



QUEENSLAND DRUG AND SPECIALIST COURTS REVIEW

Report Summary and Recommendations



AUDAX AT FIDELIS
QUEENSLAND
COURTS

November 2016

THE AUTHORS

Emeritus Professor Arie Freiberg AM

Faculty of Law Monash University

Dr Jason Payne

Australian National University

Dr Karen Gelb

Karen Gelb Consulting

Mr Anthony Morgan

Australian Institute of Criminology

Emeritus Professor Toni Makkai

Australian National University

DRUG AND SPECIALIST COURTS REVIEW TEAM

Victoria Moore

Director

Julie Webber

Principal Policy Officer

Leigh Krenske

Manager, Research and Evaluation

Tara Linnan

Project Manager

Jamie-Lee Sykes

Administrative Support Officer

Disclaimer

The findings and recommendations in this paper reflect the views of the consultants engaged for the Review and do not necessarily reflect the views of the Queensland Government or current government policy.



SUMMARY

THE DRUG AND SPECIALIST COURTS REVIEW

The Drug and Specialist Courts Review (the Review) has been commissioned to develop options for the reinstatement of a drug court in Queensland and the development of an overarching framework for Queensland's specialist courts and court programs.

The Review was initiated in response to the Queensland Palaszczuk Government's election commitment to reinstate specialist courts and diversionary programs defunded under the former LNP Government, including the former Murri Court, the Special Circumstances Court Diversion Program and the Drug Court as soon as fiscally practicable. Funding of \$8.7 million was committed for this purpose over four years commencing in 2015–16.

Until it ceased operation, the former Queensland Drug Court operated in five court locations across Queensland (Beenleigh, Ipswich and Southport in South East Queensland and Cairns and Townsville in North Queensland) as a post-sentence option. It operated under the *Drug Court Act 2000*, which was repealed in 2013.

The Review was aimed at ensuring options for the reinstated Drug Court are evidence-based, cost-effective and reflect modern best-practice in relation to drug-related offending. The Review also considered how the current suite of court programs might be improved to enhance their operation.

DRUG COURTS AS PART OF A BROADER RESPONSE TO DRUG-RELATED CRIME

While drug courts are an important part of the criminal justice continuum, they are only one of a number of responses to the extensive problem of substance abuse-related crime. Australian legal systems have, for many years, responded to the difficult problems posed by this form of offending by introducing a wide range of pre- and post-court interventions such as police diversion schemes, bail programs, deferred and suspended sentences, conditional sentences and treatment regimes, both in and out of custody.

A comprehensive approach to the alcohol and other drug problem requires an understanding of the drug court's place in a continuum of interventions. In view of the extent and variety of drug and alcohol-related offending in Queensland, it is unrealistic to expect a drug court program alone to manage these problems effectively.

This Review has therefore aimed to develop a comprehensive criminal justice model that identifies a range of interventions from the time of first contact with police, to arrest, summons and bail, conviction and sentence through to release on parole. This model, has multiple objectives, but primarily they are to:

- reduce the risks, frequency and seriousness of offending of people coming into contact with the criminal justice system with alcohol and other drug issues and other significant issues that are contributing to their offending;
- divert offenders from prison where appropriate and safe to the community to do so and reduce their risks of future imprisonment; and
- improve health and social outcomes for the defendant and their family members.

The comprehensive criminal justice model provides an aspirational conceptual infrastructure for reimagining the system as a whole, with the drug court at the pinnacle of the criminal justice system's response to drug-related crimes, providing an intensive form of intervention for the highest risk, highest needs offenders with entrenched problematic substance use issues.

Although drug courts have only limited capacity to work with a small number of participants at any one time, they are nevertheless important. Drug courts provide the motivational mechanisms for high risk and high needs offenders to receive treatment for problematic substance use and other factors such as mental illness, homelessness and criminal thinking.

Drug courts provide a number of cost-related and social benefits to the community, operating as an alternative to imprisonment and addressing the underlying issues related to their offending. Although difficult to quantify, the health and social benefits of drug courts, not just for the offender but for their family and community, are equally important. These benefits include reductions in drug use and associated health issues, easing the burden these offenders place on the health system, the reunification of families, babies born drug-free, the retention of stable accommodation, engagement of offenders in employment, education and training, and a reduction in offending.

Even when offenders do not successfully graduate from the drug court program, they are likely to experience benefits from having participated. Therefore, it should not be assumed that graduation from the program is the only measure of success, as it is likely that many participants who do not complete treatment have nonetheless made positive gains and may return to treatment of their own volition.

CURRENT DEMAND FOR ALCOHOL AND OTHER DRUG CRIMINAL JUSTICE INTERVENTIONS IN QUEENSLAND

The Queensland criminal justice system has been experiencing increasing pressures and demands across the system, including increasing engagement with people for illicit drug offences.

The growth in the number of people coming into contact with the criminal justice system has far exceeded growth in the general population (around 6%). Between 2010–11 and 2014–15, for example:

- the number of total police proceedings grew from 133,188 to 170,200 (an increase of 28%);
- the number of total finalised defendants grew from 106,058 to 120,421 (an increase of 18%);
- the number of total people in adult custody grew from 5,575 to 7,318 (an increase of 31%); and
- the average number of children in youth detention grew from 138 in to 172 (an increase of 25%).

The growth in the number of people with an illicit drug offence as their principal offence was even higher, exceeding total criminal justice system growth. Between 2010–11 and 2014–15:

- the number of illicit drug proceedings initiated by police grew from 15,834 to 27,015 (an increase of 71%); and
- the number of defendants finalised for illicit drug offences grew from 13,748 to 23,970 (an increase of 74%).

Over the same period, there has been a reduction in the proportion of illicit drug matters resulting in a non-court action being taken by the police (decreasing from 31% in 2010–11 to 23% in 2014–15), while the overall use of non-court action for other offences remained stable at around 19%.

In comparison to other Australian jurisdictions, in 2014–15 Queensland had the third highest rate of alleged offenders proceeded against by police (2,239 per 100,000 people aged 10 or more years) and the second highest rate of alleged offenders with illicit drugs as the principal offence (670 per 100,000). Queensland also had the highest number of finalised defendants with illicit drugs as their principal offence (23,970 per 100,000).

There are likely to be a number of contributing factors driving these increases.

Aboriginal and Torres Strait Islanders have experienced higher growth in imprisonment rates compared with non-Indigenous offenders, and there has been a higher overall growth in the rate of women prisoners compared with men, although men still significantly outnumber women in the Queensland prison population.

There has also been a growing number of people held on remand, which has been a driver of prison population growth, with the number of unsentenced prisoners increasing by 47% between 2010–11 and 2014–15. Over that same period, the number of sentenced prisoners has increased by 26%.

Very few people who were dealt with for a principal offence relating to illicit drugs received a custodial sentence. In 2014–15, of those defendants found guilty in the Magistrates Courts, nearly two-thirds (62%) were sentenced to a fine/monetary order, while only 3 per cent were sentenced to custody in a correctional institution. The median term of custody imposed on defendants who pleaded guilty or were found guilty of an illicit drug offence as their principal offence was 9 months.

Illicit drug offences aside, there is a high prevalence of problematic substance use among people in contact with the criminal justice system, with cannabis and amphetamines being the most commonly used illicit substances. Based on Queensland Corrective Services (QCS) data, for offenders assessed as having more than a low risk of reoffending, 55% had a high risk of problematic substance use.

A study of Queensland Police watch-house detainees found high rates of illicit drug use, with 73% of these detainees testing positive to an illicit substance, 43% testing positive to cannabis and 38% testing positive to methamphetamines. Around one in five (23%) police watch-house detainees attributed their current charges to alcohol use and a third (35%) to their illicit drug use. There are also generally high rates of illicit drug use by those entering prison, with one survey finding that 64% of people entering prison had used an illicit substance within the previous 12 months, 40% having used cannabis and 47% having used methamphetamines.

It is not only illicit drug use that is prevalent in Queensland: alcohol remains a common principal drug of concern among people accessing alcohol and other drug treatment services.

Consultations with key stakeholders and analyses of drug use patterns among offenders indicate that methamphetamine use in particular is likely to remain high. This poses specific treatment issues in the implementation of drug interventions, with anecdotal evidence suggesting that these offenders experience a more dramatic escalation in the frequency and severity of their offending compared with other offenders.

DRUG TREATMENT SERVICES

Faced with increasing rates of drug-related offending, the number of people accessing drug treatment services through a referral by the criminal justice system is considerably less than the likely need for such services.

The success of any future drug court and the changes proposed by the Review will depend on there being sufficient funding and resourcing of supporting programs to ensure their successful operation. This includes additional funding for alcohol and other drug treatment services and related service provision.

