

QUEENSLAND DRUG AND SPECIALIST COURTS REVIEW

Final Report



QUEENSLAND
COURTS

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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.

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We travelled throughout North and South-East Queensland and spoke to many government and non-government service providers, legal professionals and government agency representatives. Throughout the consultations it was clear that there are many people who are passionate and committed to their work and who were willing to share their passion, experiences and ideas for the future. We were able to consult with many people who were involved in the former Drug Court and, with their assistance we have been able to take lessons from the past to develop a better model for the future.

ABBREVIATIONS

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health and Welfare
ANU	Australian National University
AODT	Alcohol and Other Drug Treatment
ARC	Assessment and Referral Court
ATODS	Alcohol, Tobacco and Other Drug Services
ATSILS	Aboriginal and Torres Strait Islander Legal Service
CAG	Case Assessment Group
CBT	Cognitive Behavioural Treatment
CCO	Community Corrections Order
CIN	Cannabis Infringement Notice
CISP	Court Integrated Services Program
CJG	Community Justice Group
CM	Contingency Management
DAAR	Drug and Alcohol Assessment Referral
DAES	Drug Assessment and Education Session
DCCSDS	Department of Communities, Child Safety and Disability Services
DDAP	Drug Diversion Assessment Program
DFV	Domestic and Family Violence
DJAG	Department of Justice and Attorney-General
DOHA	Department of Health and Ageing
DTO	Drug Treatment Order
DUMA	Drug Use Monitoring Australia
DVOs	Domestic Violence Orders
DWI	Driving While Intoxicated
FBT	Family Behaviour Therapy
GCDVIR	Gold Coast Domestic Violence Integrated Response
IDRO	Intensive Drug Rehabilitation Order
IDRS	Illicit Drug Reporting System
ISL	Indigenous Sentencing List
JP	Justice of the Peace
LAQ	Legal Aid Queensland
MET	Motivational Enhancement Therapy
MI	Motivational Interviewing
NADCP	National Association of Drug Court Professionals
NDARC	National Drug and Alcohol Research Centre
NGOs	Non-government organisations
NIDA	National Institute of Drug Abuse
NJC	Neighbourhood Justice Centre
NSW	New South Wales
NT	Northern Territory
PI	Prize Incentives
PTSD	Post-Traumatic Stress Disorder
QCR	Queensland Courts Referral
QCS	Queensland Corrective Services
QH	Queensland Health
QIADP	Queensland Indigenous Alcohol Diversion Program
QIARP	Queensland Integrated Assessment and Referral Program
QICR	Queensland Integrated Court Referrals
QMERIT	Queensland Magistrates Early Referral into Treatment
QNADA	Queensland Network of Alcohol and other Drug Agencies
QPS	Queensland Police Service

RNR	Risk, Need and Responsivity
ROR-PPV	Risk of Reoffending-Probation and Parole Version
ROR-PV	Risk of Reoffending-Prison Version
SA	South Australia
SCCDP	Special Circumstances Court Diversion Program
SMS	Scientific Methods Scale
TC	Therapeutic Community
VAQ	Victim Assist Queensland
VBR	Voucher-Based Reinforcement
WA	Western Australia
WSIPP	Washington State Institute of Public Policy

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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 responsivity;
- 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 responsiveness.

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 with 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 to cannabis) with three levels of caution:
 - a simple caution;
 - a caution with educational material which may be delivered online; and
 - 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 or 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.

INTRODUCTION AND OVERVIEW

Prior to its election in 2014, the Queensland Government committed to reinstate diversionary court processes and programs and specialist courts that were defunded under the previous Government. These courts and programs included the former Murri Court, the Special Circumstances Court Diversion Program (SCCDP) and the Queensland Drug Court.

The Queensland Government has allocated \$8.7 million over 4 years (commencing in 2015-16) to support the reinstatement of these courts and programs.

The reinstatement process has taken place in two stages. Stage 1 was focused on the reinstatement of the Murri Court and SCCDP.

Stage 2 of the reinstatement project – the Drug and Specialist Courts Review (the Review) – commenced in late 2015 and is the focus of this Report. The Review has involved:

- a review of best practice in specialist court and court diversionary approaches in Australia and internationally to address issues associated with offending such as drug and/or alcohol issues, mental health issues and housing instability;
- the development of options for the reintroduction of a drug court or specialist court approach in Queensland for offenders who are drug dependent as part of a broader continuum of court-based interventions and referral services; and
- consideration of potential modifications to the existing suite of courts and diversionary programs to improve their operation and effectiveness.

The outcomes of the Review will inform the reinstatement of a Drug Court in Queensland and the development of an overarching framework to support the effective operation of Queensland's specialist courts and court programs.

Scope of the Review

The Queensland court and court-based programs that have been the subject of specific investigation have included:

- the former Queensland Drug Court, which operated in Beenleigh, Ipswich, Southport, Cairns and Townsville, and Drug Courts and programs operating in other Australian and overseas jurisdictions;
- Queensland Integrated Court Referrals (QICR) and its predecessors, SCCDP and Queensland Courts Referral (QCR)—a program that provides opportunities for defendants to access treatment services and other support in order to address the underlying contributors to their offending, including problematic substance use. QICR is currently operating at the Brisbane Roma Street Arrest Court and is scheduled for introduction in the Cairns, Southport and Ipswich Magistrates Courts by the end of 2016 and Mt Isa and additional locations in 2017;
- the Queensland Magistrates Early Referral into Treatment (QMERIT) Program—a 12–16 week bail-based program operating at the Redcliffe and Maroochydore Magistrates Courts. QMERIT aims to engage defendants with illicit drug use problems with drug rehabilitation services through a case management approach;
- the Drug and Alcohol Assessment Referrals (DAAR) Program—a statewide, bail-based or post sentence program that refers offenders whose offending behaviour is associated with alcohol or drug use for assessment and a brief health intervention; and
- the Illicit Drugs Court Diversion Program (Court Diversion Program)—a statewide, post-sentence program aimed at diverting minor drug offenders from the criminal justice system by referral to a single education and information session.

The operation of the Queensland Police Illicit Drug Diversion Program (Police Diversion Program) and other options for responding to minor drug-related offending were also considered, to take into account the effects that these programs have on the number and profile of people coming before the courts for drug-related offences.

CONDUCT OF THE REVIEW

The Review commenced in late 2015 with the establishment of the Drug and Specialist Courts Review Team within the Department of Justice and Attorney-General (DJAG).

The Review has been overseen by a Specialist Courts and Court Diversion Board comprised of senior executive level representatives of DJAG. An inter-agency project team with representatives of key government agencies was also established, together with a Specialist Court and Court Diversion Working Group comprised of senior level representatives from government and non-government agencies which was formed for the purposes of sharing information about the review and to operate as a consultative forum during the development of reform options.

In preparation for the Review, the DJAG Review team released an Issues Paper to stakeholders in April 2016. In June 2016, two expert consultancy teams were engaged to lead the next phase of the Review:

1. The Australian National University (ANU) with the Australian Institute of Criminology (AIC), was asked to provide advice about best practice in court-based alcohol and other drug interventions in Australia and internationally to address issues linked to offending, including in support of the reinstatement of a drug court in Queensland.
2. Emeritus Professor Arie Freiberg AM and Dr Karen Gelb were engaged to review best practice in specialist court and court diversionary approaches in Australia and internationally and the legal framework that supports the current suite of specialist courts and court programs, and to develop options for the reintroduction of a Drug Court. These consultants were also asked to consider potential changes to existing programs to improve their operation and effectiveness.

This Report has been prepared by the consultants to the Review, specifically Emeritus Professor Arie Freiberg AM, Dr. Karen Gelb, Dr. Jason Payne, Emeritus Professor Toni Makkai and Mr. Anthony Morgan, prepared with the support and assistance of the DJAG Review Team.

In the development of the recommendations, the consultants have conducted an extensive review of available research on drug and specialist courts, considered the operation of programs operating in Australia and internationally, analysed a range of criminal justice system and program data, and consulted with government and non-government stakeholders.

Approach to consultation

Consultation for the Review was undertaken over two phases.

- Phase One was focused on gathering information about the operation of the former Queensland Drug Court and other court intervention programs and took place over late June to early August 2016.
- Phase Two was focused on the development, testing and refinement of potential reform options and took place in October 2016.

Over 140 people were consulted between June and October 2016. The consultation summary report and full schedule of those who participated in consultations appears at **Appendix A**.

DJAG would like to thank all those who participated in these meetings and who gave so generously of their time to share their experiences and views in support of the Review.

Limitations of the Review

Given the very limited timeframes for the Review, it has not been possible to investigate the adequacy of referral pathways to alcohol and other drug services to or from the Murri Court or Southport Specialist Domestic and Family Violence (DFV) Court, nor whether the services provided to people with problematic alcohol and other drug issues in contact with those courts is sufficient. The Southport DFV Court is being separately evaluated and the findings may complement those of this Review.

The Review Team recognises the value of consulting with participants of the programs but due to the limitations of time and the need to obtain ethics approvals for interviews with clients of the system, this has not been possible at this stage of the reinstatement process. However, it is both possible and desirable that they be consulted during the implementation phase. The Reviewers have made every effort to consult with those involved in representing offenders' interests, such as Legal Aid Queensland (LAQ) personnel and alcohol and other drug treatment service providers, to ensure their interests have been considered in developing reform options.

A range of different data sources have been used to inform the Review. These data are subject to limitations that are described in a report at **Appendix B**.

OUTLINE OF THE REPORT

This Report comprises 37 chapters. 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

[Chapter 1](#) discusses a number of fundamental conceptual issues that underpin the criminal justice model proposed.

[Chapter 2](#) discusses the conceptual issues addressed in developing an overarching framework for interventions for those who come into contact with the criminal justice system with alcohol and other drug problems.

[Chapter 3](#) examines the demands for alcohol and other drug court interventions.

[Chapter 4](#) explores the relationship between drug use and crime.

[Chapter 5](#) explores the current Queensland's current criminal justice system context.

[Chapter 6](#) examines the costs of crime on Queensland's criminal justice system.

[Chapter 7](#) discusses the conceptual issues that underpin the assessment and treatment framework.

[Chapter 8](#) discusses the assessment and treatment of individuals with alcohol and other drug issues in Queensland.

PART B

[Chapter 9](#) examines pre-arrest dispositions and programs.

[Chapter 10](#) examines bail and pre-sentence dispositions and programs.

[Chapter 11](#) examines sentencing dispositions.

[Chapter 12](#) examines post-custodial dispositions (parole).

[Chapter 13](#) examines the needs of Aboriginal and Torres Strait Islander offenders.

Part C

[Chapter 14](#) provides an overview of the former Queensland Drug Court.

[Chapter 15](#) examines whether drug courts work and for whom.

[Chapter 16](#) provides an overview of the best practice standards produced by the United States National Association of Drug Court Professionals.

[Chapters 17 – 36](#) examines the components of the drug court model.

[Chapter 37](#) discusses the other forms of problem-oriented courts in Australia.

Appendices

A number of separate papers and reports were prepared in order to inform the development of this report and its recommendations. These reports and papers are attached as appendices to this report.

A: Consultation summary report identifies the key messages arising from consultations with key stakeholders.

B: Data to inform the drug and specialist court review provides an extensive overview of Queensland's criminal justice system, information on the provision of alcohol and other drug treatment services and the operation of the former Queensland Drug Court. It also describes how data was sourced and the limitations of these data.

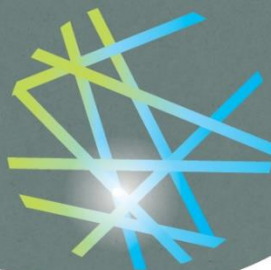
C: Solution-focused interventions for drug-related offending: review of the literature summarises the literature on intervention programs for drug-related offending at each stage of the criminal justice system.

D: Queensland Alcohol and Other Drug Treatment Service Delivery Framework describes the principles and standards that underpin Queensland's alcohol and other drug treatment sector.

E: Building effective interventions for drug users in the criminal justice system: a review of best practice summarises the literature review on best-practice alcohol and other drug interventions and the risk-need-responsivity model.

F: Mapping Queensland's diversionary and specialist court interventions describes Queensland's current range of court-based interventions.

G: Drug Court Program Logic describes the inputs, activities, outputs and short and long-term outcomes of the proposed Drug Court.



PART A

Foundational Principles

1 FUNDAMENTAL CONCEPTUAL ISSUES

1.1 INTRODUCTION

This chapter addresses a number of the basic issues and concepts that have guided the approach adopted by the Review and that underpin its findings and recommendations. It first addresses the terminology used to describe the various courts and programs and suggests that the use of the term 'specialist courts' to describe drug courts and other similar programs is too limited and fails to describe their function and operation properly. It also argues that use of the terms 'diversion' and 'diversionary' is misleading and suggests that what occurs at various stages of the criminal justice system is better described as 'interventions' rather than diversions. Secondly, this chapter suggests that the overall approach to these courts and interventions should be understood within a framework of non-adversarial justice with particular emphasis on the use of therapeutic and restorative justice concepts. Finally, it suggests that a broad approach is required to the problems of substance abuse, requiring an understanding of the role of both illicit and licit drugs such as alcohol in the commission of crime.

1.2 TERMINOLOGY

1.2.1 Why is terminology important?

The names that programs are given are important not only as descriptions of what they are or do, but also for what they represent. Names communicate meaning from those who develop programs or policies to those who operate programs, those subject to them and to the community more generally. The criminal justice system involves a wide variety of actors, including police, courts, judicial officers, health professionals, correctional personnel and victims as well offenders and their families. If the courts, lists and programs are to succeed, it is crucial that they be accurately described, their place in the criminal justice system properly represented and the values they convey and their aspirations be clearly communicated. For example, whereas the term 'specialty court' has a relatively narrow meaning, the term 'problem-oriented court' conveys a considerably more ambitious agenda for these forums.

1.2.2 Specialist courts versus problem-oriented or solution-focused courts

The terms 'specialty' or 'specialist' courts are widely used to describe the range of courts, or court lists, such as drug courts, mental health courts, family violence courts, Indigenous courts, special circumstances courts and similar programs. However, there are conflicting views as to how they should best be styled.

The terms 'specialist' or 'specialised' court are often used to describe a court with a 'limited or exclusive jurisdiction in a field of law presided over by a judge with expertise in that field' (King et al. 2014:156). Examples of specialised courts or lists are those that deal with building cases, commercial cases, intellectual property, family law and others.

On the other hand, the terms 'problem-oriented' or 'solution-focused' courts or lists are used to describe programs that seek 'to use the authority of the courts to address the underlying problems of individual litigants, the structural problems of the justice system, and the social problems of communities' (Berman and Feinblatt 2001, p. 125). The term 'problem-oriented' refers to the idea that courts should change their focus from individuals and their criminal conduct to offenders' problems and their solutions (King et al. 2014, pp. 155-6). 'Solution-focused' refers to offender-focused programs that recognise the centrality of the offender's motivation for change (King et al. 2014:157). Problem-oriented or solution-focused courts aim to reduce recidivism, improve health outcomes for offenders (and, in some courts, for victims, and, where appropriate, to improve relationships between offenders and victims), produce system change, utilise judicial monitoring, encourage collaboration between courts and service agencies and draw on the theories and practices of a number of disciplines (King et al. 2014, pp. 157-8). Thus King et al argue that:

While a particular problem-oriented court may well be a specialised court, not every specialised court is a problem-oriented court. This distinction is significant. Though specialised courts may be distinguished by their procedures or

the expertise of the presiding officers, unless they adopt the features outlined below (judicial supervision or control, inter-sectoral collaboration and the like), they cannot be regarded as problem-oriented courts. (King et al. 2014, p. 157)

Accordingly, we prefer, and have adopted, the terminology of ‘problem-oriented’ or ‘solution-focused’ courts or lists in preference to ‘specialty courts’ throughout this report in order to emphasise the fact that their role is not just to concentrate expertise in one particular area but to employ and embrace the broader philosophy of seeking comprehensive solutions to seemingly intractable legal and social problems.

1.2.3 Diversionary programs versus interventions

Another term that is widely used in the criminal justice system is ‘diversion’. ‘Diversion’ is used to describe funding programs, legislative schemes and a variety of criminal justice activities that ostensibly aim to minimise the adverse effects of the criminal justice system on alleged offenders or those convicted of crimes. It is a term with many meanings and is used inconsistently between jurisdictions, in different contexts and over time. Diversion may mean a scheme or program that is intended to obviate completely the need for judicial involvement (diversion from the court system); or a means by which a person is brought before a court and then re-directed, either permanently or temporarily, into a program for some form of intervention and then possibly returned to court for a final disposition; or a scheme that provides some form of external intervention at some stage of the criminal justice system, be it before arrest, after arrest, during the bail process, post-plea, at sentence or with or without supervision (Richardson 2016, p. 5).

The word ‘diversion’ implies a departure from some predetermined path that is *prima facie* necessary or appropriate (King et al. 2014, p. 194). It assumes that in relation to any dispute or conflict with the law a diversion is an act that amounts to an act of leniency or grace or a derogation from some ideal form of, usually adversarial, justice.

A better conceptual approach to schemes or programs currently labeled ‘diversionary’ is not to consider them as legal detours or deviations from a true path but as identifiable stages in the criminal justice continuum at which the law can intervene effectively, proportionately and responsively to an alleged crime and to the person who is alleged to have committed it. State actions at these junctures are therefore better described as ‘interventions’ rather than ‘diversions’.

Interventions can take many forms and take different forms for different purposes at different points of the criminal justice system. A generic definition of an ‘intervention program’ can be found in the *Criminal Procedure Act 1986* (NSW) s 347 which describes an ‘intervention program’ as:

... a program of measures for dealing with accused persons, or offenders, for the purposes of promoting their rehabilitation, respect for the law, their acceptance of accountability and responsibility for their behaviour, their reintegration into the community and for encouraging and facilitating the reparation by offenders to victims and the community.¹

The term ‘intervention’ is not unknown in Queensland. The *Bail Act 1980* (Qld), s 11(9) refers to an intervention program as a condition of bail that requires a person to ‘participate in a rehabilitation, treatment or other intervention program or course’ while the *Penalties and Sentences Act 1992* (Qld), s 9(2)(n) requires a court in sentencing an offender to take into account the person’s successful completion of a program or course. The *Domestic and Family Violence Protection Act 2012* (Qld), s 75(2)(a) refers to intervention programs as those that aim (i) to increase participants’ accountability for domestic violence; (ii) help participants change their

¹ See also *Bail Act 1985* (SA), s 3; *Criminal Law (Sentencing) Act 1988* (SA), s 3.

behaviour; and (iii) increase the safety, protection and well-being of persons against whom domestic violence has been committed. A program must satisfy any other criteria prescribed under a regulation.²

The new Queensland *Mental Health Act 2016*, s 136, also provides for the Mental Health Court, in making a forensic order for a person, to make recommendations it considers appropriate about particular intervention programs that should be provided for the person by an authorised mental health service. Such programs may include alcohol and other drug programs, anger management, counselling programs and sexual offender programs.

The advantage of the term ‘intervention’ rather than ‘diversion’ is that it focuses on the program - its aims and content - rather than on the time of intervention or the order to which it is attached. In our view, what is important is the nature, extent and duration of the intervention, not where it might lead. Unlike the term diversion, ‘intervention’ does not imply a move in a direction from or to a court or a particular disposition. Accordingly, in this Report we use the term ‘intervention’ in preference to ‘diversion’ to focus upon programs rather than pathways.

In South Australia, the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*, s 3 states that an intervention program is one that provides:

- a) supervised treatment; or
- b) supervised rehabilitation; or
- c) supervised behaviour management; or
- d) supervised access to support services; or
- e) a combination of any 1 or more of the above, and

designed to address behavioural problems (including problem gambling), substance abuse or mental impairment.

We also distinguish between interventions and referrals. A referral program is one that operates to transfer a person, or facilitates access to, an intervention program or service but does not provide the service itself. The *intervention* is the program that provides the substantive treatment, rehabilitation or behaviour change regime.

1.3 A NON-ADVERSARIAL APPROACH

Problem-oriented courts and intervention programs sit within a broader conceptual framework that has been termed ‘non-adversarial justice’ (King et al. 2014). This has been described as (King et al. 2014, p. 5):

... an approach to justice, both civil and criminal, that focuses on non-court dispute resolution, including the role of tribunals and public and private ombudsmen.... However, it also includes processes used by courts that may not involve judicial determination, or court processes that involve judicial officers both pre- and post-determination of guilt or sentence in exercising more control over process Its basic premises are prevention rather than post-conflict solutions, cooperation rather than conflict, and problem solving rather than solely dispute resolution. Truth-finding is the aim, rather than dispute determination, and there is a multidisciplinary rather than a pre-dominantly legal approach.

This approach draws upon a number of disciplines, approaches and theories of justice including appropriate dispute resolution, restorative justice, therapeutic jurisprudence, problem-oriented courts, Indigenous courts, diversion and intervention programs and others (King et al 2014, p.6). Among its basic premises are that (King et al. 2014, pp. 12-16):

- dealing with the problems of crime requires an understanding that the task extends beyond the courts alone: it is an issue that must be dealt with by the justice system more broadly and beyond that, the private and non-government sectors and the community generally;

² *Domestic and Family Violence Protection Act 2012 (Qld)*, s 75(3). A list of approved intervention programs is held by the Chief Executive Officer of the Magistrates Court and a copy of the list must be provided to the Chief Magistrate.

- the aim of the system should move beyond dealing with or responding to an immediate problem to that of attempting to ‘solve’ a problem or seek longer term solutions that address the underlying reason for conflict with the law;
- process may be as important as outcomes, which requires an understanding, and application of, the principles of procedural justice;
- process and programs should build on the notions of cooperation with communities, a range of criminal justice and other agencies including treatment agencies; between prosecution and defence lawyers and judicial officers and between disciplines;
- judges should be more active in appropriate criminal justice procedure through such means as judicial monitoring.

A theory of non-adversarial justice therefore encourages a comprehensive approach to the criminal justice system that addresses the rights, responsibilities and needs of all of the parties in a conflict: offenders, victims, judicial officers, justice and health workers, and promotes attempts to address the underlying problems that brought a person to court, including substance abuse. A comprehensive approach deals not only with the substance abuse but also employment, accommodation, family violence, life skills and cognition issues (King et al. 2014, pp. 17-18).

1.4 THERAPEUTIC JURISPRUDENCE

Although problem-oriented courts and intervention programs originally developed independently of any theoretical foundation, the conjunction of these initiatives with the concept of therapeutic jurisprudence has provided a firm foundation for their operation and further development.

Therapeutic jurisprudence has been described as being:

...“an interdisciplinary approach to law”, a “research tool”, a “useful lens”, a “perspective”, a “research program”, a “project”, “a framework for asking questions and for raising certain questions that might otherwise go unaddressed” and “simply a way of looking at the law in a richer way”. (King et al. 2014, p. 24)

Its main contention is that the law may have anti-therapeutic effects and that if used appropriately, it can improve the law and its operation by minimising its adverse effects and promoting the well-being of all those affected by the law, not only offenders but all participants including victims, judicial officers, lawyers and litigants (King et al. 2014, pp. 24-25).

A ‘therapeutic experience’ has been described as being:

... “positive and encourages meaningful change, while an anti-therapeutic experience is negative and has adverse consequences for the actors involved. Therapeutic jurisprudence explores ways of maximising potential benefits. Proponents claim that encounters with the legal system, like encounters with the health system, should leave them better off, not worse off, than before.... Courts employing a therapeutic jurisprudence approach would remain conscious of the positive and negative tendencies in the justice system and seek to minimise the negative tendencies. The approach encourages courts to adopt an analytical stance in relation to the cases coming before them”. (Blagg 2007, pp. 12)

Elements of a therapeutic approach include (Richardson 2016, pp. 81-82):

- promoting behavioural change intended to promote compliance with the criminal justice system;
- adopting a forward looking approach rather than focusing upon the apportionment of blame;
- acknowledging that the community can be protected by treating and monitoring offenders;
- adopting an evidence-based approach to determining measures that are effective and consistent with criminal justice principles; and
- a recognition of the importance of procedural justice in all proceedings. This involves:
 - an affirmation of a person’s status as a competent, equal citizen;
 - giving a person voice, validation and respect;
 - treating people with dignity

- applying an ethic of care;
- active judicial involvement;
- active participation of all participants; and
- encouraging self-determination and individual choice.

In developing a comprehensive framework, this Review accordingly suggests that non-adversarial and therapeutic approaches be adopted where appropriate in dealing with alcohol- and drug-related crime.

1.5 SPECIALISATION OR MAINSTREAMING?

In 2014-15, the Queensland criminal courts finalised over 120,000 defendants where 20% had an illicit drug offence as the principal offence (23,970 defendants) (ABS 2016b).³ 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. Of those convicted of crimes and sentenced to supervision (including a probation, intensive correction or imprisonment order) in 2014-15, 43% had a drug and/or drug-motivated offence and 55% were assessed as having a high risk of a substance misuse issue.⁴

In 2014-15, some 9,500 people were referred by the Queensland Police Service (QPS) to the Police Drug Diversion Program and just under 6,000 people were referred to the Drug and Alcohol Assessment Program through court-related processes.⁵

The previous Queensland Drug Court, in its various locations, managed approximately 134 offenders at any one time. It is readily apparent that the problems of people who come into contact with the criminal justice system with drug and/or alcohol abuse or dependency cannot be managed by one, or even a small number of problem-oriented courts. Re-establishing the drug court in one or more locations, the Murri Court in multiple locations and the Domestic and Family Violence Court are worthwhile initiatives for what they will be able to do with, and for, the offenders and victims who come before them. However, in total, they will only be able to deal with relatively few offenders. They are resource intensive, often limited in scope geographically and result in what has been termed ‘postcode justice’ which excludes, on relatively arbitrary grounds, those who could be provided with useful interventions (King et al. 2014, p, 189). While it may be possible to expand the number of such courts, the experience in Australia is that this unlikely to occur. Queensland’s Drug Court operated in five locations, New South Wales’ (NSW) Drug Court in three, Victoria’s, until recently, in one and in other jurisdictions, in only a very few locations. They can never be a panacea to substance abuse-related crime.

The reality of criminal justice in Queensland is that the vast majority of offenders are, and will, in the foreseeable future, be dealt with in the mainstream courts. The drug court, as proposed in this Review, will only deal with relatively few of the most serious offenders in a limited number of places.

Many of the people with alcohol and other drug problems who come into contact with the law and will not have access to a drug court also require appropriate assessment, referral and treatment resources prior to, or after sentence. And because, as we suggest, the non-adversarial and therapeutic approaches provide a holistic and probably more effective approach to dealing with substance abuse-related crime, it would be sensible to adopt these approaches, where appropriate, across the criminal justice system. What is required is a

³ These data exclude defendants with a principal offence relating to traffic and regulation offence/s; in total more than 170,000 defendants were finalised in 2014-15.

⁴ QCS administrative data.

⁵ DJAG administrative data.

comprehensive approach to substance abuse-related crime from first contact with police through to bail, sentencing and parole, which can be implemented on a statewide basis.

In relation to the courts, therapeutic/problem-oriented principles can be applied throughout the state by adopting the underlying philosophical approaches outlined above, using existing resources, modifying existing, or creating new, dispositional options and adapting administrative procedures (Spencer 2012).

If so adopted, many of the strategies and interventions successfully adopted by problem-oriented courts can be used more broadly. However, this would require a number of significant changes in the manner in which courts dealing with drug- and/or alcohol-affected offenders are managed across the state. Victorian magistrate Pauline Spencer has outlined the types of changes that would be required to 'mainstream' these more responsive and effective approaches (Spencer 2012):

- **Changes in court craft:** judicial officers have wide discretion as to how they manage their courts and, subject to the resources and dispositional options available and the judicial officer's willingness to adopt a problem-oriented approach, a mainstream court can accommodate a different model;
- **Judicial supervision or monitoring:** can be implemented through existing court powers or proposed new ones;
- **Targeting:** to ensure that appropriate interventions are only used for suitable offenders;
- **Changes to listing practices:** courts can manage their lists to allow for sufficient time to run separate or different lists that involve problem-oriented approaches;
- **Partnerships:** Although problem-oriented courts or lists have treatment and rehabilitation resources made available to them, generic services may be available or there may be services in the community that can provide support and treatment to offenders dealt with in mainstream courts;
- **Court leadership:** if problem-oriented, therapeutic approaches are to be mainstreamed, the Chief Magistrate and Chief Executive Officer of the court must be committed to the enterprise and create a culture in which such an approach can be successful;
- **Court-level reforms:** Court management and administrative systems can be put in place to support solution-focused approaches;
- **Governance:** A cohesive statewide framework is necessary to support this approach, but such an approach must allow adaptation to local circumstances;
- **Access to services:** where no government funds are available to provide services, partnerships with local services or providers may be sought;
- **Support for judicial officers and court staff:** judicial officers and staff must receive support through education relating to therapeutic jurisprudence and problem-oriented approaches. Access to training must be available as well as access to, and knowledge of, resources such as the Solution-focused Judging Bench Book authored by Magistrate Michael King.⁶
- **Professional development:** As well as judicial officers, prosecutors, counsel and support agencies must be provided with education and training relating to therapeutic jurisprudence and problem-oriented approaches.

We recognise that in some circumstances this may require the appointment of additional magistrates who are sympathetic to these approaches, continuing education and engagement with sitting judicial officers, court staff, corrections staff, legal representatives, police and related agencies regarding the application of non-adversarial and therapeutic justice principles, in particular those relating to the vital role that they play in non-adversarial and therapeutic practices.

⁶ See <http://www.aija.org.au/Solution%20Focused%20BB/SFJ%20BB.pdf>.

1.6 RESTORATIVE JUSTICE AND THE RIGHTS OF VICTIMS

The criminal justice system is not only concerned with the rights and responsibilities of offenders and the interests of the state acting on behalf of the community. Victims are an important part of the criminal justice system and their interests and role must be recognised throughout the criminal justice process. This may take the form of providing them with information about court processes, about their rights in the process, their entitlement to restitution and compensation and their voice in the sentencing process through such mechanisms as the victim impact statement.

One mechanism for victim involvement is through restorative justice processes. Restorative justice has been described as comprising

... principles that promote the more inclusive, comprehensive and satisfying resolution of the effects of harmful behaviour. It seeks the restoration of victims, offenders and society through the application of these principles in processes dealing with the aftermath of wrongful behaviour generally. (King et al. 2014, p. 41)

Restorative justice is becoming increasingly widely used in the criminal justice system in the form of family group conferencing for young offenders, Indigenous sentencing circles, victim-offender mediation and other forums that may occur at the pre-arrest and arrest stages, while the offender is on bail, as part of the sentencing process and in some cases, post-sentence. In appropriate circumstances victims of crimes committed by alcohol- and drug-dependent offenders may wish to become involved in restorative justice programs, though their involvement can only ever be voluntary. This may occur at various stages in the criminal justice system including after arrest, while the offender is on bail or when sentence is adjourned or deferred.

In general terms, victims are likely to be able to manage their experiences through the criminal justice system more successfully if provided with appropriate information and support, including with the assistance of victim support services.

In Queensland, fundamental principles of justice for victims of crime are set out in the *Victims of Crime Assistance Act 2009* (the Act) which outlines the standards to be applied by government agencies when providing services to a victim of crime who has suffered personal harm. The purposes of declaring these principles, as set out in section 5 of the Act, are to advance the interests of victims by stating some fundamental principles of justice that government entities and officers are to observe in dealing with them, and to inform victims of the principles they can expect will underlie their treatment by government entities and officers.

Victim Assist Queensland (VAQ) is an assistance scheme that provides access to specialised support services and financial assistance to help victims' recovery. VAQ can play a critical role in supporting victims throughout the court process, including as part of a future Drug Court.

In Part C we discuss the operation of the proposed Drug Court and the involvement of victims as part of this process in more detail.

Fundamental principles of justice for victims

1. Fair and dignified treatment
2. Privacy of victim
3. Information about services
4. Information about investigation of offender
5. Information about prosecution of offender
6. Victim to be advised on role as witness
7. Contact between victim and accused to be minimised
8. Giving details of impact of crime on victim at sentencing
9. Reading aloud of victim impact statement during sentencing
10. Special arrangements for reading aloud of crime impact statement during sentencing
11. Providing information about convicted offender

1.7 SUBSTANCE ABUSE

Illicit drugs such as cannabis, heroin, methamphetamines, opioids and, more recently, a host of synthetic drugs have long been identified as major contributors to criminal behaviour, adverse health outcomes and a range of social pathologies. However, throughout history, alcohol abuse has been a far greater social problem and continues to be a significant contributor to crime, family violence, family breakdown and unemployment. Drug and alcohol abuse are not unrelated and often co-exist with other psychosocial problems. Cause and effect are often difficult to disentangle.

Research has found that alcohol is a common principal drug of concern among people accessing alcohol and other drug treatment services (AIHW 2016a) and levels of alcohol consumption among offenders are substantially higher than those found among the general population (AIHW 2015).

Among prison entrants, 38% reported levels of alcohol consumption that placed them at high-risk of alcohol-related harm (as measured by the AUDIT C) indicating hazardous levels of drinking or active alcohol use disorders (AIHW 2016b). Other research has shown that police detainees reported drinking 23 standard drinks (on average) on their last drinking occasion (AIC 2015a).

With reference to the re-establishment of the drug court, a review of the literature observed that many drug courts in Australia exclude alcohol. The US National Association of Drug Court Professionals (NADCP) Queensland Network of Alcohol and other Drug Agencies key components for the operation of drug courts make clear that alcohol use is included in the purview of drug courts. There is no evidence to suggest that offending alcohol abusers would not benefit from a drug court program. This is particularly relevant for Queensland in addressing offending by Aboriginal and Torres Strait Islander people, for whom the primary substance abused may not be the illicit drugs traditionally included in Australian drug courts.

Many of those consulted in the course of this Review supported a broad approach to substance abuse that includes alcohol addiction and addiction to other legal drugs commonly abused in the community. This broader approach reflects the community experience that problematic substance use and links to criminal offending are not limited to people who use illegal drugs. The corollary of this is that in considering eligibility for, and the operation of, intervention programs, possible problem-oriented lists and the proposed drug court, alcohol abuse/dependency should be included as a relevant factor. Such an inclusion would likely increase the participation rates for those Aboriginal and Torres Strait Islander offenders for whom alcohol abuse is a serious problem.

1.8 CAUSE AND EFFECT

It is tempting to believe that if society were only able to 'cure' offenders of their drug or alcohol dependence or abuse, then drug- or alcohol-related crime would diminish or disappear. This simple hypothesis holds that where a crime has been committed by a person who is drug addicted, alcohol dependent or mentally ill, the offence is the direct product of the underlying problem. The consequence of such analysis is that the most appropriate method of dealing with the offender is to provide treatment for the identified disorder, which, if successful, will reduce the offending behavior. This approach has been described as the 'direct cause model' (Richardson 2016, p. 271).

However, crime is the product of multiple factors, both personal and environmental. The personal factors may involve substance abuse, personality disorders, past history of abuse, family breakdown and others while the environmental factors may involve social disadvantage, poverty, peer group pressure and others. Some factors such as age and criminal history may be '*static*', that is, they are not changeable and some, such as substance abuse or employment status are '*dynamic*' and amenable to change.

It is misleading and dangerous to infer a direct causal relationship between a particular condition and the commission of a crime. In fact the relationship between offending behaviour and an underlying disorder such

as substance abuse or mental disorder is far more complex. Five different relationships between an underlying disorder and criminal behaviour can be hypothesised:⁷

1. The anti-social behaviour is directly related to or driven by aspects of the underlying disorder. In this case, effective treatment of the underlying disorder would be likely to reduce the risk of further anti-social behaviour.
2. The anti-social behaviour is indirectly related to the underlying disorder. Treatment would be likely to make a contribution to a reduction in offending but would not be sufficient in itself to tackle offending behaviour.
3. The anti-social behaviour and the underlying disorder are related by some common antecedent, for example childhood abuse. Treatment of the underlying disorder in itself would not be sufficient to tackle re-offending.
4. The anti-social behaviour and the underlying disorder are coincidental.
5. The underlying disorder is at least partly secondary to the anti-social behaviour.

In the best-case scenario, effective treatment of the underlying disorder is likely to reduce crime. However, this is premised upon the ability of criminal justice professionals and others to diagnose accurately the cause or causes of the 'problem' that need to be addressed through an intervention or a 'problem-oriented' court. However, if an offender's problems are multi-factorial and the offences committed various (such as property offences, family violence offences, offences of personal violence generally, offences against the administration of criminal justice) then individual court programs, or interventions alone, such as drug court, or family violence court, may not be able to address all the factors involved. Problems of co-morbidity (alcohol/drug/mental disorder) may be addressed by more generic responses such as broad-based intervention programs rather than specific courts or lists or by lists with expanded remits such as the Family Drug Treatment Court in the Childrens Court of Victoria, that recognises the interactions between substance abuse, family breakdown and child protection issues (King et al. 2014, p. 188).

In all these circumstances, expectations of the outcomes of these programs should be realistic and informed by an understanding that they can make a small but significant contribution to reducing crime in Queensland.

⁷ Adapted from Lord Keith Bradley, *The Bradley Report: Lord Bradley's Review of People with Mental Health Problems or Learning Disabilities in the Criminal Justice System* (London, Department of Health, April 2009) 17; [from Richardson 2016:27].

2 A CONTINUUM OF INTERVENTIONS

2.1 INTRODUCTION

A drug court is one of a number of interventions that can be made by the criminal justice system in response to drug- and alcohol-related crime. Some of these interventions are made by the police service, some by the courts, and some by corrections and most with the cooperation of other government agencies such as Queensland Health (QH) and community organisations that provide housing, education, training, health and other social services. The drug court should, accordingly, be understood as only one small part of a long continuum of referral services and intervention programs that are required to reduce crime and the risk of crime, decrease the pressure on prison populations and improve the health and social outcomes of offenders and their families.

The challenge of developing such a system is to ensure that the work of police, courts, corrections, government agencies and private or community organisations is integrated, effective and efficient. Feedback provided to the Review indicates that the current system does not meet these criteria. A number of interventions are locality based rather than being based on the requirements of the eligible offender. A lack of coherence between programs contributes to confusion among treatment agencies, which places pressure on justice and law enforcement resources. Programs that are very similar in terms of their therapeutic intent are linked to separate legislative and administrative regimes and there appears to be duplication of services that provide different outcomes for the same participant.

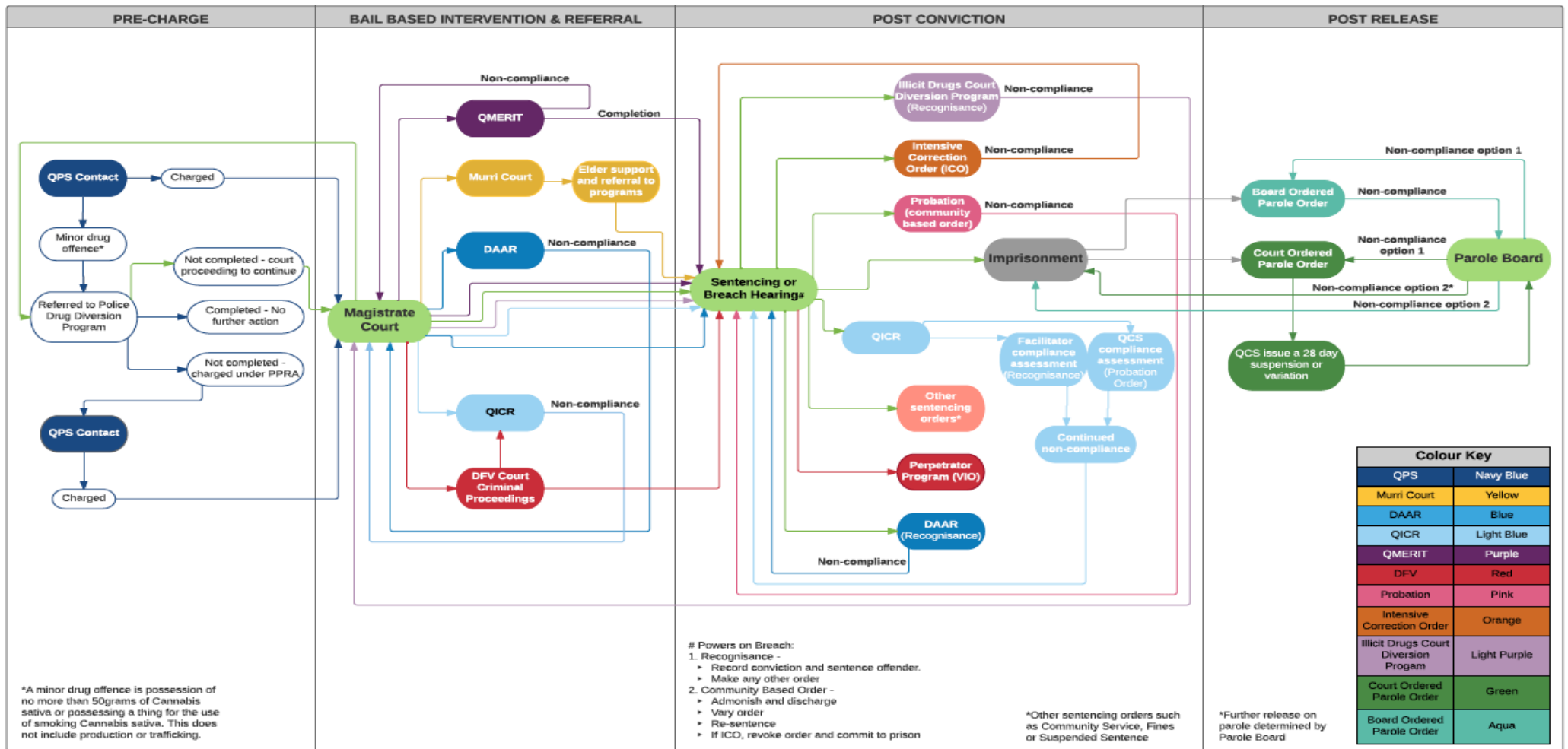
In response to this feedback, and as a first step towards improving the integration, effectiveness and efficiency of Queensland's approach to drug- and alcohol-related crime, this Review has aimed to develop a comprehensive criminal justice model that identifies a range of interventions along the criminal justice continuum.

2.2 MODEL OF CURRENT INTERVENTION PROGRAMS

Figure 1 below shows the various stages of the Queensland criminal justice system and the various legal frameworks, referral programs, interventions and sentencing dispositions that apply from first contact with police through to parole release. The criminal justice system deals with cases from very minor to the most serious. It can be viewed sequentially, in that an offender may progress through the various stages from arrest, to bail, to sentence to parole, or recursively, by progressing through parts of the system and, either by breaching an order, or re-offending, return to an earlier stage.

What is evident from the depiction of the process is that some interventions are available at different stages and, as will be indicated, some operate in very similar fashions, but under different names and with different funding sources.

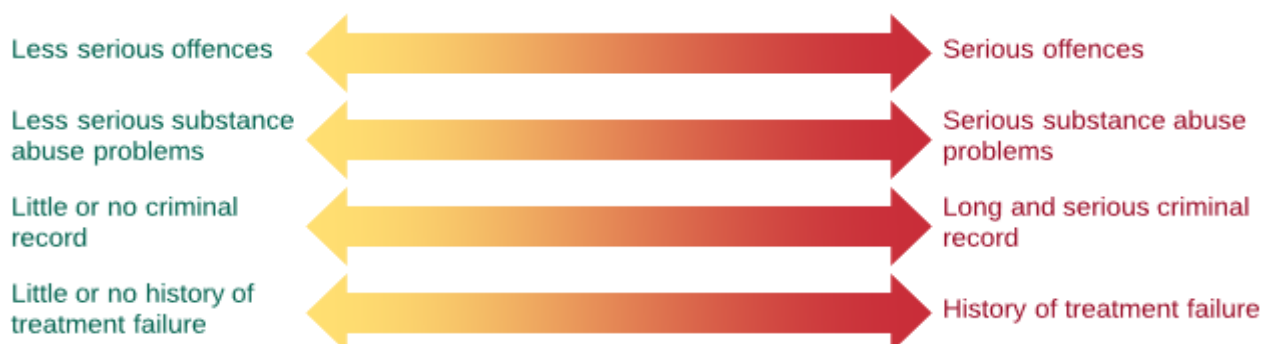
Figure 1: Queensland criminal justice system pathways



2.3 CRITERIA FOR INTERVENTIONS

This criminal justice continuum can be conceived of not only as a process map but as a complex set of relationships between offence seriousness, offender characteristics, treatment requirements and legal power. In developing a comprehensive criminal justice framework, a balance between these various elements must be struck.

