designed to help each participant acquire sufficient skills to overcome the addiction, prevent relapse, reintegrate back into society via reuniting families and providing better educational and employment prospects. By this process it was also intended, overall, to achieve the four objects of the Act.

Whether or not all participants graduate through all three phases, the Drug Court pilot program has been able to impart to participants more knowledge and skills than they would have received in prison and they will be better equipped to try rehabilitation again in the future.

This report has also catalogued many benefits gained by the community as a result of the Drug Court program.

This report demonstrates that whether or not all participants graduate through all three phases, the Drug Court pilot program achieves the objects of the Act.

The Drug Court has reshaped the professional and administrative roles of magistrates, lawyers, counsellors and others working with the Drug Court. Magistrates no longer work in comparative solitude and along with lawyers, prosecutors and treatment providers work together in an almost non-adversarial setting to realize the common goal of helping a participant achieve recovery from his or her drug dependency.

As soon as appropriate resources and suitable facilities can be established, the metropolitan and regional Drug Court models recommended in this report should be implemented so that the human knowledge and experience gained from this pilot is not lost or dissipated.

There is always a risk that if you are not part of the solution you may possibly be part of the problem. The Drug Court has clearly become an important part of the solution to the drug-crime cycle which permeates Australian society. Drug Court magistrates should remain involved in decision making and development of the relevant services for each new Drug Court. The findings and recommendations in this report may assist the criminal justice system to develop into one which incorporates and adapts the drug court concept to meet the specific needs of, and maximise the utility of resources and infrastructure of, individual communities.

TESTIMONIALS

In the last two years the Drug Court has attracted a lot of interest from visiting Queensland magistrates, government ministers, MLAs, health professionals including doctors, psychiatrists and nurses, as well as Drug Court graduates, interested parents and other members of the public. There have also been several judicial officers, justice officials, and academics from both interstate and overseas.

The Drug Court and the pilot program magistrate have received a number of unsolicited letters from interested persons which provide evidence of the positive contribution the Drug Court program has made in peoples lives. These people had nothing to gain for the court by writing these letters. A few samples follow.

Letter from a parent

'...We would like to take the opportunity of thanking you for your understanding and encouragement to our daughter <...>, during her recent appearances in your court. Without the help of yourself and Nurse Maree we are sure, at best, <...> would still be a "lost soul" walking the streets. Instead she appears to be extremely happy at Mirikai, and dedicated to making something of her life for herself as well as her ... daughter

We know it is still early stages, and <...> will most certainly have many ups and downs before she is well enough to leave Mirikai and return to hopefully a normal life, however, we felt we must not let the opportunity pass to thank you all for your dedicated and continuing help to our daughter, and the many others like her.

Once again thankyou from the bottom of our hearts for the wonderful job you and your system appear to be doing.'

Letter from a recent graduate

'I appreciate the time that you are taking to read this letter as well as the extensive time you have lent me in the past 2 years.

This letter I hope shows you that I am totally grateful for the effort that you and the entire drug court team have spent on who I am today. I believe that I honestly would not have been able to do this by myself, with the continuous push, all their phases and their requirements and the different options the Drug Court have to offer have obviously made me more determined than I have ever been with recovery and achievements.

When I started this program I honestly though that there is no way out of the continuous downhill spiral. You have given me a chance to start again and look forward to an exciting future. ...

Last but not least the opportunity of a lifetime my traineeship ... has certainly opened my eyes to something that I thought I was not capable of doing ever. With the sole decision coming from you I hope I have not disappointed you.

I have the respect of my family and my old friends again and to me that is something that can only be improved by time. ...

Once again I thank you for everything and I certainly will not forget this and I hope that there will be plenty more people that can be helped.

Just for today I am free and with a life.

Yours sincerely...'

Letter from a longer-term graduate

'... I am writing this letter to you just to let you know I am still very proud to inform you what stage of life I am at.