Most of the referrals made to treatment by criminal justice agencies in Queensland involve brief education and assessment interventions. These referrals are generally based on referral criteria

rather than an assessment of individual needs and have driven the growth in closed treatment episodes reported by health agencies. Data from the Australian Institute of Health and Welfare shows that:

- in Queensland, the total number of closed alcohol and other drug treatment episodes grew from 26,541 in 2010–11 to 38,923 in 2014–15 (an increase of 47%), while national increases for the same period were at 13%;
- nationally, counselling was the most common main treatment type (40% of treatment episodes in 2014–15), compared with Queensland where interventions involving information and education only were the most prevalent main treatment mode (33%);
- criminal justice agencies accounted for 38% of referrals to treatment services in 2014–15, which was more than health (29%) or self/family referrals (28%); and
- in 2014–15, there were 10,402 criminal justice referrals to information and education only treatment services. Police accounted for 60% (6,196) of these referrals, while the courts accounted for 35% (3,674).

GETTING THE LEGAL AND PROGRAM FOUNDATIONS RIGHT

In developing a robust framework for Queensland’s existing court-based programs, the Review has been concerned to ensure that intervention and referral programs are underpinned by clear legal and program foundations. The aim of the Review is to create clarity in the intended objectives of these programs, their intended target group and how these programs are to be managed.

Many existing programs in Queensland are based upon a judicial officer’s powers to grant bail, some are based on general powers of adjournment, some on general sentencing powers and others on specific statutory provisions.

We support all intervention programs being clearly defined and underpinned by legislation.

We also propose that a number of guiding principles should be used to determine both the stage in the criminal justice system at which the intervention takes place and its nature.

Intervention programs versus referral programs

In this Review we have distinguished assessment and referral programs from substantive measures for reducing crime and problematic substance use that provide education, rehabilitation, treatment or behaviour change programs that are delivered by health and other services, both public and private. In our view, there is currently a degree of confusion between referral programs and substantive intervention programs. For the purposes of this Review, an intervention program is one that requires a person to participate in a specific and identifiable program that is intended to address the person’s underlying behavioural problem or problems. We believe that intervention programs should be specifically identified, approved and legislatively supported.

We recommend that for intervention programs a general authorising provision be enacted that creates the framework for their introduction, operation, monitoring and evaluation.

Criteria for alcohol and other drug interventions in the criminal justice system

Criteria have been developed for alcohol and other drug interventions in the criminal justice context, which provides principles for effective alcohol and other drug treatment for criminal justice populations. This is linked to an understanding based on the research evidence of what works in reducing reoffending.

IMPROVING THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO ALCOHOL AND OTHER DRUG ISSUES

The Review is proposing a number of reforms that may reduce pressure across the criminal justice system and better respond to alcohol and other drug issues that contribute to criminal offending.

The likely numbers of those dealt with by a drug court, if re-established, are likely to remain small compared to the overwhelming demands placed on the system for alcohol and other drug treatment services. Apart from capacity reasons, this intensive form of intervention has been shown to be most cost effective when targeted at the highest risk, highest needs offenders who have been unresponsive to other forms of intervention. In the interests of cost-effectiveness, drug courts should only be established in locations with sufficient numbers of offenders who otherwise would have been sentenced to imprisonment and where sufficient judicial, treatment and administrative resources are available.

As the vast majority of offenders with alcohol and other drug problems will be dealt with in the mainstream courts, they will require appropriate assessment, referral and treatment resources prior to, and/or after, sentence.

Rationalising existing programs

There are a number of programs that provide low-level alcohol and other drug interventions in Queensland, targeting offenders who are generally low risk and low need. Many are similar to each other.

Due to the essential similarity of these programs, albeit that they are provided by different organisations and available at different stages of the criminal justice system, we recommend that there be a review and rationalisation of the low-level intervention programs to provide a single consistent, brief intervention program for appropriate offenders. Referrals into this program could be made during all stages of the criminal justice system, including by police at the pre-arrest stage, and by courts, as part of a bail, adjournment or deferral of sentence procedure or as a condition of a recognisance order.

In terms of delivery, there are opportunities to investigate new, and potentially more cost efficient, modes of delivery. Currently some of these programs are offered face-to-face or via phone. Other forms of technology and methods of delivery, such as validated self-administered web-based instruments, should be considered.

Pre-arrest/pre-charge

Currently, police have limited options when dealing with adult offenders who are suspected of having committed an illicit drug offence. While a form of adult cautioning exists under policy, this is only permitted in exceptional circumstances where this is considered to be in the public interest.

The Queensland Police Illicit Drug Diversion Program provides an alternative to proceeding through the usual criminal justice processes to court for people apprehended for a minor drugs offence (e.g. possession of not more than 50g of cannabis). The statewide program aims to reduce the number of people appearing before the courts for possession of small quantities of cannabis, while also increasing access to assessment, education and treatment for drug users and an incentive to address their drug use early.

Queensland has a relatively high number of people charged with and convicted of illicit drug offences when compared with most other Australian jurisdictions. In all, the analyses to date (although limited in number and methodological rigour) suggest that cautioning low-level drug offenders (both juveniles

and adults) is likely to be a cheaper alternative to formal processing and does not worsen long-term criminal justice outcomes.

To improve current responses to low-level offending and target limited resources more effectively, the Review recommends that police should be provided with access to an expanded range of options to respond to minor drug offences, drawing on models that exist in other Australian jurisdictions. Such an approach will also have the benefit of reducing people's formal involvement with the criminal justice system and ameliorating the effects of a criminal record on future employment, while reducing demand on the providers of such services and on the courts.

Bail-based programs

A number of key features of successful court-based intervention programs have been identified:

- early assessment of offenders to ensure the most appropriate intervention pathway is followed – assessments made prior to the first mention of a matter may assist in expediting the identification of appropriate intervention pathways;
- clear and broad eligibility criteria that allow streaming of people based on their assessed risk, needs and responsiveness;
- the inclusion of alcohol as an eligible primary drug of concern for drug intervention programs;
- strong collaboration and communication between specially-trained magistrates, alcohol and other drug service providers and other relevant stakeholders at the local level;
- an adequate period of treatment that allows time for behaviour change while not inducing treatment fatigue;
- high-quality case management to assist in addressing clients' broader social and health issues; and
- availability of a range of treatment options.

The Review considers that Queensland's current pre-sentence, bail-based or bail-related programs are in need of rationalisation to ensure that programs are delivered, as far as possible, equitably across Queensland and are consistently funded and resourced.

In our view, what is required is a new legal and service framework that will better support the future needs of Queensland's courts and court users and address underlying issues associated with offending to break the cycle of offending. This can be achieved through the introduction of an integrated court assessment and referral program and associated changes to the present system. The proposed court assessment and referral program would bring existing programs under one framework and better provide for referrals and interventions to be matched to offenders' risk of reoffending and criminogenic needs.

The development of a comprehensive new integrated court assessment and referral program that could operate in those courts with sufficient resources to support such a program would bring all the existing services under one program and resourcing framework.

The model proposed is similar to that which exists in Victoria as part of the Court Integrated Services Program (CISP).

Sentencing options

In 2014-15, the Queensland criminal courts finalised over 120,000 defendants, of whom 20% had an illicit drug offence as the principal offence (23,970 defendants). The number of defendants convicted of illicit drug, and/or other offences, whose offending was substantially influenced by drug or alcohol dependence, is more difficult to estimate, but analysis of QCS administrative data suggests that the numbers are significant.

The previous Queensland Drug Court, in its various locations, accepted approximately 134 offenders per year onto the program. It is readily apparent that the problems of people who come into contact with the criminal justice system with problematic alcohol and other drug use cannot be managed by one, or even a small number of problem-oriented courts. In contrast, there were over 14,000 offenders on some form of supervised order in Queensland such as probation, intensive correction order or parole in 2014-15, many of whom require moderate or high levels of treatment intervention. Based on current trends, these numbers are increasing.

Both probation orders and intensive correction orders provide the courts and correctional officers with a limited range of options to engage the offender. With the focus of this Review on both alcohol and other drug offenders, it may be useful to consider whether these orders should be expanded in scope.

Victoria has introduced a broad-based order, the community correction order, which replaced the community-based order and the combined custody and treatment order. Tasmania has also committed to introducing a similar order that replaces its probation and community service orders with an omnibus order similar to Victoria's. Such an order may contain special conditions as ordered by the court such as that:

- the offender undergo assessment and treatment for alcohol or drug dependency as directed by a corrections officer;
- the offender submit to testing for alcohol or drug use as directed by a corrections officer;
- the offender submit to medical, psychological or psychiatric assessment or treatment as directed by a corrections officer;
- the offender is subject to judicial monitoring; and
- alcohol exclusion is imposed on the offender.