Figure 2: Relationship between offending history, drug use and level of treatment



Offence seriousness will limit the degree of intervention that the state may make into the life of an offender so that even if an offender has very high treatment needs, what the state can do will be tempered by the nature of the offence committed. An offender who has committed a very serious offence, on the other hand, may have very limited treatment needs and may not be suitable for treatment intervention. Even a long history of offending may not warrant a very long sentence if the offence committed is less serious.

In designing a coherent and effective overarching framework for criminal justice interventions, the following criteria should be used to determine the stage in the criminal justice system when the intervention takes place and its nature:

2.3.1 The nature and seriousness of the offence

This criterion assists in determining not only the appropriate intervention but the proportionality considerations that should apply.

2.3.2 The history of involvement in criminal justice system

This criterion assists in determining the offender's past criminal history, which also assists in assessing an offender's past responses to criminal justice interventions, their attitude to those interventions and to court and other orders, as well as determining the proportionality considerations that should apply.

2.3.3 Risk, need and responsivity

The risk, need and responsivity (RNR) principle assists in determining which treatment modalities will be most effective, as it stipulates that interventions be targeted appropriately to meet an offenders' risk of reoffending, their criminogenic needs and level of responsivity.

Among all the interventions examined in this report, the RNR principle ensures that the intervention is appropriate to the offence and the offender, thus tailoring aspects of programs to meet individual needs. Using this principle, more intensive (and more costly) interventions tend to be reserved for high-risk, high-need offenders, while briefer (and cheaper) interventions are given to low-risk, first offenders. Additionally, many of the interventions draw conceptually from the therapeutic jurisprudence literature and its associated development of solution-focused responses to criminal behaviour – solutions that attempt to address the underlying causes of offending, rather than simply offering punitive responses.

2.4 CLEAR CONCEPTUALISATION OF PROGRAMS

In designing intervention programs, it is necessary to ensure that each intervention program is clearly conceptualised in order to ensure that it is properly targeted, proportionate, necessary, cost-effective and meets its stated aims. Such a conceptualisation requires:

- a clear set of reasons or logical basis for the course of action (program logic);
- a clear articulation of the causal model that links the offending behaviour, and the intended outcome of the intervention;
- a clear set of objectives or statement of what the intervention program seeks to achieve; and
- a clearly identified target group (Richardson 2016, pp. 263-264).⁸

2.5 A CLEAR LEGISLATIVE AND REGULATORY FRAMEWORK

Many existing programs are based on uncertain or vague legal foundations. Many programs 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. There are differing views as to the appropriateness of using bail or general powers of adjournment to underpin interventions (Freiberg & Morgan 2004). Bail has the advantage of flexibility by allowing judicial officers to craft schemes that suit their purposes. The nature of such schemes may result in a blurring of the boundaries between bail and sentencing. The question remains whether this use is consonant with the purpose of bail, which is primarily to ensure that an offender returns to court to respond to the charges laid against them. Lack of clarity can lead to net-widening, disparity between courts and judicial officers resulting in idiosyncratic behaviour and unjustifiable or disproportionate interventions.

King et al. (2014, p. 206) have argued that:

... it is important that clear distinctions are maintained between sentencing and non-sentencing powers; that the interventions or programs are appropriate and proportionate to the stage of the proceedings at which they occur and to the harm that has been alleged; that the interventions or programs are relevant to the purpose of the power; and that appropriate legal protections are in place to preserve the rights of offenders or alleged offenders.

The Law Reform Commission of Western Australia (2008) recommended that court intervention programs be underpinned by legislation 'in order to ensure that the programs are able to meet the aim of rehabilitating offenders and reducing crime'. The Commission argued that legislation had an important role in:

- ensuring programs are valued and understood in the criminal justice system and by the wider community;
- promoting consistency, accountability and confidence in programs;
- strengthening rehabilitative efforts and preventing future offending;
- promoting equality of justice;
- promoting awareness of a program and the benefits;
- providing legitimacy of a program and engendering community support by clearly stating the purpose of the program;
- promoting the objectives of a program and encouraging systemic change;
- giving judicial officers confidence to use a program; and
- ensuring that programs are appropriately resourced.

Similarly, Pauline Spencer has argued that government policy and legislative change are the key to driving systemic and cultural change in courts (Spencer 2012, p. 94).

There is a diversity of views as to the desirability of providing clear legislative foundations for intervention programs. Those opposing a legislative approach point to the flexibility and innovation in programs that is

⁸ These matters are discussed further below in Paragraph 10.5.6 where we recommend that some intervention programs be gazetted if they meet certain criteria set out in regulations.

possible when judicial officers are not constrained by firm and specific legislative mandates. However, this Review takes the view that flexibility and pragmatism are uncertain foundations upon which to build a coherent framework of interventions and that a better approach ‘where the coercive power of governments is involved, is to clearly set out in statute what the rights and responsibilities of the various parties are, what are the limits of state power and what sanctions may be imposed on persons before the courts’ (King et al. 2014, p. 193).

Recommendation 1	Need for a clear program logic and legal foundations
Intervention programs should be:	
<ul style="list-style-type: none"> • 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. 	

2.6 PRINCIPLES

Interventions along the criminal justice continuum should be governed by a set of principles that can determine which are appropriate at each stage of the process. We have discussed some of the criteria for interventions: offence seriousness, offender history and RNR.⁹ These, in turn, must be informed by a broader set of principles that can guide the development of policy and decision-makers within the system.

2.6.1 Proportionality

Proportionality is a sentencing principle that holds that the severity of a punishment imposed should be commensurate with the seriousness of the offending, which involves both the degree of harmfulness of the conduct and the extent of culpability of the offender. The principle of proportionality applies to rehabilitative sanctions as much as punitive sanctions. The Victorian Court of Appeal has held in a case relating to the principles that should apply to a community correction order that considerations of proportionality apply to all elements of the sentence, including punishment and rehabilitation.¹⁰

Accordingly, the approach adopted by this Review is that 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. Where an intervention program is not part of a sentence, and therefore the principles of proportionality do not strictly apply, we believe that there should be a relationship between the seriousness of the offending conduct and the length and severity of the program.

2.6.2 Parsimony

A sub-set of the principle of proportionality is that of parsimony, which holds that a sentence, or sanction, or intervention should not be more severe than that which is necessary to achieve the purpose or purposes for which that sentence, sanction or intervention is imposed (Freiberg 2014, p. 245). This means that in using the authority of the state, where possible, the least restrictive alternative should be used.

2.6.3 Minimising net-widening and sentence escalation

The ostensibly benign intentions of a non-adversarial approach should not have the consequence that more people are brought within the operation of the criminal justice system, that they are under state control for

⁹ See Paragraph 2.3

¹⁰ *Boulton* [2014] VSCA 342.

longer periods than they otherwise would have been and that the sanctions imposed upon them or the conditions of the sanctions are more onerous than they would otherwise have been.

Net-widening refers to unintended effects of what are ostensibly 'diversion' programs when more people are enmeshed in the criminal justice system than previously due to the desire to provide those with programs that would not otherwise be available were they not charged with criminal offences. Sentence escalation occurs when a more severe sentence is imposed that would otherwise be warranted in order to receive the benefits of an intervention program (King et al. 2014, p. 190).

Net-widening and sentence escalation can take a number of forms:

- the length of a program may be longer due to treatment or rehabilitation requirements than it would have been if treatment or rehabilitation had not been a purpose of the intervention;
- intervention programs may supplement rather than replace community interventions, thus increasing the total duration of government or other forms of interventions in an offender's life;
- the conditions of a program may be more numerous and onerous than they otherwise would be if treatment or rehabilitation had not been a purpose of the intervention; the greater the number of conditions and their stringency may result in a greater number of breaches that may in turn result in an increased number of sanctions being imposed that may also be more severe; and
- the use of sanctions and rewards within an intervention program or as part of a sentence may result in more severe sanctions than if no such mechanisms were operating within such a program or as part of a sentence.

A comprehensive system of criminal justice interventions must therefore ensure that no more people are brought within the operation of the criminal justice system, or are brought under state control for longer periods than they otherwise would otherwise have been, or that the sanctions imposed upon them or the conditions of the sanctions are more onerous than they would have been had treatment or rehabilitation not been a purpose of the intervention.

2.6.4 Privacy

A comprehensive criminal justice response to offending often requires co-operation between criminal justice agencies as well as those delivering health and other ancillary services. This may require the sharing of information originally collected by those agencies for their own purposes. This may be done with the (genuine) consent of the offender. On the other hand, the state may deem it necessary or desirable that personal information be shared as part of an integrated, holistic approach to the appropriate dispositions for that person.

Overarching privacy principles require that personal information collected about a person remains confidential and that their rights to privacy are respected. However, a comprehensive criminal justice response may require amendments to laws relating to privacy and confidentiality to expand the ability of agencies to share information;¹¹ any such expansion should adhere as closely as possible to the National Privacy Principles set out in Schedule 4 of the *Information Privacy Act 2009* (Qld).

2.6.5 Minimal coercion

A non-adversarial justice system underpinned by the principles of cooperation, therapeutic jurisprudence and restorative justice usually requires that the offender acknowledge guilt or plead guilty to an offence. Access to intervention programs or problem-oriented courts is contingent on such pleas or acknowledgements. This may be regarded as representing a degree of coercion, particularly in respect of offenders with some form of disability (King et al. 2014, p. 190). An offender who pleads guilty may consequently acquire a criminal record, which may affect their future prospects.

¹¹ See Information Privacy Act 2009 (Qld).

However, the criminal justice system is founded on the presumption of innocence and the requirement of the prosecution to prove its case beyond reasonable doubt.

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 no unnecessary or unethical interventions be used in relation to them.

2.6.6 Consent

Referral to an intervention entails a degree of interference into the liberty of the individual. It is important that the person be able to consent freely to the process and its consequences. Consent may be relevant at different stages of the referral and intervention process. Richardson identifies these stages (Richardson 2016, p. 321):

- consent to be referred to in the [intervention] process which involves consent to be screened and assessed, for health records to be accessed and for an intervention plan to be developed;
- consent to participate once the intervention plan has been determined; and
- consent to use and sharing of personal and medical information about the participant and regarding time limits on the use of that information.

The matters to be explained to the offender at each stage include:

- that the program is voluntary and what this means;
- what processes at each stage (that is, referral, screening and assessment, judicial hearings) involves;
- what the overall program participation involves;
- what is required for successful completion of the program;
- what would happen if the person does not participate, and ways to access treatment if the person does not participate. Linkages and referrals should also occur if the person decides not to participate; and
- what conditions are attached to the order and the expectations of the court and external treatment providers of the offender.

A just system of criminal justice interventions must ensure that where a person's consent is required, that person is freely able to consent to the intervention and its consequences.

Recommendation 2	Guiding principles for interventions in a criminal justice context
<p>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:</p>	
<ul style="list-style-type: none">• 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.

3 SYSTEM DEMANDS

3.1 INTRODUCTION

This chapter provides information on the number of people in contact with Queensland's criminal justice system. It shows increasing system pressures and a growing number of people in contact with the system for drug offences.

Much of the data presented in this chapter uses the principal offence to identify changes in drug offending trends. This practice (commonly used to deal with complex data) disguises the full nature and extent of drug offending by only counting the most serious offence within a criminal justice incident. For example, a person convicted for arson and drug possession will only be counted as committing arson. The use of the principal offence also provides no indication of incidents involving drug-related offending not involving drug offences, such as acquisitive offending to support illicit drug purchases. Therefore, this section concludes with the provision of information on the prevalence of drug offences and drug-related offending across all offenders, not just those with an illicit drug offence as their principal offence.

3.2 CURRENT CRIMINAL JUSTICE SYSTEM ENVIRONMENT

The number of people in contact with Queensland's criminal justice system is increasing in an environment of limited funding for criminal justice agencies.¹² Increasing numbers of people are being arrested by the police, which in turn has affected court activity and the number of people held in custody (both on remand or as sentenced offenders).¹³ The number of Aboriginal and Torres Strait Islanders and women held in custody is growing a rate higher than overall system growth.

3.2.1 Criminal justice system activity

Figure 3 shows criminal justice system indicator data for the period of 2010–11 to 2014–15. Although each of these system indicators uses different counting rules, they all demonstrate increases in criminal justice system activity.¹⁴

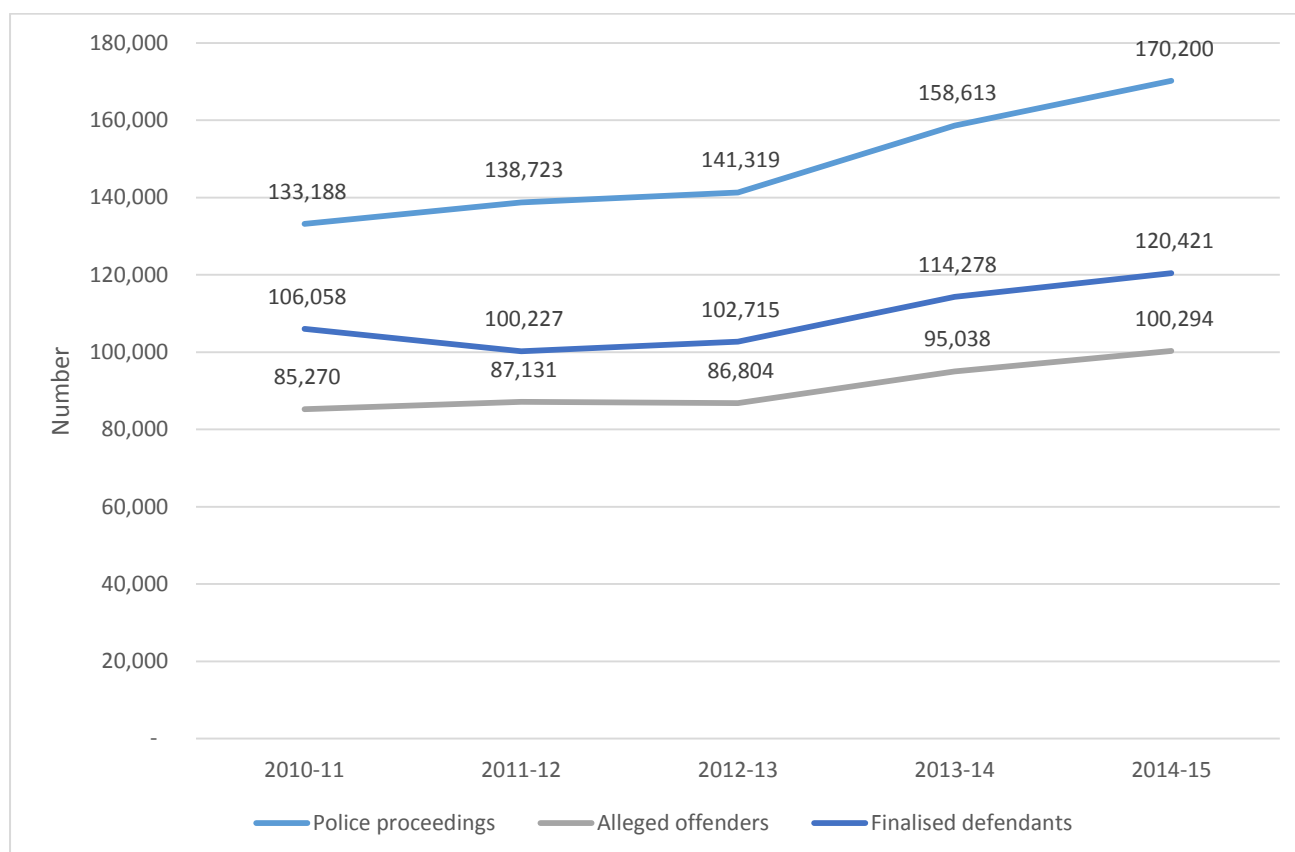
The number of adults arrested by the police increased from 85,270 in 2010–11 to 100,294 in 2014–15 (an increase of 18%). The number of police proceedings increased from 133,188 in 2010–11 to 170,200 in 2014–15 (an increase of 28%) and the number of adult defendants finalised by the courts increased from 106,058 in 2010–11 to 120,421 in 2014–15 (an increase of 14%).

¹² This economic austerity limits availability of funds for offender management and support services. For example, Report on Government Services data indicates that QCS' offender-to-operational staff ratio in 2014–15 was 35.1 in Queensland compared with 21.2 nationally.

¹³ Further information about the data used in this section is provided in the *Data for drug and specialist courts review* at Appendix B.

¹⁴ Alleged offenders data only count unique individuals arrested by the police during the reporting period, police proceedings data excludes matters relating to traffic offences, which are the most common offences heard by the Magistrates Court.

Figure 3: Number of alleged offenders, police proceedings and defendants finalised, Queensland, 2010– 11 to 2014–15



Source: Australian Bureau of Statistics (ABS) Recorded Crime, Offenders, 2014–15 and ABS Criminal Courts, Australia 2014–15

Note: As police data do not include traffic offences, these offences have been excluded from the courts data.

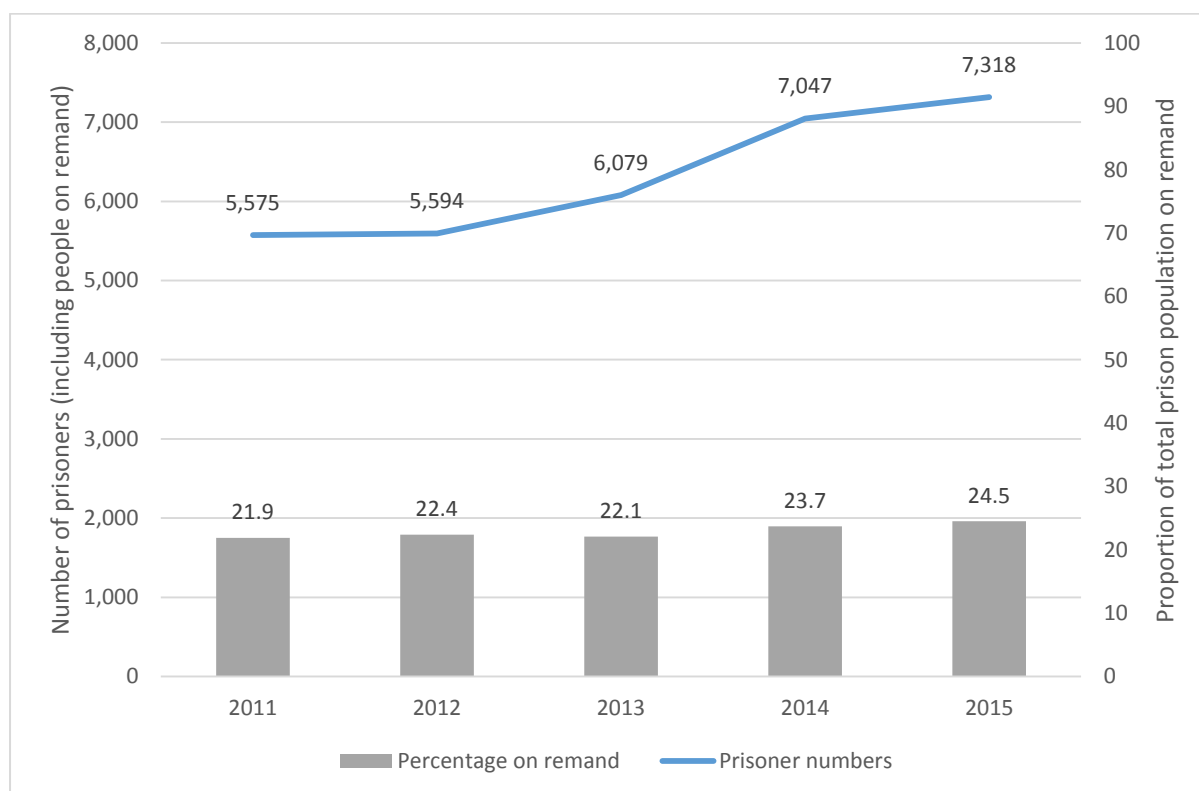
The growing number of people arrested by the police is also evident in Queensland's prisoner population, which increased from 5,575 in 2011 to 7,318 in 2015 (an increase of 31%). See Figure 4.

The proportion of total prisoners held on remand has increased in recent years (from 22% in 2011 to 25% in 2015). This suggests that growth in the number of unsentenced prisoners was higher than that for sentenced prisoners. Indeed, the number of unsentenced prisoners increased by 47%, while the number of sentenced prisoners increased by 26% between 2010–11 and 2014–15 (ABS 2015). Increases in remand numbers are more likely to be explained by the growing number of people arrested by the police and not released on bail, rather than increased time spent on remand, given that the median number of months spent on remand was 3.4 months in 2011 compared with 3.5 months in 2015 (ABS 2015). Offenders returned to custody under suspension of their parole order also contribute to the prisoner population.

The level of growth in adult prisoner numbers is not evident in the number of adult offenders supervised in the community. The average number of offenders on supervised orders in Queensland was 13,636 in 2010–11 compared with 14,144 in 2014–15 (an increase of 4%) (Australian Government Productivity Commission 2016). However, there is indication that this relative level of stability is changing given that more recent data indicate that the number of offenders serving probation orders increased by 16% between 30 June 2015 (9,037) and 30 June 2016 (10,495).¹⁵

¹⁵ QCS administrative data. See 11.6 for further information on number of offenders on probation orders.

Figure 4: Total number of prisoners and proportion of total prisoners on remand, Queensland, 2011 to 2015



Source: ABS Prisoners in Australia, 2015

Note: Prisoner numbers are number of people in prison as at 30 June each year.

There has also been an increase in the number of young people (aged 10 to 17 years) in contact with the criminal justice system. For example, the number of young Queenslanders in detention on an average day increased from 138 in 2010–11 to 172 in 2014–15 (an increase of 25%) (AIHW 2016a). The majority of these young people were unsentenced. On average, young remandees accounted for 72% of the youth detention population in 2010–11 compared with 84% in 2014–15 (AIHW 2016a).

The increasing number of people in contact with the criminal justice system has driven a growing demand for alcohol and other drug treatment as the number of people referred to these services as part of criminal justice diversionary schemes (such as the Police Drug Diversion Program) or rehabilitation efforts as part of order supervision has, expanded.¹⁶

3.2.2 Aboriginal and Torres Strait Islander people

People in contact with the criminal justice system are typically from highly disadvantaged backgrounds and Aboriginal and Torres Strait Islanders are the most disadvantaged group in Australia. Aboriginal and Torres Strait Islanders are overrepresented in all areas 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 2015.¹⁷ In 2015, Aboriginal and Torres Strait Islanders were 13 times more likely to be in custody than non-Indigenous people. The increasing overrepresentation of Aboriginal and Torres Strait Islanders in custody is also evident

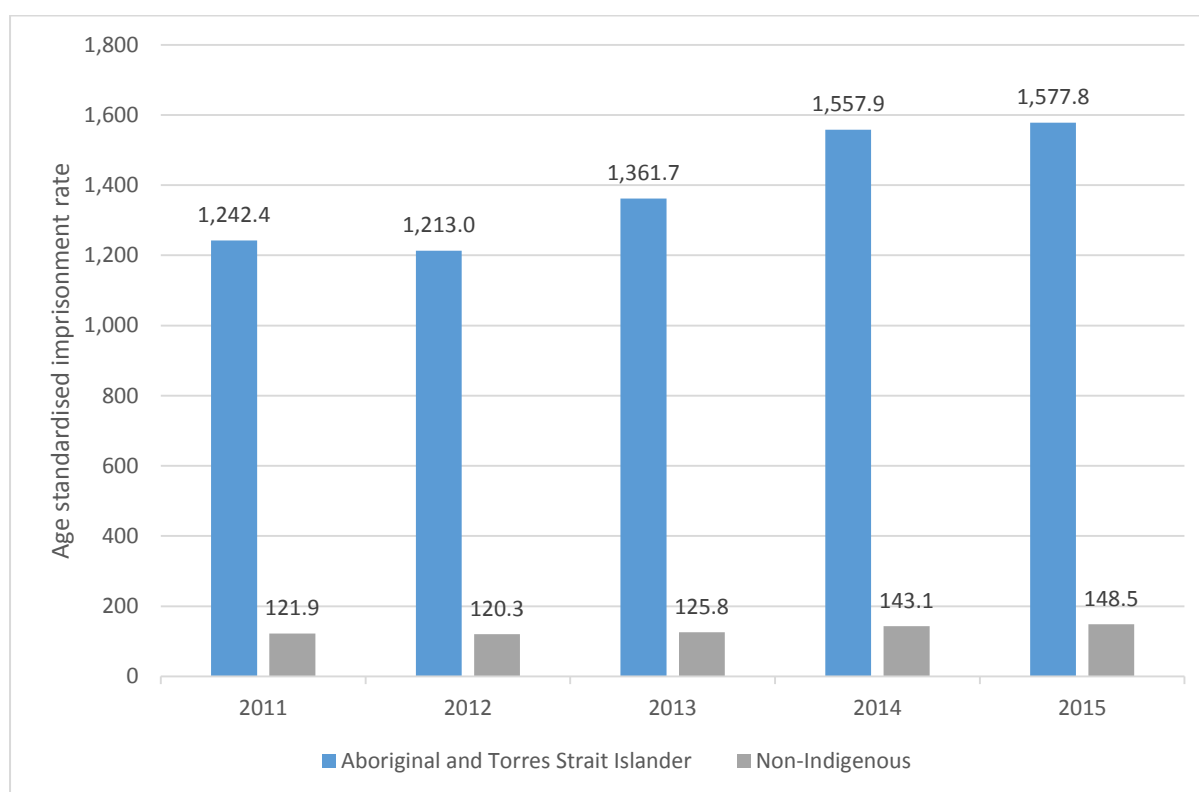
¹⁶ See Chapter 7 for further information on alcohol and other drug treatment services in Queensland.

¹⁷ Aboriginal and Torres Strait Islanders represented 3.6% of Queensland's total population in 2011 (ABS, Census of Population and Housing, 2011, Indigenous profile).

in other Australian jurisdictions. Figure 5 shows the age standardised imprisonment rate for adult Aboriginal and Torres Strait Islanders compared with adult non-Indigenous Queenslanders. Although the rate of imprisonment has increased for both Aboriginal and Torres Strait Islanders and non-Indigenous Queenslanders in recent years, the rate of imprisonment is substantially higher for Aboriginal and Torres Strait Islanders than non-Indigenous Queenslanders and relative increases in incarceration rates are higher for Aboriginal and Torres Strait Islander people. The imprisonment rate for Aboriginal and Torres Strait Islanders grew from 1,242 per 100,000 of the adult population in 2011 to 1,578 per 100,000 of the adult population in 2015 (an increase of 27%), while the rate for non-Indigenous Queenslanders grew from 122 to 149 per 100,000 of the adult population respectively (an increase of 22%).

Aboriginal and Torres Strait Islander youth are also overrepresented in the criminal justice system and this overrepresentation is increasing. For example, 58% of young people in detention (on an average day) in 2010–11 identified as Aboriginal and Torres Strait Islander compared with 65% in 2014–15 (AIHW 2016a).

Figure 5: Age standardised imprisonment rate for Aboriginal and Torres Strait Islanders and non-Indigenous adults, Queensland, 2011 to 2015



Source: ABS Prisoners in Australia, 2015.

Note: Prisoners rates are per 100,000 of the adult population. Age standardisation adjusts crude imprisonment rates to account for age difference between study populations. Crude imprisonment rates for the adult prisoner population are calculated using the estimated resident population of each state and territory. Aboriginal and Torres Strait Islander rates are based on estimated resident Aboriginal and Torres Strait Islander population of each state and territory.

3.2.3 Women

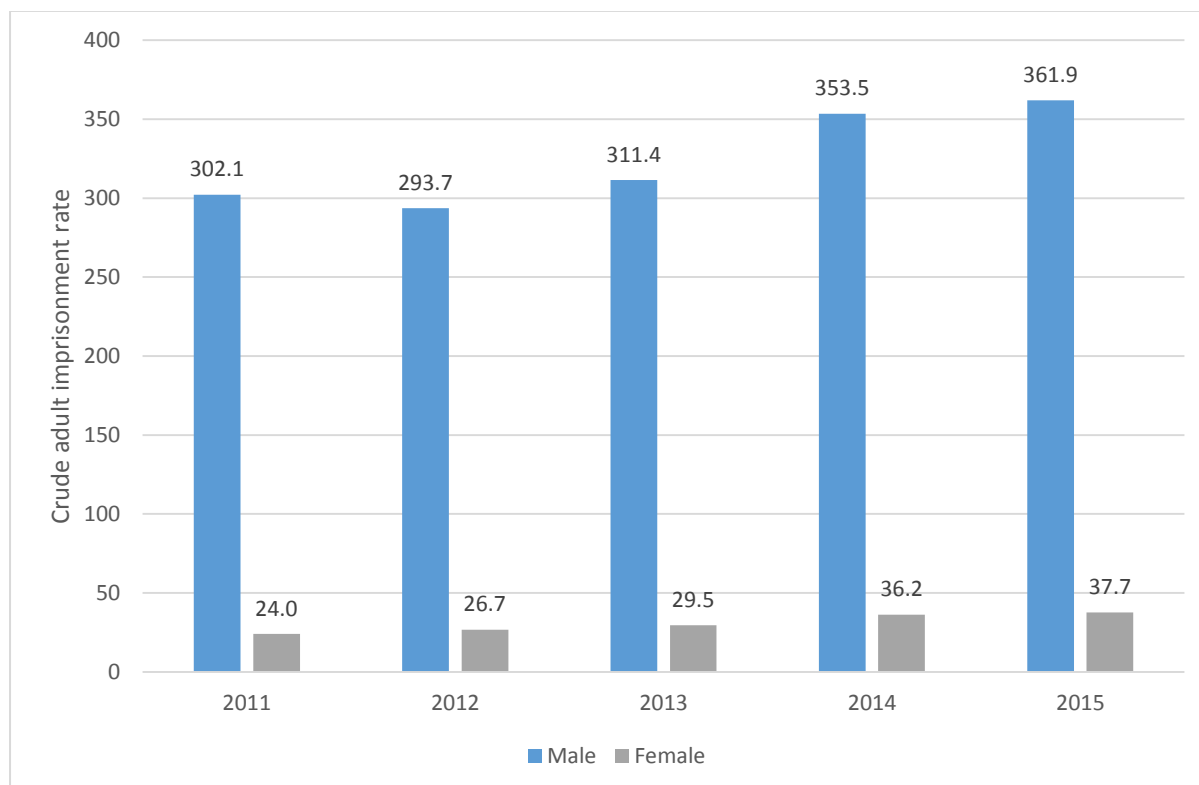
Women are less likely than men to have contact with the criminal justice system. They are more likely to commit acquisitive crimes and less likely to commit serious violence offences when compared to men. In 2015, women made up 10% of the prisoner population in Queensland (ABS 2015). Women represented 24% of total alleged offenders (ABS 2016a) and 24% of total finalised defendants (ABS 2016b) in 2014–15.

Figure 6 shows the crude imprisonment rate for male and female adults. While the imprisonment rate has increased for both men and women, increases were more substantial for women. The imprisonment rate for women grew from 24 per 100,000 of the adult population in 2011 to 38 per 100,000 of the adult population

in 2015 (an increase of 57%), while the rate for men grew from 302 per 100,000 of the adult population to 362 per 100,000 of the adult population during this time (an increase of 20%).

The growing female prisoner population has significant implications for offender management given the specific issues experienced by women prisoners.¹⁸

Figure 6: Crude imprisonment rates for women and men, Queensland, 2011 to 2015



Source: ABS Prisoners in Australia, 2015.

Note: Prisoner rates are per 100,000 of the adult population. Crude imprisonment rates for the adult prisoner population are calculated using the estimated resident population of each state and territory.

Gendered differences apparent in the adult criminal justice system are also evident in the youth justice system. Although caution is required in interpreting data given the small population sizes, the number of girls in detention on an average day increased by 138% between 2010–11 and 2014–15 (from 13 in 2010–11 and to 31 in 2014–15), while the number of boys in detention rose by 38% (from 125 in 2010–11 and to 172 in 2014–15) (AIHW 2016a). These data suggest that growth in the adult female prisoner population is likely to continue at least in the short-term.

3.2.4 Queensland compared with other states

The alleged offender and imprisonment rates for each Australian jurisdiction are presented in Figure 7.

It shows that young people (aged under 17 years) are generally more likely to be arrested by the police than adults and that adults are more likely to be incarcerated than young people. It also shows that Queensland

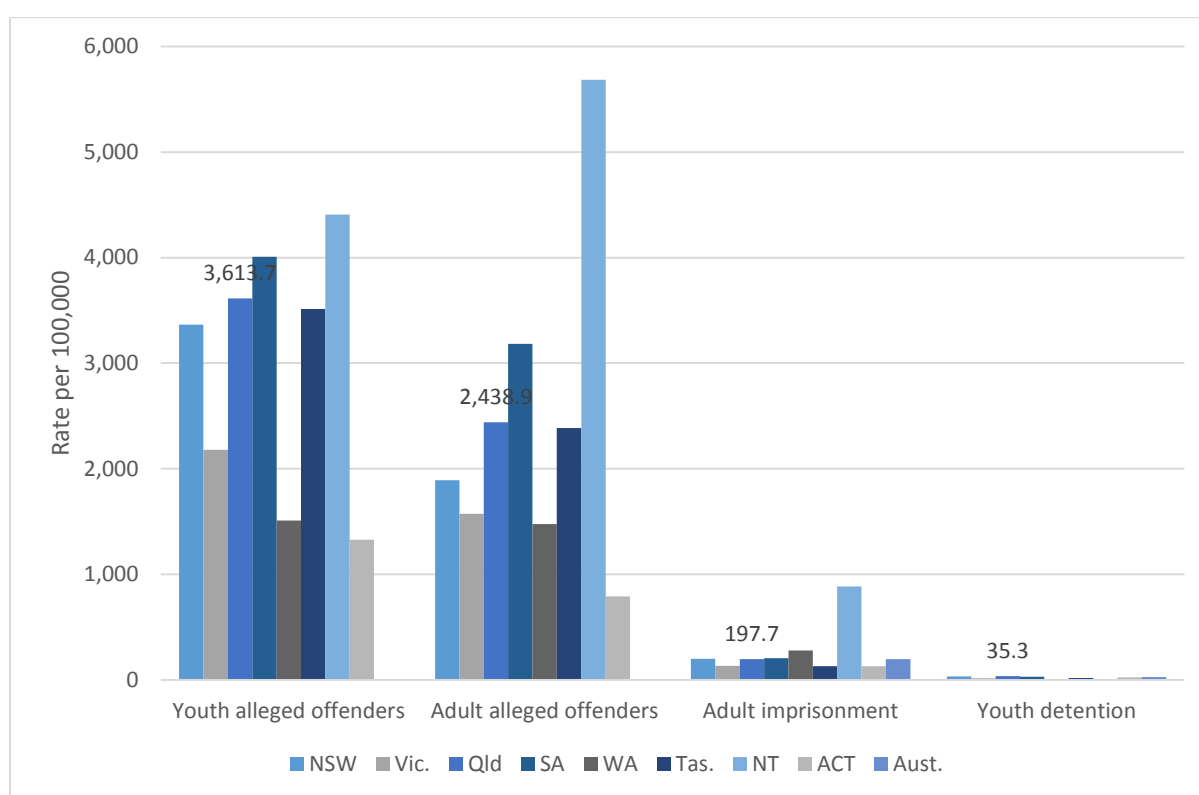
¹⁸ Male and female prisoners are characterised by similar criminogenic issues, such as unemployment, substance misuse, poor mental health and lack of accommodation, however the prevalence and/or magnitude of these issues can be different. Women also have specific issues (such as far higher rates of physical, emotional and sexual victimisation histories) that make their management in prison more complex.

has higher alleged offender rates and youth detention rates than those in most other jurisdictions. However, Queensland's adult imprisonment rate is similar to the national total and some other states including NSW and South Australia.¹⁹

Queensland's alleged offender rate (2,439 per 100,000 of population aged 10 years or more) was higher than that found in NSW, Victoria, Western Australia (WA), Tasmania and the ACT, but lower than South Australia's and the Northern Territory's (NT). Queensland's adult imprisonment rate (198 per 100,000 of people aged 10 years or older) is similar to NSW and South Australia, but lower the rate evident in WA and the NT. Queensland's adult imprisonment rate was only higher than Victoria's and the ACT. Queensland has higher youth alleged offender and detention rates than most other jurisdictions.

Other Australian jurisdictions are also experiencing increases in the number of Aboriginal and Torres Strait Islander people and women in contact with the criminal justice system, as well as, an expanding remand population. However, these increases are not necessarily as high as those evident in Queensland (ABS 2015).

Figure 7: Alleged offender and incarceration rates, Australian states and territories, 2015 and 2014–15



Source: AIHW Youth Justice in Australia 2014–15 (youth detention rates); ABS Prisoners in Australia, 2015 (adult imprisonment rates) and ABS Recorded Crime, Offenders, 2014–15 (youth alleged offender rates and alleged offender rates).

Note: Adult imprisonment rates relate to 2015, all other data relate to 2014–15. Youth detention rates exclude Western Australia and the NT. ABS alleged offender information relates to people aged 10 years or more unless specified otherwise, ABS imprisonment information relates to adults only.

¹⁹ Some variation in alleged offender and incarceration rates across the jurisdictions may be explained partially by differences in the representation of Aboriginal and Torres Strait Islander people in different jurisdictions, as this cohort is overrepresented in both the criminal justice system and in other indicators of social disadvantage.

3.3 DRUG OFFENDERS AND OFFENCES

This section shows that the number of people in contact with the criminal justice system for drug offences has exceeded overall system growth. The number of drug offences committed by people has also increased in recent years. These findings signify a growing need for interventions and problem-oriented courts that address substance misuse.

3.3.1 Alleged drug offenders

There has been a rise in the number of alleged offenders recorded by police in Queensland in recent years. This includes alleged offenders with an illicit drug offence as their principal offence.

The total number of alleged offenders in Queensland between 2010–11 and 2014–15 is shown in Figure 8.²⁰ These offenders increased in number from 85,270 in 2010–11 to 100,294 in 2014–15 (an increase of 18%). However, the number of alleged offenders with a principal offence involving an illicit drug offence grew from 15,834 to 27,015 (an increase of 71%).

Growth in the number of alleged offenders was most apparent in 2013–14 and 2014–15.

Not surprisingly, given the different rates of growth, the proportion of total alleged offenders with a principal offence relating to illicit drugs grew from 20% in 2010–11 to 28% in 2014–15 (ABS 2016a). Furthermore, these increases are not explained by population growth in Queensland. The rate of alleged offenders (per 100,000 people) with an illicit drug offence as the principal offence increased from 412.0 in 2010–11 to 656.9 in 2014–15 (ABS 2016a).

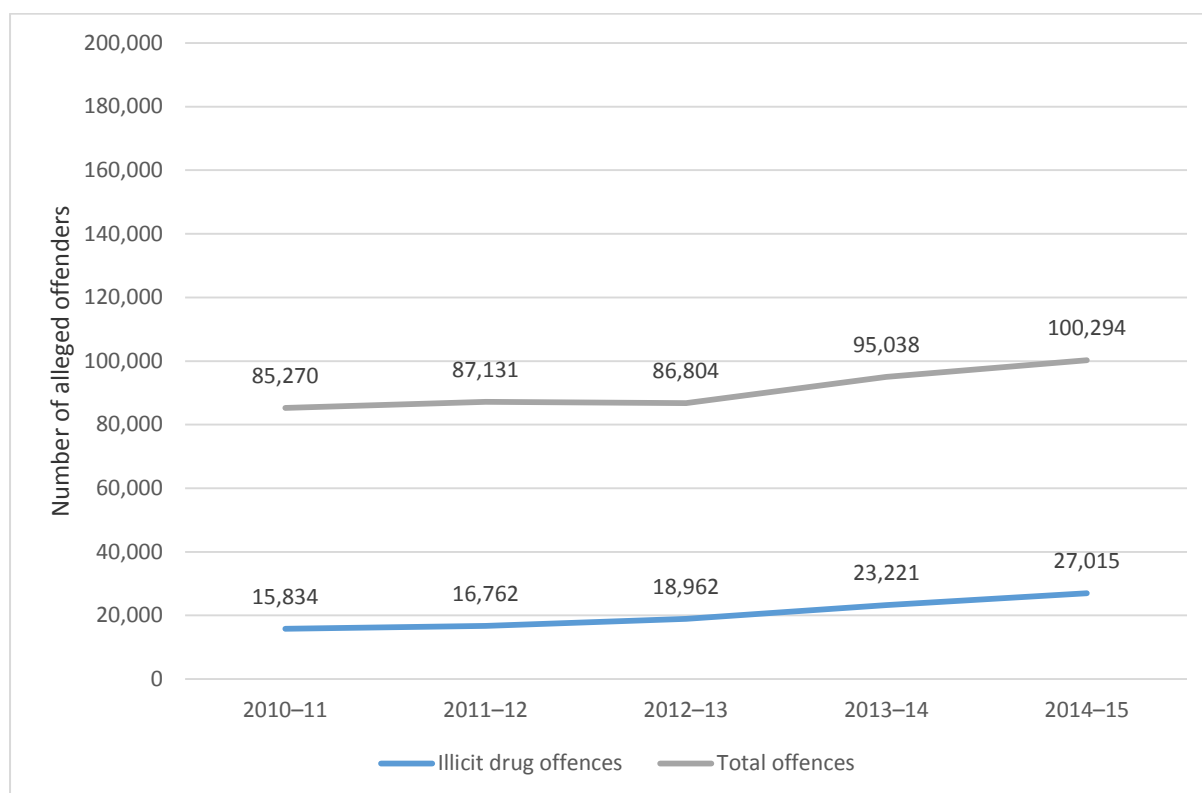
Analysis of courts data suggests that some of the growth in the number of alleged drug offenders may be explained by a greater focus on drug driving and the introduction of random roadside drug testing. When examining all offences related to matters where the finalised defendant had an illicit drug offence as their principal offence, the number of traffic and vehicle regulatory offences increased by 143% between 2010–11 and 2014–15. The number of dangerous or negligent acts endangering persons increased by 247% over the same period.²¹

²⁰ Data shown in

Figure 8 exclude traffic and vehicle regulatory offences.

²¹ Source: DJAG administrative data.

Figure 8: Number of total alleged offenders and alleged illicit drug offenders, Queensland, 2010–11 to 2014–15



Source: ABS 2016 Recorded Crime - Offenders

3.4 POLICE PROCEEDINGS AND USE OF NON-COURT ACTIONS

The way in which police proceed against alleged drug offenders has changed in recent years. There has been a decline in the use of non-court actions in favour of more formal proceedings.