...I am still drug free, life has had its few tests thrown at me ...I did not even think of having a shot, not even a drink. But I will say being drug free and feeling as if you are the only person going through this, you feel very much alone. As you know the only people in my life I knew were drug addicts and drunks. ... It is a lonely walk rehabilitating you change of life.

I only wish I could be able to help young teenagers before they end up as I was. Even to help other ex-drug users feel they're not alone. We are people, and we can only become stronger day by day.

To your Honour I owe my life. You have made me feel like a person again. I respect you and the Drug Courts greatly.

Yours sincerely ...'

Letter from a PhD student

'...May I also take the opportunity to say how extremely impressed I have been during the, admittedly, small amount of time I have had observing the operation of your court. The experience has been exhilarating and grounding at the same time, but I cannot express in words the admiration I have for what you are doing.'

Letter from a visiting politician

More than a dozen Ministers and MLAs have visited the Drug Court. Following one such visit Mr G Wilson, MLA, wrote:

'Whilst Parliament sat in North Queensland I had the opportunity to speak on the Drug Court. I made my contribution by informing the House of my recent visit to the court. I enclose a copy of the speech for your information.

My visit to the Beenleigh Drug Court had a big impact on me. I think this is an excellent program and can only be impressed by the way you are committed to helping these young people deal with their drug addiction.'

The full text of the speech as it appears in Hansard for 3 September 2002 follows.

'I strongly support the Drug Rehabilitation (North Queensland Court Diversion initiative) Amendment Bill 2000. For the average member of the public, a Court is a very intimidating place. The presiding magistrate or judge has within the law absolute control over the conduct of proceedings and the outcome. If you are a defendant in criminal proceedings, your fate is totally in their hands. The court is often in a large, imposing and unfriendly looking building with crowds of people, bearing confusion and uncertainty on their faces, milling about the foyer of the courtroom that is your unhappy destination. Uniformed police officers and courthouse staff are busily going to and fro.

When your name is ominously called, you walk uncertainly into a very foreign place, a large room with a black-robed magistrate presiding from a high bench at one end looking down on all those assembled. The police prosecutor and lawyers are seated at the bar table. Everyone appears comfortable in their familiar surroundings, except you. You hold your breath and sit on your nerves, resisting the persistent impulse to run a million miles from where you have ended up. You have broken the criminal law and have to cop the consequences demanded by the law. You might be lucky and get let off, but then again you might be sent to jail. That is the type of courtroom in which I used to practice in a previous life as a lawyer many years ago. For many people, it is often the courtroom experienced even today. It is a courtroom in a justice system that largely operates on the traditional judicial model which focuses on the offender and the punishment that fits the offender's crime.

Just three weeks ago Warren Pitt, the member for Mulgrave, and I witnessed a very different magistrates court in action. For several hours our eyes were open as we observed the novel proceedings of the drug court at Beenleigh, presided over by magistrate John Costanzo who also sits at Southport and Ipswich. We also had the privilege of a lengthy discussion with the magistrate during an adjournment – for which we were grateful. The drug court trial in south-east Queensland commenced in the year 2000. Before the magistrate's appointment as the pilot program magistrate, he had served 15 years as a Crown Prosecutor. He is well acquainted with the limited effectiveness of the justice system when it comes to criminal offences, in particular by drug addicts. On this occasion, seated at the bar table in the small and intimately furnished courtroom was the police prosecutor, representatives of the Department of Health and Corrective Services and a lawyer from Legal Aid to represent the defendant.

Already seated in the small area at the back of the court were about 16 young men and women, waiting their turn to report to the magistrate on their progress on rehabilitation during the previous week. These men and women, with varying socioeconomic backgrounds, education and qualifications, some employed and some unemployed – and several with young families – are the lucky ones. The drug court program is not suitable for every drug offender. These young people have admitted their guilt for the drug-driven crimes they have committed and in other respects satisfied the stringent requirements for admission to the drug court pilot program. Most important of all, they have reached a critical life-changing point of deciding to commit themselves to the difficult task of reclaiming their lives from the certain desolation and destruction of drug addiction.