The advantage of a more detailed order is that it provides a court with a wider range of conditions that can be tailored to each individual offender. While it is not accompanied by the full range of services and supervision requirements provided by a drug court (such as a drug court team), it does provide an option for judicial monitoring, which is similar in effect to the role of a Drug Court magistrate.

This Review has not been asked to examine the operation of the *Penalties and Sentences Act 1992* generally and it is inappropriate for us to develop a case for a completely new order to replace the probation order and the intensive correction order. However, we recommend that this should be an area for further investigation to ensure equity of access and the broader availability of appropriate orders to address problematic alcohol and other drug use associated with offending.

This is consistent with our view that these principles and practices should be mainstreamed for both practical and theoretical reasons. Either more, or more appropriate, conditions should be added to probation and intensive correction orders or a new order could be created.

Post-custodial orders

In Queensland, post-custodial orders include court-ordered and board-ordered parole.

Between August 2006 and August 2016, courts favoured the use of court-ordered parole over other types of orders (i.e. prison/probation and intensive correction orders). The use of court-ordered parole increased rapidly after its introduction in 2006, corresponding with a decline in the use of partially suspended sentences.

The introduction of court-ordered parole effected the operation of the former drug court in terms of referral to and completion of Intensive Drug Rehabilitation Orders (IDROs). Anecdotal evidence suggests that for some offenders, participation in the drug court program was considered more onerous compared to court-ordered parole. Withdrawal from, or refusal to enter, the drug court resulted in offenders receiving less treatment and supervision than would have been the case on an IDRO. The loss of access to services and intensive support combined with the more severe repercussions of breach of a parole order were, ultimately, thought to have resulted in poorer outcomes for a group of high risk/ high needs offenders who could have benefitted from the IDRO. The Review notes that there will remain some issues of concern about the relationship between the proposed Drug Treatment Order (DTO) and court-ordered parole, but these are beyond the scope of this Review.

While QCS supervises parolees according to an individual's assessed level of risk and need, the level of alcohol and other drug treatment provided is largely contingent upon appropriate services being available in the service sector. Enhancement of the parole system, to provide high level case-management of the offender and a focus on addressing the underlying causes of offending, would provide access to rehabilitation and treatment for offenders who might not be eligible for a drug court or do not reside in the catchment area.

MEETING THE NEEDS OF ABORIGINAL AND TORRES STRAIT ISLANDERS

Aboriginal and Torres Strait Islanders are overrepresented at all stages of the criminal justice system (including as victims of crime) and this overrepresentation continues to increase. For example, Aboriginal and Torres Strait Islanders accounted for 25% of the Queensland prisoner population in 2005, growing to 30% in 2011 and 32% in 2015. In 2015, there were 13 times more Aboriginal and Torres Strait Islanders per head of population in custody than non-Indigenous people.

While a person's contact with or progression through the justice system can be reduced through intervention programs, Aboriginal and Torres Strait Islander people have lower participation and completion rates of intervention programs, particularly those who access mainstream programs.

Access is also a key contributory factor in the underrepresentation of Aboriginal and Torres Strait Islander offenders in intervention programs. This relates to barriers such as strict program eligibility criteria, transport difficulties and geographical dispersion.

The lack of appropriate services has also been noted as a significant issue affecting the ability of Aboriginal and Torres Strait Islander offenders to address adequately the underlying causes of their offending behaviour.

To minimise the negative and disproportionate impact of the criminal justice system on Aboriginal and Torres Strait Islander offenders, it is important to ensure that all programs, interventions and sentencing orders appropriately meet the needs of Aboriginal and Torres Strait Islander offenders.

REINSTATEMENT OF A QUEENSLAND DRUG COURT

The Review supports the reintroduction of a drug court in Queensland as an important part of the criminal justice system's response to alcohol and other drug offending. In particular, a drug court provides a valuable response to offenders with a drug and/or alcohol dependency directly associated with their offending behaviour who would be unlikely to succeed under minimal to moderate supervision arrangements (i.e. high risk and high need offenders with entrenched drug and/or alcohol problems).

Overall, several systematic reviews and meta-analyses of the effectiveness of drug courts support the view that drug courts are effective in reducing reoffending. Mean effect sizes estimate the impact of

drug court programs on reoffending as being somewhere between eight and 13 percentage points. Given the offenders at which this intervention is targeted (high risk and high needs offenders), these results are very positive.

An 'ideal' drug court graduate is one who:

- has fewer reasons to commit crime or take drugs as a result of treatment and other interventions to address issues associated with their offending (such as housing and accommodation, family issues, education and employment, mental health issues and association with antisocial and criminal peers);
- is equipped with the knowledge and skills necessary to identify and avoid relapse triggers and rapidly redress relapse if and when it occurs;
- is deterred from committing crimes or taking drugs because the consequences of doing so would weaken newfound attachments to pro-social institutions; and
- has rejected their former identity as a drug-using offender and consequently adopts a positive outlook on their potential to maintain a trajectory of desistance.

The best drug court outcomes are achieved where there is close adherence to best practice. For this reason the Review makes a number of recommendations aimed to achieve this objective and maintain program fidelity over time.

There are a number of elements that allow drug courts, unlike other interventions, to support and provide motivation for high-risk and high-need offenders to graduate so that the benefits of the program can be realised. These include:

- The select and specialised nature of the drug court model maximises the likelihood that offenders will receive access to the necessary treatment and interventions and that the treatments delivered will meet best practice standards.
- Drug courts have the ability to successfully leverage otherwise unwilling participants into treatment and motivate participants to respond positively to treatment goals and objectives through elements such as providing the incentive of a significant penalty reduction upon graduation.
- The use of compliance monitoring mechanisms by drug courts and their ability to be swift and certain in the imposition of sanctions for non-compliance sends strong signals about the consequences of continued criminal or antisocial conduct, again adding to the leveraging capacity of these courts to encourage persistent and proactive engagement in treatment.
- Drug courts challenge pre-existing perceptions by offenders of the criminal justice system, identifying personal motivators for change, and rewarding success and progress in treatment thereby activating individual responsibility.

The United States National Association of Drug Court Professionals (NADCP) has produced the *Adult Drug Court Best Practice Standards* (Standards) published in 2013. These Standards are the result of exhaustive work reviewing scientific research on best practices in substance abuse treatment and correctional rehabilitation and distilling the vast literature into measurable and enforceable practice recommendations for drug court professionals.

The 10 Standards encapsulate what are considered to be best practice in the establishment and operation of drug courts and have been taken into account in identifying key components of a future Queensland Drug Court.

To ensure its effective operation, the Review recommends that a drug court should be established only in locations where there is an identified need for alcohol and other drug interventions, court

caseloads to warrant such a court and availability of services to support the court. For this reason, we suggest that a drug court be established initially in one location and be expanded over time to other locations based on demand and the availability of services once the model has been evaluated and refined.

Under the model proposed, to be eligible to participate in the program, an offender will need to live within the boundary of the court district, but should be able to move outside of the boundary after being accepted into the program, with approval, provided the operation of the order, including the provision of supervision and treatment services, is still viable.

Given the intensity of the program, it is proposed that the drug court should operate, as was the case under the former Drug Court, as a post-sentence option requiring the offender to plead guilty or indicate an intention to plead guilty, and be established in legislation with clear legislative powers and eligibility and exclusionary criteria.

Violent offending and having a mental illness would not be exclusionary criteria, as they were under the former Drug Court model, with the discretion left to the magistrate to determine suitability of making the order based on the individual circumstances of the case. This would include, in the case of violent offending, the nature and seriousness of the offence, including whether actual bodily harm was inflicted and any harm caused to the victim.

As a drug court is reserved for high risk and high needs offenders, a person should only be eligible to participate in the program if the person is drug dependent and that dependency contributed to the person committing the offence, and it was likely the person would be sentenced to imprisonment. We recommend that offenders who are eligible should also include those whose dependency is related to the use of alcohol, taking into account the high overall use of alcohol in the community and its connection to criminal offending.

While the former Queensland Drug Court model provided for the imposition of an initial and final sentence, the model preferred by the Review to create greater certainty and transparency is a sentencing order in the form of a Drug Treatment Order (DTO), which would consist of:

- the custodial part – a term of imprisonment of the same length the court would have made had the drug court not made the order (up to four years), which is suspended while the person completes treatment and supervision. The term of imprisonment would remain suspended once the treatment and supervision part of the order has been completed provided that the person does not commit another offence punishable by imprisonment while they are serving the remainder of their sentence in the community; and
- the treatment and supervision part, which consists of the core conditions and treatment program conditions and operates for two years.