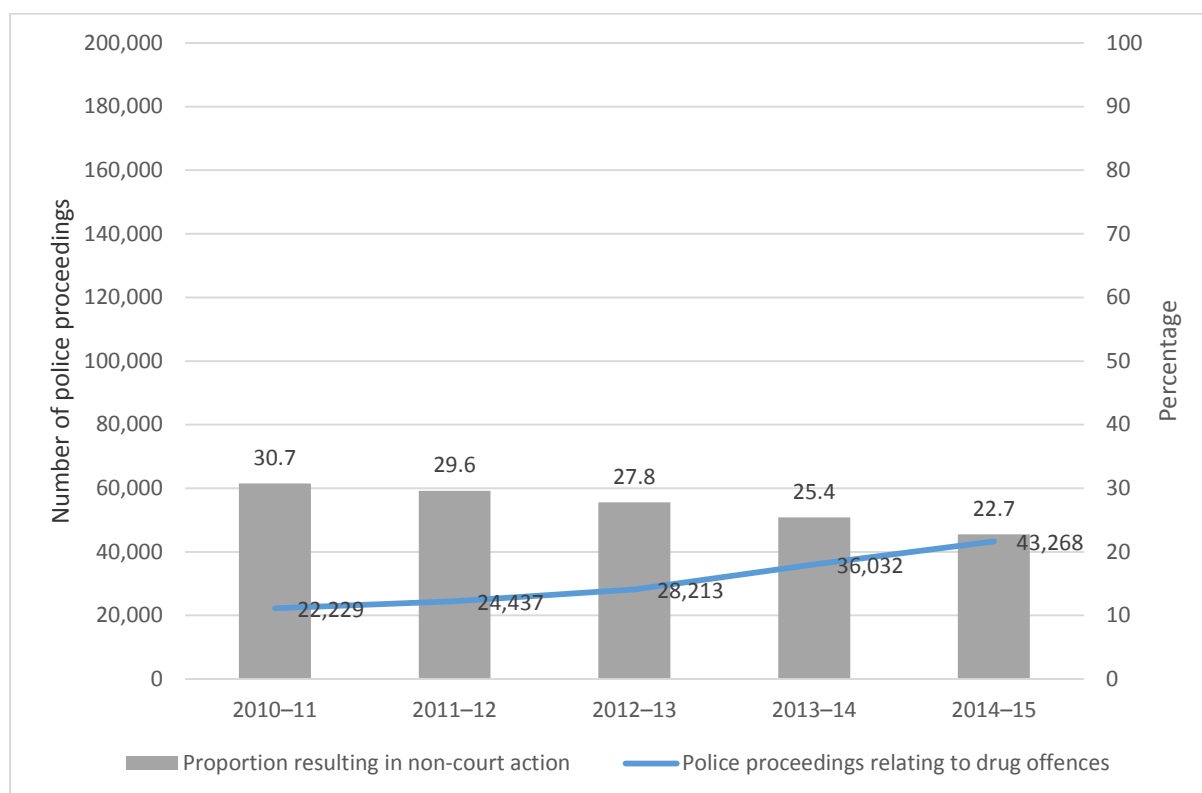
Figure 9 shows that police proceedings relating to illicit drug offences as the principal offence nearly doubled between 2010–11 (22,229) and 2014–15 (43,268). The percentage increase in the number of illicit drug offence-related police proceedings over the reporting period (95%) was substantially higher than growth in the total number of police proceedings (28%).

The proportion of police proceedings (with an illicit drug offence as the principal offence) resulting in a non-court action declined over the reporting period – decreasing from 31% in 2010–11 to 23% in 2014–15. This decline in non-court actions occurred in a context of no change in overall police actions. This could suggest changes in police practices regarding illicit drug offences (for example, less use of diversionary strategies), a change in the profile of offending (for example, increasing seriousness of the drug-related offences or types of drugs involved), other factors or a combination of these.

Further analyses of ABS police proceedings data also shows that the proportion of total police proceedings with a principal offence relating to illicit drugs increased from 18% in 2010–11 to 27% in 2014–15.²²

²² Missing data have been excluded in the calculation of percentages.

Figure 9: Number of police proceedings with illicit drug offences as principal offence and proportion resulting in non-court action, Queensland, 2010–11 to 2014–15



Source: ABS 2016 Recorded Crime – Offenders.

Note: Missing data have been excluded when calculating percentages of totals.

3.5 TYPES OF ILLICIT DRUG OFFENCES

The majority of illicit drug offences tend to relate to minor drug offences such as possession and use of drugs. While the incidence of both minor and serious drug offences has increased in recent years, relative growth in the number of people with a serious drug offence as their principal offence has grown more substantially.

Analyses of QPS administrative data shows that about 65% of total alleged offenders with an illicit drug offence as their principal offence are proceeded against for possession and/or use of drugs, while about 20% are proceeded against for ‘other illicit drug offences’ such as possess drug utensil and possess money with intent to purchase drugs. Less than 10% of total alleged offenders with an illicit drug offence as their principal offence are proceeded against for dealing or trafficking in illicit drugs.²³

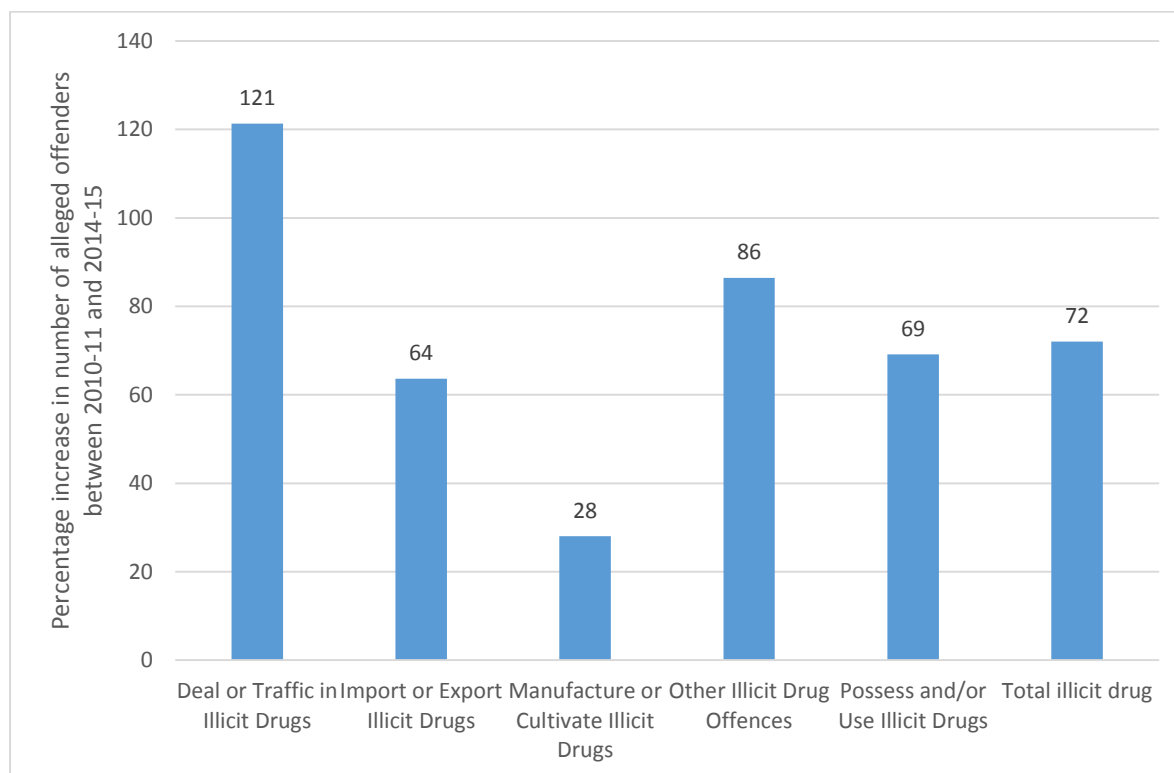
Figure 10 shows the percentage growth in the number of alleged offenders with an illicit drug offence as their principal offence between 2010–11 and 2014–15 by type of illicit drug offence. The number of offenders with deal or traffic illicit drug offences grew by 121%, other illicit drug offences increased by 86% and possess and/or use illicit drugs grew by 69% between these years.

Queensland Corrective Services data also indicate that the number of offenders sentenced to supervision with a serious drug offence as their principal drug offence increased by 83% between 2010–11 and 2014–15, while the number of offenders with a minor drug offence as the principal offence grew by 56%.²⁴

²³ Source: QPS administration data.

²⁴ Source: QCS administrative data

Figure 10: Percentage growth in the number of alleged offenders with an illicit drug offence as principal offence by type of illicit drug offence, Queensland, 2010–11 to 2014–15



Source: QPS administrative data

Notes: There is consistency in findings between ABS data and QPS data analysed for the purpose of the Review. ABS data indicate that the number of alleged offenders with an illicit drug offence as their principal offence increased by 71% between 2010-11 and 2014-15, while analysis of QPS administrative data indicates an increase of 72%.

'Other drug offences' includes possess money with intent to obtain drugs; possess pipes, syringes, other utensils associated with the use of drugs; permit premises to be used for taking, selling or distributing of drugs; and fail to keep register for drugs of addiction.

3.6 DRUG OFFENDERS BEFORE THE COURTS

The growing number of alleged drug offenders, the decreasing use of non-court actions by the police for drug offenders and the increasing number of serious drug offenders occurring in recent years signals greater court workloads in response to drug-related offending.

3.7 NUMBER OF FINALISED DRUG DEFENDANTS

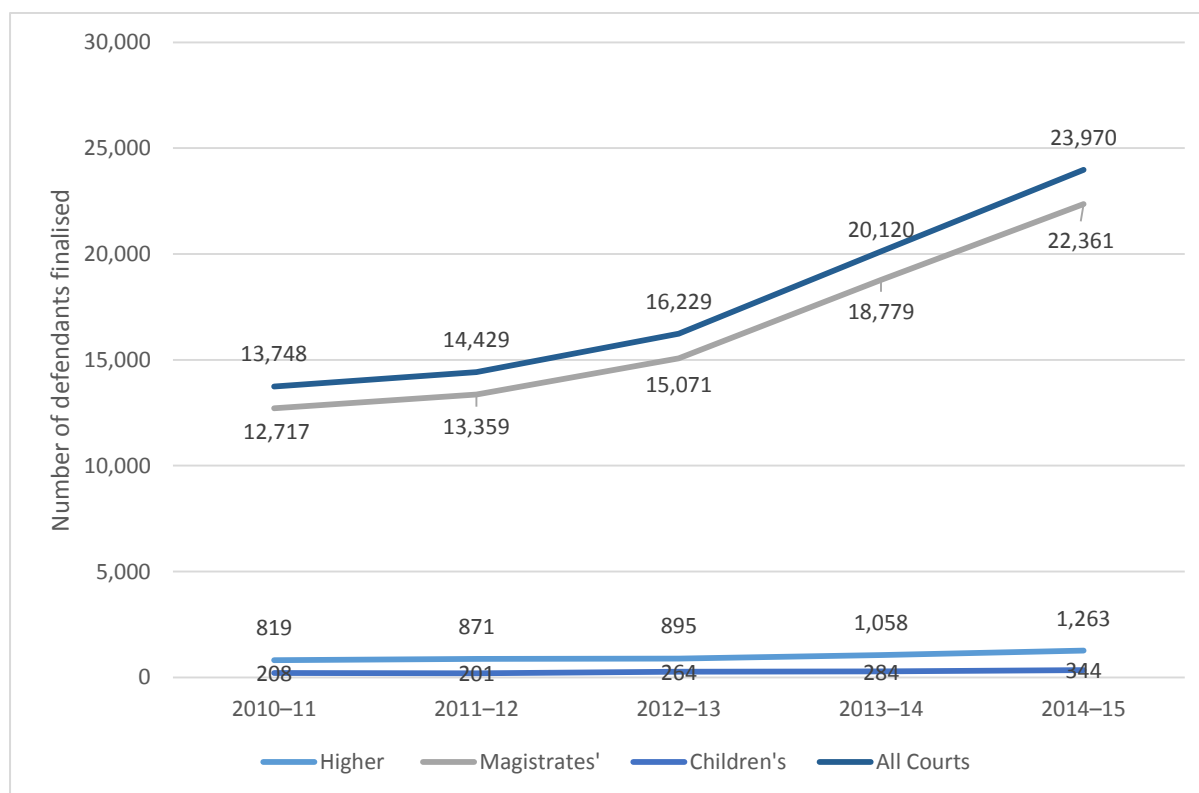
Finalised defendants with a principal offence relating to drug offences accounted for 14 per cent of total defendants finalised in Queensland's Courts in 2014-15 and the majority of drug-related matters were finalised in the Magistrates Courts.

Figure 3 showed that the number of finalised defendants increased by 14% in Queensland between 2010–11 and 2014–15. the number of finalised defendants with an illicit drug offence as their principal offence grew more than overall court system growth.

Figure 11 shows that the total number defendants finalised with an illicit drug offence as the principal offence increased from 13,748 in 2010–11 to 23,970 in 2014–15 (an increase of 74%). The number of defendants finalised with an illicit drug offence as the principal offence between 2010–11 and 2014–15 increased by 76% in the Magistrates Courts, 65% in the Childrens Court and 54% in the Higher Courts (Supreme and District Court).

The increase in illicit drug offences as a principal offence took place at the national level – albeit at a lower level than the Queensland experience. Nationally, there was a 51% increase in the number of defendants finalised in 2014–15 with an illicit drug offence as the principal offence when compared to 2010–11 (ABS 2016b).

Figure 11: Number of defendants finalised with illicit drug offences as principal offence by type of court, Queensland, 2010–11 to 2014–15



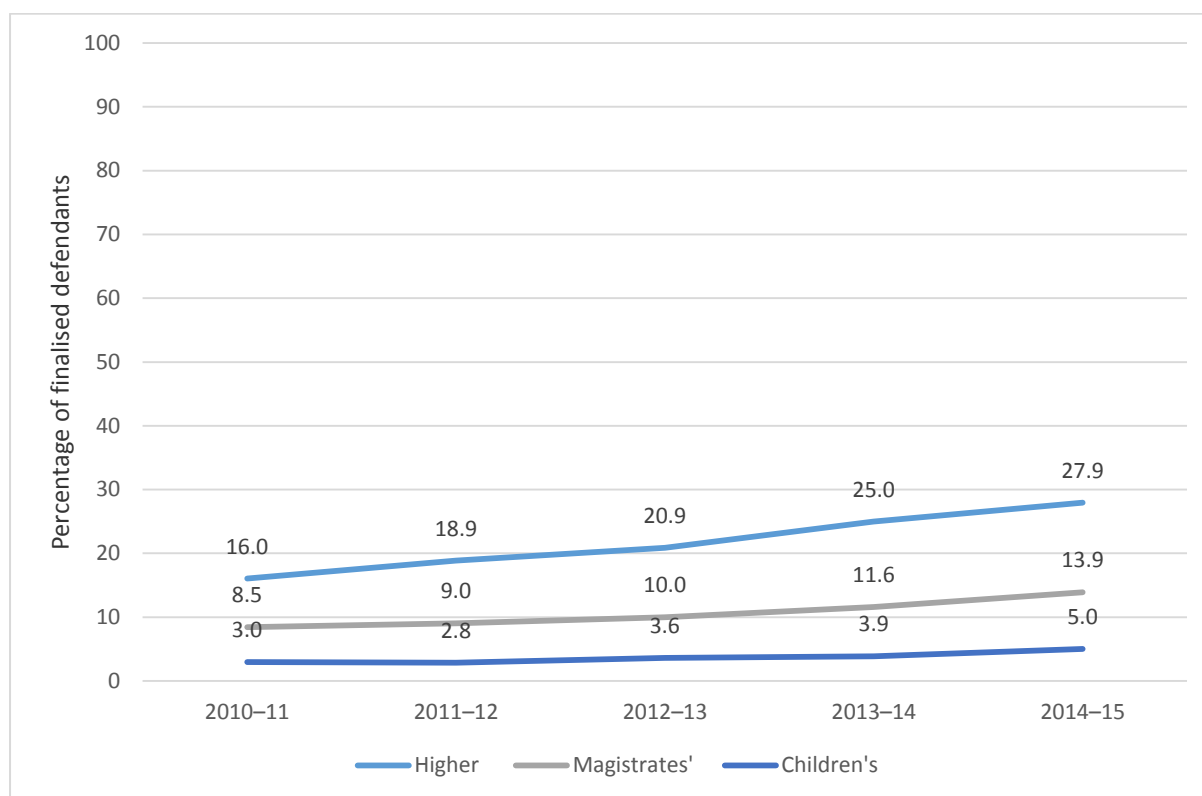
Source: ABS 2016 Criminal Courts Australia.

The share of all finalised defendants with an illicit drug offence as their principal offence has also increased in recent years – growing from 9% in 2010–11 to 14% in 2014–15. This growth was most apparent in the Higher Courts. In the years between 2010–11 and 2014–15, the share of all finalised defendants with illicit drug offences as their principal offence increased from 16% to 28% in the Higher Courts, 8% to 14% in the Magistrates Courts and 3% to 5% in the Childrens Court (see Figure 12).

Further analysis of 2014–15 courts data shows that most finalised defendants with an illicit drug as their principal offence have either single (40%) or multiple (42%) drug offences only. Eighteen per cent have a combination of drug and non-drug offences. These patterns have not changed in recent years.²⁵

²⁵ Source: DJAG administrative data.

Figure 12: Proportion of finalised defendants with illicit drug offence as principal offence by type of court, Queensland, 2010–11 to 2014–15



Source: ABS 2016b

The increasing share of total finalised defendants with an illicit drug offence as the principal offence suggests growth in illicit drug offences in a context of decline for other types of offences.

Further analysis shows that there was a decline in the share of total finalised defendants with a principal offence relating to traffic and vehicle regulatory offences (36% in 2010–11 compared with 30% in 2014–15). Other offence types with a slight decline included public order offences (14% to 11%) and acts to cause injury (6% to 5%). Other principal offence types exhibiting growth between 2010–11 and 2014–15 (albeit very slight) included prohibited and regulated weapons and explosive offences (1% to 3%) and offences against justice procedures, government security and government operations (9% to 11%) (ABS 2016b).

3.8 SENTENCE OUTCOMES FOR DRUG OFFENDERS

Nearly all defendants found guilty of an illicit drug offence as the principal offence receive a non-custodial sentence.

Table 1 shows that the majority (82%) of defendants finalised in the Higher Courts received a custodial order (including community custody orders and fully suspended sentences), however the number of these defendants is relatively small. The majority (95%) of defendants finalised in the Magistrates Courts received a non-custodial order and nearly two thirds (62%) received a monetary order. These sentence outcomes reflect the drug offending patterns discussed above, which showed that the majority of incidents relating to a drug offence as the principal offence involved a minor drug offence (such as possession and use of drugs).

Table 1: Sentence outcome of guilty defendants with illicit drug offence as principal offence, Queensland Higher and Magistrates Courts, 2014–15

Sentence outcomes	Court level	
	Higher Courts (%)	Magistrates Courts (%)
Custody in a correctional institution	63.1	2.8
Custody in the community	0.6	0.1
Fully suspended sentence	17.6	2.2
Community supervision/work orders	11.2	8.4
Monetary orders	5.5	62.2
Other non-custodial orders	2.2	24.3
Total (n) proven guilty	1,085	20,489

Source: ABS *Criminal Courts, Australia*, 2014–15

Note: This source does not include sentence outcomes for illicit drug defendants finalised in the Childrens Court.

In 2014–15, the median length of custody for guilty defendants finalised and sentenced to custody in a correctional institution was nine months (ABS 2016b). The median term was the same for guilty defendants with an illicit drug offence as their principal offence (ABS 2016b). Nearly three quarters (72%) of all defendants who had an illicit drug offence as their principal offence and were sentenced to custody in a correctional institution received a sentence under two years, while 21% received a sentence of two to less than five years (ABS 2016b).

Defendants with an illicit offence as their principal offence and whose cases were finalised in the Higher Courts were given longer terms of custody in a correctional institution (24 months) than those finalised in the Magistrates Courts (four months) (ABS 2016b).

Assuming that the reinstated drug court will target drug-related offending that is likely to result in a period of custody in a correctional setting, these data suggest that the number of people potentially eligible for drug court will be relatively low and that the operation of a drug court would have a modest impact on prisoner numbers (even if it aims to divert people from a period of imprisonment in custody).

3.9 SUMMARY

This chapter has shown that:

- there is a growing number of people in contact with the police, courts and corrections and this growth is higher than population growth;
- there is an expanding remand population most likely explained by a growing number of people in contact with the police and possibly a reduced likelihood of getting bail;
- the overrepresentation of Aboriginal and Torres Strait Islander people in contact with the criminal justice system continues to grow despite efforts to address this issue;
- the number of women in contact with the criminal justice system is expanding at a higher rate than increases among men;
- the rate of police contact with Queenslanders is higher than that experienced in most other Australian jurisdictions; and
- Victoria and South Australia are the only states with a lower adult incarceration rate than Queensland's;
- the majority of youth held in detention centres are not sentenced;

- growth in the number of offenders with a drug offence as their principal offence exceeds overall system growth
- most people's drug offences relate to minor offences such as possession and use of illicit substances; and
- a relatively small proportion of people sentenced by the Magistrates Court are given a term of imprisonment.

3.10 IMPLICATIONS

The data in this chapter illustrate the increasing pressure under which the Queensland justice system has been placed due to illicit drug offending. While the majority of offenders found guilty of an illicit drug offence as their principal offence did not enter the prison system, nonetheless the demands of drug offending on the system as a whole remain significant. Of additional concern, the proportion of vulnerable populations in the criminal justice system continues to grow.

4 PATTERNS OF DRUG USE AND SUBSTANCE MISUSE AMONG QUEENSLAND OFFENDERS

4.1 INTRODUCTION

This chapter explores the complex relationship between drug use and crime and identifies the potential demand for interventions and problem-oriented courts that provide a therapeutic response to drug use. Information is provided on the patterns of drug use among offender populations.²⁶

The data in this chapter are presented to illustrate the extent of problematic alcohol and other drug use in Queensland and to identify the nature of the demand for appropriate criminal justice interventions.

4.2 THE DRUG-CRIME NEXUS

Beginning in the 1970s there has been significant growth in the number of academic research papers and government reports examining the drug-crime relationship. The vast majority of these studies point to a strong positive correlation between the two phenomena. These studies can be broadly categorised into three main types: (1) those examining the criminal offending patterns of drug users; (2) those examining the drug use patterns of criminally involved individuals; and (3) those using aggregate data to compare community level drug use and crime rates.

In Australia, the best and most current estimates of the criminal involvement of drug users comes from the Illicit Drug Reporting System (IDRS), funded under the National Illicit Drug Strategy (NIDS) and coordinated by the University of NSW National Drug and Alcohol Research Centre (NDARC). NDARC is one of three national centres of excellence established by the Australian Government Department of Health and Aging (DOHA) and IDRS is an annual national survey of injecting drug users from all major capital cities across Australia. In their reports on the data, Stafford and Burns (2013) estimate that one in three injecting drug users across Australia self-reported some involvement in criminal activity in the preceding month (37%), while roughly the same proportion reported having been arrested by the police (33%) at least once in the preceding year. The most common types of crimes committed by injecting drug users were property and drug dealing offences, findings that have remained stable since the IDRS first began in 1999.

In addition to the IDRS, NDARC also coordinate the Ecstasy and related Drugs Reporting System (EDRS), a sister study which seeks to capture information from a national sample of non-injecting drug users. In a summary of results from the 2012 survey, Sindicich and Burns (2013) noted that roughly two fifths of non-injecting drug users self-reported some involvement in crime during the 30 days preceding the interview, while just over one in ten (14%) had been arrested by the police in the past 12 months. Violent and drug offences were the most commonly reported offence types.

As an alternative to examining the criminal offending activities of drug users, researchers have also sought to examine the prevalence and nature of drug use among criminal justice populations with the view to demonstrating that drug use rates are higher among offenders than in the general population. From the Australian research, several consistent conclusions can be drawn, namely that:

- The prevalence of drug use is significantly higher among criminal justice populations than in the general community and the differential is greater for more serious drug types such as heroin, amphetamine and cocaine (Johnson 2004a, 2004b; Kinner 2006; Kraemer et al. 2009; Makkai & Payne 2003a, 2003b, 2005; Prichard & Payne 2005b, 2005a).
- Offenders typically experiment with illicit drugs at younger ages than those who use drugs but do not have contact with the criminal justice system (Johnson 2001). Moreover, it seems the more serious the offender

²⁶ Further analyses and information about data sources are provided in the *Data for drug and specialist courts review* report at Appendix B.

the younger they were when they first used drugs (Makkai & Payne 2003a, 2003b, 2005; Prichard & Payne, 2005a, 2005b);

- There is modest association between specific drug types and specific crime types (Indermaur 1995) although the association is likely the result of the pattern of usage more than the psychoactive properties of the drug (Bradford & Payne 2012);
- Some offenders attribute their own offending to the use of drugs (Indermaur 1995; Makkai & Payne 2003a), though this can vary by drug type (Payne & Gaffney 2012);
- Offending rates typically fluctuate according to levels of drug use (Dobinson & Ward 1985; Johnson 2004a, 2004b; Kraemer et al. 2009; Makkai & Payne 2003a, 2003b, 2005; Prichard & Payne 2005a, 2005b; Stevenson & Forsythe 1998), but may also vary depending on the drug being used (Makkai 2002);
- Offenders are typically more likely to report experimenting with drugs only after they are already involved in crime (Dobinson & Ward 1985; Johnson 2001; Johnson 2004a, 2004b; Makkai & Payne 2003a, 2003b, 2005; Prichard & Payne 2005a, 2005b). However, this appears less so among female offender populations (Johnson 2004a); and
- A history of drug use serves as a strong predictor of reoffending (Makkai, Ratcliffe, Veraar & Collins 2004), especially among prisoner populations who continue to use drugs in prison or who express an intention to re-use drugs upon their release (Kinner 2006).

4.2.1 Understanding the drug-crime nexus

Notwithstanding the apparently strong correlation between drug use and crime, the drug-crime debate remains plagued by the unanswered question of causality; whether it exists at all, and if it exists, in which direction it operates. In assessing the same complex mix of empirical findings Menard and his colleagues (2001) point out that there are at least four competing explanations of the drug-crime relationship, which can be summarised as:

- drug use leads to crime;
- crime leads to drug use (the inverse causality model; see Brochu 1995);
- drug use and crime influence each other in a pattern of mutual causation; and
- the relationship between drug use and crime is either coincidental or spurious and that both result from a common underlying aetiology (see also White & Gorman 2000).

The most common explanation for the relationship between drug use and crime is that drug use acts as the catalyst for criminal offending or the development of an individual's criminal career. This is, perhaps, the most common and popular public perception of drug use and was described by Goldstein (1985) as resulting from one of three mechanisms:

- the psycho-pharmacological effect – used to describe crimes that are committed under the influence or whilst intoxicated;
- the economic-compulsive – financial crimes which are presumed to be committed for financial gain and where the proceeds are typically used to fund drug purchases; and
- the systemic effect – crimes that occur as a consequence of participation in the illegal and unregulated market for drugs.

Although it is true that some crime occurs as a consequence of drug use, Menard and colleagues (2001) conclude that the simple hypothesis that drug use causes crime is 'untenable' because in the vast majority of research, particularly that conducted with criminal justice populations, the initiation of drug use typically occurs subsequent to the onset of offending. Further, they conclude that once both crime and drug use have commenced, each appears to increase the probability that the other will continue. Most importantly, they argue that crime and drug use are related to one another in different ways and in different strengths across the life-course - that while some crime is caused by drug use and some drug use is caused by crime, both are also heavily influenced by a similar set of underlying factors. White and Gorman (2000), for example, argue that it is equally possible for drug use to occur as the result of crime because:

- the aspects of the lifestyle associated with being an offender may encourage heavy alcohol and other drug use (e.g. being single, being geographically mobile, partying/using drugs when between jobs and only working occasionally);
- the extra income derived from crime may allow the offender to more easily purchase drugs; and
- offenders may use drugs as a source of self-medication, 'Dutch courage', or as a justification to continue committing crime.

Perhaps the most popular contemporary explanation for the drug-crime relationship is that while drugs and crime may influence each other at different strengths and at different times in the life-course, both are nonetheless principally the result of a process of mutual causation, influenced by other underlying causal factors. In their General Theory of Crime, Gottfredson and Hirschi (1990) argue that both drug use and crime are the result of low self-control – the common antecedent of all anti-social behavior. Others have used the 'impaired functioning' theory to suggest that altered physical, psychological and emotional functioning may result from drug use and can consequently lead to involvement in crime. Another theory proposes that the factors associated with involvement in crime (such as poverty, personality disorders, associations with anti-social peers and lack of pro-social support) are also associated with problematic drug use. The 'sociological drift theory' argues that involvement in crime creates opportunities and contexts that can result in drug problems and involvement in drug-related activities (Queensland Crime and Misconduct Commission 2008). These theories suggest a multi-directional relationship between drug use and crime. Indeed, researchers have found that drug use problems can come before involvement in crime and involvement in crime can come before using drugs.

Whichever the explanation, more than 40 years of detailed drug-crime research, including sociological, biological, medical and psychological research, has not yet answered the question of causation. Such is the complexity of these two social phenomena that it is unlikely that one, single, unifying explanation will ever be found. As a consequence, researchers and practitioners must now agree that to reduce drug related crime is a complex proposition that must take into account a diverse range of individual and social-level factors. Put simply, treating drug dependency alone without meeting and redressing other criminogenic needs will not, for the majority of drug users, be sufficient to stop their involvement in crime.

4.2.2 Drug use patterns among offenders

The drug-crime nexus is apparent when the prevalence of drug use among the general population is compared with drug use in offender populations. The evidence consistently shows higher levels of drug use among offenders than that occurring in the general population.

Table 2 shows the prevalence of drug use among the Queensland general population, people entering Queensland prisons and people being detained in the Brisbane watch-house.²⁷

While 16% of the general population reported recent illicit drug use, 73% of police detainees tested positive to an illicit drug and 64% of prison entrants reported recent illicit drug use.²⁸

Cannabis and methamphetamines were the most commonly used illicit drugs among offenders and illicit pharmaceutical use was also evident. Forty-three per cent of police detainees tested positive to cannabis and 38% tested positive to methamphetamines. Reported use of methamphetamine was more prevalent among prison entrants (47% reporting recent use) than cannabis use (40% reporting recent use).

²⁷ The data presented in Table 2 have been collected using different methodologies and at different time periods. It is therefore important to exercise caution when interpreting results. These data provide an indication of drug use prevalence, but not frequency of use.

²⁸ Recent drug use is defined as any use of drugs within the previous 12 months.

Cannabis is the most commonly used illicit drug in the general population (11% used recently) and use of methamphetamines is atypical (2% recently used). The prevalence of cannabis and methamphetamine use among criminal justice populations suggests that offenders are about four times more likely to use cannabis than people in the general population and around 16 to 20 times more likely to use methamphetamines.²⁹

Table 2: Comparative illicit drug use patterns, Queensland general and offender populations

	NDSHS ^a	NPHDC ^b	DUMA ^c
	General population (2013)	Prison entrants (2015)	Watch-house detainees (2013)
Type of drug	Used in previous 12 months		Tested positive
Cannabis	11.1	40	43
Cocaine	2		2
Amphetamine type stimulants	2.3	47	38
Inhalants	0.8		
Sedatives or sleeping pills	1.7		
Hallucinogens			
Opioids			23
Heroin	0.1	8	8
Methadone/buprenorphine	0.2		
Methadone			6
Buprenorphine			10
Other opiates/opioids	0.6		7
Injected drugs	0.3		
Any drug other than cannabis			58
Multiple drugs			41
Any illicit	15.5	64	73

a. NDSHS measures drug use in the general population.

b. NPHDC measures drug use among sentenced and unsentenced persons entering or leaving custody. Data presented in table includes results from prison entrants only.

c. DUMA measures drug use among people in the Brisbane watch-house.

²⁹ Results of the 2013 NDSHS show that Aboriginal and Torres Strait Islander people in the general community are more likely to abstain from alcohol than non-Indigenous people, however this pattern is not apparent in relation to illicit drug use (AIHW 2014). Over a quarter (28%) Aboriginal and Torres Strait Islanders were reported as abstainers/ex-drinkers compared with 22% of non-Indigenous people; while 47% of Aboriginal and Torres Strait Islander reported that they had never used any illicit drug compared with 59% of non-Indigenous people. Aboriginal and Torres Strait Islander people were also more likely than non-Indigenous people to report recent use of illicit drugs (24% compared with 15%) and report risky levels of alcohol use (23% compared with 18%).

Levels of alcohol consumption among offenders are substantially higher than those found among the general population (AIHW 2016b). Among prison entrants, 38% of prison entrants reported levels of alcohol consumption that placed them at high-risk of alcohol-related harm (as measured by the AUDIT C) indicating hazardous levels of drinking or active alcohol use disorders (AIHW 2016b). Police detainees reported drinking 23 standard drinks (on average) on their last drinking occasion (AIC 2015a).

Other research also shows a high prevalence of criminal behaviour among illicit drug user populations. For example, the 2015 Queensland Illicit Drug Report Survey found that 33% of responding injecting drug users reported involvement in crime in the previous month and 38% reported that they had been arrested in the previous 12 months. One quarter (25%) of those arrested were arrested for use/possession of drugs (McIlwraith, Salom & Alati 2016).³⁰ Gisev et al. (2014) found that most people (76%) that had sought treatment for opioid-dependence in NSW were incarcerated at least once (also noting that the majority of heroin users have received opiate substitute treatment at some point of their lives).

4.2.3 Use of methamphetamine

While the use of methamphetamine in the general population has remained relatively stable in recent years, there is evidence to suggest that it is becoming more prevalent among offenders.

The levels of methamphetamine detected among Brisbane watch-house detainees via urinalysis were the highest ever recorded in 2013 and 38% reported that they needed or were dependent on methamphetamine in the previous 12 months. Watch-house detainees also believed that methamphetamine was readily available and that more sellers were entering the market (Gannoni, Goldsmid & Patterson 2015).

The increasing use of meth/amphetamine among Queensland offenders was referred to by key stakeholders consulted as part of this Review. It was also suggested that offenders using meth/amphetamines tended to escalate in offence seriousness and be considered for custodial sentences more quickly than cannabis only users. One key expert interviewed as part of the 2015 IDRS believed that methamphetamine use had 'a shorter period than with other drugs between first use and disaster' (McIlwraith, Salom & Alati 2016).³¹

Research has shown a high prevalence of violent offending among illicit drug users and that offenders who primarily used methamphetamine were more likely to have committed a violent offence in the past 12 months than offenders who were primarily heroin users (51% versus 35%) (Torok 2009).

The most recent illicit drugs intelligence assessment prepared by the Queensland Crime and Corruption Commission continues to rank methylamphetamine as the illicit drug market posing the highest risk to Queensland and indicates that there has been a greater targeting of regional areas such as Toowoomba, Mackay, Rockhampton, Gladstone, Townsville and Cairns by groups supplying illicit drugs. It also noted that the heroin market continues to be small in Queensland, however it continues to expand internationally and in other Australian states (Queensland Crime and Corruption Commission 2016).

4.2.4 Relationships between drug use and types of offending

Although polydrug use is often apparent among drug users, there is some evidence to suggest that alcohol tends to be associated with violent offending, while illicit drug use tends to be associated with drug and property offending.

About one in four Queensland police detainees (23%) surveyed as part of the Drug Use Monitoring Australia (DUMA) study attributed their current charges to alcohol or other drug use, 35% attributed their current

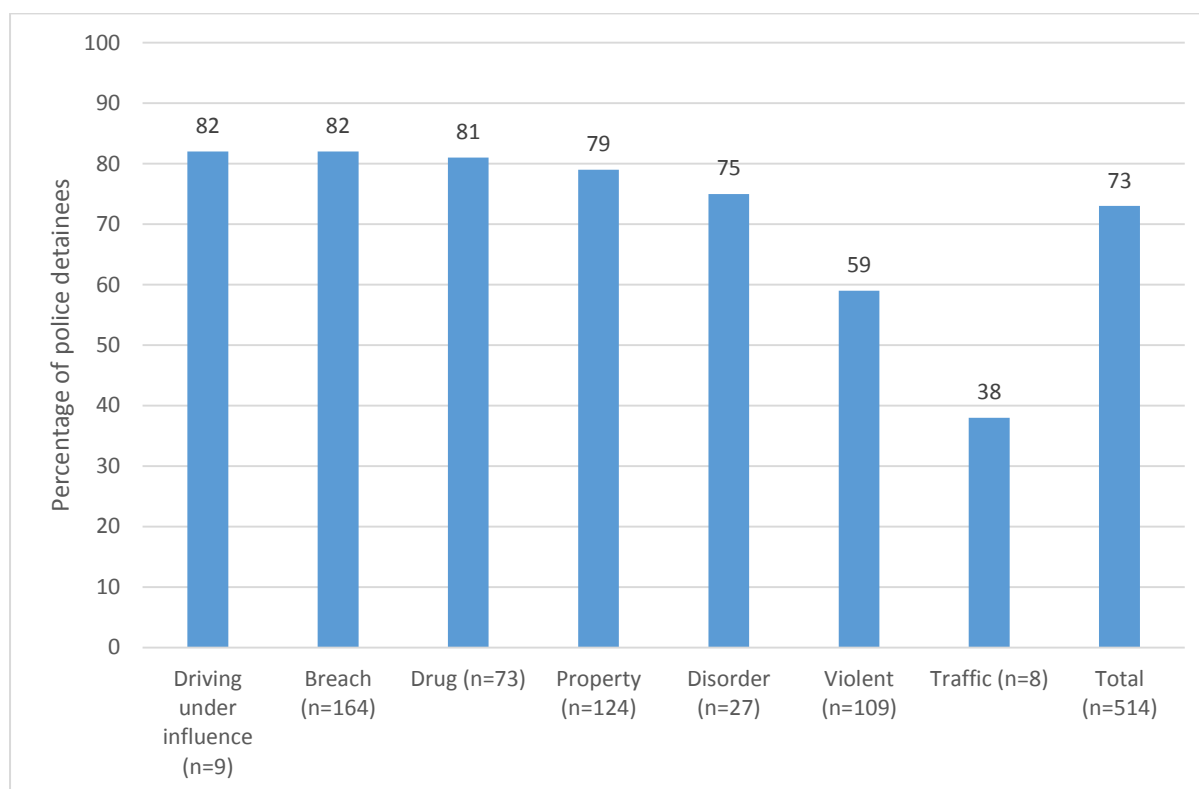
³⁰ Caution should be used when interpreting these findings as the IDRS has a relatively small sample size (n=98). See Chapter 3 for more information on the IDRS.

³¹ It is noted that not all drug use is related to high levels of harm (including involvement in crime and health issues).

charges to illicit drug use and half (53%) attributed their current charges to alcohol and/or illicit drug (AIC 2015a).

Alcohol was more likely than other drugs to be a contributing factor to involvement in driving under the influence, disorder and violent offences (AIC 2015a). Figure 13 shows that illicit drug use was most prevalent among those with a principal offence relating to driving under the influence (82%), breach of a justice order (82%), a drug offence (81%) and property offending (79%). Recent use of illicit drugs was less prevalent among police detainees with a principal offence relating to violence (59%) or a traffic violation (38%).

Figure 13: Proportion of police detainees testing positive to any illicit drug by principal offence, Queensland, 2013



Source: AIC 2015a

Table 3 shows the principal offence among offenders under QCS supervision reporting daily or almost daily use of drugs. These data are consistent with other research showing a relationship between alcohol use and violent offences and between illicit drug use and drug and property offences.

Thirty-seven per cent of offenders using alcohol daily or almost daily had offences against the person as their principal offence compared with 24% of regular cannabis users, 18% of regular amphetamine users and 16% of regular opiate users. Nearly half of those offenders reporting amphetamine use (43%) or opiate use (48%) had a property offence as their principal offence compared with 20% of regular alcohol users and 29% of regular cannabis users. The prevalence of justice administration offences (as a principal offence) was also relatively high among regular alcohol users.

Table 3: Type of principal offence among offenders reporting daily or almost daily drug use by type of drug, 2010–11 to 2014–15, Queensland

Principal offence type	Daily or almost daily use of drug (percentage within type of drug)			
	Alcohol	Cannabis	Amphetamines	Opiates
Against the person	36.6	24.1	17.6	15.6
Drug	9.7	25.8	20.4	21.7
Justice administration	21.9	13.3	11.8	7.2
Other	10.7	7.5	7.1	7.2
Property	20.1	28.6	42.6	48.1
Sex	0.9	0.6	0.4	0.3
Total	100	100	100	100
Total (n)	2737	4318	1379	391

Source: QCS administrative data (benchmark assessment).

Note: Missing data are excluded from analyses. This includes offenders without assessment information that provides information on frequency of drug use.

4.2.5 Substance misuse issues and drug-related crime among offenders

A substantial number of offenders supervised by QCS are assessed as having a high risk of problematic substance use and a significant proportion of offending is determined to be drug-related.

Over half (55%) of offenders sentenced to supervision between 2010–11 and 2014–15 were assessed as having a high risk of substance misuse.³² Offenders sentenced to imprisonment (65%) were more likely than offenders sentenced to probation (51%) as having a high risk of problematic substance use.

Table 4 shows the proportion of offenders under QCS supervision assessed as having a drug offence or drug-related offence by frequency of drug use. Information in this table shows that the likelihood of having a drug offence or drug-related offence tends to rise with increases in drug use frequency. This is especially apparent for illicit drug use (amphetamines and opiates in particular).

While 43% of total offenders under QCS supervision were assessed as having a drug offence or drug-related offence, 47% of daily/almost daily alcohol users, 66% of daily/almost daily cannabis users, 78% of daily/almost daily amphetamine users and 83% of daily/almost daily opiate users were assessed as drug-related offenders.

³² Further information about QCS data is outlined in Chapter 3 of this report. Risk of substance misuse is determined via the Benchmark Assessment which is implemented on offenders managed in the community only. Offenders sentenced to imprisonment may have a Benchmark Assessment if they serve a period of parole.

Table 4: Proportion of sentenced offenders under QCS supervision assessed as having a drug-offence or drug related offending by frequency and type of drug use, Queensland, 2010–11 to 2014–15

Type of drug	Offenders with drug offence or drug-related offending				
	Frequency of drug use				
	Daily or almost daily	Weekly	Monthly	Once or twice	Never
Alcohol	46.5	41.0	40.9	45.0	49.1
Cannabis	66.5	54.5	45.8	39.3	29.4
Amphetamine	78.2	73.1	65.2	57.4	34.8
Opiates	83.4	81.8	70.6	73.1	41.7

Source: QCS administrative data (benchmark assessment).

Note: This table intersects three variables. It shows the proportion of offenders with a drug offence or drug-related offending within frequency of drug use by type of drug used.