As one offender said in open court to the magistrate, 'I now realise that I could not deal with problems in my life, so I tried to escape through drugs; and that's a dead end.' Earlier that morning, all had provided a urine sample in the mobile drug testing van

outside the court. They are tested several times each week and often randomly. This is just a part of the intensive drug rehabilitation order that involves close supervision and intensive rehabilitation. In Queensland, offenders accepted into the program are involved in a range of situations—completing drug treatment programs ordered by the court; abstaining from illegal drug consumption; refraining from committing further offences; providing specimens for drug testing as required; attending at court when required; attending sessions of counselling, training interviews and appointments; and attending residential or non-residential community treatment programs as required. The drug court pilot has changed the lives of many drug offenders for the better. As at July this year, 31 offenders had graduated after taking from 12 to 18 months to complete the program. All these people have overcome addictions to serious drugs such as heroin, cocaine and amphetamines. Without the pilot program, they would have gone to jail and continued in their drug addiction.

I urge all members of parliament to visit the Drug Courts at Southport, Ipswich or Beenleigh and here in Townsville and in Cairns when established. Members will see, as we did, brave young men and women speaking frankly in open court about very personal problems and experiences that have led them to choose drug addiction. They were articulate and displayed a self-critical awareness and a genuine respect for the authority of the magistrate. I am sure members will feel, as did we, drawn to join in the applause of all of the offenders in the court for the success reported by each offender to the magistrate as their turn came. I can assure members that the magistrate is no soft touch. He is tough but fair and resolutely committed to the success of the program. This bill extends the Drug Court pilot program to Townsville and Cairns, as has been said. I am confident that it will provide success in north Queensland as it has in south-east Queensland. I strongly commend the bill to the House.”

ANNEXURES

1. Outline of the NSW MERIT program
2. Pre-sentence report template
3. Rehabilitation program—examples of content choices
4. List of current phase requirements—aims of each phase and method of achieving those aims.

MAGISTRATES EARLY REFERRAL INTO TREATMENT

The following information was gathered by the pilot program magistrate on a visit to the MERIT program.

Background

The NSW government established a number of diversion initiatives in response to the April 1999 Council of Australian Governments meeting on drugs, and the NSW Drug Summit.

One such program, Magistrates Early Referral into Treatment (MERIT), gives defendants charged with any drug or drug related offence an opportunity to voluntarily enter a treatment program as a condition of Magistrates Court bail, prior to a plea being entered. The final hearing and sentencing take place after completion of the program.

A funding agreement (the National Illicit Drug Strategy (NIDS) Funding Agreement) was entered into by the Commonwealth and the NSW Government for the MERIT program.

In July 2000 MERIT commenced as a pilot in the Lismore Local Court. By 8 February 2003 (as reported in the *Sydney Morning Herald*) 1135 people had been accepted into that program since it began. Of those, 426 had completed the program and 460 failed. More than 200 remained in the program. MERIT has been expanded and was then running in 37 local courts and 12 of the 17 area health services. It is funded to expand to all 17 areas.

At any one time there are no more than 50 participants between 6 courts in the Lismore health service area. An evaluation of program outcomes, including recidivism is still being undertaken.

Program summary

MERIT targets adult defendants with illicit drug use “problems” (not necessarily a dependency). If assessed suitable they undertake drug treatment as part of their bail conditions. Like the Drug Court, MERIT incorporates courts and multiple services. In MERIT, local drug and mental health services, Aboriginal services and specially funded clinicians combine to conduct a quick four stage program. A MERIT treatment program is designed to take three months to complete (reflecting the average NSW Local Court bail period).

However, the average length of a completed program has been 120 days (4 months) and 40 days for terminated programs. There is currently a growing view the program should be extended to 6 months.