The treatment and supervision part of the order would come to an end when the offender:

- graduated from the program having substantially complied with their treatment and supervision requirements; or
- completed the program, without graduating from it; or
- had their treatment and supervision part cancelled (e.g. due to a repeated failure to comply with its conditions), in which case they could be ordered to serve the unactivated term of imprisonment (less any periods of custody served) or be resentenced.

Other proposed elements of the drug court, based on best practice principles, are:

- the establishment of a drug court team being led by a dedicated Drug Court magistrate;

- professional development and training of magistrates, staff and other legal professionals;
- frequent and random urine testing;
- regular court hearings;
- the use of sanctions and rewards;
- the operation of the treatment and supervision component of the program over three distinct phases: stabilisation, rehabilitation, and reintegration and relapse prevention; and
- drug treatment delivered by accredited treatment providers where a drug treatment case plan is developed that also addresses criminogenic needs.

There may also be important differences in how the drug court operates in practice including the roles of the drug court team, case management of the person, removal of duplication of urine testing and court hearings, particularly where the person is in a residential rehabilitation facility. To ensure the benefits and outcomes of a drug court do not diminish over time, it will be important to maintain program fidelity. This is done by having a shared commitment and understanding of the program philosophy by all government and non-government agencies involved in the drug court.

There should also be a commitment made to ongoing monitoring and evaluation.

OTHER PROBLEM-ORIENTED COURTS

There have been promising developments in other jurisdictions around a range of problem-solving courts or lists, such as:

- Driving whilst intoxicated courts created to provide close supervision of repeat driving whilst intoxicated offenders and improve their compliance with substance abuse treatment. These are modelled on the US drug courts and employ the 10 key components of drug courts.
- Family violence courts. Although there is no consistent model, these address the criminal and/or civil elements of family violence matters.
- Family Drug Treatment Courts, which aim to protect children and reunite families by providing substance-abusing parents with support, treatment and comprehensive access to services for the whole family. A Family Drug Treatment Court has been established in the Childrens Court of Victoria as a list within that court.
- Community courts and justice centres are neighbourhood-focused courts that seek to enhance community participation in the justice system, address local problems, and enhance the quality of local community life. They strive to engage outside stakeholders such as residents, merchants, churches and schools in new ways in an effort to bolster public trust in justice.
- The Assessment and Referral Court List, which operates in Victoria and aims to address the underlying causes of offending for people with a mental illness or cognitive impairment. It is a pre-sentence intervention, deferring sentence until after the program has been completed.

Queensland has already established a Domestic and Family Violence Court that is operating at the Southport Magistrates Court. This court is currently being evaluated, with a view to informing its potential future roll-out to other court locations.

The Review suggests that other promising programs should be monitored and considered as part of future planning.

RECOMMENDATIONS

This Report comprises 37 chapters with 39 recommendations. Part A provides the conceptual background for the Review and the principles that should apply, as well as statistical information relating to the operation of the criminal justice system and drug interventions. Part B examines a criminal justice framework to deal with offenders with problematic alcohol and other drug use. Part C provides the framework for the reestablishment of the Queensland Drug Court.

Part A Foundational Principles

RECOMMENDATION 1

NEED FOR A CLEAR PROGRAM LOGIC AND LEGAL FOUNDATIONS

Intervention programs should be:

- clearly conceptualised in order to ensure that they are properly targeted, proportionate, necessary, cost-effective and meet their stated aims; and
- underpinned by legislation to provide a stable and clear legal foundation for these programs to operate and to identify their intended target group and purpose.

RECOMMENDATION 2

GUIDING PRINCIPLES FOR INTERVENTIONS IN A CRIMINAL JUSTICE CONTEXT

The criteria including the nature and intensity of alcohol and other drug treatment interventions and the stage in the criminal justice system at which they are offered (pre-arrest, post-arrest, bail, pre-sentence, post-sentence) should be guided by the following principles:

- An intervention or a sanction should not be longer or more onerous because of the desire to treat, rehabilitate or assist a person than if that were not a major purpose (principle of proportionality).
- Where an intervention program is not part of a sentence, and therefore the principle of proportionality does not strictly apply, there should be a relationship between the seriousness of the offending and the length and intensity of the program.
- When using the authority of the state to encourage engagement with treatment services, where possible, the least restrictive alternative should be used to ensure the intervention is not more severe than that which is necessary to achieve its purpose (principle of parsimony).
- Interventions should be designed to minimise the unintended consequences of net-widening and sentence escalation – that is, avoid bringing people within the operation of the criminal justice system, or under state control for longer periods than they otherwise would otherwise have been, or that will result in sanctions being imposed or the conditions of those sanctions being more onerous than they would have been had treatment or rehabilitation not been a purpose of the intervention.
- Interventions must respect a person's right to privacy, providing for information sharing with the person's consent wherever reasonably possible, unless this impedes the ability of agencies to share information required to support comprehensive criminal justice response.
- Interventions should employ minimal coercion to encourage participation – although there is some evidence that a degree of coercion may be useful in encouraging offenders to enter into, and remain in, intervention programs, a fair, non-coercive system must ensure that offenders who wish to contest charges brought against them be able to do so in an appropriate forum and that no unnecessary or unethical interventions be used in relation to them.

- As a referral to an intervention entails a degree of interference into the liberty of the individual, steps should be taken to ensure that the person is able to freely consent to the intervention and understands the consequences of giving this consent at key stages of the referral and intervention process.

RECOMMENDATION 3

CRITERIA FOR ALCOHOL AND OTHER DRUG INTERVENTIONS IN A CRIMINAL JUSTICE FRAMEWORK

- 3.1 Alcohol and other drug treatment should be underpinned by a shared understanding across government that problematic alcohol and other drug use is an often chronic and relapsing condition that affects behaviour and for which treatment be provided on a continuum of 'stepped care'.
- 3.2 The intensity of drug treatment, the provision of allied treatment and the intensity of supervision by the criminal justice system should be guided by the principles of risk, needs and responsivity. Accordingly:
 - (a) the level of program intensity should be matched to offender risk level (the risk of reoffending principle);
 - (b) criminogenic needs (i.e. those functionally related to persistence in offending, including drug use and co-occurring needs such as mental illness, unemployment and accommodation) should be addressed concurrently; (the need principle);
 - (c) the style and modes of intervention, wherever possible, should be matched or tailored to each individual offender's learning style and abilities and be responsive to individual strengths and levels of motivation (the responsivity principle).
- 3.3 More intensive (and more costly) interventions should be reserved for high-need, high-risk offenders, while briefer (and cheaper) interventions, should be provided to low-risk or first time offenders.
- 3.4 Low risk offenders should not be over-treated or over-supervised because, notwithstanding ethical considerations, there is a potential for net-widening, to exacerbate drug use, and to worsen criminal justice outcomes.
- 3.5 Intensive interventions delivered in a criminal justice setting and targeting high risk offenders should operate on the basis that most clients are not, at the time of referral, motivated to change their lifestyle or address their criminogenic needs. The goal should therefore not be to target those already motivated to change, but in implementing strategies proven to facilitate the transition of unmotivated offenders into a position of contemplation and action (e.g. as is provided under a drug court model).
- 3.6 Treatment programs should use validated and standardised screening and assessment tools that match offenders to appropriate service levels and intervention types based on risk and need. The following key practice principles should be followed:
 - (a) Eligibility screening should be based on established written criteria. Criminal justice officials or others are designated to screen cases and identify potential drug court participants.
 - (b) As part of the screening and assessment process, eligible participants should be promptly advised about program requirements and the relative merits of participating.
 - (c) Instruments should be selected on the basis that they will actually be used in the decision making process.
 - (d) Screening tools should be used that can be easily administered and scored, as well as that provide clinically meaningful results based on comparisons with normative data.

- (e) Instruments should be selected that have good overall classification accuracy and psychometric properties, particularly reliability and validity.
- (f) Trained professionals should screen drug court-eligible individuals for alcohol and other drug problems and suitability for treatment as well as risk screening for withdrawal, self-harming and suicidal ideation, aggression and violence, and mental health concerns. Staff should be appropriately qualified and trained for administering the selected instruments.