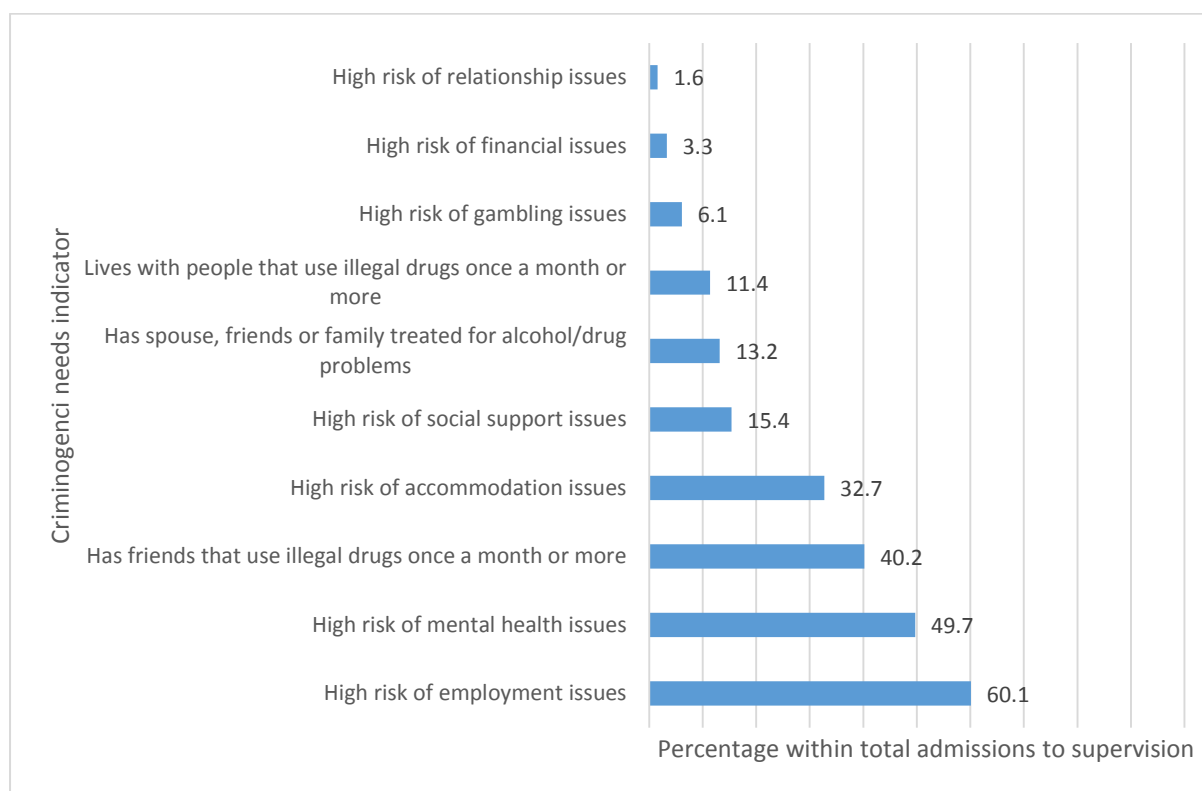
4.2.6 Other criminogenic factors

Drug use is a criminogenic factor that when addressed can assist in reducing the likelihood of reoffending. Other criminogenic factors include antisocial behaviour, anti-social personality, anti-social cognition, anti-social associates, poor family/marital circumstances, low engagement with school/work, and low levels of involvement in leisure/recreation (Andrews & Bonta 2010).

Queensland Corrective Services collects information on criminogenic needs as part of their assessment processes. Analysis of this information highlights the complex issues experienced by offenders and demonstrates the importance of designing interventions that can address the multiple and complex issues presented by individuals.

Figure 14 shows that nearly two in three offenders (60%) supervised by QCS were assessed as having a high risk of employment issues, half (50%) had a high risk of mental health issues and a third (33%) had a high risk of accommodation issues. Offenders were also exposed to anti-social associates (40% had friends that used illicit drugs once a month or more) and 15% were assessed as having a high risk of social support issues.

Figure 14: Proportion of offenders supervised by QCS by selected criminogenic need indicators, Queensland, 2010–11 to 2014–15



Source:

QCS administrative data (benchmark assessment).

Note: QCS assesses an offender's risk of certain criminogenic factors based on a number of different items included its Benchmark Assessment. For example, the 'risk of unemployment' considers a range of items such as 'how long has the offender been employed/unemployed?', 'has the offender been continuously unemployed?', 'what sort of Centrelink benefit is the offender receiving?' and 'has the offender demonstrated or self-reported numeracy issues?'

The prevalence of mental health issues was apparent in the most recent Queensland prisoner health survey. Forty percent of Queensland prison entrants reported that they had been told they have a mental health disorder and 29% reported distress relating to a mental health issue (AIHW 2015).

Although not necessarily criminogenic, offenders are also characterised by relatively poor physical health when compared to the general population. Twenty-seven percent of Queensland prison entrants reported distress relating to physical health issues (AIHW 2015) and QCS assessment information indicates that 16% of offenders under supervision were assessed as having a high risk of general health issues (AIHW 2015).

The multiple issues potentially contributing to offender behaviour was also evident among early referrals to Queensland Integrated Court Referrals (QICR) (see section 5.2.8 for further information about QICR).³³ Of the first 29 referrals:

- 62% were seeking treatment for illicit drug use;
- 76% were seeking accommodation assistance;
- 31% were seeking assistance with mental health issues;
- 97% were not currently employed;
- 89% were either single or separated; and

³³ Caution is required when interpreting these data given the small number of people included in analyses. The prevalence of drug use, housing and mental health issues will reflect the QICR program which specifically targets people experiencing these issues.

- 39% had a highest level of education of Year 10 or under.

There is also a relationship between crime (including domestic violence), problematic substance use and child protection matters. Among the families worked with by Child Safety Services in 2015–16:

- approximately two-thirds of households substantiated for harm or risk of harm had a parent with a current or past drug/alcohol problem;
- nearly half had experienced domestic and family violence within the last year;
- approximately 45% had a parent who was abused as a child
- over half had a parent with a criminal history;
- nearly half had a parent with a diagnosed mental illness; and
- nearly three-quarters (73%) had more than one of the factors listed above (DCCSDS 2016).

A study of amphetamine and opioid users also found that psychostimulant use is associated with a proportion of domestic violence (Torok et al. 2008).

4.3 DRUG-RELATED OFFENDING

This section provides information that shows that drug use is not only relevant to illicit drug offences, it is also associated with other types of offending behaviour.

4.3.1 Substance misuse within different types of offending patterns

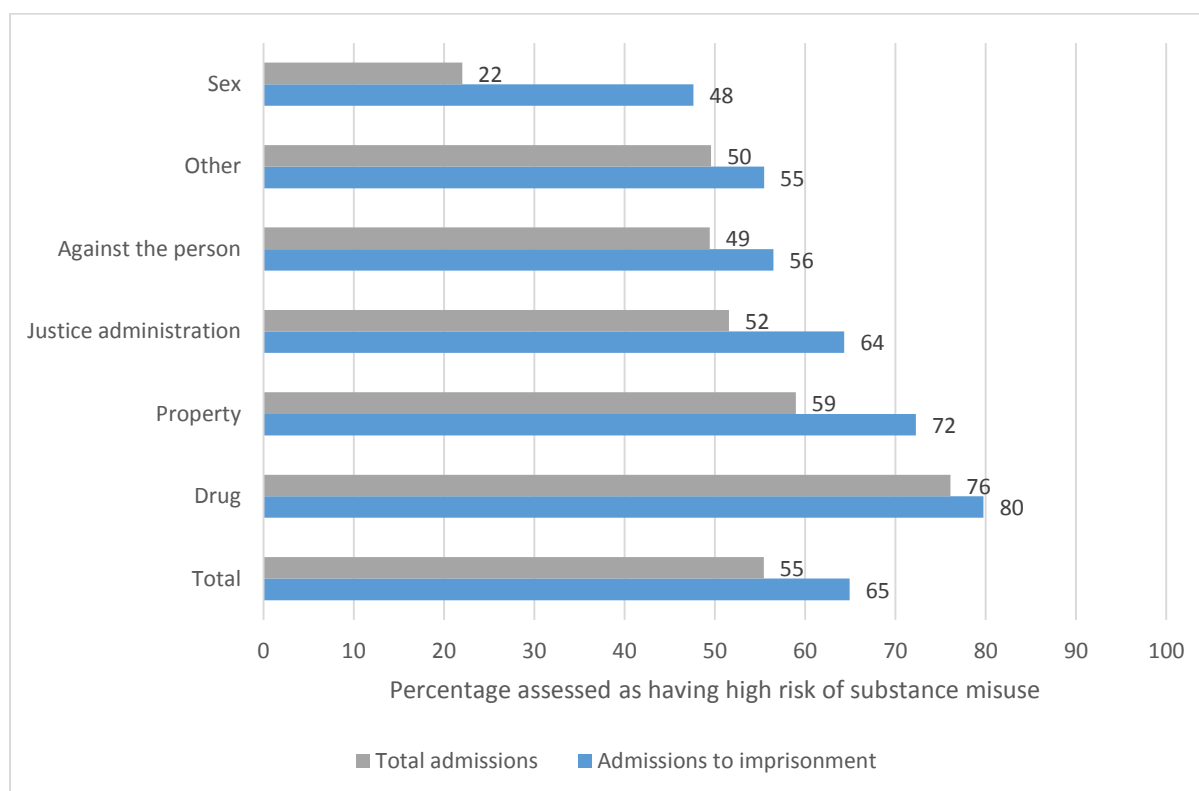
There is a high prevalence of substance misuse among all offenders, not just those with a principal offence relating to an illicit drug offence.

Figure 15 shows the proportion of offenders assessed by QCS as having a high risk of substance misuse by their principal offence at admission. A high risk of substance misuse is used here as an indicator for substance treatment need among offenders assessed as having more than a low risk of reoffending.³⁴

Offenders with drug (76%) or property offences (52%) as their principal offence were more likely than offenders with offences against the person (49%) as their principal offence to have a high risk of substance misuse. However, substance misuse issues were still prevalent among violent offenders. Offenders sentenced to imprisonment were more likely than offenders in total to be assessed as having a high risk of substance misuse. Substance misuse issues were least prevalent among sex offenders.

³⁴ See Appendix B for more information about use of QCS administrative data.

Figure 15: Proportion of offenders assessed as having a high risk of substance misuse by principal offence type, Queensland, 2010–11 to 2014–15



Source: QCS administrative data (benchmark assessment).

Note: These data do not include admissions to parole from court and offenders only include those with Benchmark Assessment information.

4.3.2 Drug offences within different types of offending patterns

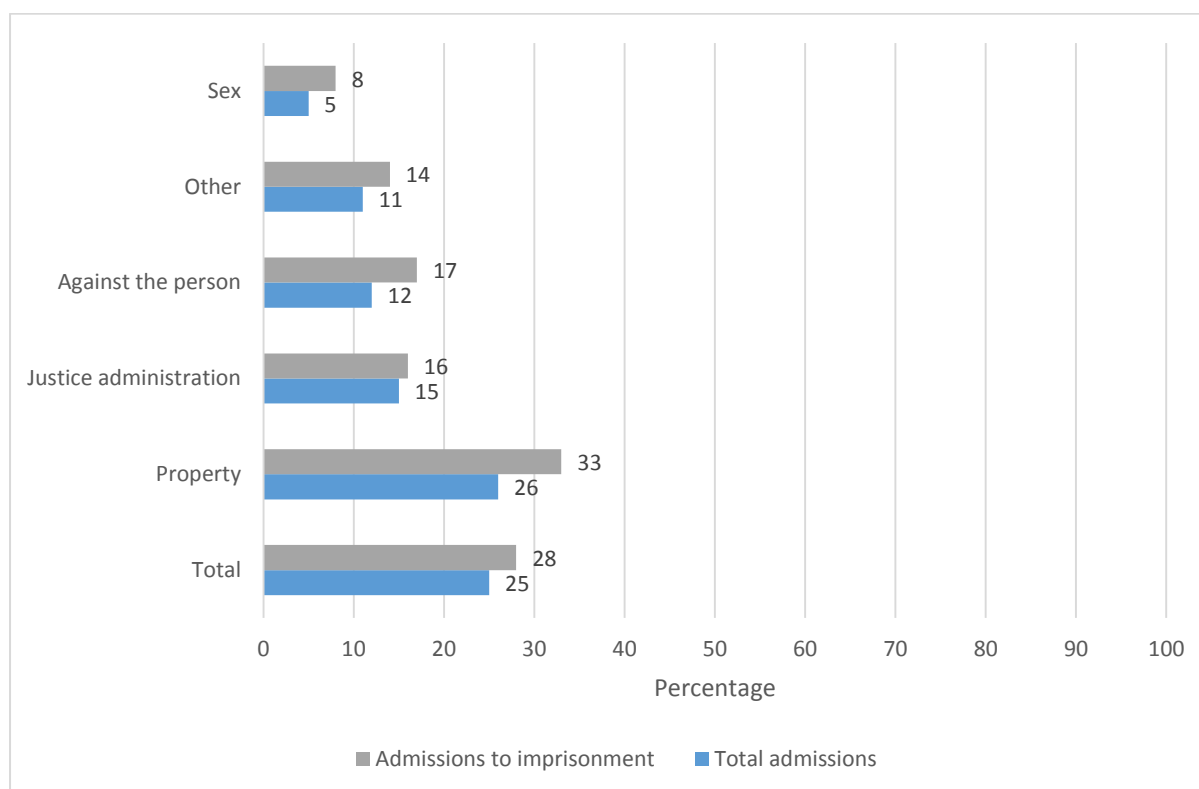
Offenders with an illicit drug offence as the principal offence are not the only offenders to be convicted of illicit drug offences. This suggests that the need for drug interventions may be broader than offenders with a principal offence relating to illicit drugs.

Figure 16 shows the proportion of offenders with an illicit drug offence at admission to supervision by QCS by their principal offence at admission.

One in four offenders (25%) sentenced to supervision have been convicted of at least one illicit drug offence. The prevalence of illicit drug offences within non-drug offence categories was highest among offenders with a principal offence of property offences (26%). About 12% of offenders admitted to supervision with an offence against the person as their principal offence were also convicted of at least one illicit drug offence.

The likelihood of being convicted of a drug offence increases slightly with more serious sentence outcomes. Twenty-eight person of offenders sentenced to imprisonment had been convicted of at least one illicit drug offence.

Figure 16: Proportion of offenders convicted of at least one illicit drug offence by principal offence type, Queensland, 2010–11 to 2014–15



Source: QCS administrative data (benchmark assessment).

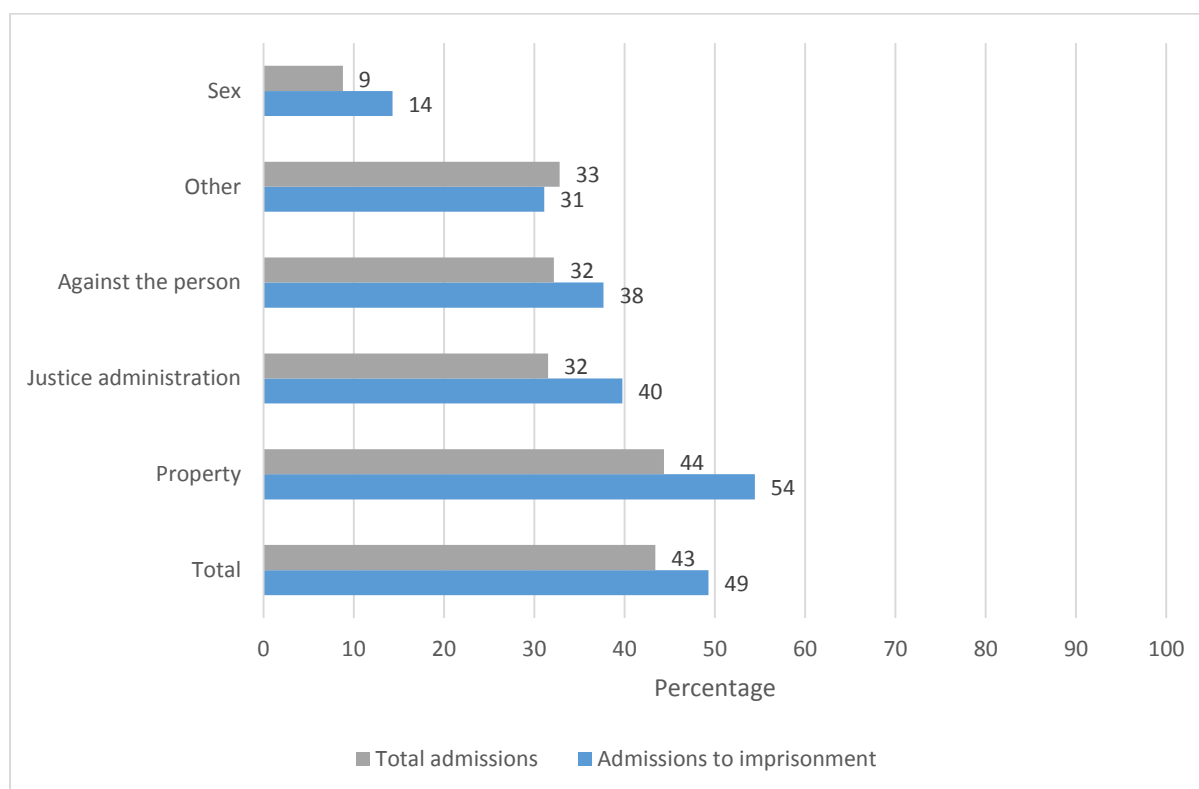
Note: These data do not include admissions to parole from court. All offenders convicted of a drug offence have at least one illicit drug offence.

4.3.3 Drug-motivated offending within different types of offending patterns

Queensland Corrective Services collects information on whether offenders have been sentenced for a drug offence and/or their offending is drug-motivated as part of their assessment process. Analysis of this information shows that 43% of offenders sentenced to a supervised order had a drug or drug-motivated offence/s and these types of offences were prevalent among half (49%) of those sentenced to imprisonment (see Figure 17).

The presence of drug and/or drug-motivated offences was prevalent across different offending patterns including offenders sentenced to supervision with a principal offence relating to a property offence (44%) and offences against the person (32%). Drug-offences and/or drug-motivated offences were least prevalent among offenders with a principal offence relating to sex offending (9%).

Figure 17: Proportion of offenders convicted of at least one illicit drug offence and/or drug motivated offence by principal offence type, Queensland, 2010–11 to 2014–15



Source: QCS administrative data (benchmark assessment).

Note: These data do not include admissions to parole from court. All offenders within the drug offence category are convicted of at least one illicit drug offence and/or drug motivated offence.

4.3.4 Substance misuse and risk of reoffending

The risks-needs-responsivity model argues that criminal justice interventions should be designed and implemented in relation to reoffending risk. Information in Table 5 provides another indication of the level of demand for interventions and specialist court responses to drug use by exploring the risk of recidivism against assessed risk of substance misuse issues among offenders sentenced to supervised supervision.

It shows that nearly one in five people (18%) supervised by QCS (both in the community and in custody) have a high or very high risk of reoffending as well as a high risk of substance misuse. About one in four (23%) have a medium risk of recidivism and a high risk of substance misuse. This latter group is a sizable offender cohort that may benefit from a less intensive intervention than a drug court.

Table 5: Risk of substance misuse and recidivism matrix, offenders under QCS supervision, Queensland, 2010–11 to 2014–15

Risk of substance misuse	Percentage within total offenders under supervision			
	Risk of recidivism			
	Low	Medium	High	Very high
Low	9	7	2	1
Medium	9	10	5	1
High	15	23	13	5

Source: QCS administrative data (benchmark assessment).

Note: Risk of recidivism categories correspond to QCS levels of management categories – low (low risk), medium (standard), high (enhanced) and very high (intensive). The risk of recidivism information presented in above table does not factor in excluding factors that may affect levels of QCS management. For example, sex offenders may have a low risk of reoffending, but are excluded from the low risk management stream by QCS.

4.4 SUMMARY

This chapter has shown that:

- the demand for responses that address substance misuse is high and has been increasing in recent years;
- high levels of substance misuse is evident among offenders with different offending patterns (including violent offending), levels of supervision (including probation orders) and levels of recidivism risk (including low, medium and high);
- high levels of substance misuse are most prevalent among those committing drug and/or property offences, offenders sentenced to imprisonment and offenders with high risks of reoffending;
- the number of people potentially eligible for an intensive drug court intervention (that is, sentenced to imprisonment involving custody) is very small when compared to the number of coming people before the courts; and
- the re-establishment of an intensive drug court intervention is unlikely to reduce prisoner numbers in any substantial way; additional interventions for drug-related offending are therefore needed.

4.5 IMPLICATIONS

The analyses presented in this chapter show that there is a high demand in Queensland for various criminal justice intervention programs, including problem-oriented courts, in response to alcohol and other drug related offending. The following chapter considers whether Queensland currently has the appropriate range of responses in place to be able to supply such interventions in an effective and efficient manner.

5 THE CURRENT QUEENSLAND CRIMINAL JUSTICE CONTEXT

5.1 INTRODUCTION

The Queensland criminal justice system has a number of different points at which people who are suspected of committing, or who are convicted of drug-related offending, can be referred to assessment or treatment programs, from their first contact with police, through to their post-sentence management following a finding of guilt or conviction. Suspected offenders who come into contact with police may be referred to the Police Drug Diversion Program.

Current court-based intervention and referral programs operate within this broader context. Some referrals and interventions are available once a person has been charged with an offence, but before a person has entered a plea or indicated their intention to plead. Others can be accessed only once a person has pleaded guilty or expressed an intention to plead guilty and is on bail. Some are available only post-sentence. In some cases, interventions are also available to defendants at more than one point in the system.

Some forms of interventions and programs are available only to adult defendants while others are also available to young people.

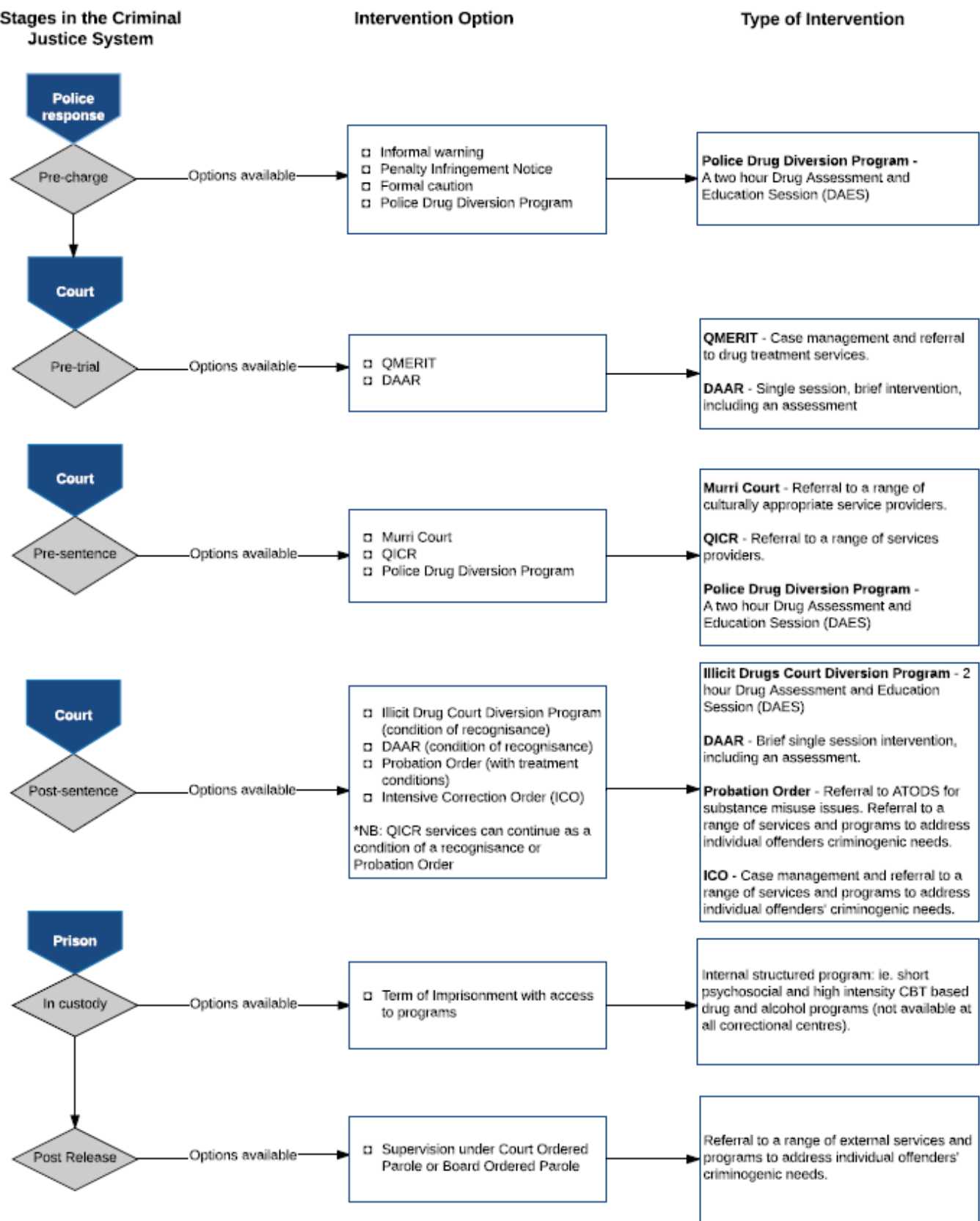
Some programs have specific offence-based eligibility criteria. Others base eligibility on the nature of the issues being experienced by the defendants.

The majority apply, either by intention or effect, to less serious forms of drug-related offending and/or offenders with less extensive criminal histories – for example, through the types of offences they target, or the fact the person must be eligible for bail in order to access the program.

This chapter provides an overview of current court-based referral and intervention programs and also explores the current operation of the criminal justice system and key trends. This information is presented to illustrate Queensland's current responses to its demand for alcohol and other drug related criminal justice interventions.

Figure 18: Model of referral and intervention programs for offenders with alcohol and other drug issues.

Model of Referral and Intervention Programs in Queensland
(offenders with drug and alcohol issues)



5.2 QUEENSLAND'S CURRENT PROBLEM-ORIENTED COURTS AND INTERVENTION PROGRAMS

5.2.1 Introduction

DJAG currently coordinates and supports a range of court-based referral programs and problem-oriented courts that deal with defendants with mental health issues (including impaired decision making capacity), problematic alcohol and other drug use issues or who are otherwise vulnerable, such as defendants who are homeless, where these issues have contributed to them coming into contact with the criminal justice system.

The development of an overarching framework for all problem-oriented courts and intervention programs in Queensland as part of the Review is intended to ensure that these programs work together effectively and in an integrated way.

Some of the programs currently offered are outlined below.

5.2.2 Community Justice Groups

The Community Justice Groups (CJG) program provides essential support and services to Aboriginal and Torres Strait Islander victims and offenders within the criminal justice system. DJAG provides funding to 49 CJGs to support Aboriginal and Torres Strait Islander victims and offenders during the legal process and assist the judiciary by making appropriate cultural submissions to the courts.

The CJG program provides community members with the opportunity to work collaboratively with the courts, police, and staff from other government agencies to address criminal behaviour, and provide support and assistance to victims of crime.

CJGs provide over 9000 bail and sentencing court submissions each year and support to an estimated 5,000 victims of crime throughout Queensland each year. CJGs develop strong working relationships with many non-government agencies to identify and promote referral pathways for Aboriginal and Torres Strait Islander defendants and link victims and defendants to support services. These agencies include Aboriginal and Torres Strait Islander health services, rehabilitation centres, Relationships Australia, the Salvation Army, Centacare, employment agencies, sexual assault services, youth support groups, and men's and women's groups. The CJGs help reduce the likelihood of conflict and crime in Aboriginal and Torres Strait Islander communities by assisting offenders in prison and upon release and resolving conflict and mediating disputes before they escalate.

5.2.3 Remote Justice of the Peace (Magistrates Court) Program

The remote Justice of the Peace (JP) Courts Program was initiated by the Queensland Government in 1993 as part of its response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

SPECIALIST COURTS AND COURT PROGRAMS IN QUEENSLAND

- Community Justice Groups
- Murri Court
- Remote Justice of the Peace Court Program
- Queensland Magistrates Early Referral into Treatment Program
- Illicit Drugs Court Diversion Program
- Drug and Alcohol Assessment Referrals
- Queensland Integrated Court Referral
- Former Special Circumstances Court Diversion Program
- Former Queensland Courts Referral
- Domestic and Family Violence Protection Court in Southport

The JP Courts Program seeks to assist Aboriginal and Torres Strait Islander peoples to overcome disadvantages they may face in coming into contact with the criminal justice system, whether as a victim of a criminal act, an accused person, or otherwise.

Under the JP Courts Program, Aboriginal and Torres Strait Islander JPs, may constitute a Magistrates Court in the absence of a magistrate to hear and determine charges for specified minor offences where the defendant pleads guilty.

Four Aboriginal and Torres Strait Islander communities currently convene remote JP Courts: Cherbourg, Kowanyama, Lockhart River and Mornington Island.

5.2.4 Queensland Magistrates Early Referral into Treatment Program

The Queensland Magistrates Early Referral into Treatment (QMERIT) program is a bail-based diversion program for defendants with illicit drug use problems. The QMERIT program operates in the Maroochydore and Redcliffe Magistrates Courts.

The program engages defendants charged with an offence relating to illicit drug use with drug rehabilitation services through bail conditions. QMERIT combines treatment and support services for defendants with problematic drug use during their contact with the criminal justice system.

QMERIT provides an opportunity for eligible defendants to participate in a structured intervention that aims to give defendants the skills and confidence needed to improve their health and well-being and significantly reduce offending behaviour.

An outcome evaluation of the QMERIT program completed in 2010 found improvements in health and well-being, as well as, reduced offending among program completers. Among QMERIT evaluation participants:

- 52% reported not using drugs three months after exiting the program;
- the average Severity of Dependence Score reduced from indications of clinical drug dependence at program entry to an average score equivalent to that found in the general community at program exit;
- the average physical and mental health scores improved (although the improvement in physical health was not statistically significant);
- reductions in levels of psychological distress; and
- 24% were engaged in full time employment at program entry compared with more than 50% at program exit and six months after program exit (Turning Point 2010).

The evaluation also calculated that there were higher rates of re-offending predicted for program non-completers (40% within 200 days of program termination) than program completers (10% predicted to re-offend within program completion).

Evaluations of similar programs operating in other jurisdictions also show promising results. For example, an evaluation of the Magistrates Early Referral into Treatment program implemented in NSW found that program completers were less likely than non-completers to re-offend within 3, 6 and 12 months after completing the program (Matruglio 2008).

5.2.5 Illicit Drugs Court Diversion Program

The Illicit Drugs Court Diversion Program (court diversion program) targets offenders who plead guilty to eligible minor drug offences. For adult offenders, the court orders these offenders to attend a Drug Assessment and Education Session (DAES) as a condition of a recognisance order imposed. The court refers juvenile offenders to a DAES by way of a verbal direction. The program is available in all Magistrates Courts and Childrens Courts in Queensland.

Evaluations of brief interventions offered as part of police and court diversionary initiatives indicate positive results. For example, a national evaluation of police drug diversion programs found that the majority of people referred to a police drug diversion program either did not reoffend or, if they did reoffend, had very few subsequent offences in the 12 to 18 months post diversion (Payne, Kwiatkowski & Wundersitz 2008).

Results for Queensland's Police Diversion Program showed that around one-third of the 4,700 people diverted to the program were re-apprehended within 12 months of being diverted, while half of those who continued to offend committed just the one offence (Najman et al., 2009). A subsequent evaluation of the Police Diversion Program involving interviews with 152 participants at the time of diversion and six weeks later observed reductions in self-reported cannabis, ecstasy, amphetamine and tranquiliser use, along with improvements across a number of other health indicators (Najman et al., 2009).

Overall, brief interventions appear to be a promising option for mild-to-moderate drug users; however, more intensive interventions tend to yield greater outcomes than brief interventions, albeit at higher cost. Brief interventions are more effective for less serious or entrenched substance users, with those showing signs of dependence less likely to benefit from short, motivational interviewing programs (Nathan & Gorman 2015). For these reasons, there is a growing consensus that brief interventions should be offered as part of a broader continuum of 'stepped care' that allows treatment and health practitioners to respond appropriately to clients who are not engaging or who are identified throughout the brief intervention as having more complex or significant treatment needs (Breslin et al., 1997; Sobell & Sobell 2000).³⁵

5.2.6 Drug and Alcohol Assessment Referrals

The Drug and Alcohol Assessment Referrals (DAAR) program was established as part of the Safe Night Out Strategy aimed at reducing alcohol and other drug-related violence in Queensland's nightlife.

When the DAAR program was first introduced, a mandatory bail condition was applied by police officers or the court and required offenders to complete a one-off course involving a drug and alcohol assessment, and information about treatment options. Offenders must have been charged with a particular offence of violence, where alleged in the charge that the offence was committed while in a public place and intoxicated. The relevant offences to which this mandatory bail condition applied included grievous bodily harm, wounding, serious assaults, common assault, affray, assault occasioning bodily harm and assault or obstruction of a police officer.

As a result of recent legislative changes the DAAR bail condition is no longer mandatory and courts have a discretion to include a bail condition, in relation to any offence to which the *Bail Act 1980* applies, that the person complete a DAAR course by a stated date. In deciding whether to impose this condition, the court must have regard to the nature of the offence in relation to which bail is proposed to be granted; the person's circumstances, including any benefit the person may derive by completing a DAAR course and the public interest. However, the court may not include this condition if the person has completed two DAAR courses within the previous five years, is under 18 years or provisions relating to the release of a person with impairment of the mind apply. These changes also confine the imposition of the condition to cases where the bail granting authority is a court and, in recognition of its therapeutic nature, provides that a failure to comply with the condition does not constitute an offence of breaching the conditions of bail.

The completion of a DAAR course may be added as a condition of a recognisance order upon sentence with the consent of the defendant.

5.2.7 Murri Court

As part of stage one of the reinstatement project, work has been completed to reinstate the former Murri Court.

The first Murri Court was established in 2002 and, prior to it being de-funded in 2012, operated in 17 locations across Queensland. Murri Courts operated within a Magistrates Courts framework, but provided opportunities for greater involvement of Aboriginal and Torres Strait Islander Elders and respected persons, the offender's

³⁵ See Appendix D for further information.

family, Aboriginal and Torres Strait Islander community organisations and CJGs in the sentencing of Aboriginal and Torres Strait Islander offenders. While the program began as a sentence-based program, it evolved into a bail-based rehabilitation program in a number of locations.

Following the de-funding of the Murri Court in 2013, an Indigenous Sentencing List (ISL) was established and operated in 13 locations across Queensland.

The Murri Court has been formally reinstated in the 13 current locations: Brisbane, Cleveland, Caboolture, Cairns, Cherbourg, Mackay, Mount Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville and Wynnum.

The reinstated Murri Court is very similar to the former ISL. It operates under both bail and sentencing powers.

Eligibility requirements are that a defendant must identify as an Aboriginal and/or Torres Strait Islander, be on bail or be eligible for bail, have committed an offence within the jurisdiction of the Magistrate Court or Childrens Court, and agree to participate in the Murri Court.

An evaluation of the Queensland Murri Court operating before it was defunded in 2013 found that it met many of its objectives (Morgan & Louis 2010). It offered a culturally-sensitive approach to sentencing and the involvement of Elders and respected persons in court processes increased perceptions of judicial fairness. The court was highly valued among stakeholders and assisted with the development of local collaborations (Morgan & Louis 2010).

However, the Murri Court did not decrease the likelihood of reoffending among participants with little change in the frequency or seriousness of their offences after involvement in the court (Morgan & Louis 2010). Furthermore, Murri Court participants were no more or less likely to receive a custodial sentence than defendants heard in the mainstream court (Morgan & Louis 2010). This meant that the Murri Court did not assist in reducing the overrepresentation of Aboriginal and/or Torres Strait Islanders in the criminal justice system.

The evaluation identified a number of recommendations that could potentially enhance the operation of the Murri Court. Recommendations of relevance to the design of the reinstated drug court include:

- continued involvement of Elders and respected persons;
- funding for local program providers that target the specific needs of Aboriginal and/or Torres Strait Islanders in order to support a reduction in reoffending;
- ongoing training, mentoring and professional development for those involved in implementing the program;
- consideration of the Murri Court's relationship with other court-based diversion programs;
- clear definitions regarding the role of all stakeholders (including CJGs, magistrates, Aboriginal and/or Torres Strait Islander community organisations and police liaison officers) in supporting the program;
- providing debriefing opportunities and support for elders involved in the court's operation; and
- enhancing the court's use of victim impact statements and its ability to support victims when they attend court (Morgan & Louis 2010).

5.2.8 Special Circumstances Court Diversion Program and Queensland Courts Referral

As part of stage one of the reinstatement project, work has been completed to reinstate the former Special Circumstances Court Diversion Program (SCCDP). The SCCDP operated in Brisbane from 2009-2012 and was a court-based rehabilitation program for offenders who were homeless or suffered from impaired decision making capacity.

A review of the SCCDP collected information that enabled a description of SCCDP participants (through use of participant observation) and the operation of the court (through face-to-face interviews) (Walsh 2011).³⁶

³⁶ Information on participant recidivism was not collected as part of the Review.

Some of the benefits of the court described by program participants included:

- the dignity and respect shown by court staff (including the magistrate);
- the practical advice and support provided by court staff;
- facilitated access to support services; and
- renewed respect for the justice system (Walsh 2011).

These benefits were seen to be assisted by participants' regular contact with the court. Some review participants also described improved outcomes such as access to housing, reduced drug use, separating from a violent partner and meeting education and employment milestones (Walsh 2011).

Court staff described the strengths of the court:

- the ability to develop relationships with offenders that enabled the ability to contextualise offending behaviour and effect change;
- the ability to facilitate access to support services; and
- the capacity of the court to use its authority to encourage and enable change (Walsh 2011).

After SCCDP's closure in December 2012, the Queensland Courts Referral process was initiated in eight locations: Brisbane, Beenleigh, Cairns, Holland Park, Ipswich, Mount Isa, Pine Rivers and Southport. QCR is a bail-based process under which defendants are referred to services provided by non-government organisations (NGOs) and government agencies to address the underlying causes of offending behaviour.

The reinstated model is Queensland Integrated Courts Referral (QICR). QICR encourages defendants' engagement with service providers through short term bail-based referrals and then longer-term treatment and rehabilitation post-sentence. When QICR is implemented in a location, the QCR process will cease.

QICR will operate in a number of locations throughout Queensland including Brisbane, Cairns, Southport, Ipswich and Mt Isa. QICR may then be rolled-out to other locations in the future.

Defendants are eligible for QICR if they are on bail or eligible for bail, charged with at least one summary offence, and if they have a drug or alcohol dependency, mental illness, cognitive impairment, intellectual disability or are homeless or at risk of homelessness. The court-based facilitator is responsible for conducting initial non-clinical screenings and referring eligible defendants to the Case Assessment Group.

5.2.9 Domestic and Family Violence Specialist Court

A trial of a specialist Domestic and Family Violence (DFV) court commenced at Southport on 1 September 2015. The trial builds on the existing Gold Coast Domestic Violence Integrated Response (GCDVIR) and involves dedicated magistrates presiding over all civil domestic and family violence proceedings, as well as breach proceedings and associated criminal charges including committal hearings.

The trial involves close collaboration between all stakeholders including Legal Aid Queensland (LAQ), QPS Queensland Corrective Services (QCS), Department of Communities, Child Safety and Disability Services (DCCSDS) and other members of the GCDVIR.

The long term objectives of the DFV court are:

- the delivery of a coordinated, fair, consistent and timely response to domestic and family violence matters by the specialist court;
- increased safety and improved court safety for victims of domestic and family violence;
- perpetrators are more accountable and demonstrate behaviour change;
- the development of strong local service provider partnerships.

One of the reasons Southport Magistrates Court was selected as the pilot site was that the Gold Coast Domestic Violence Integrated Response (GCDVIR) – a community-based network that delivers an integrated response to domestic violence with the focus on coordinated interventions – was established as a key current

scheme that could assist the work of a specialist court. The GCDVIR have been a vital service on the Gold Coast for 18 years and includes access to duty lawyers (through LAQ), police, court support workers, perpetrator information workers, providers of perpetrator programs and specialist domestic violence counselling. The high ratio of DFV proceedings presented before this Magistrates Court was another reason to establish the pilot in Southport. In addition, the prospects for investigating how the court systems for domestic violence matters could be coupled with associated child protection and family law matters was considered an important aspect of the pilot as the Federal Circuit Court of Australia, which exercises family law jurisdiction, also sits in Southport.

The pilot centres on dedicated magistrates hearing both applications for Domestic Violence Orders (DVOs) and associated criminal matters. The dedicated magistrates are assisted by a DFV Registry and a Court Coordinator. Additional duty lawyers provided by LAQ and prosecutors by QPS are assigned to support the court assembled by the dedicated magistrates. Local service providers important to the operation of the DFV court are co-located, to offer assistance and information to the aggrieved and respondents.

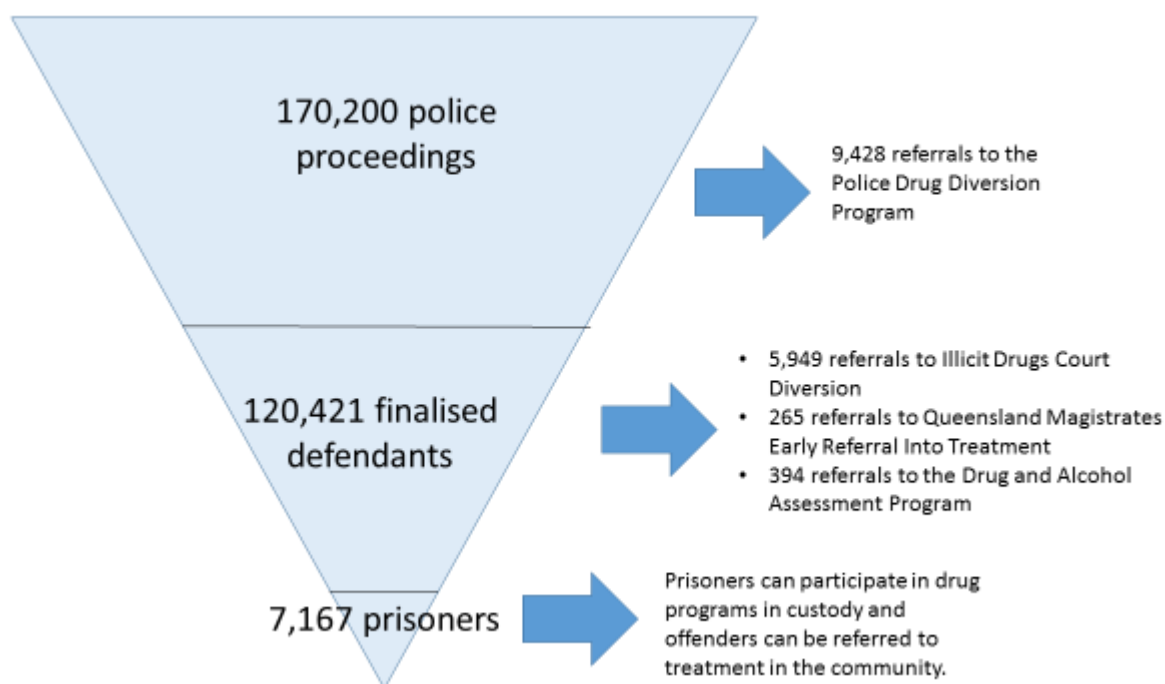
5.3 CRIMINAL JUSTICE REFERRALS TO ILLICIT DRUG INTERVENTIONS

5.3.1 Number of referrals

Figure 19 shows that a relatively small proportion of people in contact with the criminal justice system are referred to drug interventions. In 2014–15, 9,428 people were referred to the Police Drug Diversion Program by QPS, 5,949 people were referred to the Court Diversion Program, 265 people were referred to QMERIT and 394 people were referred to DAAR.

Chapters 3 and 4 shows how the demand for illicit drugs interventions is likely to be substantially higher than the current supply available.

Figure 19: Indicators of criminal justice system demand and number of criminal justice referrals to illicit drug interventions, 2014–15



Source: ABS Recorded Crime, Offenders, 2014–15 (number of alleged adult offenders in 2014–15), ABS Criminal Courts, Australia 2014–15 (number of finalised defendants in 2014–15), ABS Prisoners in Australia, 2015 (number of adult sentenced and unsentenced prisoners in 2015) and DJAG administrative program data (number of referrals to programs in 2014–15).

5.4 IMPLICATIONS

This chapter has presented a picture of Queensland’s current supply of criminal justice interventions in response to alcohol and other drug related offending. But when considered in conjunction with the data on the demand for such interventions (presented in the previous chapters), it is clear that a more effective and efficient criminal justice model is required.