Typically, the court supervision occurs only about 4 times per program. Ideally, the same Magistrate will try to deal with the defendant throughout the bail period. Urine tests are merely conducted about every 10 days. Because the program is wholly voluntary it adopts a harm-minimization philosophy.

At final sentencing, magistrates are given a report about the defendant's participation. The magistrate can not punish a defendant for breaching or failing the program but can take completion into account. The relevance and weight given to compliance or non-compliance is at the discretion of the magistrate.

The MERIT diversion model was intended to complement the Drug Court at Parramatta which, like the Qld Drug Court, targets serious offenders facing a sentence of imprisonment. However, unlike the Drug Courts, the defendant does not have to enter a plea of guilty to qualify for the MERIT program. It is completely voluntary.

The intended MERIT program outcomes are similar to the Drug Court aims under the *Drug Rehabilitation (Court Diversion) Act 2000*.

Eligibility criteria are, a defendant must—

- be an adult,
- be eligible and suitable for release on bail,
- have a treatable illicit drug use problem (not an alcohol problem unless secondary),
- reside where they are able to participate in treatment programs as required,
- give informed consent to participate, and
- have a suitable treatment place available.

Disqualifying criteria include, if a defendant is—

- charged with outstanding sexual or other violent offences,
- charged with indictable offences which may not be dealt with summarily,
- not able to participate in treatment due to his or her place of residence, or
- on other court ordered treatment programs.

However, criminal histories are not considered in deciding eligibility provided the magistrate is prepared to grant bail and the MERIT team is prepared to accept the defendant.

Referrals

Referral of defendants to the MERIT team for clinical assessment can come from a number of different sources, for example—

- Defendants and/or their families (self referrals),
- Legal representatives including Legal Aid Commission solicitors, Aboriginal Legal Service and private legal practitioners,
- NSW Police at the time of arrest,
- Probation and Parole Service, and
- Magistrates.

Breaches

MERIT bail conditions are breached if the defendant commits further offences, fails to comply with bail conditions or fails to appear in court.

The failure to attend a treatment session is not in itself seen as a breach. However, if a defendant fails to appear for several consecutive treatment sessions without good reason, or absconds from a residential treatment facility the Court is notified. Where breaches are detected, the Magistrate can terminate the defendant's participation in MERIT or revoke bail.

DEPARTMENT OF CORRECTIVE SERVICES

PRE-SENTENCE REPORT

Re:
DOB: (Age: years)

CORUM: COURT:

OFFENCES:

REFERRING COURT: Magistrates Court,

REFERRING MAGISTRATE:

DATE OF REFERRAL:

DATE OF MENTION:

DATE OF INTERVIEW:

REMAND STATUS:

ASSESSMENT AND RECOMMENDATION:

recommended as suitable for drug rehabilitation on the following basis.

- An officer of the Department of Health has assessed is drug dependent;
- The defendant reported motivation to address offending behaviour
- has been advised of the requirements contained in an Intensive Drug Rehabilitation Order and has expressed a willingness to comply; and
- The defendant is considered a suitable person to undertake relevant intervention to address their substance abuse.

ADDITIONAL COMMENTS RELEVANT TO THIS ASSESSMENT:

- Community Support:
- Specific need for further health/residential assessment, etc.

If relevant: The defendant has been briefed regarding travel arrangements from custody to a residential facility if made the subject of an IDRO.