3.7 In the case of offenders with a drug dependency, the following additional principles apply:

- (a) Effective interventions are those that employ evidence based and endorsed psychotherapeutic therapies and techniques such as therapeutic community, cognitive-behavioural and standardised behavioural techniques which should be augmented, where applicable, with the use of medication-assisted treatment including pharmacotherapy.
- (b) Although individuals should be provided with no more treatment than is required by their level of criminogenic need, where drug dependency is identified, programs should employ treatment services for a minimum duration of 90 days.
- (c) To effectively employ standardised behavioural treatments, programs should, where possible, adopt a regimen of rewards and incentives in both the treatment and criminal justice settings. Rewarding treatment progress and compliance has proven to be an effective strategy for treating the drug dependency of offenders in the criminal justice system.
- (d) Individual progress in treatment should be monitored for signs of disengagement and relapse. Specifically, routine drug testing has been shown to be an effective tool for the treatment of drug dependency, especially among criminal justice populations. Drug testing programs, coupled contingency management systems for rewarding treatment progress, are important tools for maintaining treatment retention and thereby maximising treatment duration.

Part B Criminal Justice Framework

RECOMMENDATION 4

EXPANDED PRE-ARREST AND POST-ARREST OPTIONS FOR MINOR DRUG OFFENCES

Consideration should be given to expanding the current range of options to deal with minor drug offences prior to court action, including:

1. the introduction of an adult cautioning scheme for minor drug offences (possibly not limited cannabis) with three levels of caution:
 - (a) a simple caution;
 - (b) a caution with educational material which may be delivered online; and
 - (c) a caution with a requirement to attend, or participate in a face-to-face or online educational program.
2. the introduction of penalty infringement notices for a broader range of minor illicit drug offences than those for which they are currently available.

RECOMMENDATION 5

RATIONALISING EXISTING BRIEF INTERVENTION PROGRAMS FOR ALCOHOL AND OTHER DRUG-RELATED ISSUES

- 5.1 There should be a review and rationalisation of the low-level intervention programs to provide one consistent brief intervention program for low-level offenders.
- 5.2 Referrals into this program could come from police, pre-arrest, courts, as part of a bail, adjournment or deferral of sentence procedure or as a condition of a recognisance.
- 5.3 More efficient and effective modes of delivery should be considered, such as validated self-administered instruments and programs.
- 5.4 While the current arrangements that allow these brief intervention programs to be offered on multiple occasions should be retained, the following principles should apply:
 - (a) if a brief intervention involves a specific non-individualised program of activities and educational exercises, there is likely to be little benefit in offering the same program twice;
 - (b) if the brief intervention is individualised, for example involving motivational interviewing and identifying current and future risks of relapse, then this may be offered on multiple occasions; and
 - (c) if the return to brief intervention signals an escalation of drug use, then a brief intervention may no longer be appropriate.

RECOMMENDATION 6

A SINGLE GENERIC INTEGRATED COURT ASSESSMENT, REFERRAL AND SUPPORT PROGRAM FOR QUEENSLAND

Consideration be given to the introduction of a generic integrated assessment, referral and support scheme to be named the Queensland Integrated Assessment and Referral Program (QIARP) based on the Victorian CISP that aims to address a range of problems faced by offenders including drugs, alcohol, mental health issues, impaired decision making capacity, housing, employment and other issues. This would replace the existing QICR program and bring other programs, such as QMERIT, under the one program framework.

Interventions delivered as part of the existing programs under this model could be retained to be funded and delivered under the new program. The proposed QIARP, like CISP, could operate pre-plea and should be relatively brief, preferably no more than 16 weeks, but could continue for longer if required.

Where an extensive period is required for assessment, referral, treatment or rehabilitation and for a range of other purposes, courts, including the District Court, could be provided with a statutory power to defer sentence for up to 12 months.

Based on the Victorian experience, the QIARP model could build on the existing QICR model to include the engagement of suitably qualified court case managers employed by the court. The role of these officers could include to:

- conduct initial screening of eligibility and comprehensive assessments;
- work with participants to develop individual case management plans that link participants into treatment and other support services and to meet regularly with those participants;
- as part of the case management of the participant, coordinate and negotiate delivery of a range of services, including accommodation, alcohol and other drug treatment, mental health, disability, family violence and other relevant services;

- compile reports for courts on the progress of participants and, where required, give advice to, and evidence in, court;
- maintain strong linkages with the community services sector and other key stakeholders;
- work collaboratively within a multi-disciplinary team on issues relevant to the management of participants and develop and maintain a working relationship with other court programs; and
- provide education and professional development to judicial officers and court staff in relation to relevant issues experienced by court users.

The model would allow in-house court-based assessments to be undertaken and other assessment providers to be engaged, as necessary, to conduct specialised assessments (e.g. neuropsychological reports). Some forms of brief interventions, such as motivational interviewing, could also be delivered by the team.

In larger locations (e.g. Brisbane), a number of case managers could be recruited to address specialist areas of expertise, such as alcohol and other drugs, mental health and disability, and to support Aboriginal and Torres Strait Islander clients, as is the case in Victoria. This team could be built over time, subject to available funding.

In smaller centres, a single case manager might be employed to provide support to participants.

Participants on the program could be subject to regular judicial monitoring.

The level of service provision (e.g. judicial monitoring and level of case management) could be determined based on a needs assessment.

Once established, this program and the services delivered under it could also support specialist courts, such as the Southport DFV Court and Murri Court.

RECOMMENDATION 7

GENERAL, AUTHORISING PROVISION TO CREATE THE FRAMEWORK FOR AN INTERVENTION PROGRAM

To ensure that programs used are evidence-based and that they can be used at a number of points in the criminal justice system, consideration should be given to:

- the establishment of approved intervention programs that might be Gazetted on the recommendation of an Interagency Consultative Committee comprised of magistrates and mental health, alcohol and other drug services, police, corrections, prosecutions, legal and victims' representatives; and
- provision to attend approved intervention programs being attached to section 379 of the *Police Powers and Responsibilities Act 2000*, or made a condition of bail, adjournment, deferral of sentence or recognisance. Programs could be added or removed depending upon their availability, efficacy or efficiency.

RECOMMENDATION 8

REVIEW OF SENTENCING ORDERS

Consideration should be given to providing judicial officers with a broader range of sentencing options for alcohol and other drug related offences in the moderate to high range, in particular, ones that may allow for judicial monitoring. The elements of such an order might include:

- standard conditions such as not committing an offence, reporting requirements, notification of change of address, not leaving the State without permission and compliance with a reasonable direction;
- at least one special condition which may include:
 - undertake medical treatment or other rehabilitation;

- not enter licenced premises;
 - community service work;
 - abstain from association with particular people;
 - abide by a curfew;
 - stay away from nominated places or areas;
 - payment of a bond; and
 - be monitored and reviewed by the court to ensure compliance with the order.
- case management and supervision by a corrections officer;
 - the suitability of the order and the special conditions required for the offender are assessed by a corrections officer and a pre-sentence report provided to the court; and
 - the option for a term of imprisonment to be served prior to the commencement of the order.

Further detailed consideration to the form of such an order could be undertaken through a reference to the Queensland Sentencing Advisory Council once operational.

RECOMMENDATION 9

PAROLE SUPERVISION

Consideration should be given to:

- the enhancement of parole supervision to ensure the equivalency in treatment and supervision requirements with intensive orders such as the former IDRO, where indicated based on an offender’s assessed risk and needs; and
- the provision of additional resourcing to enable offenders on parole to receive appropriate alcohol and other drug treatment to meet their assessed need.

RECOMMENDATION 10

MEETING THE NEEDS OF ABORIGINAL AND TORRES STRAIT ISLANDER OFFENDERS

To ensure that programs, interventions and sentencing orders appropriately meet the needs of Aboriginal and Torres Strait Islander offenders, consideration should be given to:

- the clear articulation of strategies that improve equity and, where possible, positively target specific cultural needs;
- the identification of community-controlled or Indigenous specific services, or mainstream services that deliver culturally safe, competent, appropriate and responsive to Aboriginal and Torres Strait Islander people;
- the adoption of best practice principles specific to the provision of Aboriginal and Torres Strait Islander services;
- ensuring that programs are ‘culturally safe’ and participants and their identity are respected;
- the inclusion of Aboriginal and Torres Strait Islander staff to assist in the motivation, support and retention of Aboriginal and Torres Strait Islander offenders in court-based interventions;
- developing linkages between Murri Court and other court based interventions;
- making any new sentencing orders, with supervision and intervention, equally available to the Murri Court including orders with a judicial monitoring component; and
- incorporating elements of the Murri Court into the Drug Court to make it a culturally safe environment, such as through the participation of Elders.

Part C Drug Court

RECOMMENDATION 11

OBJECTIVES OF THE DRUG COURT

Reflecting the therapeutic jurisprudential framework that underpins a drug court, the legislative objectives of the Act or provisions establishing the Queensland Drug Court program should focus on the individual-level benefits of participation in the drug court program. In particular, to:

- facilitate the rehabilitation of eligible persons by providing a judicially-supervised, therapeutically-oriented, integrated drug or alcohol treatment and supervision regime;
- reduce the drug or alcohol dependency of eligible persons;
- reduce the level of criminal activity associated with alcohol and other drug dependency;
- reduce the health risks associated with alcohol and other drug dependency of eligible persons; and
- promote the rehabilitation of eligible persons and their re-integration into the community.