6 COST EFFECTIVENESS OF DRUG INTERVENTIONS

6.1 INTRODUCTION

The growing number of people in contact with Queensland's criminal justice system for illicit drug offences and with drug-related issues has considerable economic and social cost implications – both tangible and intangible. Tangible costs associated with crime include police, court and corrections expenditure, medical fees and lost productivity. Intangible costs include psychological and emotional harm and lost quality of life (Dossetor 2011).

Research has shown that behavioural treatments and medications administered in both community and criminal justice settings can reduce problematic substance use and drug-related criminal behaviour and are cost-effective in doing so (Chandler, Fletcher & Volkow 2009). Diverting funds to enable effective therapeutic responses to drug-related crime is likely to result in future cost savings (including costs related to administering the criminal justice system, health and victim harm) (Morgan et al. 2012).

6.1.1 The cost of crime in Australia

In 2014, the Australian Institute of Criminology (AIC) estimated that the cost of crime in Australia for 2011 was \$47.6 billion (Smith et al. 2014). These estimations began with establishing the number of crime events through the use of reported crime and the crime victimisation survey. Costs that accounted for actual loss, intangible loss, loss of output caused by the crime and other related costs (such as medical expenses) were then applied to these crime events. The costs of preventing and responding to crime in the community were then added to these costs. Recovered values (for example, recovered property and funds) were subsequently deducted from these costs to produce final costs by crime categories (Smith et al. 2014).

The AIC calculations indicated that fraud offences accounted for the highest cost of all crime types, followed by drug abuse and assault (Smith et al. 2014).

The estimated cost of Australia's drug abuse problem was \$3.2 billion in 2011 (Smith et al. 2014). These estimations principally related to the human cost of drug-related crime (as opposed to the cost of offending to fund a drug habit and the cost of law enforcement activities related to the prevention of drug trafficking, drug use and drug-related crime).³⁷ They factor in costs associated with loss of life, hospitalisation, treatment and lost productivity (Smith et al. 2014).

The economic values developed by the AIC offer one of the few sources of information on the costs of crime and are often used to underpin economic evaluations of criminal justice programs implemented in Australia, for example, KPMG's economic evaluation of Victoria's CISP (KPMG 2009). However, some crime types are not included in the AIC estimations because of a lack of data on their incidence and/or cost (Smith et al. 2014) which may limit the accuracy of economic evaluations using these estimates.³⁸

6.1.2 The cost of Queensland's criminal justice system

Available information on the costs associated with administering criminal justice services in Queensland is summarised in Table 6. Although caution is required when interpreting these figures, costs were substantial

³⁷ The AIC posited that the costs of crime perpetrated to fund drug addiction are included within other crime categories (for example, burglary and assault). These estimations do not include the human cost of alcohol consumption.

³⁸ Crimes not included in AIC cost estimates are kidnapping, extortion, blackmail, abduction, criminal defamation, environmental crime, good order offences, regulatory offences, illegal immigration, road traffic offences, human trafficking, corporate crime, tax evasion, cybercrime, identity crime, child exploitation offences and organised crime.

at \$1.54 billion in 2014–15.³⁹ These costs do not represent the full cost of crime in Queensland as they exclude a range of tangible and intangible costs associated with crime.

Table 6 Estimated cost of administering criminal justice in Queensland, 2014–15

	(\$'000)
Crime management by police	588,700
Criminal courts	146,781
Adult corrections	670,307
Youth corrections	137,278
Total	1,543,066

Source:

Police. Estimated costs are 35% of real recurrent expenditure on police services as reported by Australian Government Productivity Commission in 2015 Report on Government Services. The QPS 2011 Annual Report indicated that 35% of the police budget was directed towards crime management, rather than other functions such as traffic management (cited in Allard et al 2013). This may have changed over time.

Criminal Courts. Real net recurrent expenditure on criminal courts as reported in Australian Government Productivity Commission's 2015 Report on Government Services.

Adult corrections. Real net expenditure on prisons and corrections (plus depreciation) as reported in in Australian Government Productivity Commission's 2015 Report on Government Services.

Youth corrections. Department of Justice and Attorney-General (DJAG) expenses for Youth Justice as reported in the Queensland Government Service Delivery Statement for (DJAG).

6.1.3 The cost of Queensland offender trajectories

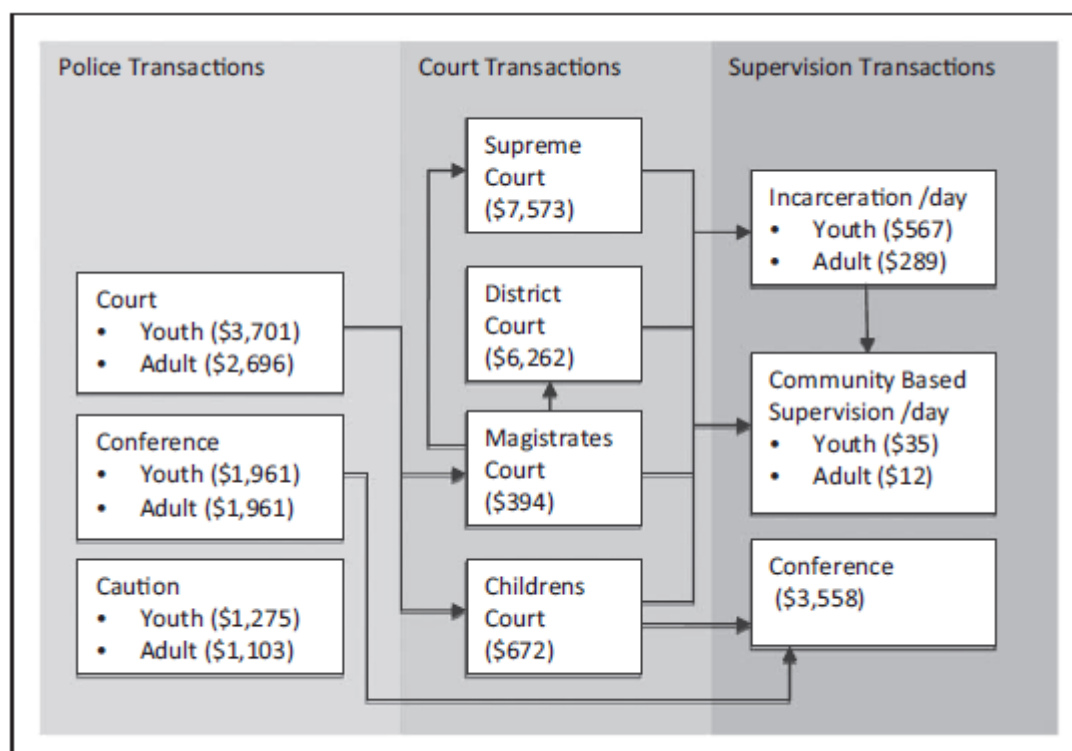
The cost of Queensland offender trajectories has been valued by Allard and colleagues (2013).

These estimations were based on the number and type of finalised criminal justice events (including police, courts and supervision) for individuals committing offences between the ages of 10 and 25 years and the costs of crime as estimated by the AIC (which enabled the wide social and economic costs of crime to be factored into analyses) (Allard et al. 2013).

The average cost of criminal justice system transactions used by the study are shown in Figure 20. Although these costings will understate the current value of criminal justice responses to crime, they illustrate how criminal justice transaction costs can be minimised if offenders are not unnecessarily progressed through the system.

³⁹ These costs do not represent the full cost of crime in Queensland. They do not include the wider social and economic costs including ancillary costs (such as those associated with legal representation and the provision of programs by other government agencies to support offender rehabilitation). They do not include intangible costs such as harm to victims and communities.

Figure 20: Cost of justice system transactions



Source: Allard et al 2013:91

The results of the offender trajectory costings showed that a small proportion of offenders (4.8%) accounted for a substantial share (41.1%) of overall crime costs and that on average, chronic offenders each cost between \$186,366 and \$262,799 by the time they turned 26 years old (Allard et al. 2013). Analyses of the same data also showed that some communities were more likely to generate chronic offenders and therefore carried the 'cost burden' of chronic offenders, to a greater extent than other communities (Allard, Chrzanowski and Stewart 2012). These communities were predominately located in north and far north Queensland and had a relatively high proportion of young Aboriginal and Torres Strait Islander people (Allard, Chrzanowski and Stewart 2012).

These findings indicate that reducing the incidence of crime among chronic offenders with high risk, high need (such as those referred to drug courts in Australia) will have the biggest impact on the total costs of crime.

6.1.4 The cost of providing drug interventions to people in contact with the criminal justice system

The total funding allocated to support people referred to drug interventions by criminal justice agencies is difficult to quantify accurately. Funded organisations can be responsible for delivering services to people referred by the police and the courts as well as people accessing services from non-criminal justice referral pathways, including self-referrals. Accurate information on the number of interventions provided against each program name is not systematically collected or reported on by support services.

Based on information provided by the Department of Health, nearly \$11 million was allocated in 2015–16 to provide drug treatment services to people referred to treatment services by the police and the courts.⁴⁰ Some of this funding is redirected funding from the former drug court.

⁴⁰ E-mail communication, Department of Health, 15 June 2016.

This includes funding provided to non-government agencies for the delivery of treatment and referral and coordination services, as well as funding provided to government agencies (including DJAG and QPS) for program support.

The \$11 million excludes some funding required for program support staff, which is sourced from other budgets. For example, the nursing staff, social workers and psychologists that support the operation of QMERIT are funded from regional Health and Hospital Services budgets.⁴¹

Funding provided to NGOs is used to support the assessment and education sessions provided as part of police and court drug diversion and DAAR, as well as the residential drug treatment provided as part of the QMERIT and QICR programs.

The estimated average cost of delivering assessment and education sessions is approximately \$250 per session.⁴² However, the average cost of delivering this intervention will depend on local issues and economies of scale (which is affected by the number of people referred to the intervention).

6.2 COST EFFECTIVENESS OF POLICE DRUG INTERVENTIONS

There are no robust cost-effectiveness evaluations of Australian police drug intervention programs.

Only one evaluation has even attempted to examine the cost-effectiveness of a police intervention program. The study of the cost-effectiveness of the NSW Cannabis Cautioning Scheme found positive results in savings to the criminal justice system. In the first three years of operation it was estimated that over 18,000 police hours were saved as a result of not having to charge offenders at the time of detection of the offence and not having to prepare matters for court or attend subsequent hearings. The evaluation calculated that the scheme resulted in total savings of more than \$1 million during the first three years of operation, but also cost approximately \$1,096,000. The evaluators therefore concluded that the scheme had paid for itself in its first three years. They also noted that most of the costs identified were establishment costs, which would reduce over time, thereby increasing potential savings (Baker & Goh 2004). However, many of the people consulted as part of the evaluation commented that there was no evidence that the scheme kept people out of court in the longer term, and in fact had instead led to net-widening, as people who would previously have been dealt with informally were given a formal caution. As this cost-effectiveness evaluation was based not on actual hours and dollars saved, but on a series of assumptions and estimates about savings that might have accrued, it should be viewed with some caution.⁴³

6.3 COST-EFFECTIVENESS OF COURT INTERVENTIONS

This section discusses available information on the cost-effectiveness of Australian court-related interventions.

6.3.1 Queensland Magistrates Early Referral into Treatment

The QMERIT outcome evaluation reported that the estimated cost per client in the QMERIT program during 2007-08 was \$8,574, involving 112 days in the program. This is substantially less than the estimated cost per

⁴¹ The Redcliffe QMERIT team includes two full time clinical nurses and two part time social workers. The Maroochydore QMERIT team includes a Nurse Unit Manager and five case managers (nurses, social workers and psychologists).

⁴² E-mail communication, Department of Health, 15 June 2016.

⁴³ The authors themselves note that 'this analysis is in no way intended to constitute a full cost-benefit analysis' of the scheme: Baker and Goh 2004, p. 35.

prisoner over the same period at \$29,456 – although not all QMERIT participants would have necessarily been required to go to remand without the establishment of QMERIT (Turning Point 2010).

An economic assessment of NSW's Magistrates Early Referral into Treatment program found a potential ratio of benefits to costs of between 2.41 and 5.54 to the dollar, with a conservative estimate of an annual net benefit of \$914,214 for a yearly average of 55 program completers, or \$16,622 per completer (Northern Rivers University Department of Rural Health 2003).

6.3.2 Court Integrated Services Program

The Court Integrated Services Program (CISP) is a bail-based program operating in Victoria. It aims to provide integrated support to people in order to address factors contributing to offending behaviour.⁴⁴

The average length of participation in the CISP program is four months and the operating costs of this program are lower than the cost of imprisonment.

KMPG (2014) estimated that the cost per CISP graduate was \$7,268 and the cost of each CISP terminate was \$4,080. This was less than the cost of a four-month imprisonment term estimated to be approximately \$34,000.⁴⁵

A benefit-cost analysis estimated the benefits associated with the CISP program through a reduced rate and length of imprisonment for program participants, as well as a reduction in the re-offending rate, compared with the costs of administering the program (PricewaterhouseCoopers 2009).

The total days of imprisonment imposed across the sample of 200 CISP participants was 1,592 (sentences post-CISP completion), compared with the total days of imprisonment imposed on the control group of 8,116 (most recent sentence). The sample survey of CISP participants found that the 100-week recidivism rate amongst CISP participants was 40%, compared with 50% among the control group. When reoffending does occur, the average time to the offence is longer for the CISP group, and the average seriousness of reoffending is lower (PricewaterhouseCoopers 2009). Comparing the sample of 200 CISP participants with 200 similar offenders who had not been through CISP,⁴⁶ the evaluation estimated a benefit-cost ratio ranging from 1.7 to 5.9.⁴⁷ The benefits were comprised of avoided costs of sentencing, avoided costs of imprisonment, avoided costs of crime and avoided costs of order breach (PricewaterhouseCoopers 2009). The evaluation concluded that there are significant potential benefits associated with CISP. The key driver of these benefits are a reduction in reoffending and concomitant reduction in factors such as the costs associated with sentencing for reoffenders and costs associated with imprisonment.

The current approximate program cost per client episode (including graduates and terminates) is \$4,300 (excluding court costs). The breakdown of costs under the CISP model is estimated at staffing (47%), drug and alcohol treatment (18%), housing (24%) and brokerage funds (11%).⁴⁸

⁴⁴ Further information about the CISP program is at Chapter 10.

⁴⁵ Cost of imprisonment uses daily cost of imprisonment (\$280) cited in KPMG (2014) evaluation report.

⁴⁶ The two samples were matched on factors such as age, gender, type of offence and offending history (PricewaterhouseCoopers 2009).

⁴⁷ Three scenarios were created to estimate the duration of the impact of CISP: two years, five years and 30 years. If the impact of CISP lasts two years, the benefit-cost ratio is 1.7. If the impact lasts five years, it is 2.6. If the program impact lasts a lifetime (30 years), the benefit-cost ratio is 5.9 (PricewaterhouseCoopers 2009).

⁴⁸ E-mail/telephone communication, Court Support and Diversion Services, Victoria, 28 October 2016.

Most economic evaluations of drug courts operating in Australia find that they are cost-effective given that they are more likely to reduce reoffending than imprisonment.⁴⁹ To date there have been no cost-benefit analyses of drug courts in Australia.

6.3.3 Former Queensland Drug Court

Three evaluations have been conducted on the former Queensland Drug Courts. Two evaluations focused on implementation issues (the North Queensland Drug Court Evaluation and the South East Queensland Drug Court Evaluation), while the third evaluation focused on recidivism.

The North and South East Queensland evaluations found early indications of:

- time-graded reductions in drug use among participants while on the drug court program – with fewer positive drug tests occurring the further a participant progressed through the program;
- significant improvements in health and well-being across a range of health measures (at the time of graduation, graduates' health status was the equivalent to Queensland population norms); and
- reductions in the likelihood of reoffending among graduates and reductions in the time to reoffend among those graduates who did reoffend (Payne 2005; Makkai & Veraar 2003).

The recidivism evaluation was able to examine reoffending patterns within a two-year follow up period. It established that drug court graduates had improved criminal justice outcomes when compared with drug court terminates and a prisoner comparison group. It showed that:

- 70% of drug court graduates and 92% of drug court terminates committed offences while on the program. Most of these offences were breach-related offences. Graduates had significant reductions in overall offending frequency when compared to the previous 12 months.
- 59% of drug court graduates compared with 77% of drug court terminates reoffended within two years of completing the program, or in the case of drug court terminates, exiting custody.
- The average time to reoffend was 379 days for graduates and 139 days for terminates.
- Both drug court graduates and terminates committed fewer offences after program involvement, however decreases were greater among drug court graduates (80% decrease) than for drug court terminates (63% decrease).
- Post-offending patterns among drug court terminates were similar to patterns observed among a prisoner comparison group (Payne 2008).

These results show some of the benefits of the former Queensland Drug Court. Costs were avoided through the reduced use of imprisonment and reductions in offending behaviour among graduates. However, less than a third (28%) of offenders issued with an Intensive Drug Rehabilitation Order (IDRO) graduated from the drug court,⁵⁰ which highlights the high level of complexity involved in responding to people with entrenched offending patterns and substance misuse.

There is minimal costing information available regarding the operation of the former drug court and analysis of this information indicates that it was more costly than imprisonment. However, evaluations found that the former drug court was more effective at reducing reoffending than imprisonment (Payne 2008). The cost-benefits of reduced drug use and reoffending were not measured.

The overall whole-of-government per annum cost of the former Queensland Drug Court was estimated to be \$14.3 million. This includes \$6.72 million allocated to Queensland Health to support the provision of drug

⁴⁹ Information on drug courts operating in the United States and other countries is not described here given the differences between these courts and those established in Australia.

⁵⁰ DJAG administrative data. Total Queensland Drug Court results for 2000 to 2012.

treatment services and \$4 million allocated to Queensland Corrective Services to support the supervision of IDROs and undertake urinalysis.

On average, 134 people were referred and accepted into the drug court program each year. Just over 70% of participants were terminated from the program and the average (mean) time to termination was less than one year (281 days) (Payne 2008). In other words, most of the offenders sentenced to an IDRO were on the former drug court program for less than a year. The average (mean) time for graduates to complete the program was about 14 months (420 days) (Payne 2008).

The average cost per person referred to drug court was about \$107,000, which was higher than the approximate cost of imprisonment per person per year (\$69,000).⁵¹ However, the reduction in reoffending among program graduates and terminates means that the program is likely to have contributed to saved criminal justice system costs (including police, courts and corrections).

Economic evaluations often calculate the unit cost of programs by dividing total program funding by the average number of people on the program during the funding period. For example, the Drug Court of Victoria unit cost was estimated to be \$26,000 and the unit cost of the NSW Drug Court was estimated to be \$24,000 (KPMG 2014).

Information on the average number of people on the former Queensland Drug Court at any one time is not currently available. However, the number of places on the program was capped at 221. This suggests that the unit cost for the former Queensland Drug Court was at best \$59,000.

Unlike Queensland where program costs included substantial funds for health services, other drug courts operating in Australia are generally able to utilise existing health services to support the provision of drug treatment, which will partially explain why unit costs in other jurisdictions are lower than those identified for Queensland.

Furthermore, it is not clear if the \$14.3 million attributed to the operation of the Queensland Drug Court was solely expended on drug court activities. Consultation with key stakeholders suggests that some of these funds were absorbed into supporting other 'business-as-usual' government functions or supporting other people in contact with the criminal justice system. This means that the \$14.3 million estimate may be an inflated cost-estimate.

These results highlight the importance of locating the reinstated drug court in locations where economies of scale can be achieved (so that the program operates efficiently and unit costs are not artificially inflated due to low program participant numbers) and collecting accurate information regarding program resourcing. It may also be important to quarantine drug court funding to ensure that resources are solely directed into the operation of the drug court to maintain its effective implementation.

6.3.4 NSW Drug Court

An evaluation of the NSW Drug Court was finalised in 2002. It found that the drug court was more effective than conventional courts in reducing the risk of recidivism, although the effect was fairly modest. The average (mean) time to the first reconviction for NSW Drug Court participants was marginally longer than that for the control group (325 days compared with 279 days) and they were also convicted of fewer further offences for drug offences only. Comparing those who had completed the program with those who had not, a second analysis showed that treatment completers were significantly less likely to reoffend, to take longer to reoffend and to have fewer reconvictions for a range of theft and drug offences (Lind, Weatherburn & Chen 2002).

The cost per day per participant in the drug court program (\$143.87) was slightly less than the cost per day for offenders sanctioned by conventional means (\$151.72). The most significant contributors to the cost of the

⁵¹ In 2012–13, the average cost per prisoner per day in Queensland (real net operating expenditure) was \$189.87 (Australian Government Productivity Commission 2014) or approximately \$69,302 per year.

Drug Court were health care treatment, court attendances and the cost of sanctions (particularly imprisonment) for non-compliance (Lind, Weatherburn & Chen 2002).

The NSW Drug Court was found to be more cost-effective than conventional court sanctions (mostly imprisonment) in reducing the risk of re-offending, while there was little difference between the two in delaying the time to the first offence. For example, it cost nearly \$5,000 more for each shop stealing offence averted using conventional sanctions, and an additional \$19,000 for each possess/use opiates offence averted, than it cost using the Drug Court program (Lind, Weatherburn & Chen 2002).

A second evaluation undertaken in 2008 estimated that the total cost of the program was estimated to be \$32.752 million over two years (or \$16.376 million per annum), giving an average (mean) cost of \$114,119 per participant.⁵² The analysis showed that the cost of the drug court participants if they had not participated in drug court would have been \$36.268 million over two years (or \$18.134 million per annum). The annual saving of the NSW Drug Court was thus estimated at \$1.758 million (Goodall, Norman & Hass 2008).

The second evaluation concluded that the NSW Drug Court is cheaper and produces better outcomes than the alternative, leading to significant reductions and delay in recidivism and saving 'considerable resource use as a result of reduced incarceration'.

6.3.5 Drug Court of Victoria

The most recent evaluation of the Drug Court of Victoria found it to be more cost-effective than imprisonment. The average cost of each drug court participant was \$26,000, which compared favourably with the cost of a two year sentence of imprisonment (\$197,000) (KPMG 2014)⁵³.

The reduction in the frequency and severity of offending achieved by the drug court cohort was estimated to result in 4,492 fewer days of imprisonment (6,125 versus 10,617). At \$270 per day, this represented over \$1.2 million in reduced costs of imprisonment over two years. The evaluators believed that this compared favourably with the costs of the court (\$4.5 million over three years) especially given that the benefits to the community by way of reduced offending were not measured by the evaluation (KPMG 2014).

6.3.6 Perth Drug Court

A review of the Perth Drug Court considered its operational costs in relation to prison and a community order.

This review found that the offender management costs associated with the Perth Drug Court were higher than a community order (estimated to be \$16,211 per participant versus \$7,310 per offender), but lower than a prison sentence (estimated at \$93,075).⁵⁴ However, when the different rates of recidivism were also considered, and the cost of just one of these recidivist episodes taken into account, the drug court became more cost effective in a global sense – while costing more per individual in direct correctional and court costs, the ongoing financial benefit of averted crime showed that the drug court had a much better social outcome (Department of the Attorney-General 2006).

The costs and cost-effectiveness of court-based interventions are summarised at Table 7. Although direct comparisons between programs should not be made due to differences in program design, evaluation methodology and evaluation periods, the information highlights the cost differences between high intensity

⁵² These costs included the cost of final imprisonment following unsuccessful participation in the Drug Court program so cannot be compared with Queensland Drug Court costing information.

⁵³ The cost per participant is a straight average of operational costs for 2012-13 divided by the target number of participants at any given time (60 people).

⁵⁴ Cost determinations were based on an assumption employed in the 2003 evaluation that 70% of Perth Drug Court offenders would have received a 12-month imprisonment term if they had not appeared in drug court, while the remaining 30% would have received a 15-month community-based order (Department of the Attorney General 2006).

programs such as drug courts and more moderate interventions such as MERIT and CISP. Drug courts are more expensive than moderate interventions, however, the economic and social benefits of successfully implemented drug courts may be more substantial given that they target high risk, high need offenders who are generally responsible for committing a substantial share of overall offending.

The lack of reliable and consistent program cost-benefit information in Queensland (and other Australian jurisdictions) means that it is difficult to know whether it is more cost-effective to invest in moderate or high intensity programs.

Table 7: Summary of court program outcome and costing information

	Program costs (\$)	Average number of people participating in program	Unit cost per participant (\$)	Equivalent cost of imprisonment per offender (\$)	Reductions in reoffending	Benefit/cost ratio (\$)	Benefits
MERIT		55 people completed the program per year			program completers less likely than non-completers to re-offend	2.41 to 5.54	\$914,214 for yearly average of 55 program completers
CISP	2,920,000 in 2008	2,004 referrals in 2008	4,080 to 7,268	34,000	50% (CISP completers) compared with 64% (control group)	1.7 to 5.9	
Perth Drug Court			16,211	93,075			
Victorian Drug Court	1,600,000/per year	130 accepted referrals between 2010-11 and 2012-13	26,000	197,000	31% lower rate of re-offending for drug cohort compared with control group		\$1,200,000 reduced imprisonment costs over two years
NSW Drug Court	13,495,727 for 309 participants		24,000				\$1,758,000 reduced costs per year
Former Queensland Drug Court	14,300,000 for 134 participants		59,000 (at full capacity); 107,000 per referral		59% (graduates) compared with 77% (terminates)		

6.4 SUMMARY

This chapter has shown that:

- the cost of crime to the community is significant (approximately \$1.5 billion was spent in 2014–15 in Queensland on criminal justice administration costs alone);
- most evaluations of Australian drug court programs and other bail-based programs such QMERIT and CISP have demonstrated cost-effectiveness; and
- there is a paucity of reliable and consistent cost-benefit information relating to programs delivered across the different stages of the criminal justice system.

6.5 IMPLICATIONS

Along with increasing pressure on the criminal justice system, the growth of illegal drug use and drug-related offending in Queensland has led to substantial economic and social costs to the state. The evidence shows that interventions such as drug courts and other court-based programs can reduce drug-related offending in a cost-effective fashion. Given the high cost of drug use to the Queensland community, investing in such interventions is likely to produce significant cost savings into the future.

7 ASSESSMENT AND TREATMENT OF INDIVIDUALS WITH ALCOHOL AND OTHER DRUG USE ISSUES IN QUEENSLAND

7.1 INTRODUCTION

This chapter provides an overview of Queensland's current services for the assessment and treatment of offenders with alcohol and other drug issues. In particular, the chapter considers the supply of appropriate services to address alcohol and other drug use in both the general and offender populations.

The Queensland Alcohol and other Drug Treatment Service Framework released in March 2015 describes the 'common ground' underpinning alcohol and other drug (AOD) treatment service delivery in Queensland. The Framework was developed by a partnership of statewide AOD policy, sector and workforce development organisations.

In Queensland, AOD treatment is provided by:

- public health Mental Health and Alcohol and Other Drugs Services and public hospitals;
- NGOs, including Aboriginal and Torres Strait Islander community controlled organisations; and
- general practitioners and other private health care providers.

Individuals are able to self-refer to each of these service providers by personal presentation or by telephone contact. Once accepted for service, there is some crossover in referrals between government and NGO services.

With the exception of individuals who are referred to alcohol and other drug interventions as a condition of bail or a court order or via referral by QCS as part of their supervision case plan (mandatory), attendance at AOD services are voluntary. According to the Queensland Network of Alcohol and other Drug Agencies (QNADA), 50% of individuals presenting to AOD services are self-referrals.

7.2 ASSESSMENT PROCESS AND TOOLS

In the case of Queensland Health and NGOs, an initial intake assessment will be completed during which an individual's alcohol and other drug and general health history will be taken. This is sometimes undertaken by telephone. Each service provider may have its own way of conducting the assessment and own forms but the assessment generally covers all aspects of AOD use history, impacts, previous treatments and others.

If, as a result of this intake assessment, it is determined that the individual has problematic AOD use, an appointment or referral will be made.

7.3 TREATMENT

A wide range of treatment types is provided in Queensland's AOD services. These are detailed in the Queensland Alcohol and Other Drug Treatment Service Delivery Framework (Appendix D).

According to the Framework, effective AOD treatment services in Queensland are those that are:

- evidence-informed;
- targeted to the right clients;
- timely, responsive and comprehensive;
- safe, welcoming and non-stigmatising;
- accessible and easily contactable in terms of location and opening hours;
- accessible in relation to any physical, environmental or procedural barriers;
- culturally, religiously, gender, age and developmentally appropriate; and
- of adequate standard, staffed by appropriately trained and skilled staff.

Other features of effective AOD services identified in the Framework include the monitoring of progress of clients to ensure that the service is targeted, coordinated and efficient, and that the services provide continuity of care not only with other AOD services, but also with other health and welfare systems (e.g. mental health, disability, housing, homelessness and statutory care services).

Treatment types are categorised across a spectrum and broadly defined as:

- prevention and early intervention;
- intervention; and
- maintenance and aftercare.

Due to long waiting lists for most services, following initial contact, individuals are often referred to 'pre-care' groups (facilitated by ATODs or NGO staff) as a means of engaging the individual and maintaining their motivation to participate in treatment and to provide information around harm minimisation. The content of these groups is not standardised statewide and will be varied according to the needs of the participants in the program.

AOD services in Queensland are reported to be scarce, particularly in comparison to other larger jurisdictions in Australia. Waiting lists for services can range from two weeks to two months. For example, in Queensland, the only hospital-based medical detoxification program is located at the Royal Brisbane Hospital. Other residential withdrawal options are also available at Fairhaven (Salvation Army), Mt Tamborine, Moonyah (Salvation Army), Red Hill and Stagpole Street (Uniting Care), Townsville. Cairns ATODS also runs a detox service.

7.4 PUBLICLY FUNDED ALCOHOL AND OTHER DRUG TREATMENT SERVICES

This section provides information on treatment episodes finalised by publicly funded alcohol and other drug treatment services.⁵⁵ This information is collected by the Australian Institute of Health and Welfare (AIHW) as part of a national minimum data set.⁵⁶ The data show differences in the type of alcohol and other drug treatment services delivered and a high number of referrals from criminal justice agencies in Queensland compared with other jurisdictions.

7.4.1 Number and location of alcohol and other drug treatment services

In 2014–15, a total of 843 service providers assisted people seeking support for their alcohol and other drug use across Australia, with 181 (21%) of these providers based in Queensland.

Nationally, there was a 27% increase in the number of service providers between 2009–10 and 2014–15 (from 666 to 843) (AIHW 2016b). The number of providers in Queensland grew from 109 to 181 over the same time period (a percentage increase of 66%).⁵⁷

In 2014–15, service providers were more likely to be non-government (66%) than government agencies (34%).

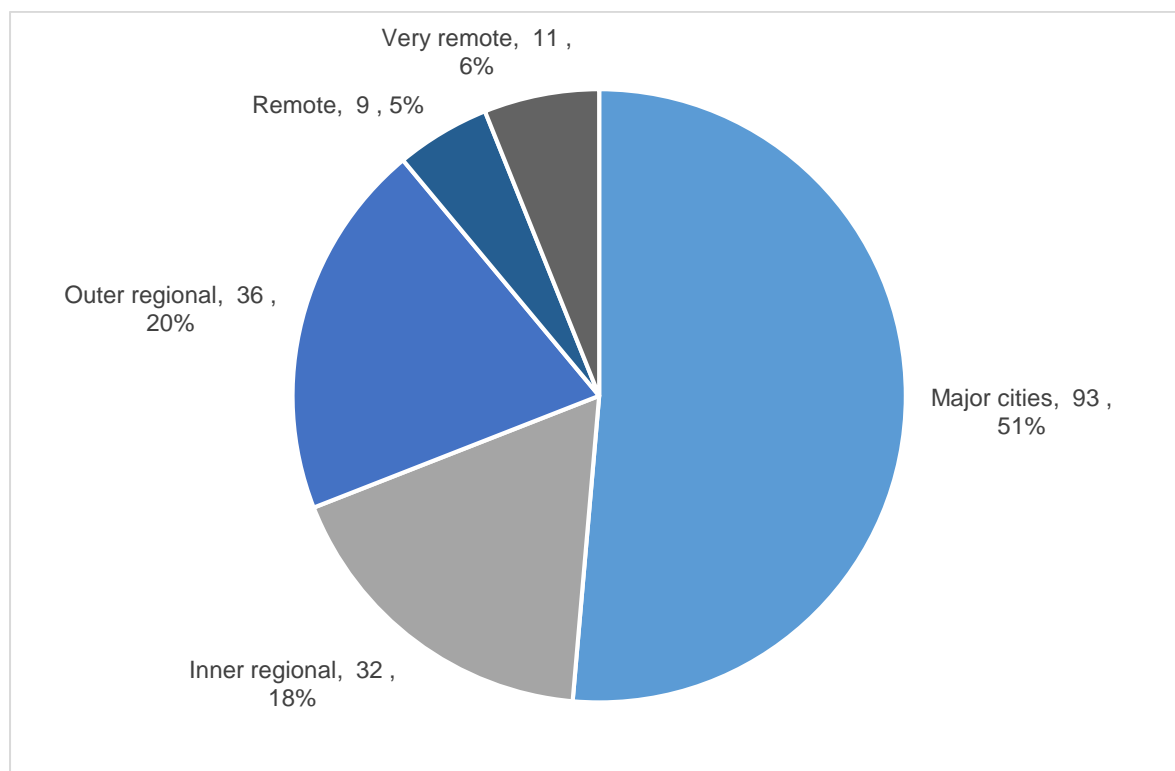
Figure 21 also shows that about half (51%) of alcohol and other drug treatment service providers were located in major cities and 38% were located in inner or outer regional locations.

⁵⁵ All data reported in this section is from Australian Institute of Health and Welfare *Alcohol and other drug treatment services in Australia* national minimum data set.

⁵⁶ See *Data for drug and specialist courts review* at Appendix B for further information about the national minimum data set.

⁵⁷ It is noted that increases in the number of service providers does not necessarily equate to increases in service capacity. Increases may also reflect growing number of service providers contributing to national data set.

Figure 21: Number of alcohol and other drug treatment services by location, Queensland, 2014–15



Source: AIHW 2016 *Alcohol and other drug treatment services in Australia 2014–15: supplementary tables*

7.4.2 Number of treatment services provided

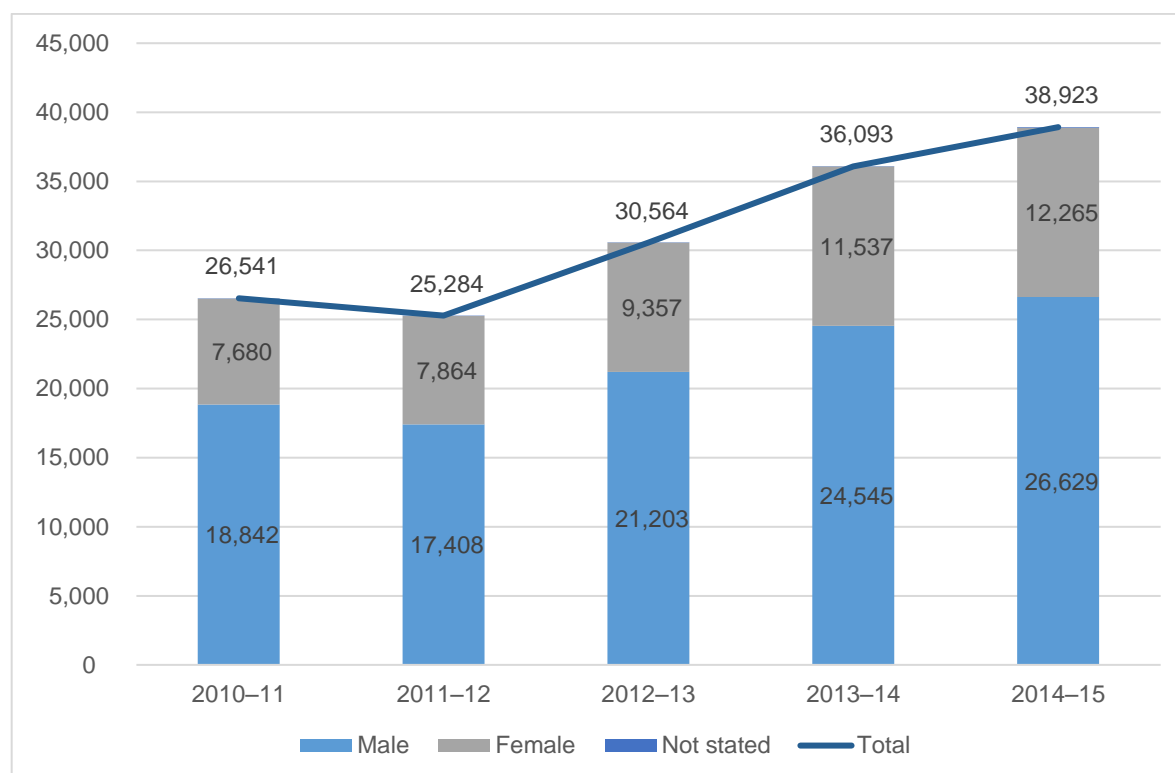
There has been an increase in the number of closed treatment episodes provided by Queensland-based alcohol and other drug services in recent years.⁵⁸

Figure 22 shows that the number of closed treatment episodes increased from 26,541 in 2010–11 to 38,923 in 2014–15 (a percentage increase of 47%). Nationally, the number of closed treatment episodes increased by 13% between 2010–11 and 2014–15.

In 2014–15, 68% of Queensland's total closed treatment episodes related to male clients, 46% related to clients aged under 30 years and 16% related to Aboriginal and/or Torres Strait Islander clients.

⁵⁸ A closed treatment episode is defined as a period of contact between a client and a treatment provider that is closed when treatment is completed, has ceased or where there is no contact between the client and treatment provider for three months.

Figure 22: Number of closed treatment episodes by gender, Queensland, 2010–11 to 2014–15



Source: AIHW 2016 *Alcohol and other drug treatment services in Australia 2014–15: supplementary tables*

7.4.3 Main drugs of concern

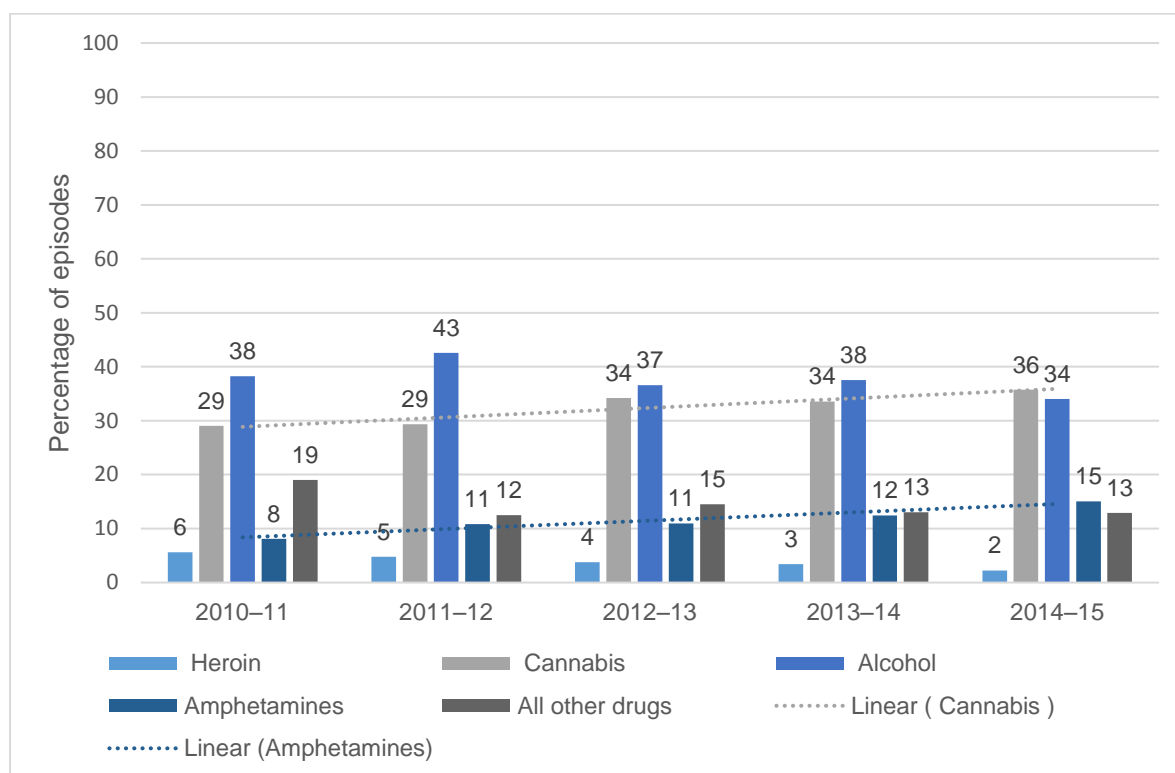
Alcohol and cannabis were the most common principal drugs of concern treated by Queensland alcohol and other drug treatment service providers.

Nationally, alcohol was the most common principal drug of concern in 2014–15 (38% of treatment episodes), followed by cannabis (24%), amphetamines (20%) and heroin (6%). However, cannabis became the most common principal drug of concern in Queensland in 2014–15 (36% of treatment episodes), followed by alcohol (34%) and amphetamines (15%).

The proportion of treatment episodes involving cannabis and amphetamines as the principal drugs of concern has been increasing over time in Queensland. Figure 23 shows that cannabis was a principal drug of concern for 29% of treatment episodes in 2010–11 compared with 36% in 2014–15; amphetamines were the principal drug of concern for 8% of treatment episodes in 2010–11 compared with 15% in 2014–15 (AIHW 2016b).

Alcohol and other drug treatment episodes were more likely to relate to cases where amphetamines or heroin were the principal drug of concern (26%) at the national level than in Queensland (17%) in 2014–15.

Figure 23: Closed alcohol and other drug treatment episodes for own drug use by principal drug of concern, Queensland 2010–11 to 2014–15



Source: AIHW 2016 *Alcohol and other drug treatment services in Australia 2014–15: supplementary tables*

7.4.4 Treatment modes

Treatment delivery differed in Queensland when compared with national patterns, with greater use of treatment interventions that involve the provision of information and education only.

While across Australia, counselling was the most common main treatment type (40% of treatment episodes in 2014–15), in Queensland interventions involving ‘information and education only’ were the most prevalent main treatment mode (33%).