Home Assessment Relevant to this Report:

Home Assessment Completed:

Home Assessment Recommendation:

THIS REPORT IS BASED ON INFORMATION PROVIDED BY THE DEFENDANT OR AS STATED

CURRENT OFFENCES:

Date/s of Arrest:

- Defendant is in general agreement with facts outlined in QP9/s
- Actual drug offences
- Offence/s committed whilst withdrawing from drug use
- Offence/s committed whilst under the influence of a drug
- Offence/s committed to obtain money for drugs
- Other:
- Exceptions:

Attitude Towards Current Offending:

- Remorseful
- Unrepentant
- Evidence of victim empathy
- Insight evident into precipitating factors
- Impulsivity
- Risk-taking

Defendant's actions or statements regarding current charges:

1. CRIMINAL HISTORY:

- Criminal convictions commenced as:
- Incarcerated on conviction:
- Escapes from institution:
- Orders still current and date of completion, eg: Suspended sentence;
- Criminal history recorded elsewhere:

Type of Offences in criminal history:

- Street
- Dishonesty
- Property
- Violent
- Driving/Traffic
- Substance Abuse
- Weapon
- Sexual
- Breach of Bail

Pattern of Offending:

Co-offenders:

3. **COMMUNITY BASED SUPERVISION:** **CIS Number:**

Category **Number of orders**

- No prior based community supervision
- Probation
- Prison/Probation
- ICO
- IDRO
- CSO
- FOO
- Leave of Absence
- Home Detention
- Parole
- Other:

Response to Supervision:

4. **FAMILY UPBRINGING:** (Family members, stability, mobility, trauma, family support, family history of substance abuse): Ethnic background:

5. ACCOMMODATION (If relevant):

Address details (at time of current offence):

Proposed accommodation:

Telephone number:

Household occupants:

Comments on household issues (including criminal/substance abuse history of occupants):

Is a Home Assessment relevant to this Pre-Sentence Report?

Has a Home Assessment been completed?

N.B. If a Home Assessment has been completed, forward with this assessment for the information of the Court.

6. EDUCATION:

Highest Level Achieved:

Tertiary Education:

Literate?:

7. INTELLECTUAL FUNCTIONING:

Adequate for IDRO Requirements: .

8. EMPLOYMENT:

Current Employment: - Details:

In Receipt of Social Assistance:

Contact with Centrelink in the last 12 months:

Employment History:

9. RELATIONSHIP HISTORY:

Current Relationship::

History of Domestic Violence in Relationship/s:

Does Partner have Criminal History:

Does Partner have Substance Abuse History:

Dependants:

10. SUBSTANCE ABUSE:

Queensland Health Report Received:

Queensland Health Assessed Defendant as Drug Dependent:

Primary Drug of Choice:

Poly Substance Abuse:

If yes: Other Drugs:

History of Alcohol use:

Gambling behaviour:

***Past Drug Abuse Treatment:**

***Current Drug Abuse Treatment:**

11. HEALTH:

Significant Health Issues:

History of Self-Harm Ideation: Current issues:

Psychiatric History: Details:

Abuse as a Victim: Details:

12. ADDITIONAL INFORMATION:

REHABILITATION PROGRAM

Name:

Phase:

The defendant must: #

1. Not use any illegal drug.
2. Not use any non-prescribed drug.
3. Not use any prescribed drug except in accordance with the directions of the prescribing health care professional in consultation with an authorised corrective services officer.
4. Reside at, unless otherwise authorised by the Court and/or a corrective services officer and advise of any change of circumstance at this residence.
5. Comply with a curfew; that is, remain at the above address at all times between the hours of p.m. and a.m., unless attending or travelling directly to and from a Drug Court appointment or medical appointment or unless prior approval is obtained from an authorised corrective services officer or the Court.
6. Attend and complete the drug rehabilitation program at and comply with all rules, directions and requirements of that rehabilitation centre.
7. Attend weekly/fortnightly/other drug counselling at ATODS/other unless and until otherwise directed by the Court or an authorised corrective services officer.
8. Continue to participate in the Methadone program as advised by the Methadone clinic and as directed by an authorised corrective services officer.
9. Report weekly/fortnightly/other to an authorised corrective services officer between the hours of 9 a.m. and 4 p.m. at or as directed.
10. Receive visits from an authorised corrective services officer between the hours of 8 a.m. and 6 p.m. as arranged.