RECOMMENDATION 12

POST-SENTENCE MODEL

The Queensland Drug Court program should operate as a post-sentence model and require the offender to plead guilty or indicate an intention to plead guilty before being referred for an assessment of eligibility and suitability. Under this model, potential participants should be permitted to contest any additional charges to which they do not wish to plead guilty and to have these charges determined separately, in an appropriate forum.

RECOMMENDATION 13

DRUG COURT PROGRAM LEGISLATION

- 13.1 As a post-sentence program, the Drug Court program should be established in legislation. The most appropriate form of legislation, whether a stand-alone Drug Court Act or as a Part in the *Penalties and Sentences Act 1992* and *Magistrates Courts Act 1921*, should be determined by the Queensland Government.
- 13.2 Whether the provisions that support the Drug Court appear in a stand-alone Act or are included in the *Penalties and Sentences Act 1992*, a provision similar to section 18X(2) of the *Sentencing Act 1991* (Vic) should be included to clarify the relationship between the general purposes of sentencing set out under section 9(1) of the Act and the purposes of an order made the Drug Court by providing that while the purposes of the order are not intended to affect the operation of section 9(1), if considering whether to make an order, the Drug Court must regard the rehabilitation of the offender and the protection of the community from the offender (achieved through the offender's rehabilitation) as having greater importance than the other general purposes of sentencing set out under section 9(1).

RECOMMENDATION 14

MAXIMUM NUMBER OF ACTIVE PARTICIPANTS

The maximum number of active participants in the drug court should be determined as a matter of policy under administrative guidelines, rather than being prescribed in legislation.

RECOMMENDATION 15

DRUG COURT LOCATIONS

The location(s) of the Queensland Drug Court should be identified based on need, court caseloads and availability of services, commencing with one drug court location, to test and refine the model.

RECOMMENDATION 16

ELIGIBILITY CRITERIA AND CATCHMENT AREA

- 16.1 A person should be eligible to participate in the drug court program if:
- (a) the person is not a person who must be dealt with as a child under the *Youth Justice Act 1992*;
 - (b) the person was alcohol and/or drug dependent and that dependency has contributed to the person committing the offence;
 - (c) it is likely the person would, if convicted of the offence, be sentenced to imprisonment; and
 - (d) the person satisfies any other criteria prescribed under a regulation.
- 16.2 Catchment areas for drug court participants should be defined by Magistrates Courts districts or Local Government Area boundaries, rather than by postcodes. Participants should be able to move outside the drug court boundary after acceptance into the program with approval, so long as the operation of the order is still considered viable.

RECOMMENDATION 17

OFFENDERS WITH A MENTAL ILLNESS

Mental illness/cognitive impairment should not preclude participation in the Drug Court program but should be considered in determining the appropriateness of making the order, taking into account the assessment report, whether the defendant's mental health is able to be stabilised and he/she is able to participate and there are treatment facilities/programs available.

RECOMMENDATION 18

RELEVANT OFFENCES

Offences that could be dealt with under the former *Drug Court Act 2000* should be retained. Accordingly, the offences that may be dealt with by the Queensland Drug Court should include:

- a summary offence;
- an indictable offence dealt with summarily;
- a prescribed drug offence; or
- another offence prescribed under a regulation that is punishable by imprisonment for a term of not more than 7 years (a list of offences can be found in Schedule 3 of the former Regulation).

RECOMMENDATION 19

INELIGIBILITY OF AN OFFENDER TO PARTICIPATE IN THE DRUG COURT

- 19.1 A person should not be eligible to participate in the Queensland Drug Court if:
- (a) the person is serving a term of imprisonment;
 - (b) the person is currently subject to a sentence imposed by the District Court or Supreme Court;
 - (c) the person is the subject of a parole order that is cancelled by a parole board and the person is to serve the unexpired portion of the person's period of imprisonment; or
 - (d) the person is charged with an offence of a sexual nature.

- 19.2 The fact the person has been charged with an offence involving violence should not be treated as an automatic exclusionary criterion. Instead, the legislation should provide that when determining if it is appropriate in all the circumstances to make the order, magistrates must have regard to the nature and seriousness of the offence including whether actual bodily harm was inflicted. The availability of services that are willing to accept these clients will also need to be considered as part of the assessment of the offender's suitability for the program.

RECOMMENDATION 20

A TWO STAGE PROCESS TO ASSESS ELIGIBILITY AND SUITABILITY BE ADOPTED

- 20.1 A two stage process to assess eligibility and suitability should be adopted.
- 20.2 In relation to eligibility, the initial screen should include a review of legal eligibility, preliminary assessment of dependency and the completion of a risk of re-offending assessment to ensure that inappropriate referrals are filtered out at the first opportunity.
- 20.3 Once deemed eligible for the drug court, a suitability assessment is conducted. This would include a full bio-psycho-social health assessment, including an assessment of drug dependency utilising an accredited tool and the development of a preliminary treatment plan. A pre-sentence or specific drug court report should be prepared by Queensland Corrective Services identifying the defendant's criminogenic needs. A preliminary case management plan would be completed taking into consideration the results of the health assessment.

RECOMMENDATION 21

SENTENCING STRUCTURE OF A DRUG TREATMENT ORDER

- 21.1 The Queensland order should operate as a straight sentence comprised of:
- (a) a term of imprisonment which is not activated. The term is the same length as the court would have made had the drug court not made the order.
Maximum term: 4 years imprisonment
 - (b) a treatment and supervision part which operates for 2 years and consists of:
 - i. core conditions; and
 - ii. a rehabilitation program which consists of the treatment conditions attached to the order.
- 21.2 The court should be permitted to activate part of the imprisonment order in certain circumstances (i.e. as a sanction for failure to comply or upon termination of the order).

RECOMMENDATION 22

CORE CONDITIONS

The new form of Drug Treatment Order (DTO) should retain the core conditions that were imposed under former Queensland IDRO, namely that the offender:

- not commit another offence, in or outside Queensland, during the period of the order;
- notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after this change;
- not leave or stay out of Queensland without permission;
- comply with every reasonable direction of an authorised corrective services officer, including a direction to appear before a Drug Court Magistrate; and
- attend before a Drug Court Magistrate at the times and places stated in the order.

RECOMMENDATION 23

REQUIREMENTS OF REHABILITATION PROGRAM

The new form of DTO should retain the requirements of the rehabilitation program that were imposed under the former Queensland IDRO, which would set out the details of the rehabilitation program that the offender must undertake including, for example that the offender must:

- report to, or receive visits from, an authorised corrective services officer;
- report for drug testing to an authorised corrective services officer;
- attend vocational education and employment courses; or
- submit to medical, psychiatric or psychological treatment.

RECOMMENDATION 24

ADDITIONAL REQUIREMENTS

The drug court should retain the ability to attach other requirements that a Drug Court Magistrate considers may help the offender's rehabilitation, and also to require that the offender pay restitution or compensation.

These additional requirements should not, however, include any requirements that would interfere with or reduce the offender's capacity to meet the core conditions of the order and treatment conditions, such as imposing community service.

RECOMMENDATION 25

GRADUATION AND COMPLETION OF THE DRUG TREATMENT ORDER

- 25.1 A person should be considered as having completed the treatment and supervision part of a DTO:
- (a) at the end of the two-year treatment and supervision period (unless the court varies the order by extending the period of treatment and supervision); or
 - (b) if it has been cancelled by the court earlier for full or substantial compliance with the treatment and supervision conditions.
- 25.2 In circumstances where a person completes and graduates from the rehabilitation program before the two year treatment and supervision part of the DTO has expired, and the order has not otherwise been cancelled by the Drug Court, they should be required to serve the remaining term of the treatment and supervision part by being subject to the core conditions of the order.
- 25.3 If the person completes and graduates from the treatment and supervision part of the order and there is still time remaining on the order, the court, on its own initiative, should have the power to cancel the whole treatment and supervision part of the order if it considers that:
- (a) the offender has fully or substantially complied with the conditions attached to the order; and
 - (b) the continuation of the order is no longer necessary to meet the purposes for which it was made.
- 25.4 If the operational period of the custodial term is longer than the 2 year treatment and supervision part of the order, the offender will still be subject to the suspended sentence. The offender will be liable to serve the remaining term of imprisonment if they commit an offence during this period.