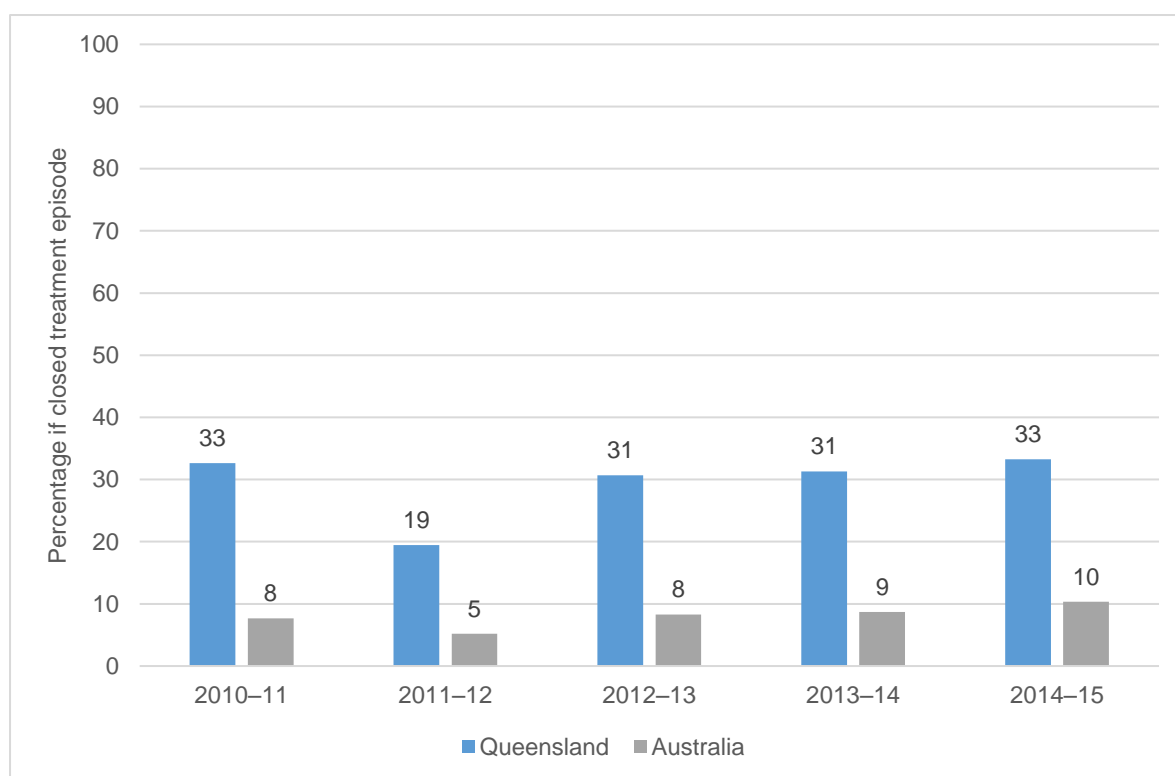
Figure 24 shows that the use of information and education only forms of treatment in Queensland was around three times higher than the national use of this type of treatment modality.

The relatively high use of information and education as a form of treatment is likely to reflect the operation of the Police Drug Diversion and the Court Diversion Program in Queensland during the reporting period. These programs aim to divert minor drug offenders from the criminal justice system to brief health interventions⁵⁹ and tend to focus on minor offences involving cannabis. This will partially explain why cannabis, rather than alcohol, is the most common principal drug of concern among Queensland’s alcohol and other drug treatment services.

The potential use of information and education programs was further expanded on 1 December 2015 with the introduction of referral to a DAAR course under the *Bail Act 1980*.⁴²

⁵⁹ These programs involve a two-hour treatment sessions that includes assessment (to determine drug dependency and risk-taking behaviours) and the provision of advice on reducing drug use and ways to minimise harm, motivational intervention, resources and referral (if assessed as appropriate).

Figure 24: Proportion of closed treatment episodes where information and education only was the main treatment type, Queensland, 2010–11 to 2014–15



Source: AIHW 2016 *Alcohol and other drug treatment services in Australia 2014–15: supplementary tables*

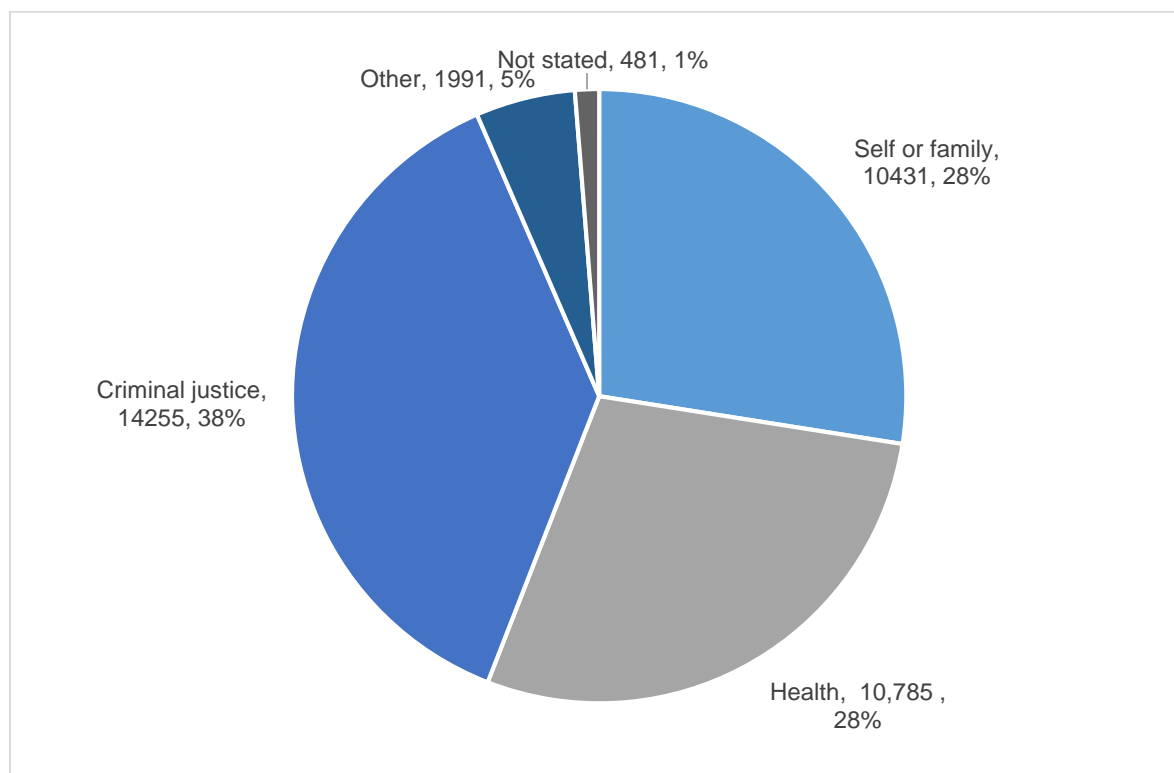
The high use of brief information and education treatment interventions will also partially explain why the proportion of treatment episodes finalised within one month in Queensland (66%) was higher than that found in other Australian jurisdictions.

7.4.5 Referral pathways to treatment

Queensland was characterised by a relatively high proportion of referrals to alcohol and other drug treatment services made by criminal justice agencies. The majority of these referrals related to cannabis use.

Figure 25 shows that criminal justice agencies (corrections, police and courts) accounted for 38% of referrals to treatment services in 2014–15, which was more than health (29%) or self/family referrals (28%). Among criminal justice agencies, the police (19%) were most likely to refer, followed by the courts (11%) and correctional services (8%). Nationally, criminal justice agencies accounted for 27% of referrals to alcohol and other drug treatment services.

Figure 25: Closed alcohol and other drug treatment episodes for own drug use by referral source, Queensland, 2014–15



Source: AIHW 2016 *Alcohol and other drug treatment services in Australia 2014–15: supplementary tables*

Note: These data relate to a person's own drug use only.

Further analyses show that treatment for different types of drug use was associated with different referral pathways. In 2014–15, the majority (70%) of closed treatment episodes where cannabis was the main drug of concern related to criminal justice referrals. Amphetamine-related episodes were driven by self and family referrals (39%), although health agencies (27%) and criminal justice agencies (28%) also made referrals relating to treatment for amphetamine use. Alcohol-related treatment episodes were driven by health agencies (43%) and self and family referrals (34%).

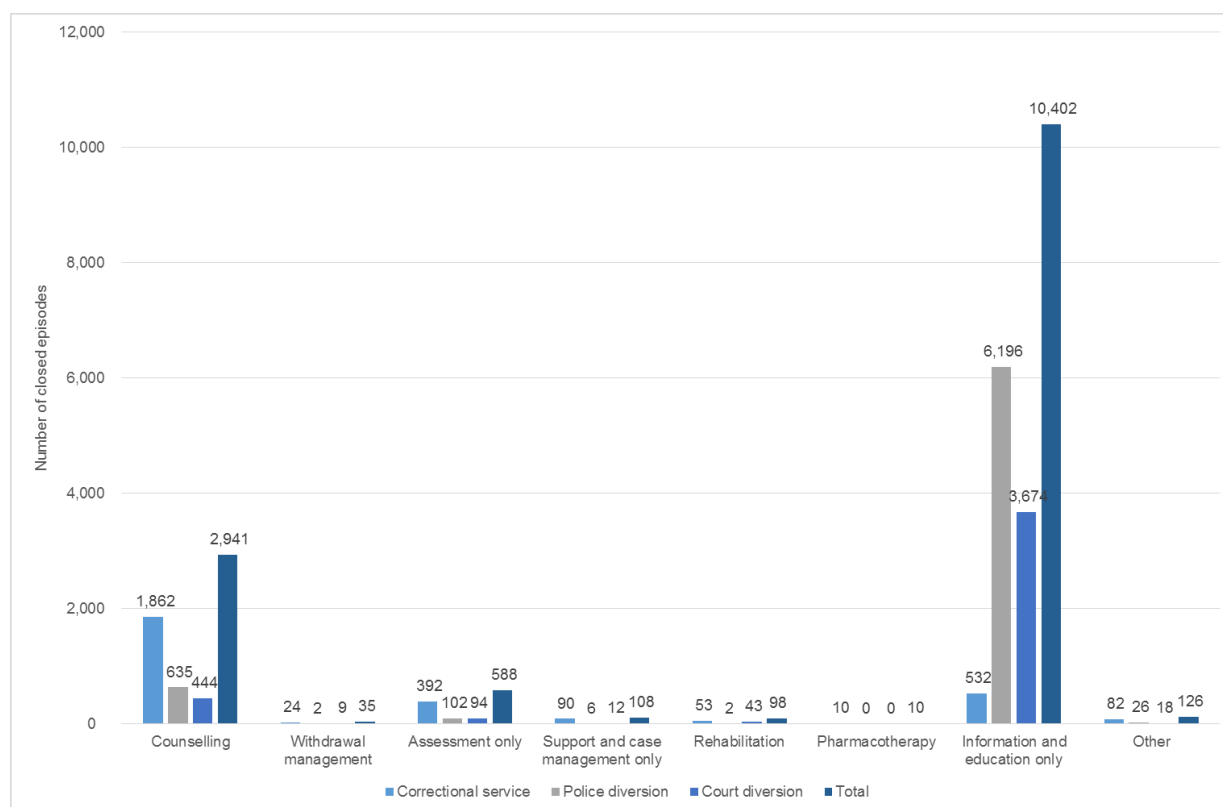
7.4.6 Criminal justice agency referrals to treatment

Criminal justice agencies tended to refer to information and education treatment services. There were indications of low utilisation of residential treatment facilities.

The treatment modalities associated with Queensland criminal justice agency referrals is shown in Figure 26. 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).

Counselling was the second most common main treatment type among criminal justice referred episodes. In total, there were 2,941 treatment episodes involving counselling that were referred by criminal justice agencies. There were substantially fewer referrals to rehabilitation (98), withdrawal treatment (35) or pharmacotherapy (10) by criminal justice agencies. Other data show that rehabilitation and withdrawal services constituted the most common treatment type (88%) at Queensland-based residential treatment facilities in 2014–15. These data suggest very few criminal justice referrals to residential alcohol and other drug treatment facilities (at least as captured by the national minimum data set).

Figure 26: Number of closed treatment episodes, by main treatment type and criminal justice referral source, Queensland, 2014–15



Source: AIHW 2016 *Alcohol and other drug treatment services in Australia 2014–15: supplementary tables*

7.5 SUMMARY

This chapter has shown that:

- there has been an increase in the number of alcohol and other drug treatment service providers in recent years;
- alcohol and other drug treatment service providers in Queensland deliver a relatively high number of education and information treatment sessions when compared with other Australian jurisdictions – with the many of these sessions resulting from referrals by criminal justice agencies;
- the increasing number of people in contact with the criminal justice system is also apparent in the increasing number of people provided with alcohol and other drug treatment services in Queensland;
- cannabis is the main drug of concern (rather than alcohol as in other Australian jurisdictions) reflecting referrals made by criminal justice agencies as part of police and court diversionary programs; and
- amphetamine as a principal drug of concern has increased in recent years.

7.6 IMPLICATIONS

While there are now more service providers in Queensland to respond to drug- and alcohol-related offending, the demand for their services has also increased. Once again, the data show that a more effective and efficient response is required – one that provides a comprehensive model of integrated criminal justice interventions.

8 THE ASSESSMENT AND TREATMENT FRAMEWORK

8.1 INTRODUCTION

The previous two chapters have shown that, while there is a high demand for criminal justice interventions in response to drug- and alcohol-related offending in Queensland, an integrated, effective and efficient supply of interventions is lacking.

As part of its remit in developing a comprehensive criminal justice model to address this gap, this Review has considered the best-practice principles that have been developed in this area.

This chapter examines the evidence on assessment and treatment of drug users in the criminal justice system. It provides the underlying clinical framework for the recommendations developed throughout this report.

8.2 PRINCIPLES OF TREATING DRUG USERS IN THE CRIMINAL JUSTICE SYSTEM

Over the last two decades, there has been significant investment in research aimed at understanding what works in reducing reoffending. Specifically, systematic and expert reviews of the correctional literature have all largely concluded that the most effective interventions and programs are those that: (a) use identified and validated actuarial risk assessment tools; (b) employ cognitive-behavioural techniques and services as a foundation of treatment and intervention; and (c) match offenders to appropriate service levels and intervention types based on prognostic risk and criminogenic need (Andrews et al. 1990; MacKenzie 2006). These three principles now set the foundation for that which has become internationally recognised as best practice in community and custodial corrections.

Tackling the problem of high-volume drug-related offending requires the concerted and cooperative effort of criminal justice and health agencies to identify and implement programmatic elements that improve outcomes for drug using and drug-dependent offenders. This requires consideration of both the drug treatment and criminal justice intervention literature and, more importantly, research demonstrating the impact of specific drug-treatment interventions offered as a consequence of criminal justice interaction. At the same time, there is a significant body of evidence that has sought to identify effective practice in the treatment of drug using offenders. This research has shown that behavioural treatments and medications administered in both community and criminal justice settings can reduce substance abuse and drug-related criminal behaviour and is cost effective in doing so (Chandler, Fletcher & Volkow 2009).

Drawing on this large evidence-base, and to provide guidance to criminal justice and treatment professionals working with drug abusing offenders, the US National Institute of Drug Abuse (NIDA) has identified thirteen principles for effective drug addiction treatment for criminal justice populations (see Box 1). These principles should provide significant guidance to policy makers and practitioners in Australia, especially given the ubiquity of concern about the management of alcohol and other drug related offending. The remainder of this section examines the application of these principles within an Australian and, in particular, Queensland context.

Box 1: National Institute for Drug Abuse - Principles of Drug Addiction Treatment for Criminal Justice Populations (2014)

1. Drug addiction is a brain disease that affects behaviour.
2. Recovery from drug addiction requires effective treatment, followed by management of the problem over time.
3. Treatment must last long enough to produce stable behavioural changes.
4. Assessment is the first step in treatment.
5. Tailoring services to fit the needs of the individual is an important part of effective drug abuse treatment for criminal justice populations.
6. Drug use during treatment should be carefully monitored.
7. Treatment should target factors that are associated with criminal behaviour.
8. Criminal justice supervision should incorporate treatment planning for drug abusing offenders, and treatment providers should be aware of correctional supervision requirements.
9. Continuity of care is essential for drug abusers re-entering the community.
10. A balance of rewards and sanctions encourages pro-social behaviour and treatment participation.
11. Offenders with co-occurring drug abuse and mental health problems often require an integrated treatment approach.
12. Medications are an important part of treatment for many drug-abusing offenders.
13. Treatment planning for drug-abusing offenders who are living in or re-entering the community should include strategies to prevent and treat serious, chronic medical conditions, such as HIV/AIDS, hepatitis B and C, and tuberculosis.

8.3 A SHARED UNDERSTANDING OF DRUG DEPENDENCY

Engaging criminal justice clients in the process of drug treatment and rehabilitation is undoubtedly a challenging prospect that requires recognition on the part of treatment and criminal justice practitioners of the chronic and relapsing nature of drug dependency. Importantly, all practitioners should be educated on the neurophysiological consequences of drug use and adopt strategies that recognise dependency as a chronic relapsing condition. Drug dependency, for example, has well-recognised cognitive, behavioural, and physiological characteristics that contribute to habitual use despite the harmful consequences. Consistent with this, neurologists have also found that regular drug use almost invariably results in alterations to the brain's anatomy and chemistry that can then persist even after long periods of abstinence. These neurochemical changes are important for understanding why offenders, both during and after treatment, may persist in seeking drugs despite the consequences (Baler and Volkow 2006; Volkow et al. 2010; and Chandler et al. 2009). Of the 13 key principles identified by NIDA, system and community level recognition of drug addiction as a chronic disease is perhaps the most important. Without this, many or all of the remaining 12 principles would be difficult to achieve given the philosophical tensions between criminal justice and health practitioners on the question of how best to respond to drug dependent offenders.

According to the American Society of Addiction Medicine (ASAM), a peak body for the conduct and dissemination of research on drug dependency, addiction is defined as a:

“...primary, chronic disease of the brain reward, motivation, memory and related circuitry... characterised by inability to consistently abstain, impairment in behavioural control, craving, ... and a dysfunctional emotional response... which... without treatment or engagement in recovery activities, ... is progressive and can result in disability or premature death.”

Accordingly, to achieve drug abstinence requires much more than ‘just saying no’. It requires ‘treatment’ as the primary response, recognising that (Kushner, Peters and Cooper 2014, p. 5):

- recovery is a long term process, will likely entail relapses, and frequently requires multiple episodes of treatment;
- no single treatment modality is appropriate for everyone and thus there is a need for individualised treatment strategies that are flexible and responsive to individual and changing needs;
- incarceration without treatment will not have a measurable impact on reducing substance use or crime;
- expectations for drug treatment participants in terms of program compliance and progression should differ, depending upon their individual situation(s) and stage of program participation;
- not all participants will progress at the same pace and the drug court structure must therefore provide the flexibility to address the individual needs of each participant;
- court-based interventions need to provide a continuum of treatment that assures patients' access to needed levels and intensities of services, as and when they need them; and
- effective treatment must address the multiple needs of the individual, both substance addiction specifically and ancillary services, with particular focus on 'criminogenic' factors.

8.4 CAUTIONING

For young people in particular, formal contact with the criminal justice system is likely more harmful than helpful. Decades of criminological research have demonstrated that formal criminal justice processing itself has the potential to increase significantly the likelihood of future criminal offending (Nagin, Cullen & Jonson 2009). The reasons given for this strong empirical relationship are many and varied. Some argue that labelling effects consequently foreclose opportunities for prosocial engagement (Bernburg & Krohn 2003; Bernburg, Krohn & Rivera 2006; Ward, Krohn & Gibson 2014), while others argue that early experience of the criminal justice system weakens perceived levels of deterrence. Whatever the cause, there is a general consensus that limiting a young person's contact with the criminal justice system is an appropriate goal, especially for non-serious status offences.

The use of cautioning, rather than apprehending, arresting and formally processing young people has been an important feature of the criminal justice system in all Australian jurisdictions (O'Connor & Cameron 2002; Polk 2003; Wundersitz 1997). In Queensland, the *Youth Justice Act 1992* requires that the primary criminal justice system response to young people (aged 10-16 years) should be diversion, which in this context includes being informally cautioned or warned, formally cautioned, or referred to a family conference. For individuals who are not juveniles at the time of their apprehension (including 17-year olds), the diversion options described above are not available.

For minor drug offences in Queensland, juvenile offenders are eligible for formal cautioning under the *Youth Justice Act 1992*, but only one such caution can be issued. Adult offenders (and juveniles previously cautioned) are not eligible for cautioning. Instead they must be referred to a drug diversion assessment. The opportunity for referral to a drug assessment is limited to one referral only.

There is unequivocal evidence that informal and formal cautioning yields more favourable long-term outcomes than formal processing (Payne and Weatherburn 2015). In Queensland specifically, the rate of recidivism (formal re-contact) is considerably lower for juveniles who are cautioned compared to those who are required to appear in court for their first offence, although these analyses do not control for the severity of the presenting offence (Dennison, Stewart and Hurren 2006). While it is not possible to conclude that cautioning reduces offending based on this analysis, it does suggest that cautioning does not appear to increase offending compared with those young people whose first contact is a court appearance, which is an important finding. For offenders appearing for drug offences, no disaggregated analyses exist in the Queensland context. However, in other jurisdictions where cautioning programs are available for adult first-time cannabis possession offenders (NSW), cautioned offenders have recidivism rates that are considerably lower than is estimated for general first-time offending populations (Payne, Kwaitkowski and Wundersitz 2008). 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 which doesn't worsen long-term criminal justice outcomes.

8.5 BRIEF INTERVENTIONS ARE PROMISING ALTERNATIVES

The emergence of brief interventions can be traced to the early 1980s, prompted by a call from the World Health Organisation to provide an evidence base for alcohol screening and brief intervention applications in the primary health care setting (Babor et al. 2007). Coupled with motivational interviewing techniques and un-invasive cognitive exercises, brief interventions emerged primarily in the United States as a strategy for engaging substance users at the point of clinical presentation. Their purpose is to encourage a reduction or cessation of use. Since then, the medical and drug treatment literature has seen a substantial body of research produced in favour of brief-interventions for clinical patients and clients presenting with mild to moderate substance use disorders (Roche and Freeman 2004). The vast majority of the ‘what works’ literature has thus been historically focused on brief interventions for alcohol and tobacco use (Roach and Freeman 2004), however a more recent literature has emerged testing the applicability of these strategies to other substances – specifically cannabis (Stephens et al. 2000; Copeland 2004; Copeland and Swift 2009), and, to a lesser extent, amphetamines (Baker et al., 2001; 2005), benzodiazepines (Bashir et al. 1994; Heather et al. 2004) opiates (Saunders et al. 1995) and cocaine (Stotts et al. 2001). For illicit substances, clinical trials and other research studies have overwhelmingly focused on juvenile or young-adult populations, while recent studies have begun to examine their utility for the prevention of violent offending and victimisation (Cheng et al. 2008; Walton et al. 2010).

According to the Australian Department of Health and Ageing, a brief intervention is one that ‘takes very little time...[are] usually conducted in a one-on-one situation, and can be implemented anywhere on the intervention continuum’ (Department of Health 2004). Consequently, brief interventions can last as little as 30 seconds (opportunistic) or can extend over several sessions of between five and 60 minutes in length. The most often cited aims of a brief intervention are: (a) to engage those not yet ready for change; (b) to increase the perception of real and potential risks and problems associated with substance use; and (c) to encourage change by helping individuals consider the reasons for change and the risks of not changing.

Brief interventions are generally underpinned by a Motivational Interviewing (MI) framework (Blonigen et al. 2015). The FRAMES model (see Hester and Miller 1995), for example, includes five elements that are considered common components of empirically supported brief interventions. These are:

- giving feedback on the risks and consequences of substance use;
- emphasising personal responsibility to change substance use;
- giving concrete advice on how to modify substance use;
- offering a menu of different change options; and
- increasing an individual’s self-efficacy to change their patterns of use.

In terms of efficacy, randomised control trials have generally concluded that brief interventions are more effective than no treatment at all for individuals with mild or moderate substance use disorders (Blonigen et al. 2015). Further, many studies often conclude that brief interventions can be just as effective as more intensive treatments, although this conclusion is often complicated at the meta-analytic level because studies vary considerably in their definitions of what constitutes ‘brief’ (Blonigen et al. 2015). According to Jonas et al. (2012), it is likely that the efficacy of a brief intervention may have more to do with the number of multiple contacts than the length of each individual session. Similarly, it seems that multi-component interventions do not necessarily improve outcomes over simpler motivational interviewing or counselling sessions (see Kaner et al. 2013). Finally, a review of systematic reviews for alcohol-based brief interventions have found generally positive outcomes, but warns that these results tend to be inconsistent for different demographic groups, across different cultural settings and in different intervention contexts (O’Donnell et al. 2014).

For illicit substance use there is comparatively little evidence of effectiveness, although this is mostly because intervention adaptations for substances other than alcohol and tobacco are only relatively new. Nevertheless, the results so far appear promising.

In the Australian context, police drug diversion is a common form of brief intervention for minor drug offenders who have contact with the criminal justice system. The aim of these interventions is to reduce the

impost of large numbers of minor drug offenders on the criminal justice system by diverting them away from the system. A systematic review by Mazerolle et al. (2007) identified 14 studies relating to seven diversion interventions, all in Australia, the majority of which targeted minor cannabis offenders. Drug use outcomes were reported for five of the seven interventions, with three demonstrating reductions in use, one no change, and one mixed results. Reductions in self-reported offending were reported in two studies, a further two studies demonstrated reduced pressure on police resources, and improved police relations were reported in three studies.

Overall, brief interventions appear to be a promising option for mild-to-moderate drug users; however, in most of the applications reviewed here, more intensive interventions still yielded greater outcomes than brief interventions, albeit at higher cost. Further, brief interventions appear more effective for less serious or entrenched substance users, with those showing signs of dependence less likely to benefit from short, motivational interviewing programs (Blonigen et al. 2015). For these reasons, there is a growing consensus that brief interventions should be offered as part of a broader continuum of ‘stepped care’ that allows treatment and health practitioners to respond appropriately to clients who are not engaging or who are identified throughout the brief intervention as having more complex or significant treatment needs (Breslin et al. 1997; Sobell and Sobell 1999; 2000).

8.6 MANDATED TREATMENT WORKS

First and foremost, any review of what works in the drug treatment of criminal justice populations requires acknowledgement that those who are legally coerced to participate in treatment often perform as well as those who enter treatment voluntarily. There is a now large body of research that confirms that legally coerced clients do not underperform others who access treatment from outside the criminal justice sector (Kelly, Finney, & Moos 2005; McSweeney, Stevens, Hunt, & Turnbull 2007; Perron & Bright 2008; Young & Belenko 2002). Whereas during the early proliferation of drug courts there was concern that criminally mandated clients would monopolise to lesser effect the scarce resources of the health and treatment sectors, such fears have not been realised. To the contrary, the evidence supporting equality for legally-coerced clients is such that allocating treatment places and resources to criminal-justice led interventions is a worthwhile policy objective.

It is important to distinguish between compulsory drug treatment and coerced drug treatment, the latter including drug courts. Compulsory treatment refers to drug treatment program in which clients are mandated to enrol. It typically involves forced inpatient treatment, but can also involve outpatient treatment. Coerced treatment is different in that it provides individuals with a choice to avoid treatment (such as, in the case of drug courts, not consenting to participate in the program). A recent review of compulsory drug treatment by Werb et al. (2016) found nine studies that examined the impact of compulsory treatment. Results were mixed, with two studies showing a negative impact on recidivism, while another two showed a positive impact on recidivism and drug use.

8.7 TREATMENT AND SUPERVISION INTENSITY SHOULD BE GUIDED BY PRINCIPLES OF RISK AND NEED

Correctional practitioners, policy makers and researchers have long been concerned with the undoubtedly difficult task of identifying ‘what works’ in reducing reoffending. A cornerstone of this literature, developed over more than 50 years of research and practice, is that high-risk offenders are better suited to more intensive and structured interventions. Pioneering this philosophy, Andrews and Bonta (2010) dedicated their efforts in the *Psychology of Criminal Conduct* to a comprehensive examination and review of the literature, concluding that correctional agencies would be more effective if high-risk offenders could be more accurately identified and targeted with appropriate multi-dimensional desistance-based interventions.

Emerging from this paradigm is the treatment and intervention framework now commonly known as *Risk-Need-Responsivity* (RNR) – a theory founded in behavioral psychology and influenced heavily by the treatment classification literature of the 1960s and 1970s (Sechrest et al. 1979; Palmer 1978). In principle, RNR focuses

on the use of cognitive techniques and treatments for managing ‘criminogenic’ risk factors, defined broadly as individual, situational or environmental characteristics for which there is both empirical and statistical evidence of an association with future offending.

The three key principles of RNR are:

- the risk principle – that the level of program intensity be matched to offender risk level (defined as the risk of reoffending, absent intervention or treatment), and that intensive levels of intervention and treatment be reserved for offenders with the highest level of risk;
- the need principle – that criminogenic needs (i.e. those functionally related to persistence in offending) require commensurate and concurrent redress; and
- the responsivity principle – that the style and modes of intervention be matched or tailored to each individual offender’s learning style and abilities and be responsive to individual strengths and levels of motivation (see Andrews, Bonta and Wormith 2006).

In the tradition of RNR, the most effective and cost-efficient interventions for drug using and drug dependent criminal justice populations are likely to be those where supervision intensity is tailored to the prognostic risk of reoffending and where drug treatment types and intensities are chosen cognisant of drug use as a key criminogenic need (Andrews and Bonta 2010; Taxman and Marlowe 2006). Therefore, 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 risk and need principles. Risk, in this case, refers to those individual offender characteristics that are nominally linked to less favourable recidivism outcomes. According to a review by Marlowe and colleagues (2003), these include age (younger), gender (male), onset of offending and substance use (younger), prior convictions, prior history of unsuccessful treatment, a diagnosis of antisocial personality disorder, and regular contact with other drug-using or anti-social peers. Conversely, criminogenic need refers to clinical disorders and functional impairments that increase the risk of future offending. Drug use is among the most common of criminogenic needs, together with mental illness, unemployment and lack of basic life-skills (Marlowe 2012). In their summary, Andrews and Bonta (2010) describe the “central eight” – eight domains through which the risk of reoffending can be energised if appropriate interventions are not utilised. These include:

1. Criminal History (*static*)
2. Antisocial Personality Pattern (*static/dynamic*)
3. Pro-criminal Attitudes (*dynamic*)
4. Social Supports for Crime (*dynamic*)
5. Substance Abuse (*dynamic*)
6. School/Work Failure (*dynamic*)
7. Family or Relationship Problems (*dynamic*)
8. Lack of Prosocial Activities (*dynamic*)

Ultimately, prognostic risk and criminogenic need should be used to determine the intensity of treatment and supervision, as well as the nature and type of response required for non-compliance. Importantly, low-risk offenders should not be over-treated or over-supervised.

Not only is it potentially unethical and net-widening, but the over-treating of offenders who are low-risk and low-need has the potential to exacerbate drug use and worsen criminal justice outcomes (Lowenkamp and Latessa 2004; McCord 2003; Andrews & Dowden 1999; Bonta, Wallace-Capretta & Rooney 2000; Lowenkamp

QUEENSLAND CORRECTIVE SERVICES

Queensland Community Corrections assesses offenders based on the risk-needs-responsivity (RNR) model.

The Risk of Reoffending (RoR) is a validated, actuarial screening tool used to screen offenders sentenced to community orders (RoR-PPV) and custodial sentences (RoR-PV) for their risk of reoffending. The RoR informs decision making regarding the level of service provided to an offender.

The Benchmark Assessment may subsequently be conducted to identify risk factors, criminogenic and non-criminogenic needs and protective factors at the point of admission into a correctional episode. The Benchmark Assessment quantifies a risk level for each factor contained in the assessment.

The Dynamic Supervision Instrument also applies a scoring system for each factor allowing Probation and Parole officers to target case management efforts in response to changes in risk.

& Latessa 2004). Specifically, the research evidence indicates that high-intensity interventions for low-risk offenders can, in fact, interfere with an offender's existing strengths and turn moderate or mild criminogenic factors into significant criminogenic needs. By their very design, intensive interventions have the potential to:

- remove offenders from prosocial and productive activities such as work and school (Lowenkamp & Latessa 2004);
- replace potentially low-risk peers with high-risk peers; and
- deepen criminal justice involvement, having the potential for negative labeling and negative effects on self-concept.

Conversely, meta-analyses investigating the risk principle applied to juvenile and adult offenders in correctional programs or school-aged youth in school-based intervention programs have found that adhering to the risk principle produces effect sizes between two and six times as great (Lowenkamp & Latessa 2004). Accordingly, the level of supervision should be highest for offenders with the highest prognostic risk (Lowenkamp et al. 2006) while the intensity of the treatment services should be highest for offenders assessed as having high criminogenic need (Smith et al. 2009). For drug dependent offenders, this will almost invariably require some form of intensive drug treatment coupled with interventions targeting other concurrent criminogenic needs. To manage such a comprehensive and individualised system of intervention and treatment requires systems integration and a continuum of care as offenders move through different phases of the criminal justice system (Butzin et al. 2002; Taxman and Bouffard 2000).

8.7.1 Triaging by risk and need – a complex task

The fundamentals underlying the RNR framework have strong empirical support, however, the actual practice of triaging offenders into different treatment and supervision intensities is likely to be a challenging task. Marlowe, in his 2012 reflection on drug courts, sets out a case for the use of the risk and need principles when developing alternative options for the provision of drug treatment within the criminal justice system. Although framed as 'alternative tracks within a drug court', the framework is nevertheless useful for understanding how a continuum of criminal justice services could be designed. In it, Marlowe (2012) dichotomises prognostic risk and criminogenic need into categories of 'high' and 'low' which, when cross-classified, produces four intervention quadrants described as the 'risk and need matrix'. Each of the four quadrants then attracts a different intensity of supervision and treatment, coupled with different responses to non-compliance (see Table 8).

Table 8: Alternative tracks within an adult drug court

		Prognostic risk	
		High	Low
Criminogenic need	High (substance dependence)	Offenders require all the services typically provided under a drug court program	Offenders require drug treatment and cognitive behavioural interventions, but need only be required to appear before the court for matters of non-compliance (treatment emphasis)
	Low (substance abuse)	Offenders require the same level of supervision and compliance monitoring as would be provided under a drug court; however, drug treatment should be replaced with behavioural interventions that target other criminogenic needs and criminal thinking (accountability emphasis)	Offenders do not require drug treatment or cognitive behavioural interventions, and should only appear before the court for matters of non-compliance (diversion emphasis)

Source: Marlowe 2012.

Although a useful framework for conceptualising a whole-of-system approach to drug related offending, Marlowe (2012) nevertheless concedes that triaging offenders into four discrete ‘tracks’ is a complex process because:

“[n]o assessment tool is perfectly reliable and valid. There will often be an appreciable number of false positives and false negatives..., meaning that assessment tools may overestimate or underestimate the level of risk and need in some cases. In addition, many drug-involved offenders may be poor informants and the information they provide may be erroneous, exaggerated or minimized”

In addition to this, there are a number of other practical and conceptual issues that makes the triaging of offenders into discrete categories a challenging prospect. First, the proportionality principle demands that the criminal justice system respond equitably and fairly to those matters presenting for adjudication.⁶⁰ The degree to which supervision and treatment can (or should) be enforced by a court will, therefore, depend considerably on the severity of the presenting offences and the nature of one’s prior criminal history. In many cases, the initial phase of the triaging process occurs by default, with supervision intensities determined by proxy, based on some vague notion of proportional retribution. Consequently, the criminal justice system relies heavily on the severity or quantity of the presenting offences to implement a series of graduated sanctions and supervision intensities. Unfortunately, however, empirical criminological research (Makkai and Payne 2003) has shown that an offender’s current offence/s are relatively poor indicators of prior offending and prospective risk, especially among early career criminals who are likely to be the most costly in the longer term. There is, therefore, a sizable number of offenders who are *qualitatively* at high-risk of reoffending but who, at the time of presenting to the court, may nevertheless only be eligible for interventions that carry supervision intensities consistent with a low-risk rating (Payne and Piquero 2016).

In addition, the drug-crime and criminal careers literature suggests that problematic drug use, including drug dependency in many cases, typically precedes the onset of serious regular offending (Makkai and Payne 2003a; 2003b). Consequently, there is likely to be a period of time for many offenders where criminogenic needs are high, but where the assessable risk of reoffending (based on official and static factors) is lower than would be otherwise indicated from self-reported histories. For this period, and in the interests of proportionality, the criminal justice system is likely to be significantly constrained in its ability to apply supervision and treatment intensities that exceed the justifiable limits of the presenting offences/criminal history.

Second, actuarial risk assessment tools are often calibrated to minimise the rate of false negative results. In other words, screening and assessment tools are often constructed with the view to limiting the number of high-risk offenders incorrectly classified as low-risk. Doing so requires a finite balance between sensitivity and specificity, though often in high-stakes situations the procedure is calibrated such that the incorrect classification of low-risk offenders is preferred over the incorrect classification of high-risk offenders. As a consequence, actuarial systems are often designed to prioritise the identification of high-risk offenders and the policy and program discussion about risk assessment is often limited to a high-risk / low-risk dichotomy. Those not assessed as ‘high-risk’ or ‘high-priority for intervention’ are subsequently aggregated together, often without any meaningful understanding or appreciation of the underlying heterogeneity. This is, in part, because scarce criminal justice resources limit the capacity to offer appropriate levels of supervision and treatment to those not deemed to be a high priority according to the risk principle. Unfortunately, therefore, a large proportion of drug dependent or drug using criminal offenders may not receive appropriate levels of treatment until such time as their official criminal careers demand a commensurate level of supervision.

8.7.2 Motivation and readiness to change – a vexed issue

Whichever intervention philosophy is ultimately selected, the issue of offender motivation and responsivity must be addressed. Several studies have explored the role of motivation in treatment and, specifically, the

⁶⁰ See section 2.6.1

impact that motivation has on treatment retention and outcomes. An analysis of motivation among 500 drug court participants found that women, particularly women with mental health problems, exhibited the highest levels of motivation (Webster et al. 2006). This highlights the need to consider gender differences in planning interventions. The Treatment Needs/Motivation scales found within the TCU Criminal Justice Client Evaluation of Self and Treatment (CJ CEST) is one example of a freely available, evidence-based tool that can be used effectively to assess an offender's readiness for the drug court (Garner, Knight, Flynn, Morey & Simpson, 2007).

Clients who are internally motivated for treatment are the ones who are more likely to engage in the treatment process (e.g. attend sessions, develop rapport, and report satisfaction; Simpson & Joe 2004). Cosden et al. (2006) found that motivation for treatment—based on the client's reported need for treatment and acknowledgement of problem severity—was associated with the severity of drug use, and that client motivation (along with jail time) predicted program completion for drug court but not drug treatment court. Drug treatment clients who do not recognise that they have a drug use problem, do not want help, or simply believe they are not ready for treatment may require motivational enhancement services (e.g. Motivational Interviewing) before being mainstreamed into the drug court process.

However, the relationship between treatment motivation, program completion and recidivism is not as straightforward as might be expected. Cosden et al. (2006) also found that motivation was not a significant predictor of reoffending; rather, recidivism was predicted by program completion and problem severity.

To the extent that motivational change is acknowledged as a core objective of court-based intervention program, then all other aspects of the proposed model should be assessed and considered in light of their contribution and capacity to maintain this objective. This includes:

- the nature and composition of the intervention team – are the right agencies represented;
- the roles and responsibilities of key personnel;
- the nature of key program components and requirements (such as court appearances, compliance management and monitoring systems, the use of rewards and sanctions and graduated phasing); and
- the selection of treatment services.

Importantly, not only should treatment interventions be assessed for their ability to facilitate motivational change, but the practices and procedures of the intervention model must be assessed for their reverse potential – that is, the potential to diminish and demotivate clients.

Stakeholder views on motivation to change

Motivation for change was a topic often raised in the consultation sessions with stakeholders. The feedback received from stakeholders include:

- Motivation to change is an essential ingredient to an individual's success on an intensive drug treatment order.
- Offenders who are motivated solely by the desire to avoid harsh penalties (imprisonment) will be the most difficult to manage in a community corrections and intensive treatment context. Conversely, those offenders motivated by the desire to change their life or improve their life circumstances will have more favourable outcomes.
- However, for programs that target high-risk, high-need offenders, it may be unrealistic to expect anything other than purely instrumental motivations at the time of referral and entry.
- It is the role of case-workers (wherever situated) to help transition clients from instrumental (and largely external) motivators to internal and treatment focused motivators.
- Motivational interviewing, cognitive behavioural therapies and close case management programs are three key strategies for aiding motivational and attitudinal change.
- Motivational change can be difficult to achieve, if not a protracted process for high-risk and high-needs offenders.

The concept of motivation is different from the concepts of risk and responsivity — matching offenders to services based on their risk factors and delivery of services in a manner consistent with their learning styles. The research has provided preliminary empirical evidence that treatment outcomes can be improved if high-risk offenders are targeted for treatment services, regardless of their level of intrinsic motivation. It also implies that a cohesive treatment and supervision experience may impact the motivation of the offender (Thanner & Taxman 2003).

For information on the screening and assessment of an individual's motivation and readiness for treatment see section 8.8.4.

8.8 ASSESSMENT AS THE CORNERSTONE OF SUCCESS

At the cornerstone of any intervention, both reoffending risk and criminogenic needs should be determined using validated and standardised screening and assessment tools. Consistent with the broader correctional literature, drug treatment programs offered in concert with criminal justice orders are more effective when combined with appropriate levels of supervision and programmatic intensity. Ultimately, determining the optimal level of supervision and providing a seamless system of service provision requires a reliable assessment of risk (Thanner and Taxman 2003; Lowenkamp et al. 2006 Andrews and Bonta 2010; Taxman and Marlowe 2006). Similarly, criminal justice interventions are more effective when the level of drug treatment is suitably matched to the severity of drug dependency. Service-level matching therefore requires validated assessment and screening tools which limit over or under-treating individuals (Sacks et al. 2005), especially as the number and type of available treatment options increase (Carroll 2000). According to the American Society of Addiction Medicine, drug use and dependency assessment should include: aspects of the drug dependency and its severity, psychiatric problems and severity, medical conditions, substance withdrawal potential, legal pressures, family/social relationships, motivational factors, recovery and support environment, treatment history and behaviour, and cognitive capability.

8.8.1 Screening and assessment

Screening and assessment procedures are neither equivalent nor interchangeable processes. Rather, they exist as complementary systems designed to optimise efficiency in the allocation of scarce criminal justice and health resources. Screening, for example, is typically the process by which an offender's eligibility and suitability for treatment is first determined. Legal eligibility is often determined by a set of fixed criminal and circumstantial criteria not requiring further assessment, whereas program suitability is determined using brief probabilistic instruments which are indicative of treatment need requiring further and more detailed assessment. Screening, therefore, occurs soon after arrest/referral, and focuses only on those criteria required for eligibility and program placement determinations.

In principle, for screening to be effective the selected clinical criteria should be limited only to those factors considered important to the determination of an offender's suitability and eligibility, and may include: (1) drug use severity; (2) major mental health problems; (3) motivation for treatment; and (4) criminal thinking patterns. Importantly, clinical screening tools should be selected from a range of standardised instruments, these having been shown to be more reliable and valid than professional judgement alone for predicting success in correctional supervision (Andrews et al. 2006; Miller & Shutt 2001; Wormith & Goldstone 1984).

Assessment is differentiated from screening as a more comprehensive and thorough process used to determine an offender's suitability for specific types of treatment and levels of service intensity. In this case, assessment routinely occurs *after* an offender is deemed eligible for the relevant program or intervention. In some cases, offenders may be granted a position prior to the completion of a more comprehensive assessment, while in others the matter may be adjourned by the court for such a period of time that allows for a detailed assessment to be conducted. Assessment in this context is intended to provide an in-depth dynamic picture of the client's prognostic risks and criminogenic needs, leading to the identification of appropriate levels and types of interventions. Again, validated and standardised assessment instruments have

been shown to be more effective than professional judgement in the matching of offenders to appropriate levels and types of interventions.

8.8.2 Gender sensitive screening

The broader drug treatment literature has frequently identified less favorable outcomes for women in both coerced and voluntary treatment contexts. One method of redress for this issue is to ensure that the gender specific clinical needs of female offenders are adequately assessed. In a comprehensive review of drug court screening and assessment practices, Peters and Peyton (1998) argue that gender sensitive drug court screening processes should:

- ensure adequate identification of barriers to treatment participation, including responsibility for the care and support of minor children and other child custody issues;
- ensure adequate gender-sensitive assessment of relapse triggers is undertaken;
- consider carefully the circumstances related to housing and relationships, especially to ensure that women are safe in their current living situation and that there are no pressures from significant others to continue drug or alcohol use;
- where the risk of domestic violence is identified, appropriate steps should be taken by the court to develop a safety plan that prevents victimisation; and
- identify any current or prior mental health diagnoses and assess the need for medical intervention (for anxiety, depression, etc.).