11. Report at least weekly/fortnightly/other for drug testing (plus any random tests) to an authorised corrective services officer as and when directed.
12. Attend vocational, education and employment courses or any other appointment as required by an authorised corrective services officer, including;
13. Submit to medical, psychiatric or psychological appointments for assessment or treatment as and when directed by an authorised services officer, including:-
/and, as part of the medical, psychiatric or psychological treatment, the offender is required to remain at, for (eg: days, weeks).
14. Attend the Drug Court at on the of each at 10.30 am unless otherwise directed by the Court or an authorised corrective services officer.
15. Present a weekly journal detailing current participation in the Drug Court program.
16. Have no contact, directly or indirectly with
17. Not go within of the suburb of/streetunless travelling directly to or from a drug court appointment or unless prior approval is obtained from an authorised corrective services officer or the court.
18. Meet your restitution repayment agreement as negotiated with an authorised corrective services officer.
19. Attend and complete such Community Service as per your Work Instruction and as directed by an authorised corrective services officer.

delete clauses not required.

PHASE REQUIREMENTS

Phase I - Illicit Drug Free (3 to 6 months)	Phase II – Stabilisation (3 to 6 months)	Phase III – Reintegration (3 to 6 months)
<p>Aims:</p> <ul style="list-style-type: none"> • Stabilise physical health • Commitment to court program • Eliminate illicit drug use • Eliminate criminal activity • Identification of outside support systems • Stabilise accommodation • Significant sanction-less period 	<p>Aims:</p> <ul style="list-style-type: none"> • Remain illicit drug-free • Remain crime-free • Stabilise domestic and social environment • Commence developing life skills • Improve education and vocational skills • Address major life issues • Maintain good health • Maintain commitment to court program • Plan for family reunification • Significant sanctionless period 	<p>Aims:</p> <ul style="list-style-type: none"> • Acceptance of drug-free, crime-free lifestyle • Remain illicit drug-free and crime-free • Stabilise domestic and social environment • Commitment to court program • Improve employment prospects and be employable • Improve financial management skills • Plan or complete family reunification • Significant sanctionless period
<p>Achievement of aims:</p> <ul style="list-style-type: none"> • Weekly court attendance • Twice weekly drug testing plus random tests • Twice weekly case manager contact (at court, where directed or receive visits) • Full participation in core⁴¹ and elective⁴² treatment programs and Health⁴³ programs • End all criminal associations • Graduation assessment (incl. goal setting and treatment planning) 	<p>Achievement of aims:</p> <ul style="list-style-type: none"> • fortnightly (possibly reducing) court attendance • Weekly (possibly reducing) drug testing plus random tests • fortnightly case manager contact (at court, where directed or receive visits) • Continue full participation in core and elective treatment and Health programs • Perform community service as directed • Graduation assessment (incl. goal setting and treatment planning) 	<p>Achievement of aims:</p> <ul style="list-style-type: none"> • Monthly court attendance • Twice fortnightly drug testing plus random tests • Fortnightly case manager contact (at court, where directed or receive visits) • Continue full participation in treatment, health and life skills⁴⁴ programs • Make arrangements to finalise all outstanding court matters (eg fine, restitution) • Complete community service as directed

⁴¹ The **core** programs may include programs about: substance abuse education, cognitive skills development, anger management, relapse prevention and ending offending.

⁴² The **elective** programs may include programs about domestic violence, good parenting practices and relationships, grief, loss, Post Traumatic Stress Disorder, sexual abuse, financial or other counselling.

⁴³ The **health** programs may include detoxification, Methadone maintenance, Naltrexone or Buprenorphine, drug counselling, live-in rehabilitation or residential treatment, attendance at AA or NA, the TripleP Positive Parenting Program, and the DUAL diagnosis program for mental health and substance abuse.

⁴⁴ The **life skills** programs may include: cooking healthy meals on a low-income budget, budgeting, assertiveness, self-esteem, etc.