RECOMMENDATION 26

VARIATION OF THE DRUG TREATMENT ORDER

- 26.1 The court should be permitted to vary the treatment and supervision part of the order to extend beyond two years if the person still requires treatment and/or supervision. However the court should not be permitted to extend the treatment and supervision part beyond the original term of imprisonment ordered under the DTO.
- 26.2 The court should also be permitted, on application or on the court's own initiative, to vary the order the requirements of a DTO by adding new conditions to, or varying or revoking existing conditions.

RECOMMENDATION 27

CANCELLATION OF THE DRUG TREATMENT ORDER

In circumstances where an offender's DTO is cancelled other than for compliance with the order the court should be required to either:

- make an order activating some or all of the custodial part of the order (taking into consideration any time served before or during the order including as a sanction); or
- cancel the order and deal with offender in any way it could deal with the offender as if just convicted of the offence.

However, the total of:

- the term of imprisonment ordered to be served upon termination; plus
- the period during which the treatment and supervision part of the order has already operated;

should not be longer than the original term of imprisonment imposed on the DTO.

RECOMMENDATION 28

DRUG COURT TEAM

- 28.1 A multidisciplinary team should be developed having representation from each of the key agencies – courts, corrections, health, legal aid, and police. Consequently, the drug court team should include as a minimum, a corrective services representative, a health representative, a Legal Aid representative and a police prosecution representative as well as a Drug Court manager. The direct involvement of housing service providers on the team should be considered, as is the case in Victoria.
- 28.2 Where appropriate, representatives from external treatment agencies should be afforded an opportunity to participate in the drug court team and share in the drug court's broader therapeutic and jurisprudential philosophy.
- 28.3 Drug court team members should be required to consistently attend pre-court team meetings and formal drug court hearings. The presiding magistrate should also attend pre-court meetings.
- 28.4 Administrative support, including the administration of the drug court program and individual drug court orders be undertaken by a DJAG appointed Drug Court manager. The Drug Court manager should be a member of the drug court team and be responsible for coordinating and managing the court's day-to-day administrative activities.
- 28.5 As the drug court team members are required to perform their duties in a non-traditional, non-adversarial and therapeutic environment, dedicated personnel with both an interest in the philosophy of the court and skills necessary to operate in a non-traditional capacity should be

appointed to the team. Nomination to the drug court team should require a selection process through which these skills can be formally tested.

28.6 All drug court team members should be required to undertake training before joining the team and at regular intervals throughout their service.

28.7 Where new agency staff are invited or required to participate in the drug court team, a period of 'shadowing' (watching the practice of an existing team member) and formal training should be facilitated.

RECOMMENDATION 29

DRUG TESTING REGIME

29.1 The frequency with which offenders must be drug tested under their Drug Treatment Order should not be prescribed in regulation but should form part of the operational manual of the Drug Court.

29.2 In order for drug testing to achieve its deterrent capabilities:

- (a) drug testing must be conducted frequently enough to ensure that any new use is detectable. This will depend on the testing method, however for urinalysis, testing should be conducted no less than three times per week in the first phase;
- (b) testing should be conducted randomly so that from the participant's perspective the probability of being tested is the same on every day of the week. There should be no periods of time for which there is a predictable absence of testing;
- (c) random testing should be conducted as soon possible after notification to the participant – ideally within no more than eight hours. Random testing, in particular during the later phases of the drug court, should not interrupt a participant's education and employment obligations;
- (d) drug testing should be conducted for the entire duration of the drug court order, although frequency of testing may be tapered according to a participant's level of progress. Of all the compliance mechanisms available to the drug court, drug testing should be the last mechanism to be formally withdrawn (if at all);
- (e) testing equipment and procedures must conform with current scientific standards and have sufficient breadth to detect a participant's drug of choice, common substitutes (including synthetic drugs), and other commonly available drug types;
- (f) testing procedures must be organised to prevent where practicable dilution, adulteration and substitution of samples. This should include a process of witnessed collection, and resting procedures if fraudulent activity is suspected; and
- (g) the results of a drug test should be reported to the court as quickly as is practicable – ideally within no less than 48 hours. The response of the drug court, in terms of sanctioning and treatment plan revisions, should follow immediately.

29.3 To maintain an effective drug testing program:

- (a) testing personnel must be adequately trained in sample collection, testing, storage and chain of custody requirements. Drug testing personnel should also be actively engaged in training and education programs that ensure they are informed of emerging adulteration practices, technological practices and/or emerging drug types.
- (b) witnessed collection must be undertaken by a person of the same gender;
- (c) the drug court magistrate and team must have full confidence in the testing process and procedure. Where concerns emerge about the fidelity of the testing program, this has the potential to undermine the utility of testing and creates fractures between drug court team members; and

- (d) testing should only be conducted by a third party (treatment provider or other agency) where there is a contractual arrangement that ensures the drug court team of the fidelity of the testing procedure. The drug court participant must have full confidence in the fidelity of the testing procedure and, more importantly, understand the range of responses or consequences the court will impose. The range of sanctions used by the court to the provision of a positive test should be clearly articulated to participants at the time of referral.

RECOMMENDATION 30

JUDICIAL STATUS HEARINGS AND COURT APPEARANCES

- 30.1 The drug court program should be structured on the assumption that all clients are required to attend court for review at least weekly in the first phase of treatment, except in circumstances where the person is in the initial stages of a residential rehabilitation program and is otherwise compliant with their treatment conditions.
- 30.2 Alternative attendance arrangements should be agreed by the whole team and should not be seen to unfairly favour one or specific groups of participants. Maintaining fairness and equity among participants will be important for fostering improvements in the perceptions of procedural justice.
- 30.3 Court attendance requirements should be tapering with each consecutive phase of participation. Court attendance requirements should not serve as a barrier to employment or other education activities during the reintegration phase of the drug court program.
- 30.4 Technological alternatives, such as videoconferencing, should be investigated where attendance at court has the potential to disrupt treatment.

RECOMMENDATION 31

APPOINTMENT AND ROLE OF THE DRUG COURT MAGISTRATE

- 31.1 Drug court magistrates should be carefully selected with due consideration of the attributes required to foster a strong and safe therapeutic environment.
- 31.2 Judicial ownership of the drug court program is important and so the Drug Court magistrate should be appointed early enough such that he/she can help shape the court's practices and procedures prior to implementation.
- 31.3 Drug court magistrates should be appointed for as long as is practicable, but for no less than two years.
- 31.4 The magistrate should be able to lead the drug court team while simultaneously fostering a therapeutic alliance with drug court participants.
- 31.5 Drug court magistrates should be offered initial, regular and ongoing professional development. This includes education and training on drug dependency, co-morbidities and best practice interventions for drug dependent offenders, as well as opportunities to meet with other interstate and international drug court colleagues.
- 31.6 Drug court magistrates should be strongly encouraged (if not required) to maintain a regular schedule of community promotion and educational engagement activities aimed at raising awareness of the drug court's aims, activities and achievements. This includes giving presentations to community and government agencies, as well as facilitating information sessions and workshops.
- 31.7 Training may involve a period of 'shadowing' where new magistrates can learn directly from outgoing magistrates in an apprenticeship style approach.

RECOMMENDATION 32

VICTIMS' INVOLVEMENT

- 32.1 Victims of offenders dealt with by the Drug Court should have the same rights as victims of offenders dealt with by mainstream courts in accordance with the Fundamental Principles of Justice for Victims set out in the *Victims of Crime Assistance Act 2009* including to be kept informed of progress by the relevant agencies and enabled to make victim impact statements.
- 32.2 Consideration should be given to the Drug Court offering victims restorative justice options if desired and available and this being available at appropriate phases of the program, including in support of an offender's rehabilitation.

RECOMMENDATION 33

SCHEDULE OF SANCTIONS AND REWARDS

- 33.1 A schedule of sanctions should be published and made available to participants at the commencement of their drug court order. Participants must clearly understand the consequences of non-compliance and there should be little room for participants to perceive the courts response as unfair or unbalanced.
- 33.2 Overly punitive sanctions should be avoided. In particular, imprisonment sanctions should be used as a last resort and the number of days in custody should accumulate and not be ordered to be served unless a certain threshold has been met (for example, in Victoria, a minimum of seven imprisonment days can be activated). A growing evidence base suggests that shorter periods in custody are just as effective as longer periods and therefore the time in custody should generally be kept brief, while not so brief so as to increase the overall costs of the program.
- 33.3 Treatment should not be used as a sanction for non-compliance. Instead, modifications to an individual participant's treatment plan should only occur when clinically indicated. Most importantly, participants should not, as a consequence of sanctioning, be subjected to more intensive treatment than is clinically indicated.
- 33.4 Treatment relapse should not be punished by the court. Instead, relapse should be met with treatment adjustments (temporary increase in treatment visits or urinalysis testing, for example), rather than sanctions and especially after prolonged periods of treatment progress. Punitive responses to a temporary lapse in treatment will more likely than not undermine the treatment alliance and weaken the courts capacity to engage and motivate behavioural change.
- 33.5 Treatment progress and order compliance should be recognised and rewarded often. Rewards should be offered at least as often as sanctions, but preferably more often where possible. In principle, the court philosophy should be guided by evidence-based behavioural science techniques that favour incentivising compliant behaviour over the sanctioning of non-compliant behaviour.
- 33.6 All drug court team members must share in the drug court's policy and philosophy about the use of sanctions and rewards. In particular, participants should not be at any time left with the view that the drug court team is in disagreement about the response to non-compliance.
- 33.7 Where possible, participants should be encouraged to identify rewards that have an intrinsic personal value, rather than monetary value. Rewards systems will be most effective when they meet basic personal and emotional needs.