8.8.3 Screening for mental health

Due to the high rates of mental health disorders among criminal justice populations, mental health symptoms and status should be routinely examined as part of a comprehensive screening and assessment procedure. Importantly, drug treatment interventions should not restrict admission solely based on mental health symptoms or a history of mental health treatment, but should instead consider the degree to which mental health or other disorders can lead to functional impairment that inhibits effective program participation. According to Peters and Peyton (1998) key mental health considerations should include:

- paranoia, hallucinations, delusions, severe depression, or mania (i.e. hyperactivity and agitation) that occurs frequently, is obvious to others, is disruptive to group activities, or otherwise prevents constructive interaction with drug court staff or participants;
- lack of stabilisation on psychotropic medication, or failure to follow medication regimes; and
- suicidal thoughts or other harmful behaviour.

In addition to the selection of appropriate tools, agencies responsible for the coordination of treatment services should evaluate those services and their capacity to work with participants with mental health problems. This includes program resources, the extent and availability of an allied treatment service, and the levels of functioning needed to participate effectively. Further, those undertaking the screening and assessment of mental health must be trained in the application of the relevant instruments, while the drug treatment and case management practitioners should be educated on the nature and course of mental health disorders, including the identification of signs and symptoms requiring referral. Among those items to be assessed, Peters and Peyton (1998) suggest a focus on:

- acute mental health symptoms (e.g. depression, hallucinations, delusions);
- suicidal thoughts and behaviour;
- other observable mental health symptoms;
- age at which mental health symptoms began;
- prior involvement in mental health treatment, and use of psychotropic medication;
- cognitive impairment;
- past or recent trauma such as sexual/ physical abuse;
- family history of mental illness; and

- social factors (e.g. primary responsibility for children, living with an abusive or substance-involved partner, sole economic provider responsibilities) that may present obstacles for treatment participation.

8.8.4 Screening for motivation and readiness for treatment

Drug court screening and assessment should also assess an individual's motivation and readiness for treatment. Motivation may be affected by perceived sanctions and incentives, and may increase when continued substance abuse threatens current housing, involvement in mental health treatment, vocational rehabilitation, family (including loss of children), or marriage. Apparent lack of motivation should not, as a singular factor, be used to disqualify candidates from admission to the drug treatment, unless the candidate specifically refuses to participate.

Research has shown that treatment outcomes for persons coerced or court-ordered to treatment are as good as or better than for participants in voluntary treatment (DeLeon, 1988; Hubbard et al. 1989; Leukefeld & Tims 1988). Although some offenders may initially agree to participate in treatment to reduce negative consequences, motivation for treatment is expected to become internalised over time. Individuals often cycle through a series of 'stages of change' during the treatment and recovery process (Prochaska et al. 1992), including:

- pre-contemplation (unawareness of problems);
- contemplation (awareness of problems);
- preparation (reached a decision point);
- action (actively changing behaviours); and
- maintenance (practices ongoing preventive behaviours).

Individuals in the earliest stages of change have little awareness of substance abuse (or other) problems, and no intentions of changing their behavior. Awareness of problems increases in later stages, as the individual begins to consider the goal of abstinence. Due to the chronic relapsing nature of substance abuse, movement through stages of change is not a linear process.

For individuals in the early stages of change, placement in treatment that is too advanced, and that does not address a participant's ambivalence regarding behavior change, may lead to drop out from treatment. For individuals in later stages of change, placement in services that focus primarily on early recovery issues may also lead to drop out from treatment. Assessment of stages of change is useful in treatment planning, and in matching the individual to different types of treatment. Several instruments have recently been developed to examine motivation and readiness for treatment.

8.8.5 Screening for substance use

The effectiveness of substance abuse assessment and screening instruments may vary according to the criminal justice setting and the goals of gathering information in that setting. In any case, it is important that screening processes adequately identify key issues that need to be addressed in treatment. Content domains may be singular or plural, including substance use, criminal, physical health, mental health, and special considerations.

According to Peters and Peyton (1998) in their review of drug court screening and assessment practices, practitioners should give consideration to the following issues:

- signs of acute drug or alcohol intoxication;
- acute signs of withdrawal from drugs or alcohol;
- drug tolerance effects;
- results of recent drug testing;
- self-reported substance abuse;
- age and pattern of first substance use;
- history of use;

- current pattern of use (e.g. quantity, frequency, method of use);
- 'drug(s) of choice'(including alcohol);
- motivation for using;
- negative consequences associated with substance use. For women, this may include changes in physical appearance;
- prior involvement in treatment;
- family history of substance abuse (include family of origin as well as current family); and
- other observable signs and symptoms of substance abuse (e.g. needle marks/ injection sites, impaired motor skills).

8.9 USING TREATMENTS THAT WORK TO REDUCE BOTH DRUG USE AND OFFENDING

Research and evaluation analyses have consistently shown that the most effective interventions are those that employ therapeutic community (TC), cognitive-behavioural and standardised behavioural techniques. Several large scale reviews (Pearson et al. 2002; Irvin et al. 1999; Dutra et al. 2008; Magill & Ray 2009) in addition to several randomised control trials (Siqueland & Crist-Christof 1999) have consistently demonstrated more favourable outcomes from treatment orientations that engage clients in cognitive-behavioural tasks and/or standardised behavioural modification techniques (see also Andrews et al. 1990; Sherman et al. 1997; Lowenkamp & Latessa 2004; Mackenzie 2006; McMurrin & Preistley 2004; Budney, Moore, Rocha & Higgins 2006; Carroll et al. 2006; Easton et al. 2007; Kadden et al. 2007; Rawson et al. 2006). Therapeutic communities, especially in custodial environments and when coupled with cognitive-behavioural treatments (Pelissier et al. 2001; Mitchell, MacKenzie & Wilson 2012) and appropriate aftercare (Inciardi, Martin & Butzin 2004; Prendergast, Hall, Wexler, Melnick & Cao 2004), have also proven effective for reducing both drug use and reoffending (Hiller, Knight, & Simpson 1999; Knight, Simpson, & Hiller 1999;). Further, where other criminogenic needs are present, treatment programs should be augmented to include strategies that address criminal thinking (Bourgon & Armstrong 2005; Pearson & Lipton 1999; Pearson et al. 2002).

The efficacy of behavioural treatments for drug use should be augmented, where applicable, with the use of pharmacotherapy. There is now a sizable evidence-base concerning the effectiveness of pharmacotherapy treatments in facilitating drug treatment, improving drug treatment retention and reducing reoffending – specifically methadone and buprenorphine for the treatment of opiate dependency – (Parker & Kirby 1996; Coid et al. 2000; Keen et al. 2000; Pearson & Lipton, 1999; Marsch et al. 2005; Schottenfeld, Chawarski, & Mazlan, 2008; Kinlock et al. 2009). Importantly, although pharmacotherapy is an effective treatment in its own right, research has shown that its positive impact is amplified when coupled with other psychosocial and cognitive-behavioural treatments (CBT). (Rohsenow et al. 2004; Montoya et al. 2005).

Although individuals should be provided with no more treatment that 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 (three months). The length of time spent in treatment is universally acknowledged as an important predictor of drug treatment success. Spanning several decades of research (Simpson 1981; Simpson et al. 1982; Hubbard et al. 1989; Simpson et al. 1997), empirical analyses of treatment outcomes have found more favourable results for clients who spend at least 90 days engaged with treatment services.

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, otherwise known as Contingency Management (CM), has proven to be an effective strategy for treating the drug dependency of offenders in the criminal justice system. Contingency Management has been shown to be just as effective as CBT (Rawson et al. 2006), although the most favourable outcomes are typically found when CM and CBT are used in concert (Budney et al., 2006; Carroll et al., 2006; Dutra et al., 2008; Kadden et al., 2007). Contingency Management has shown to be effective for the treatment of most drug types, including marijuana (Budney et al., 2006; Carroll et al., 2006; Kadden et al., 2007), methamphetamines (Rawson et al. 2006; Roll et al. 2006), cocaine and opiates (Budney et al. 2006; Gross,

Marsch, Badger, & Bickel 2006; Olmstead & Petry 2009; Petry & Martin 2002; Prendergast, Podus, Finney, Greenwell & Roll 2006).

8.9.1 Treatment types and modalities

8.9.1.1 Cognitive Behavioural Therapy

Cognitive-Behavioural Therapy (CBT) was first developed as a treatment for alcoholism, focusing on the identification and development of behavioural strategies for managing relapse. It was adapted for cocaine-addicted individuals, and is now widely used for general substance use disorders (see Carroll and Onken 2005). Fundamental to CBT is the belief that maladaptive behavioural patterns (like substance abuse) are learned, and thus can be replaced with newly learned and reinforced behavioural repertoires. Individuals undergoing CBT learn to identify problematic behaviours and their triggers, as well as behavioural contingency strategies for mitigating the risk of relapse (Carroll et al. 2006). Such triggers may be internal (physiological cravings or stress reactions) or external (such as seeing friends, or being at specific locations). According to Rounsaville and Carroll (1992), CBT addresses several critical tasks that are essential to successful substance abuse treatment, including:

- **Foster the motivation for abstinence.** An important technique used to enhance the patient's motivation to stop cocaine use is to do a decisional analysis which clarifies what the individual stands to lose or gain by continued cocaine use.
- **Teach coping skills.** This is the core of CBT – to help patients recognise the high-risk situations in which they are most likely to use substances and to develop other, more effective means of coping with them.
- **Change reinforcement contingencies.** By the time treatment is sought, many patients spend most of their time acquiring, using, and recovering from cocaine use to the exclusion of other experiences and rewards. In CBT, the focus is on identifying and reducing habits associated with a drug-using lifestyle by substituting more enduring, positive activities and rewards.
- **Foster management of painful affects.** Skills training also focuses on techniques to recognise and cope with urges to use cocaine; this is an excellent model for helping patients learn to tolerate other strong affects such as depression and anger.
- **Improve interpersonal functioning and enhance social supports.** CBT includes training in a number of important interpersonal skills and strategies to help patients expand their social support networks and build enduring, drug-free relationships.

A central component of CBT is the identification and anticipation of key triggers coupled with the development of trigger-avoidance and self-control strategies. Specific techniques include exploring the positive and negative consequences of continued drug use, self-monitoring to recognise cravings early and identify situations that might put one at risk of relapse, and developing strategies for coping with cravings and avoiding those high-risk situations. In more recent years, computer-assisted programing has been shown to be an effective tool for engaging clients in core CBT activities (Carroll et al. 2006). According to NIDA, the key active ingredients that distinguish CBT from other therapies and which must be delivered for adequate exposure to CBT include:

- functional analyses of substance abuse;
- individualised training in the recognition of and coping with craving, managing thoughts about substance use, problem solving, planning for emergencies, recognising seemingly irrelevant decisions, and refusal skills;
- examination of the patient's cognitive processes related to substance use;
- identification and debriefing of past and future high-risk situations;
- encouragement and review of extra-session implementation of skills; and
- practice of skills within sessions.

CBT has been evaluated extensively, including through randomised clinical trials and meta-studies (Dutra et al. 2008; Magill & Ray 2009; Carroll 1996; Hofmann et al. 2012). Notably, CBT has been shown to be more

effective for the treatment of cannabis, cocaine and opioids, but less effective in the treatment of poly-drug use. Among the different types of CBT programming, the most favourable outcomes were found when CBT was coupled with contingency management programs. Further, CBT clients have more favourable long-term outcomes than those who receive minimal or no treatment at all (Rawson et al. 2006) and the intervention type has been found to be effective in addressing other problem behaviours, including criminal offending (Hofmann et al. 2012). Finally, from the perspective of tackling comorbidity, there is evidence that CBT can be effective in addressing a range of mental health conditions, including bipolar disorder, anxiety disorders and personality disorders (Hofmann et al. 2012).

8.9.1.2 Moral Reconciliation Therapy

Moral Reconciliation Therapy (MRT) is a systematic cognitive-behavioural counselling program developed by Little and Robinson (1988) with demonstrated capacity for treating drug use (Bahr et al. 2012; Wanberg & Milkman, 2006) and reducing reoffending (Ferguson & Wormith 2012), including as part of a drug court program (Cheesman et al, 2012; Heck et al. 2008; Kirchner and Goodman 2007). MRT operates as an open-ended, workbook-based program conducted as a series of group-work and homework exercises, each aimed at reducing drug use and challenging criminal thinking. The program is run across 16 steps (or units), 12 of which are completed in a group counselling environment, while the remaining four steps are completed individually. The 16 steps are clustered into four phases: engagement; creating change; reinforcing permanent change; and transitioning to the future (optional and individual).

Underpinned by a cognitive-behavioural philosophy, MRT addresses beliefs and reasoning, in an effort to restructure a participant's cognitive scripts about both drug use and crime. Central to the program is an attempt to address moral reasoning and improve decision making skills, thereby fostering more prosocial activity and community-minded engagement. MRT is indicated for offenders who meet the DSM-V diagnostic criteria for one or more substance use disorders (Ferguson and Wormith 2012). Importantly, new clients can enter the program at any time and can be incorporated into the cohort of existing clients who are at the more advanced stages of their treatment.

8.9.1.3 Therapeutic Communities

A therapeutic community (TC) is a treatment facility in which the community itself, through self-help and mutual support, is the principal means for promoting personal change. In a TC, residents and staff participate in the management and operation of the community, contributing to a psychologically and physically safe learning environment where change can occur. In a TC there is a focus on social, psychological and behavioural dimensions of substance use, with the use of the community to heal individuals emotionally, and support the development of behaviours, attitudes and values of healthy living. Importantly, therapeutic communities can also target the psychological and social factors that influence drug abuse, through CBT, CM, counselling, relapse prevention and motivational interviewing (Holloway & Bennett 2016).

Therapeutic communities may be prison-based or they may be located in community-based treatment centres. Meta-analytic reviews have concluded that therapeutic communities have some of the strongest positive evidence of any prison-based substance abuse programs (Wilson, 2016). The results in terms of substance use are not as strong, with a recent systematic review finding that substance use decreases during the program, but that relapse was common (Malivert et al. 2012).

8.9.1.4 Motivational Interviewing / Motivational Enhancement Therapy

Motivational Interviewing (MI) as a form of drug treatment was first described by Miller and Rollnick (2002) in response to Prochaska and DiClemente's (1984) stages of change model. MI, or Motivational Enhancement Therapy (MET), is described as a client-centred, empathic, but directive counselling strategy designed to explore and reduce a person's ambivalence about engaging in treatment and stopping their drug use.

The MI/MET approach aims to induce rapid and internally motivated change through counselling sessions where empathic listening and skillful interviewing techniques are used. The four basic principles of MI are (Centre for Substance Abuse Treatment 1999):

- express empathy – the counsellor communicates that the client always is responsible for change and respects the client’s decision on this issue;
- identify discrepancies – the counsellor encourages the client to focus on how current behaviour differs from his/her ideals and goals;
- roll with resistance and avoid arguing – rather than resist client resistance, the counsellor uses strategies to reduce resistance; and
- support self-efficacy – the counsellor recognises client strengths and encourages him or her to believe that change is possible.

Research on MI and MET suggests that its effects may depend on the type of drug used and the goal of the intervention. These approaches have been used successfully for alcohol and marijuana-dependency in adults, especially when combined with other CBT techniques; however, the results of MET appear mixed for people abusing other drugs (e.g., heroin, cocaine, nicotine) and for adolescents who tend to use multiple drugs. In general, MET seems to be more effective for engaging drug abusers in treatment than for producing changes in drug use.

8.9.1.5 Contingency Management Interventions

Contingency management (CM) principles have been shown to be effective in the treatment of substance abuse disorders. CM involves the use of tangible rewards to reinforce positive abstinence and other positive behaviours. Studies have demonstrated that incentive-based interventions can increase treatment retention and promote both temporary and longer term abstinence from drugs (Petry et al. 2000; Higgins et al. 2000; Petry et al. 2002), including opiate and cocaine use disorders (Silverman et al. 1996) alcohol use disorders (Petry et al. 2000), and marijuana use disorders (Budney et al. 2000). CM programs are typically delivered in one of two different models:

- Voucher-Based Reinforcement (VBR) which augments other community-based treatments where the treatment client receives a voucher with monetary value that can be exchanged for food items, movie passes, or other goods or services that are consistent with a drug-free lifestyle.
- Prize Incentives (PI) offers treatment clients the chance to win prizes (typically cash) instead of vouchers. Compared with standard VBR techniques, the prizes are not automatically offered at each stage of success.

8.9.1.6 The Matrix Model

The Matrix Model is not a specialised treatment modality, but a holistic and intensive framework for engaging, primarily stimulant (e.g. methamphetamine and cocaine) abusers in treatment. Originally known as neurobehavioral treatment, the Matrix Model integrates several evidence-based treatment techniques into a comprehensive and individualised treatment plan targeting the participant’s behavioural, emotional, cognitive and relationship issues. Participants learn about issues critical to addiction and relapse (CBT), receive direction and support from a trained therapist (MI/MET), and become familiar with 12-step and self-help programs. Patients are often monitored for drug use through urine testing.

In the Matrix model, the counsellor/therapist functions simultaneously as teacher and coach, fostering a positive, encouraging relationship with the participant and using that relationship to reinforce positive behaviour change (Obert et al. 2000). The interaction between the therapist and the patient is authentic and direct but not confrontational or parental (Rawson et al. 1995). Importantly, therapists must be trained to conduct treatment sessions in a way that promotes the patient’s self-esteem, dignity, and self-worth. A positive relationship between patient and therapist is critical to patient retention, though once established the Matrix Model should:

- maintain a strong therapeutic relationship between the client and the counsellor;
- teach clients how to structure time and initiate an orderly and healthy lifestyle;

- impart accurate, comprehensive and comprehensible information about acute and subacute withdrawal effects and cravings for substances;
- provide opportunities to learn and practice relapse prevention and coping techniques;
- involve family and significant others in the therapeutic and educational process to gain their support for – and prevent their sabotaging of – treatment;
- encourage clients to participate in community-based mutual-help programs; and
- monitor treatment effectiveness by conducting random urinalysis testing.

A number of studies have demonstrated that participants treated using the Matrix Model show statistically significant reductions in alcohol and other drug use and improvements in psychological indicators (Rawson et al. 1986; Rawson et al. 2002). Some research, however, has shown that as a consequence of the Matrix model's intensity, the program may not be suited to all clients (Obert et al. 2000) and may not allow sufficient time for other treatment needs to be addressed.

8.9.1.7 Family Behaviour Therapy

Where appropriate, interventions should encourage family involvement in treatment. There is some evidence in support of Family Behaviour Therapy (FBT) for both adults and adolescents (Azrin et al, 1994; Carroll & Onken 2005; Donohue et al. 2009; LaPota et al. 2011). FBT aims to reduce substance use problems along with a range of other co-occurring problems, such as conduct disorders, child mistreatment, depression, family conflict, and unemployment.

FBT combines behavioural contracting with CM. Working with the client and at least one other family member, therapists aim to encourage families to apply the behavioural strategies taught in therapy to help contribute to an improved home environment. Behavioural goals are developed by the client, based on a CM system, and may relate to aspects of family functioning such as effective parenting. They are then regularly reviewed by the client and significant other. Treatment interventions are chosen by the client, who is engaged in treatment planning, from a menu of options supported by evidence.

Similarly, since its first use in 1985, behavioural couples therapy (see O'Farrell et al., 1985) has been shown to be an effective means of encouraging abstinence and decreasing drug-related family conflict, including domestic and family violence (Fals-Stewart et al. 2001; O'Farrell and Fals-Stewart 2000; O'Farrell and Fals-Stewart 2002).

8.10 TACKLING COMORBIDITY AND CO-OCCURRING DISORDERS

Responsivity to treatment and supervision is critical to program and intervention success (Andrews and Bonta 2010; Simpson & Joe 2004). In part, this requires the tailoring of treatment and intervention regimens to meet the diversity of cognitive and psychosocial comorbidities within the criminal justice population. The high prevalence of mental health problems among criminal justice populations requires the coordination of comprehensive services that address co-occurring medical, mental health and psychosocial disorders. Research has consistently shown that drug treatment outcomes, including those provided in concert with criminal justice interventions, can be improved considerably where co-occurring disorders and comorbidities can be treated concurrently and seamlessly with drug dependency (McLellan et al. 1993).

8.11 MONITORING INDIVIDUAL SUCCESS

Individual level 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 (Matrix Research and Consultancy & NACRO, 2004; Sherman et al. 1997). Drug testing programs, coupled with contingency management systems for rewarding treatment progress, are important tools for maintaining treatment retention and thereby maximising treatment duration.

8.12 COMMITMENT TO EVALUATION

Interventions in the criminal justice system should be subject to governance, ongoing performance monitoring and systematic, independent evaluation. Public sector governance encompasses a set of responsibilities exercised by an agency to provide strategic direction, to ensure that objectives are achieved, risks are managed and resources are used responsibly and with accountability.

Particularly, in view of the complexity of Queensland's court diversion programs and the need to ensure adherence to program objectives and issues of efficiency and effectiveness, a governance structure should be established to collectively oversee all court based programs. This would involve the creation of a reference group comprised of representatives from all key agencies, service providers and academics.

Ongoing program monitoring, in particular when conducted against performance benchmarks and known performance indicators, is beneficial to ensure that program outcomes are achieved in the longer term. Performance monitoring in this context refers to the process of regularly collecting and monitoring performance information, reviewing program performance (i.e. using this information to assess whether a project is being implemented as planned and is meeting stated objectives), and using this information to identify where improvements might be made. The distinction between performance monitoring and evaluation is that, while monitoring key indicators of performance may help provide some evidence that certain outcomes are being delivered, it does not provide immediate evidence as to the contribution of a program to those outcomes.

Evaluation is best conducted using a systematic approach, which involves planning evaluation early in the process—ideally during the initial stages of planning the program—and starts with the development of a program logic model and evaluation framework (Morgan & Homel 2013). This can then form the basis for decisions about the most appropriate evaluation design and methods. Unfortunately, it is common for evaluation to be an afterthought, which poses numerous challenges for the measurement of key outcomes, such as the lack of appropriate baseline measures. Irrespective of whether a process and/or outcome evaluation is being undertaken, it is important for the evaluation design and research methods to be determined early in the life of the program (Weatherburn 2009).

For more information on governance, monitoring and evaluation refer to Chapter 36 in Part C of this report.

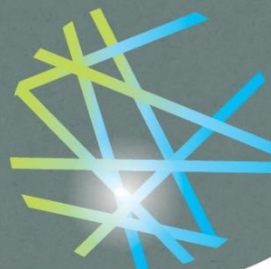
8.13 IMPLICATIONS

This chapter has presented the evidence on best practice in the assessment and treatment of offenders with alcohol and other drug issues, in order to provide an understanding of what works in reducing reoffending. Based on this evidence, a set of criteria has been developed that provides principles for effective alcohol and other drug treatment for criminal justice populations.

8.14 RECOMMENDATIONS

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); and
 - (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 that 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

9 CRIMINAL JUSTICE FRAMEWORK – PRE-ARREST

9.1 INTRODUCTION

This chapter, and the three that follow, consider the various drug and alcohol related interventions currently available in Queensland at each stage of the criminal justice system: pre-arrest (this chapter), bail and pre-sentence (Chapter 10), at sentence (Chapter 11) and at the post-custodial stage (Chapter 12). Each chapter concludes with a series of recommendations to improve the effectiveness and efficiency of interventions at each stage in the system, with the aim of creating a more integrated response to drug- and alcohol-related offending.

9.2 QUEENSLAND POLICE ILLICIT DRUG DIVERSION PROGRAM

A great deal of drug-related offending is relatively minor and dealt with by police by means of a limited intervention designed to obviate the need for a court appearance and direct the person to an intervention that involves some form of education or advice regarding substance abuse.

In Queensland the Police Illicit Drug Diversion Program (Police Diversion Program) aims to offer people apprehended for a minor drugs offence an alternative to proceeding through the usual criminal justice processes to court.

A ‘minor drugs offence’ is defined under Schedule 6 of the *Police Powers and Responsibilities Act 2000* (PPRA) as an offence against sections 9, 10(1) or 10(2) of the *Drugs Misuse Act 1986* involving either: possessing not more than 50 grams of cannabis; and/or possessing a thing for use, or that has been used, for smoking cannabis; however, it excludes an offence if the possession is an element of an offence against the *Drugs Misuse Act 1986* involving production or supply of cannabis or trafficking in 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 assessments, education and treatment for drug users and an incentive to address their drug use early.

Under section 379 of the PPRA, sworn police in the state of Queensland are able to offer the Police Diversion Program to an individual who meets the eligibility criteria for a minor drugs offence. The program can be offered to a person who is arrested for, or is being questioned by a police officer about, a minor drug offence, provided they:

- have not committed another indictable (serious) offence in related circumstances (e.g. burglary of a home to obtain money to buy drugs);
- have not previously been sentenced to serve a term of imprisonment for identified serious drug offences (including trafficking and supply);
- have not previously been convicted of an offence involving violence against a person in relation to which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* is yet to expire;
- admit to having committed the offence during an electronically recorded interview; and
- have not previously been offered the opportunity to complete the program.

The person is not eligible if the possession relates both to cannabis and another illicit drug (such as heroin or amphetamines).

The police requires the offender to attend a two-hour Drug Diversion Assessment Program (DDAP). Failure to attend may result in the defendant being charged with an offence of ‘contravene direction or requirement of a police officer’ under section 791 of the PPRA.

The Police Diversion Program commenced on 24 June 2001, and as of 30 June 2016, has referred more than 115,476 offenders. In 2015-16, 9,428 people were referred to a DDAP.

Based on data as at 30 June 2016:

- 115,476 referrals had been accepted;
- there had been 90,526 intervention completions; and
- 11,182 of referrals related to a person who identified as being Aboriginal and Torres Strait Islander.

9.3 DISCUSSION AND RECOMMENDATIONS

The Police Diversion Programs and its DDAP represent appropriate interventions for offenders charged with minor offences who pose a minimal risk to the community and who may or may not need much in the nature of treatment or education. They absorb a significant amount of police and provider resources.

There is a question as to whether QPS should have more intervention options in relation to low-level offenders and whether a referral to the DDAP is the least costly and effective means of dealing with such offenders. The data provided in section 7.4.4 indicate that Queensland utilises these forms of intervention at a far greater rate than other jurisdictions that employ a range of other measures in such circumstances.

The benefits of having a range of options to deal with minor forms of drug offending prior to court action being initiated include, for example, reduced costs associated with police and court involvement where people are formally charged with an offence, reducing people's formal involvement with the criminal justice system, ameliorating the effects of a criminal record on future employment and reduced demand on providers of such services.

The Review is aware that the NDARC is conducting research at a national level to assess the outcomes and cost-effectiveness of police diversion programs. This may inform Queensland's future responses to non-court alternatives to minor drug offences.

9.3.1 Cautions

There are no legislative cautioning provisions in Queensland for adults,⁶¹ although the cautioning of adults is permitted under policy in exceptional circumstances where the offender has special needs and it is considered to be in the public interest.⁶² The circumstances identified in which the cautioning of adults may be appropriate under policy are where the person involved is over the age of 65 or is intellectually disabled or infirm to the extent that there is no real risk of repetition of the offence.⁶³ Other criteria that the policy requires to be satisfied before administering a caution include that the offence is of a type or nature that a court is likely to impose only a nominal penalty (e.g. unauthorised dealing with shop goods) or is trivial in nature, the offender admits the offence, has no criminal history for dishonesty and no substantial record for other offences, and consents to being cautioned for the offence.⁶⁴

⁶¹ Compare this with the *Youth Justice Act 1992* (Qld), under which a police officer may, instead of bringing a child who is suspected of committing an offence before a court, administer a caution. The purpose of a caution is to divert the child from the courts' criminal justice system, *Youth Justice Act 1992* (Qld), s 14. The child must admit to committing the offence and consent to being cautioned. A child so cautioned is not liable to be prosecuted for the offence and the caution is not part of the child's criminal history, *Youth Justice Act 1992* (Qld), s 15.

⁶² Queensland Police Service, *Operational Procedures Manual*, Issue 53 (July 2016), [6.5.1 – Cautioning adults who commit offences]. This provision relates specifically to offenders with special needs Section 377(4) of the *Police Powers and Responsibilities Act 2000* provides the general legislative power for this scheme.

⁶³ Queensland Police Service, *Operational Procedures Manual*, Issue 53 (July 2016), [6.5.1 – Cautioning adults who commit offences].

⁶⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 53 (July 2016), [6.5.1 – Cautioning adults who commit offences].

The Police Diversion Program can also be conceptualised as a form of caution as the person is referred to participate in a DDAP with no further action taken if the person successfully completes the program.

In Victoria, under the Drug Diversion Program, which is aimed at non-violent illicit drug users who use, or are in possession of small quantities of illicit drugs, the police may offer a caution if the offender admits to the offence, though only two cautions may be issued. Similar to the Police Diversion Program, the Cannabis Cautioning Program requires the person to receive educational information and be referred for a cannabis education session. A caution in relation to a drug other than cannabis may require that the person undertake a clinical assessment and commence drug treatment.⁶⁵

In NSW under the Cannabis Cautioning Scheme⁶⁶ police may issue a caution to an adult detected of committing a minor cannabis offence. The caution notice provides contact details for the Alcohol Drug Information Service that provides information about treatment, counselling and support services (NSWLRC, 2013, para 16.6).

Tasmania's Illicit Drug Diversion Initiative aims to offer early incentives for people to address their illicit drug use, in many cases before acquiring a criminal record. The program comprises three levels. Level one, 'Drug Caution', is for cannabis offences only and allows police officers the discretion to warn an individual of legal consequences of drug possession. Levels two and three are referred to as 'drug diversions'. Available for cannabis offences only, the second level program requires individuals to attend an education and brief intervention with a nominated alcohol and other drug provider. Level three includes cannabis and other illicit drugs (including pharmaceutical drugs being used illicitly). Individuals are referred to an alcohol and other drug provider for up to three sessions for assessment, counselling and treatment. Failure to comply with the requirements of a health intervention results in the individual being prosecuted for all minor drug offences.

Considering the resource requirements of Queensland's Police Diversion Program and the need to deploy resources where there is a higher degree of risk and need, we recommend that consideration be given to introducing a cautioning scheme for minor drug offences (possibly not limited to cannabis) with three levels of caution:

1. A simple caution
2. A caution with educational material (which may be delivered online)
3. A caution with a requirement to attend, or participate in a face to face or on-line educational program

Mechanisms would need to be in place to deal with offenders who fail to participate in the educational program component of the caution. This would be up to the discretion of the police officer but may include escalating the intervention by using an infringement notice or formally charging them with an offence.

Information on the advantages and efficacy of cautioning is provided at Section 8.4CAUTIONING. Overall, analyses to date suggest that cautioning low-level drug offenders (both juveniles and adults) is likely to be a cheaper alternative to formal processing which does not worsen long-term criminal justice outcomes.

9.3.2 Infringement notices

Infringement notices, or on-the-spot fines, have long been available for a multitude of minor offences from parking offences to drink-driving-related offences. Under this procedure, an offender issued with a notice may expiate the offence by payment of the stipulated amount and is not required to appear in court, although they may contest the notice in court. No conviction is recorded against the offender's name.

In Queensland, Schedule 2 of the *State Penalties Enforcement Act 1999* defines an 'infringement notice offence' as an offence "other than an indictable offence or an offence against the person, prescribed under a

⁶⁵ See http://www.police.vic.gov.au/content.asp?Document_ID=5059.

⁶⁶ See http://www.police.nsw.gov.au/community_issues/drugs/cannabis_cautioning_scheme.

regulation to be an offence to which this Act applies". While some offences under the *Drugs Misuse Act 1986* have been prescribed as offences in relation to which a penalty infringement notice can be issued, prescribing possession of a dangerous drug as an infringement notice offence, even where the quantity of drug concerned is small, would not currently be possible under existing law as these offences are classified as indictable offences.

In South Australia, an adult in possession of cannabis is dealt with under the Cannabis Expiation Notice Scheme (*Controlled Substances Act 1984* (SA), s 45A).⁶⁷ In the ACT, under the *Drugs of Dependence Act 1989* (ACT), s 171A a person who is reasonably suspected of committing a 'simple cannabis offence'⁶⁸ may be issued with a notice requiring the person to pay a penalty of \$100. The NT *Misuse of Drugs Act* also allows a police officer to issue an infringement notice for some minor offences involving small quantities of cannabis.

Nearly two thirds (62%) of people sentenced by the Queensland courts for matters where an illicit drug offence is the principal offence are issued with a fine (ABS 2016b). Introducing infringement notices for minor drug offences expands the suite of options available to the police to respond to drug use in the community and potentially provides a response to minor drug offending consistent with that implemented by the court while saving court resources. Infringement notices also have the benefit of reducing a person's exposure to the criminogenic effects of having contact with the criminal justice system.

However, there are number of concerns associated with the use of infringement notices. For example, the WA Cannabis Infringement Notice (CIN) scheme was repealed in 2010 due to its complex eligibility and compliance requirements, difficulties in its administration and its net-widening effect (Fetherston & Lenton 2007). This scheme was also characterised by lower than expected notice expiation and the police were reluctant to issue a CIN to repeat offenders (Swensen & Crofts 2010). Another study found that that the ACT infringement system was having a disproportionate effect on vulnerable populations, including those with serious AOD issues (report cited in Hughes et. al. 2013). The expansion of Criminal Infringement Notices (CINs) in NSW was also found to have a net-widening effect with evidence of CINs being used when a caution or no action would have been more appropriate (NSW Ombudsman 2009).

9.3.3 Consultation

Consultation with key stakeholders found support for the police having a broader range of options for minor drug offending, including by some who expressly supported the introduction of adult cautioning for minor drugs offences either instead of, or in addition to, the existing police diversion program.

In supporting the replacement of existing brief interventions with adult cautioning, QNADA cited a recent study which found that 72.6% of people who are diverted to attend a two-hour education and information session as a result of police and court diversion are not experiencing problems relating to their substance use (apart from their contact with the criminal justice system) (National Drug Law Enforcement Research Fund 2016, unpublished). On this basis, QNADA suggested, replacement of existing programs would create an opportunity to reinvest funding in more intensive treatment for people who need (and want) this. In addition to the negative consequences of contact with the justice system, QNADA also pointed to issues with the current police diversion scheme that it considered limited its effectiveness, including that: diversion can only be offered once; the scheme requires eligibility to be assessed by police; and it requires a person to admit guilt during an electronically recorded interview before it is offered (a legislative requirement under s 378 of the *Police Powers and Responsibilities Act 2000*).

However, issues identified with the use of infringement notices consistent with those raised in the literature included:

⁶⁷ The South Australian scheme has been extensively evaluated (Ali et al 1999; Christie 1999; Lenton et al 1999; Donnelly 1999; Sutton and McMillan 1999).

⁶⁸ Namely an offence of cultivation of one or two cannabis plants.

- the low expiation of notices which can result in accumulated SPER debt;
- the risk of net-widening; and
- the risk of compounding disadvantage given that those most at-risk of substance misuse will be among those least likely to expiate notices.

Some key stakeholders also questioned the use of cautioning with non-mandatory participation in education as it was unlikely to have a therapeutic effect.

Recommendation 4	Expanded pre-arrest and post-arrest options for minor drug offences
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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.

10 CRIMINAL JUSTICE FRAMEWORK – BAIL AND PRESENTENCE

10.1 BAIL

Bail is a legal disposition that allows a person arrested for an offence to be released into the community pending the final disposition of the case at trial. Its principal purposes are to ensure that the alleged offender will appear in court to determine their guilt or innocence, will not interfere with witnesses, will not commit further offences and will be safe in the interim (Freiberg and Morgan 2004). Conditions may be attached to a grant of bail to ensure that these purposes are achieved.

The period that an alleged offender spends on bail pending the hearing of their case can provide them with an opportunity to participate in programs that are intended to address underlying problems that may have contributed to the offending behaviour, although such conditions require the offender's consent. Bail is not a sentencing disposition: the alleged offender has not been found guilty of any offence and any condition should not be punitive or excessively intrusive.⁶⁹

There are presently a number of bail-based interventions, programs or referral pathways available to the Queensland Magistrates Court, their use being dependent upon the location of the court, the nature of the offending or the offence.

There are two referral programs, that is, programs that provide a mechanism for alleged offenders to be referred to treatment or other services that are provided by external organisations:

- QICR
- QMERIT

Where Aboriginal and Torres Strait Islander defendants are charged with an offence, they may be referred to a Murri Court to be further dealt with.⁷⁰ Where defendants are the subject of proceedings related to domestic and family violence, they may be dealt with in the DFV Court.⁷¹

There is one direct intervention or program to which an alleged offender can be directed, the Drug and Alcohol Assessment and Referrals (DAAR) program.⁷²

10.2 REFERRAL PATHWAYS

10.2.1 Queensland Integrated Court Referrals & Queensland Court Referral

10.2.1.1 Description and operation

Queensland Integrated Court Referrals (QICR) provides an opportunity for defendants to engage with service providers through short-term bail-based referrals and longer-term treatment and rehabilitation post-sentence to address the underlying causes of their offending behaviour.

By linking defendants with appropriate treatment and support services, and using the influence of the court to monitor and encourage progress, QICR aims to reduce recidivism and improve defendants' physical and psychological health and quality of life.

⁶⁹ See section 2.6

⁷⁰ See Brief Discussion of Murri Court below at section 13.4.

⁷¹ See section 5.2.9.

⁷² See section 5.2.6.

Where problematic substance use, mental illness, impaired decision-making capacity or homelessness or at risk of homelessness are assessed as likely contributors to offending, the court may grant bail (*Bail Act 1980*) with a condition that the defendant participates in QICR.

At the point of sentencing, if the court considers that the defendant may benefit from participation in QICR post-sentence, it may make participation and engagement in activities contained in their QICR engagement plan a condition of either a probation order or recognisance order, in accordance with the provisions of the *Penalties and Sentences Act 1992*.

In circumstances where a defendant fails to participate in QICR when it is imposed as a condition of bail, their matters are remitted back to the Magistrates Court to proceed in the usual way. If QICR is a condition of a recognisance or other community based order made post-sentence, appropriate action is taken in accordance with the powers the court has in relation to breach of a relevant order. This may result in the order being revoked and the defendant resentenced for the original offence.

The Queensland Court Referral (QCR) program preceded, and is very similar to, the QICR program.

In 2014–15, 188 defendants were referred to QCR and 72% of these referrals were accepted.

10.2.1.2 Consultations

Defendants agreeing to participate in QICR are referred to a Case Assessment Group (CAG) comprised of organisations that assess whether they are able to offer service to defendants to meet their identified needs. In consultations, some stakeholders raised concerns that the actual process of referral and follow up with defendants was cumbersome and onerous for their organisations.

10.2.2 **Queensland Magistrates Early Referral into Treatment Program (QMERIT)**

10.2.2.1 Description and operation

QMERIT is a bail-based referral program for defendants with illicit drug use issues. QMERIT operates in the Maroochydore and Redcliffe Magistrates Courts only. The program is a pre-plea diversion program that is not dependent on the person's guilt or innocence.

The program engages defendants charged with an offence relating to illicit drug use with drug rehabilitation services that may be imposed through bail conditions. QMERIT aims to assist suitably motivated drug offenders to overcome their illicit drug use issues and end their associated criminal behaviour through court supervised treatment programs. Failure to comply with the program can result in the person being terminated from the program and, if imposed as a condition of bail, may result in the conditions being varied or bail revoked.

At the conclusion of the program, the court calls upon the defendant to enter a plea (if not previously entered) and proceeds to sentence the defendant in accordance with the *Penalties and Sentences Act 1992*. Successful completion or the extent of unsuccessful completion of the program is a matter that the court may take into account in sentencing the defendant with a view to consideration of mitigation of penalty.

In 2014–15, 265 people were referred to QMERIT and 70% of these referrals (185) were accepted. It is estimated that 43% of accepted referrals resulted in program completion. The majority of QMERIT referrals were men (74%) aged 17 years or over (98%).

About half of QMERIT participants complete the program successfully, with 52% of closed treatment episodes ceasing due to completed treatment or program expiration. Some closed treatment episodes did not result in program completion and were closed due to imprisonment/some other criminal justice sanction (4%), without notice (9%) or with mutual agreement (8%).

Queensland Health data also indicate that most treatment relating to QMERIT is provided in the community. In 2014–15, only 4% of closed QMERIT treatment episodes took place in a residential treatment setting and 95% took place in a non-residential treatment facility.

Cannabis and amphetamines were the principal drugs of concern for the QMERIT program in 2014–15. Over half (58%) of closed QMERIT treatment episodes involved cannabis as the principal drug of concern and just under one third (30%) involved amphetamines as the principal drug of concern. A small number of treatment episodes (2%) involved heroin or alcohol as the principal drug of concern.

These data suggest that the QMERIT program targets different types of drug users than those involved in the DAAR program (which largely responds to alcohol and some cannabis use).

10.2.2.2 Consultation

The QMERIT Program has a primary illicit drugs focus with priority placed on the stabilisation of the defendant's addiction and improved social functioning. The program was reported to offer a 'one stop shop' for defendants with illicit drug use issues that addresses not only their illicit drug use but also other individual needs, such as accommodation, mental health and child safety issues.

One of the strengths of QMERIT identified by those consulted was that it has dedicated case managers employed by Queensland Health who work pro-actively with the defendant throughout the program.

Whilst Magistrates Courts Practice Direction No 1 of 2016 Queensland Magistrates Early Referral Into Treatment (QMERIT) Program, guides the operation of QMERIT, comments indicate that there are some apparent differences between the philosophy and operation of the program as it operated at the existing two court locations (Redcliffe and Maroochydore). Differences mentioned include the use of urine tests to check for drug use and of a specific bail condition requiring offenders to participate in residential rehabilitation programs.

10.3 BAIL-BASED INTERVENTION PROGRAMS

10.3.1 Legislative framework

The *Bail Act 1980* empowers a court to impose a condition on bail that the defendant participate in an intervention program designed to address the underlying causes of the person's offending behaviour. A court may also impose participation in QMERIT and QICR programs as a condition of bail.

Section 11(9) of the *Bail Act 1980* (Qld) provides that:

Without limiting a court's power to impose a condition on bail under another provision of this section, a Magistrates Court may impose on the bail a condition that the defendant participate in a rehabilitation, treatment or other intervention program or course, after having regard to—

- (a) the nature of the offence; and
- (b) the circumstances of the defendant, including any benefit the defendant may derive by participating in the program or course; and
- (c) the public interest.

Section 11AB provides that:

- (1) This section applies to a court authorised by this Act to grant bail for the release of a person.
- (2) If the person consents to completing a DAAR course, the court may impose a condition for the person's release that the person complete a DAAR course by a stated day.
- (3) In deciding whether to impose the condition, the court must have regard to the following—
 - (a) the nature of the offence in relation to which bail is proposed to be granted;
 - (b) the person's circumstances, including any benefit the person may derive by completing a DAAR course;
 - (c) the public interest.

(4) However, subsection (2) does not apply if—

- (a) the person has completed 2 DAAR courses within the previous 5 years; or
- (b) the person is under 18 years; or
- (c) section 11A applies [release of a person with an impairment of the mind].

(5) This section does not limit the conditions the court may impose under section 11 [conditions of release on bail.

DAAR course means a course provided to a person by an approved provider in which—

- (a) the person's drug or alcohol use is assessed; and
- (b) the person is given information about appropriate options for treatment and may be offered counselling or education.

10.3.2 Drug and Alcohol Assessment and Referrals

Initially introduced as part of the Safe Night Out Strategy, a package of reforms to better respond to alcohol-fueled violence, a DAAR course is a bio-psychosocial assessment and brief intervention delivered to clients where their drug or alcohol use is associated with their offending behavior. It is designed to identify any alcohol- or drug-related issues that need to be addressed, whilst providing an opportunity for the client to receive information and access to further treatment if desired.