- 33.8 Drug court team members, including the magistrate, should be active in promoting the philosophy and achievements of the drug court across government and within the wider community. This includes a discussion about the use of rewards and sanctions.

RECOMMENDATION 34

DRUG COURT TREATMENT PHASES

- 34.1 The drug court treatment program should be implemented across three distinct phases – stabilisation, rehabilitation and reintegration and relapse prevention.
- (a) The stabilisation phase (Phase One) should be aimed at addressing proximal criminogenic factors that are likely to result in reoffending, such as drug use, accommodation support, income stabilisation and social stabilisation.
 - (b) The rehabilitation phase (Phase Two) should be the period in which the main treatment and intervention programs are in process.
 - (c) The reintegration and relapse prevention phase (Phase Three) should be targeted at reconnecting drug court participants with education and employment, whilst maintaining an active post-drug court relapse prevention approach.
- 34.2 In developing guidelines for the structure of a three phased program, program design should be guided by:
- (a) a shared understanding within the drug court team that stabilisation will take considerably longer for some participants and that premature graduation to a higher phase can be detrimental to treatment.
 - (b) the decision to graduate a participant from stabilisation to rehabilitation should take into account the health, criminal justice and social domains likely to affect active and motivated engagement in both drug use and criminogenic/ criminal thinking treatments.
- 34.3 The consequences of relapse should be clear and no more or less significant than at any other time during the order. Ideally, clearly articulated systems of reward should be used to incentivise post-graduation compliance and key rehabilitative efforts (motivational interviewing and case management) should be temporarily increased, where appropriate.

RECOMMENDATION 35

DRUG TREATMENT

- 35.1 The drug court should preference the use of a small number of treatment providers, capable of delivering a wide range of treatment services.
- 35.2 Individual drug treatment plans should be developed by suitability qualified and trained personnel working within a specialist alcohol and other drug service. Drug treatment location, length, setting and modality should be decided based on clinical indications and best-practice principles in the provision of drug treatment. As a guide:
- (a) Participants should be engaged in treatment for no less than 90 days, however ongoing treatment of up to 12 months is not uncommon for high-need drug court clients.
 - (b) Participants should not receive more intensive treatments than is otherwise clinically indicated.
 - (c) Detoxification services should be available, however, custodial locations should not be used to facilitate detoxification.
 - (d) Treatment progress should be regularly monitored and treatment intensity modified in response.
 - (e) Individual drug counselling sessions should be available to all participants at the commencement of their drug court order.

- (f) Where residential therapeutic communities are to be used, standards for group size, composition and staff training should be adhered to.
- (g) Cognitive and behavioural therapies should be used as the foundation of treatment for drug court clients. This should include recovery enhancement and promotion.
- (h) Services provided under the drug court program should be subject to ongoing performance monitoring, evaluation and improvement. Separate evaluations should be conducted in addition to drug-court specific evaluations.
- (i) Treatment provided must be accredited, evidence based and demonstrated to be effective with drug dependent individuals.

RECOMMENDATION 36

ADDRESSING CRIMINOGENIC NEEDS

- 36.1 Drug court participants in evidence based treatment programs that address criminal thinking and attitudes should be a mandatory component of the Drug Court program.
- 36.2 A comprehensive, individualised case plan should be developed for every drug court participant that addresses all of the offender's criminogenic needs.

RECOMMENDATION 37

DISADVANTAGED GROUPS

To ensure that people from disadvantaged groups are provided with equitable opportunity to access, participate and complete the Drug Court program:

- Eligibility criteria should be developed that do not unnecessarily exclude minorities or members of other historically disadvantaged groups. In the case where an eligibility criterion has the unintended effect of differentially restricting, access to the Drug Court for such persons, then extra assurances are required that the criterion is necessary for the program to achieve effective outcomes or protect public safety.
- The Drug Court team should include a specifically appointed Aboriginal and Torres Strait Islander staff member to act as a cultural advisor and to assist in the support and management of Aboriginal and Torres Strait Islander participants.
- Culturally appropriate protocols should be embedded into the operations of the Drug Court.
- Feedback about the performance of the Drug Court in the areas of cultural competence and cultural sensitivity should be continually sought to learn and develop creative ways to address the needs of their participants and produce better outcomes.
- Any independent evaluations should objectively identify areas requiring improvement to meet the needs of minorities and members of disadvantaged groups.
- Treatment provided by the Drug Court should be individualised, valid and effective for members of disadvantaged groups.
- Sanctions and incentives should be being applied equivalently for participants from disadvantaged groups and corrective action is taken if discrepancies are detected.
- Drug Courts should remain vigilant to the possibility of sentencing disparities in their programs and to take corrective action where indicated.
- Drug Court team members should be trained in culturally appropriate practices and are required to monitor attitudes and practices for implicit bias.

RECOMMENDATION 38

TRANSITIONAL SERVICES AND AFTER CARE

- 38.1 At the completion of a DTO, the participant's formal and mandated supervision and treatment requirements should end. However, taking into account offenders' ongoing risk of post-graduation reoffending and drug use relapse and that the immediate cessation of treatment and case management services may act as a key trigger for this risk, the drug court model should be guided by the following principles:
- (a) The utilisation of best-practice relapse prevention training in the final phase of a drug court order is the most important tool available to the drug court for preventing or minimising post-graduation risks.
 - (b) Many drug court graduates will benefit from post-graduation transitional and aftercare support. Voluntary ongoing service contact should be encouraged and supported.
 - (c) Where possible, the drug court should develop a transitional strategy that provides opportunities for after-care contact and brief intervention, if required. This may take the form of a once-a-month phone call from the Drug Court Coordinator/Manager to newly graduated clients for up to six months.
- 38.2 Consideration should be given to the development of a drug court graduate alumni program of activities through which former drug court participants can voluntarily participate.

RECOMMENDATION 39

GOVERNANCE, MONITORING AND EVALUATION

- 39.1 A Steering Group should be established to provide ongoing strategic oversight of the Drug Court and its implementation. The Steering Group should involve representation of all key government agencies involved in supporting the Drug Court.
- 39.2 The reinstated drug court should be monitored regularly, independently evaluated and open to modification in response to evaluation findings.
- 39.3 The reinstatement of the drug court should include:
- (a) a legislative commitment to the evaluation of the program, which should be undertaken as an independent process and outcome evaluation;
 - (b) the development of an evaluation plan and protocol before the commencement of the drug court. The protocol should outline an interagency agreement governing the collection, collation, sharing and storage of information and data;
 - (c) the creation of an evaluation minimum dataset in consultation with independent research experts and agency representatives. Where possible, data linkage opportunities should be identified and agreed between agencies at the outset of the drug court program;
 - (d) where possible, control and/or comparison groups should be identified at the commencement of the drug court program. Randomisation processes should be implemented where it is expected that the demand for drug court services will exceed capacity;
 - (e) drug court evaluations should include cost-efficiency and cost-benefit analysis, conducted by independent evaluators. To facilitate this process, unit level costing data should be identified as a core component of the evaluation minimum dataset;
 - (f) the Drug Court Manager should produce regular statistical and performance monitoring reports on the operation and outcomes of the drug court. Though these are not formal evaluations, they should be used to inform incremental changes to the operation of the court, where indicated and agreed; and

- (g) performance benchmarks should be developed and reported against for the purposes of ongoing performance monitoring. Benchmarks should be developed and verified through independent analysis of interstate and overseas drug court programs, as well as pre-existing drug court data in Queensland.

39.4 Subject to application and approval, the drug court program should encourage external researchers to undertake research with drug court participants. Queensland should identify areas and ways in which it can contribute to the international literature on best practice in drug court operation.



QUEENSLAND
COURTS

www.courts.qld.gov.au