A DAAR course condition can be imposed either as a condition of bail or as part of a recognisance order post-sentence, and is available on a statewide basis.

In 2015-16, 565 defendants were assessed for DAAR. Of these, 528 orders were completed. This amounted to 710 sessions, taking rescheduled appointments into consideration.

In 2014-15, 394 defendants were referred to the DAAR program, with 96% of these referrals being accepted (378) and 68% of accepted referrals (256) resulting in a completed program. Most referrals were male defendants (81%). Although Queensland is characterised by a substantially higher use of information and education treatment modality than is apparent nationally, comparison between the number of DAAR and Court Diversion Program referrals suggests that the use of this type of treatment is largely driven by the Court Diversion Program.

Information on DAAR participant characteristics evident in DJAG data is consistent with QH data. According to these data, 79% of closed DAAR treatment episodes in 2014-15 related to men and the average age of people provided with treatment was 30 years. These data also indicated that the majority of closed treatment episodes (85%) involved a non-Indigenous client and that most of the referrals to DAAR were from the QPS (76% of closed treatment episodes).

Alcohol was the most common principal drug of concern for the majority of people attending a DAAR intervention (77% of closed treatment episodes), although cannabis use was also evident being the principal drug of concern for 16% of closed treatment episodes. No treatment episodes related to heroin or heroin-type substances as a principal drug of concern and about 4% of treatment episodes related to amphetamine use as a principal drug of concern. This compares with total Queensland alcohol and other drug treatment services data that shows that alcohol was the principal drug of concern for 36% of closed treatment episodes and cannabis was the principal drug of concern for 34% of closed treatment episodes.

Queensland Health data also indicate that completion of the DAAR program also involved a referral to another agency to support any identified health issues – especially those relating to alcohol and/or illicit drug use. Most of these referrals involved a referral to a medical practitioner or hospital (80%). Some closed treatment episodes involved a referral to a residential alcohol and other drug treatment service (4%) and 9% of closed treatment episodes resulted in a referral to other health services (such as sexual health services).

10.3.3 Evaluations

Bail-related drug intervention programs operate in most Australian states. The Australian program for which the strongest evidence exists for its effectiveness in reducing reoffending and more generally improving health outcomes is the NSW Magistrates Early Referral into Treatment (MERIT) program, including the regional version of the program and the Alcohol-MERIT program.⁷³

The MERIT program has proven its effectiveness in regional areas and has been successfully extended to include alcohol-dependent offenders in its remit. It has not, however, shown itself to be particularly strong with female offenders or offenders of Aboriginal and Torres Strait Islander descent. As these groups have proven to be especially difficult to target successfully at all stages of the intervention continuum, particular attention is needed to develop interventions that are both gender sensitive and culturally appropriate.

10.4 ADJOURNMENTS

Under the *Drugs Misuse Act 1986* (Qld), s 122A, where a person has been charged with a minor drug offence and has pleaded guilty to that offence, the court may, if the person is eligible under the *Police Powers and Responsibilities Act 2000* (Qld), s 379:

- offer the offender an opportunity to attend a 2 hour DDAP; or
- order the person to attend and complete a DDAP as directed by a police officer.

This provision allows the court to adjourn proceedings to a date fixed by the court and allows for judicial monitoring of the offender's progress on the order.

Under the *Penalties and Sentences Act 1991* (Qld), s 24 a court may adjourn the sentencing of an offender to a time and place ordered by a court, on a recognisance, on condition that the person appear before the court to be sentenced. An offender may be called upon to take steps to restore or reinstate property or compensate a victim,⁷⁴ but there are no specific provisions that would permit the court to attach conditions relating to the offender's underlying problems.

In a number of jurisdictions, a court may, before the taking of a plea of guilty or on a plea, conditionally adjourn proceedings to allow the offender to undergo assessment, treatment, education, training programs or other intervention programs. Courts generally have broad discretionary powers to adjourn proceedings conditionally.

In Victoria under the *Criminal Procedure Act 2009* (Vic), s 59 where the accused acknowledges responsibility for the offence to the court, and both the prosecution and defence consent, the court may adjourn the proceeding for up to 12 months to enable the offender to participate in a diversion program. A diversion program may contain a number of conditions such as those requiring the offender to apologise to the victim, make a donation or compensation, undertake voluntary work, an anger management course, a defensive driving course, drug and alcohol awareness, counselling or treatment programs or other conditions relating to the offender's behaviour. It is thus broader than the DDAP intervention.

10.5 DISCUSSION AND RECOMMENDATIONS

Queensland's pre-sentence, bail-based or bail-related programs present as a fragmented and uncoordinated set of initiatives commenced at different times, opportunistically funded, operating at courts where resources happened to be located rather than being strategically placed, with various legal foundations, target groups and intervention programs. They are in need of rationalisation to ensure that programs are delivered equitably

⁷³ Further information on QMERIT can be found at Appendix E 'Mapping Queensland's diversionary and specialist court interventions describes Queensland's current range of court-based interventions'.

⁷⁴ Penalties and Sentences Act 1991 (Qld), s 25.

across Queensland, are consistently funded and resourced and conform to the principles articulated in Chapter 2.

For example, while some programs, such as QMERIT, offer a high level of case management and support to people with alcohol and other drug issues, with a treatment duration that is consistent with best practice (a minimum of 90 days), case management is only a feature of programs such as QCR and QICR to the extent that the service provider or providers working with the clients assume this role as part of the provision of support. This can largely be attributed to the different levels of funding and reach of these programs, with QMERIT operating only out of the Maroochydore and Redcliffe Magistrates Courts from funding provided to Health and Hospital Services by the Department of Health. Whereas QICR is to operate in up to seven court locations and out of a budget of \$535,759 for 2016–17, which is intended to fund staffing costs for DJAG staff and program facilitators, brokerage for services as required and other program costs, including administrative expenses. As the QICR program relies on service providers to support the program through existing funding, establishment of the program in new court locations irrespective of need, requires a willing service sector and sufficient capacity in those services to support those referred.

10.5.1 Intervention programs

There are a number of substantially similar schemes that provide low-level interventions in Queensland, targeting offenders who are low risk and need. These are:

- the Police Diversion Program, which refers alleged offenders into the DDAP;⁷⁵
- the DAAR program, which refers offenders who are on bail to a DAAR course or as a condition of a recognisance order on sentence, in which a person's alcohol and other use is assessed and the person is given information about appropriate options for treatment and may be offered counselling or education;⁷⁶ and
- the Court Diversion Program, which refers offenders who enter into a recognisance order into a Drug and Alcohol Education Session (DAES) under the *Penalties and Sentences Act*, 1992. This session is similar to the DDAP.⁷⁷

In total, in 2015-16 over 15,000 brief interventions were delivered to offenders.

In terms of delivery, we believe that 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 instruments, should be considered.

Due to the essential similarity of the 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 rationalisation of the DDAP, the DAAR course and DAES to provide one consistent brief intervention program for low-level offenders. 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.

Information on the advantages and efficacy of brief interventions is provided at Section 8.5. Overall, analyses to date suggest that brief interventions appear to be a promising option for mild-to-moderate drug users however more intensive interventions still yielded greater outcomes than brief interventions, albeit at higher cost.

⁷⁵ In 2015-16, 9,428 offenders were referred by police into the DDAP.

⁷⁶ See Bail Act 1980 (Qld), s 11AB(6); Penalties and Sentences Act 1992 (Qld), s19(2B)

⁷⁷ In 2015-16, 5,769 defendants were assessed for the Court Diversion Program from which 5,310 recognisance orders were made.

Recommendation 5	Rationalising existing brief intervention programs for alcohol and other drug-related issues
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| 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: <ul style="list-style-type: none"> (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. |

10.5.2 Deferral of sentence

‘Deferral of sentencing is a power that allows the court to postpone the sentencing of an offender for a specified time, generally to allow the offender to address the underlying causes of their offending behaviour, to facilitate the offender’s rehabilitation or to allow the offender to take part in activities aimed at addressing the impact of the offending behaviour on the victim... This is not a sentencing disposition but a pre-sentencing option that ‘has the potential to allow the courts to deal with a wide range of less serious cases where the court needs time to consider the outcome or public or private treatment or other interventions, or the outcome of restorative justice conferences’ (TSAC Phasing out of Suspended Sentences Report 2016, p. 109).

The power to defer sentence is available in Victoria, NSW, South Australia, the ACT and WA and is under consideration in Tasmania.⁷⁸

Legislation governing deferral of sentence generally sets out the purposes of deferral. These purposes include allowing the court to assess the offender’s capacity for, and prospects of rehabilitation, to allow the offender to demonstrate that rehabilitation has taken place, to allow the offender to participate in a program or programs aimed at addressing the underlying causes of offending or for any other purpose. Other purposes may include restorative justice programs. A program may be designated generally in legislation as an ‘intervention program’ which may then be specified in subordinate legislation.

The benefits of permitting a court to defer sentencing are that it allows it more time to assess the appropriate sentence to be imposed upon an offender, it gives the offender an opportunity to demonstrate their rehabilitation, it allows an offender’s condition to be stabilised and it provides for restorative justice procedures to be used (TSAC 2016, pp. 110-111). The maximum period of deferrals is one to two years depending upon the jurisdiction.

King et al. (2014, p. 205) observe:

Adjournment, deferral and similar powers provided to the courts to enable them to judicially monitor the progress of defendants under a conditional sentence have been criticised for delaying proceedings and imposing unnecessary administrative burdens on the court system. Many judicial officers prefer to deal with cases only once and dispose of them quickly, particularly in high volume courts. However, the evidence that judicial monitoring and targeted and well-timed interventions can be beneficial both for offenders and for the criminal

⁷⁸ *Sentencing Act 1991* (Vic), s 83A; *Crimes (Sentencing) Act 2005* (ACT), Chapter 8; *Crimes (Sentencing Procedure Act) 1999* (NSW), s 11; *Sentencing Act 1995* (WA), ss 16 and 17; Sentencing Amendment Bill 2016 (Tas).

justice system outweighs the inconveniences that are caused by multiple appearances that a therapeutic approach requires.

10.5.3 Consultation

Although many stakeholders saw merit in deferred sentencing, there was not strong support for legislative power to defer sentences in Queensland. There are practical disadvantages to deferred sentencing such as the effect on performance and reporting as well as ensuring the sentencing magistrate is available to hear the sentence some time later. Deferring a sentence and allowing a defendant to complete an intervention program creates an expectation that they will avoid a harsher penalty such as imprisonment. This may not be the case and therefore concerns were raised during consultations that deferred sentencing should not be used if the person will be sentenced to imprisonment. Deferred sentencing to complete an intervention program that may be taken into consideration upon sentence may also create an inducement to plead guilty.

The largest concern amongst stakeholders was the impact that deferred sentencing may have on victims and the availability of witnesses. Victims are currently frustrated with the delays experienced in court, and deferred sentencing further delays court outcomes. It is important to manage the expectations of victims and ensure they are kept informed throughout the court process.⁷⁹

10.5.4 A generic and integrated assessment and referral process

We have observed above that QICR, QCR and QMERIT operate at a limited number of sites in the state, under different referral and service models and legal frameworks. As we have also documented, the number of offenders with problematic substance use throughout the state is growing and not confined to any particular area.⁸⁰ The range of services and service providers across the state varies widely. In our view, what is required is a new legal and service framework that will better support the future needs of Queensland's court users and address underlying issues associated with offending. What is required is 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. Such a program would not only support offenders with substance abuse problems but offenders with mental health, domestic violence, housing instability and employment problems.

To provide such a framework we recommended that consideration be given to the introduction of a generic integrated assessment and referral process based on the Victorian Court Integrated Services Program (CISP), which is said to represent one of the best of such programs. The CISP adopts many of the principles identified in the literature as best practice in addressing drug-related offending: it provides a coordinated, team-based approach to assessment and treatment, linking people with services such as alcohol and other drug treatment, crisis accommodation, disability services and mental health support, providing a holistic, wrap-around approach to addressing offenders' multiple and complex needs.

The CISP model recognises and addresses the complexity of issues often present with drug-related offenders, and streams offenders into different program levels to target people at different levels of risk and need. This matching of intervention level with individual need is a foundational principle for interventions to address drug-related offending. Gelb describes the scheme as follows (Gelb Appendix C):

[CISP] is currently operating in four Magistrates' Courts in both metropolitan and regional areas (the Latrobe Valley, Melbourne, Mildura and Sunshine).

⁷⁹ See section 1.6 discussing restorative justice and the rights of victims.

⁸⁰ See chapter 3

The CISP aims to:

- provide short term assistance before sentencing for accused with health and social needs;
- work on the causes of offending through individualised case management support;
- provide priority access to treatment and community support services; and
- reduce the likelihood of re-offending.

Target population

The program is aimed at medium- to high-risk people who can be helped via treatment and/or support. Eligibility criteria include:

- the accused must be charged with an offence;
- the accused person's history of offending or current offending indicates a likelihood of further offending;
- the matter before the court warrants intervention to reduce risk and address needs; and
- the accused has:
 - physical or mental disabilities or illnesses;
 - drug and alcohol dependency and misuse issues; or
 - inadequate social, family and economic support that contributes to the frequency or severity of their offending.

CISP is available regardless of whether a plea has been entered and regardless of whether the person intends to plead guilty. People are eligible if they have been brought before the court on summons or bail. While referrals may be made by several parties in the court, 75% of referrals have been found to be made by clients' legal representatives.

Operation

The CISP provides a multi-disciplinary team-based approach to assessment and referral, with the level of support based on the assessed needs of the individual. Medium- and high-risk participants receive case management for up to four months and there are specific services for Koori clients, such as the Koori Liaison Officer program.

A case management plan is developed with each person that details referrals and linkages into treatment and support. A case manager is assigned to review progress on the program, and the court may also decide to monitor progress. In this case, CISP staff report back to the court throughout the program.

Evaluation

An effectiveness evaluation found that CISP had achieved its targets, successfully matched the intensity of intervention to the risks and needs of its clients and had achieved a high rate of referral to treatment and support services. In terms of outcomes, CISP clients reported improvements in health and well-being and, compared with offenders at other court venues, CISP completers had a significantly lower rate of reoffending (Ross 2009). An economic evaluation found that CISP offered good value for money (PricewaterhouseCoopers 2009).⁸¹

⁸¹ As with all Benefit-cost-analyses (BCAs), the CISP BCA is subject to data gaps, data quality issues and reliance on proxy data. The accuracy of BCA results depends on the underpinning assumptions used to generate the BCA and the identification of a suitable comparison cohort. It is noted that the CISP applied a 10% reduction in recidivism. However, the CISP evaluation found that this reduction was not achieved until around 700 days after program completion (Ross 2009). The extent to which the 10% reduction in recidivism is applied is not apparent in reported BCA workings.

Key evaluation findings were as follows:

- Approximately 6 in 10 participants completed the program successfully. The most important factors in predicting non-completion were whether the offender was in custody at the time of being assessed for CISP, whether CISP was made a condition of bail, and the offender's level of accommodation stability at the time of CISP entry, all of which increased chances of program completion (Ross 2009).
- CISP made an average of 3.3 referrals to treatment and support services per participant in 2007 and 5.1 referrals in 2008 (Ross 2009).
- Sentence outcomes were influenced by whether or not offenders completed the CISP program. CISP completers were less likely to receive a custodial sentence than non-completers (9.3% versus 1.4%) (Ross 2009).
- Successful completion of CISP was taken into account at sentencing and CISP completers received an average of 8.0 days of imprisonment per client, while people in the control group received an average of 40.6 days imprisonment.
- Post-sentence order compliance was slightly higher among CISP completers (49%) than the control group (45%). This difference was not statistically significant (Ross 2009).
- CISP completers were less likely to reoffend. Half (50%) of CISP completers were classed as reoffenders compared with 64% of a control group. This difference was statistically significant (Ross 2009).
- CISP completers took longer to reoffend than the control group. However, differences were not statistically significant (Ross 2009).
- The majority of recidivist CISP completers committed a less serious offence than their CISP referral offence (PricewaterhouseCoopers 2009).
- there were differences in pre- and post- program SF-12 Physical Health Component Scores (which increased from 50 to 54) and Mental Health Component Scores (increasing from 38 to 45) (Ross 2009).
- Low housing stock meant that accommodation issues were rarely stabilised for CISP clients (Ross 2009).
- The economic analysis estimated that the benefit-cost-ratio ranged from 1.7 to 5.9. Benefits included avoided costs of sentencing, avoided costs of imprisonment, avoided costs of crime and avoided costs of order breach. The benefits of the CISP were estimated to exceed costs of the program if the 10% reduction in recidivism was maintained by participants for at least two years (PricewaterhouseCoopers 2009).

The CISP effectiveness evaluation also:

- referred to the range of program service approaches operating in the Victorian courts (including CREDIT/Bail Support, the Neighbourhood Justice Centre (NJC), drug court, Koori Court and the Family Violence Courts) and proposed that these approaches be reviewed with a view to creating a single court support function to underpin a range of clinical, support, referral, supervision and case management services to court clients;
- suggested that the CISP should not be made accountable for treatment goals beyond its direct control, instead program goals should be more concerned with the effectiveness of the referral process and maintaining clients' engagement with treatment programs; and
- noted that magistrates believed that a program such as CISP is integral to the delivery of therapeutic jurisprudence (Ross 2009).

The CISP model may well be applicable to the Queensland context as it attempts to create a cohesive approach to the provision of interventions to address drug-related offending. In the Queensland court system, such a 'court support services function' could be the primary point of contact for drug-related offenders, coordinating and facilitating early assessment that streams individuals into appropriate intervention pathways. Staff in this functional area could then coordinate the movement of offenders through the system, including providing linkages to service providers and organising appearances to report back to the magistrate. Within this functional area, a series of specialist roles could be developed, such as offender assessment, case management and perhaps victim counselling.

The total combined annual budget for CISP together with the Victorian CREDIT and current Bail Support Programs is \$6.9 million, which includes funding for 41 FTEs across 11 courts. The program is in the process of being extended to include an additional 13 FTEs at a total cost of \$2.3 million. These staff will be placed at existing program locations and a further three courts.

Similarly, Victorian Magistrate Pauline Spencer has written of an Integrating Court Framework that has been developed in Victoria by the Department of Justice as a strategic planning tool, but which has not yet been endorsed by the Department (as at 2012: Spencer 2012, p. 95). This framework provides that such a program would:

- undertake a triage process to identify, at the earliest opportunity, court participants who:
 - may benefit from being connected to community-based services and help connect them to these services and/or may benefit from referrals to legal services available through Victoria LAQ or community legal centres; and
 - may be suitable and eligible for court-based (offender) programs, family violence and sexual assault support or victim services and to connect people to these for assessment/intake (or subsequent referral to community-based services);
- consider the needs of victims to navigate through court processes and provide better links to family violence, sexual assault and victim support services in the community;
- utilise magistrate-led problem-solving approaches in the courtroom where appropriate;
- provide specialist support services located at the court and through funded outreach to assist accused people and victims of crime;
- obtain information on how to address underlying problems leading to a person repeatedly offending or being highly likely to re-offend from relevant services and through training and professional development;
- use a collaborative and less adversarial process and adopt a team-based approach between legal aid, police, corrections, court staff and community agencies and services to work with an offender to address the underlying causes of their offending; and
- monitor and review the program of offenders, whether on bail, pre-sentence or post-sentence in appropriate cases.

It is recommended that consideration be given to creating a single referral and support scheme (Queensland Integrated Assessment and Referral Program [QIARP]) that addresses a range of problems faced by offenders including drugs, alcohol, mental health, impaired decision making, housing, employment and others in Queensland.

The QIARP would replace QICR, QCR and QMERIT. Based on the Victorian CISP program, QIARP could build on the existing QICR model to include the engagement of court managers employed by the court. The interventions delivered as part of the existing programs 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.

Stakeholders indicated strong support for a CISP model in Queensland. Specific mention was made for CISP to make referrals to general practitioners, who are currently under-utilised. Referrals to general practitioners are important for early intervention and particularly for Aboriginal and Torres Strait Islander offenders.

Recommendation 6	A single generic integrated court assessment, referral and support program for Queensland
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<p>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.</p>

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.

10.5.5 A continuum of pre-sentence legal options

We have identified a number points along the criminal justice continuum to this point at which various forms of intervention can occur from pre-arrest, to arrest, to bail to consideration of sentence. In conformity with the principles outlined in Chapter 2 we believe that these interventions should be proportionate and parsimonious so that the degree of intervention reflects the seriousness of the offence alleged or proven, the purpose of the proceeding, the nature and extent of the risk that the offender poses and their risk to the community.

The proposed QIARP, which can operate pre-plea and with or without bail, should be relatively brief, preferably up to around 16 weeks. Similarly, bail-related programs should be of around this length.

Where a longer period is required for assessment, referral treatment or rehabilitation, the courts could employ their common law or statutory power to adjourn proceedings for these purposes for a period up to, for example, six months. They would be granted power to impose conditions upon the adjournment or the bail option could be used.

Where an extensive period is required for assessment, referral to treatment or rehabilitation and for a range of other purposes as outlined above⁸² courts, including the District Court, should be provided with a statutory power to defer sentence for up to 12 months.

10.5.6 Interventions

In this Review we have distinguished assessment and referral programs from substantive measures that provide education, rehabilitation, treatment or behaviour change programs that are provided by health services, both public and private. In our view, at present, there is a degree of confusion between referral programs and substantive intervention programs. Where an intervention program is one that requires a person to participate in a specific and identifiable program that is intended to address their underlying behavioural problem or problems,⁸³ that program should be specifically identified, approved and legislatively supported.

Programs such as the DAES and the DAAR are examples of stand-alone intervention programs.⁸⁴ Some Queensland intervention programs have been statutorily recognised.⁸⁵

We recommend that in relation to drug- and alcohol-related intervention programs (or any criminal justice program that is not a condition of sentence), a general, authorising provision be enacted that creates the framework for an intervention program.

The details of such programs could be spelled out in regulations and deal with such matters as:⁸⁶

- the offences in respect of which an intervention program may be conducted;
- eligibility to participate in an intervention program;
- the nature and content of the measures constituting an intervention program;
- the purposes and objectives of an intervention program, and the principles guiding an intervention program;
- assessment of the suitability of a person to participate in an intervention program, or of a person's capacity or prospects for participation in an intervention program;
- the conduct of investigations and the preparation of reports as to a person's suitability, capacity or prospects for participation in an intervention program;
- the provision of reports as to a person's suitability, capacity or prospects for participation in an intervention program;

⁸² See section 10.5.2

⁸³ Compare this with a generic assessment and treatment intervention such as CISP

⁸⁴ However, they may also provide a referral mechanism to another intervention program, which creates a degree of confusion.

⁸⁵ See e.g. *Domestic and Family Violence Protection Act 2012* (Qld), s 75 with respect to Men's Perpetrator Behaviour Change programs. For a list of such approved programs see <https://www.qld.gov.au/community/documents/getting-support-health-social-issue/approved-providers-and-intervention-programs.pdf/>

⁸⁶ See e.g. *Criminal Procedure Act 1986* (NSW), s 347. A number of intervention programs have been identified in the *Criminal Procedure Regulation 2010* (NSW) including circle sentencing, forum sentencing and the traffic offender intervention program.

- the persons, bodies or organisations who may participate in an intervention program or intervention plan (in addition to the offender or accused person);
- the role of particular persons, bodies or organisations in the conduct of an intervention program or intervention plan;
- restrictions or conditions on participation in an intervention program (including legal representation of offenders or accused persons who participate in an intervention program);
- the development and implementation of intervention plans arising out of an intervention program, including restrictions or conditions on intervention plans;
- procedures for notification of courts or other persons, bodies or organisations of a decision of a person not to participate in, or to continue to participate in, an intervention program or intervention plan;
- the content and keeping of records in connection with an intervention program or intervention plan;
- the monitoring and evaluation of, or research into, the operation and effect of an intervention program or intervention plan;
- the issuing of guidelines with respect to the conduct or operation of an intervention program or intervention plan;
- authorising the participation of persons who are in custody in an intervention program or intervention plan; and
- any other matter relating to the conduct or operation of an intervention program or intervention plan.

Adopting such a procedure would bring a degree of rigour to the design, introduction, operation and evaluation of intervention programs that is missing from current practices. In the present context, namely substance abuse, an intervention program could be determined by an Interagency Consultative Committee comprised of magistrates and mental health, alcohol and other drug services, police, corrections, prosecutions, legal and victims' representatives.

Under this proposed structure, a Gazetted Intervention Program could be attached to the PPRA, s 379, or made a condition of bail, adjournment or deferral of sentence. Programs could be added or removed depending upon their availability, efficacy or efficiency.

10.5.7 Consultation

There was strong support from stakeholders for the establishment of approved intervention programs and for them to be evidence-based with a clear program logic outlining their purposes and objectives. It was considered that such a process would give judicial officers confidence in making referrals to approved programs, knowing that they have been through an accreditation process.

10.5.8 Recommendation

Recommendation 7 **Need for a general, authorising provision to be enacted that creates the framework for an intervention program relating to problematic substance use**

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.

11 CRIMINAL JUSTICE FRAMEWORK – SENTENCING DISPOSITIONS

11.1 RELEASE ON RECOGNISANCE

A court may order an offender complete a DAAR course or attend a drug assessment and education session or participate in the QICR program upon sentencing the offender to a recognisance order under section 19 *Penalties and Sentences Act 1992* (Qld).

Penalties and Sentences Act 1992 (Qld), s 19(1)(b) provides that a court may make an order that the offender be released if the offender enters into a recognisance on the condition that the offender must:

- be of good behaviour; and
- appear for conviction and sentence if called on at any time during such period (not longer than 3 years) as is stated in the order.

In making an order under subsection (1)(b), the court may impose any additional conditions that it considers appropriate (*Penalties and Sentences Act 1992*, s 19(2)). An additional condition that may be imposed by the court is for the offender to participate in the QICR program.

Penalties and Sentences Act 1992 (Qld), s 19(2A) provides that a court may impose a condition on a recognisance order that the offender who has been charged with an eligible drug offence⁸⁷ must attend a drug assessment and education session by a stated date (a drug diversion condition) if—

- the court is a drug diversion court [defined as a court prescribed under a regulation, being each Magistrates Court and each Childrens Court constituted by a magistrate]⁸⁸ and
- the offender is an eligible drug offender⁸⁹; and
- the offender consents to attending a drug assessment and education session.

Furthermore, *Penalties and Sentences Act 1992* (Qld), s 19(2B) provides that without limiting subsection (2) or (2A), if the offender consents to completing a DAAR course, the court may impose a condition (a DAAR condition) that the offender complete a DAAR course by a stated day.

Under our proposed scheme, *Penalties and Sentences Act 1992* (Qld), s 19(2A) would be amended to provide that a court could order that an offender undertake a prescribed intervention program, suitable for that individual's needs. This mechanism provides courts and administrators with greater flexibility as the nature of the intervention program can be changed by regulation rather than by amendment to the Act itself.

We would also suggest that, rather than participation in the QICR program being a condition of a recognisance order, reference be confined to a prescribed intervention program, of which QICR may be one if it meets the prescribed criteria.

⁸⁷ Defined in *Penalties and Sentences Act 1992* (Qld), s 15D

⁸⁸ *Penalties and Sentences Act 1992* (Qld), s 15B.

⁸⁹ Defined in *Penalties and Sentences Act 1992* (Qld), s 15C.

11.2 PROBATION ORDERS

Under *Penalties and Sentencing Act 1992* (Qld) ss 90 and 91, a court may make a probation order whether or not it records a conviction.

A probation order must contain a number of general requirements, including that the offender must take part in counselling and satisfactorily attend other programs as directed by the court or an authorised corrective services officer during the period of the order (*Penalties and Sentencing Act 1992* (Qld), s 93(1)(d)).

A court may add an additional requirement that the offender: (*Penalties and Sentencing Act 1992* (Qld), s 94

- (a) submit to medical, psychiatric or psychological treatment; and
- (b) comply, during the whole or part of the period of the order, with the conditions that the court considers are necessary—
 - (i) to cause the offender to behave in a way that is acceptable to the community; or
 - (ii) to stop the offender from again committing the offence for which the order was made; or
 - (iii) to stop the offender from committing other offences.

Participation in QICR may be required as a condition of a probation order.

11.3 INTENSIVE CORRECTION ORDER

Under *Penalties and Sentences Act 1992* (Qld), s 112 if a court sentences an offender to a term of imprisonment of one year or less, it may make an intensive correction order (ICO).

An ICO must contain a number of general requirements, including that the offender:

- (a) must take part in counselling and satisfactorily attend other programs as directed by the court or an authorised corrective services officer during the period of the order (*Penalties and Sentencing Act 1992* (Qld), s 114(1)(d)).
- (b) must, during the period of the order, if an authorised corrective services officer directs, reside at community residential facilities for periods (not longer than 7 days at a time) that the officer directs (*Penalties and Sentencing Act 1992* (Qld), s 114(1)(f)).

A court may add an additional requirement that the offender (*Penalties and Sentencing Act 1992* (Qld), s 115)

- (a) submit to medical, psychiatric or psychological treatment; and
- (b) comply, during the whole or part of the period of the order, with the conditions that the court considers are necessary—
 - (i) to cause the offender to behave in a way that is acceptable to the community; or
 - (ii) to stop the offender from again committing the offence for which the order was made; or
 - (iii) to stop the offender from committing other offences.

11.4 PROGRAMS FOR PROBATION ORDERS AND INTENSIVE CORRECTION ORDERS

Queensland Corrective Services advises that offenders are currently supervised at a level consistent with the result of their RoR-PPV or RoR-PV. Supervision levels include low, standard, enhanced, intensive and extreme.

In formulating offender case plans for community-based offenders, Probation Officers primarily refer offenders to external organisations (e.g. Queensland Health Alcohol, Tobacco, and Other Drugs Service (ATODS) and NGOs for support services and to address their criminogenic and non-criminogenic issues. Offenders with substance use issues may also be subject to urinalysis.

Queensland Corrective Services offers a limited range of structured group work programs to offenders to address problematic substance use issues.

The current suite of alcohol and other drug programs offered includes:

- short psycho-educational programs (8 hours);
- psycho-educational programs (16-20 hours);
- 'Criminal Conduct and Substance Abuse: Pathways to Self-Discovery and Change' Program (120 total hours including 50 hours 'challenges to change'); and
- Moral Reconation Therapy program.

The average 'custodial stay' of 130 days for prisoners and poor retention rates in community-based programs make it difficult for QCS to provide intensive CBT-based programs.

11.5 CONSULTATION

Consultation was undertaken on the effectiveness of current sentencing orders available in Queensland. There were mixed views on the use of probation orders. Some stakeholders considered probation orders to be ineffective because they are sufficiently focused, as were the drug court orders. Magistrates had limited confidence that specific conditions attached to orders were actually observed or delivered as there is no court monitoring of the order.

Some consultees remarked that while the structure of the order is unproblematic, what was missing was the service provision to support the offender while they are on the order.

The use of the ICO is very limited and stakeholders indicated that the 12-month order is too short. As with probation orders, there were some concerns about the level of supervision of the defendant and referral to programs to address the underlying causes of their offending. As a result, court-ordered parole is being used as an intermediate order with imprisonment as the default. This has resulted in net-widening for offenders who would otherwise have been placed on a community-based order.

Stakeholders noted that people who were once eligible for drug court are now placed on probation, court-ordered parole or imprisoned with no support to address their alcohol and other drug dependency and other associated issues. Concerns were raised that Queensland Corrective Services do not have the funding and resources to supervise, support and case manage the offender and ensure that appropriate programs are completed.

Some legal stakeholders supported a better range of sentencing options being available, including a robust sentencing order in the Supreme and District Court as well as the Magistrates Court. A current problem in the District Court is the delay in hearing breach matters, which may take up to six to 12 months if the offence is first heard in the Magistrates Court. There is no swift and certain punishment for breaches of community-based orders ordered in the Supreme and District Court.

There was also support by some magistrates consulted to see a return to the making of specific orders about the courses, treatments and/or programs that offenders should complete rather than making a general order for Queensland Corrective Services to determine what is suitable for the offender.

11.6 A MORE COMPREHENSIVE COMMUNITY-BASED ORDER

There appear to be two fundamental problems in the use of the probation and intensive correction orders. The first relates to the structure of the orders and the second relates to the delivery of services.

In relation to the first, there is a need for a more detailed and structured order that provides a similar framework for alcohol and other drug offenders whose offences are less serious, and whose risk is lower, than those offenders who would be appropriate for a Drug Treatment Order (DTO). In relation to the second, it is essential that appropriate treatment services be provided to people on community-based orders.

DTOs will be reserved for the most serious offenders and resource limitations will mean that at best only some 100-150 people will be on these orders at any one time. In June 2016 there were 18,919 persons on some form of community corrections order in Queensland (ABS 2016 June Quarter). They far outnumber the 5,495

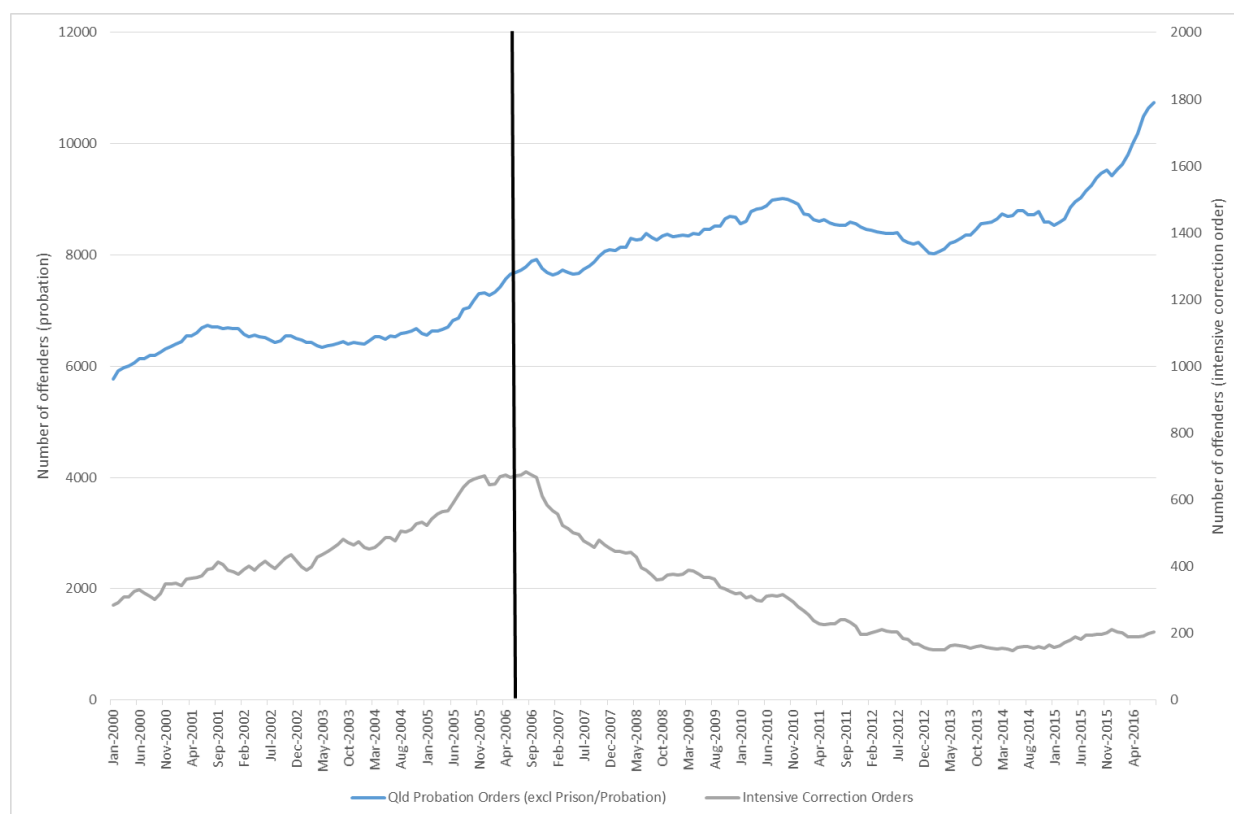
prisoners in custody at that time and will continue to be the major sentencing option for offenders, even if a DTO regime is introduced. Community corrections are thus of major significance in the management of offenders, many of whom have substance abuse problems and who need a moderate level of intervention.

The number of offenders on probation and intensive correction orders (as their most serious order) between January 2000 and August 2016 is shown in Figure 27. This shows a decline in the use of intensive correction orders after the introduction of court-ordered parole in August 2006. This decline followed a period of growth.

The majority of offenders supervised in the community are on probation orders. Overall there has been a rise in the number of offenders on probation (as their most serious order) since 2000, with some decline between 2010 and 2012, and substantial growth after 2015.

The number of offenders on intensive correction orders is very small when compared with the use of probation orders. For example, there were just under 200 offenders on an intensive correction order (as their most serious order) on 30 June 2016, compared with around 10,500 offenders on probation orders (as their most serious order).

Figure 27: Number of distinct offenders on probation and intensive correction orders (as most serious order), January 2000 to August 2016, Queensland



Source: QCS administrative data

Note: Number of offenders represents the number of offenders on the last day of the month.

Both probation orders and intensive correction orders provide the courts and correction officers with a limited range of powers over offenders. 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 (CCO), which replaced the community-based order and the combined custody and treatment order. Tasmania has 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 such as:

- 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;
- alcohol exclusion is imposed on the offender;
- a curfew is imposed on the offender;
- non-association; and
- place restrictions.

The advantage of a more detailed order such as this 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 drug court resources 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 review the operation of the *Penalties and Sentences Act* 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. In the latter case, it is evident that the order is infrequently used due to time and other limitations.

The case for a broader order is made by both the Victorian and Tasmanian Sentencing Advisory Councils. In Victoria, the assessment and treatment conditions are used in 80% of all orders in the Magistrates' Court.

In our view, judicial officers should be provided with a broader range of sentencing options for alcohol- and drug-related offences in the moderate range, in particular, ones that may allow for judicial monitoring, in line with the evidence of its importance and efficacy in the therapeutic jurisprudence literature. This is also consistent with our view that these principles and practices should be mainstreamed for both practical and theoretical reasons.⁹⁰ Either more, or more appropriate, conditions should be added to probation and intensive correction orders or a new order could be created.

11.7 PROBATION FOLLOWING IMPRISONMENT

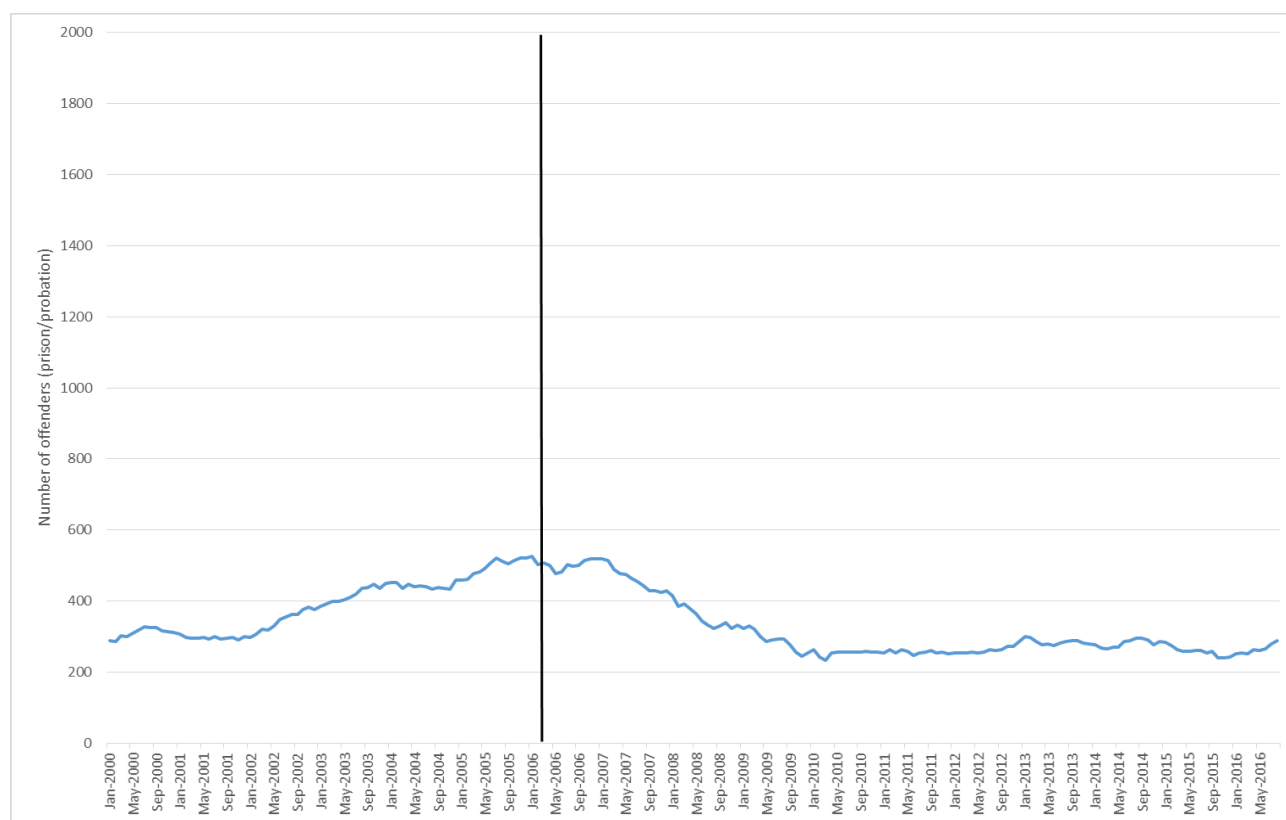
An offender who has been sentenced to imprisonment for not longer than one year may be placed on a probation order for not less than nine months or more than three years (*Penalties and Sentences Act 1992* (Qld), s 92).

The conditions of a probation order following imprisonment are the same as those where probation is not linked to imprisonment. This order has some similarities with partly [conditionally] suspended sentences that operate or have operated in other jurisdictions and allow for a period of imprisonment to be followed by a form of supervision possibly less onerous than parole.

The number of offenders on prison/probation as their most serious order supervised by QCS between January 2000 and August 2016 is shown in Figure 28. Similar to intensive correction orders, prison/probation orders represent a small proportion of total orders and their use has been in decline since the introduction of court-ordered parole. There were 265 offenders on prison/probation on 30 June 2016.

⁹⁰ See section 1.5.

Figure 28: Number of offenders sentenced to prison/probation (as most serious order), January 2000 to August 2016, Queensland



Source: QCS administrative data.

Note: Number of offenders represents the number of offenders on the last day of the month.

There is a question as to whether this additional form of ‘combined’ or mixed sanction is needed in these terms. In Victoria, and soon in Tasmania, the CCO can be combined with a custodial sentence of up to two years. From 2017, the maximum period of imprisonment will be one year. In Victoria the CCO can, in the higher courts, be imposed for a period equivalent to the statutory maximum period of imprisonment for that offence. From 2017, the maximum length of a CCO will be five years in the higher courts. In the Magistrates’ Court the maximum period of the CCO combined with imprisonment is three years. In Tasmania the maximum period will also be three years.⁹¹ The ‘combined’ sentence has proved to be very popular with the courts, providing them with a mix of sentencing purposes (punishment, rehabilitation, incapacitation and deterrence) and with control over the fate of the offender. In Victoria, short terms of imprisonment followed by parole (i.e. imprisonment of one to two years) have almost disappeared to be replaced by imprisonment followed by a CCO. In these circumstances release is determined by the court, not the parole board, which is left with the responsibility of dealing with more serious offenders.

If the present provisions in Queensland are being under-utilised or inappropriately used, one option is to abolish them altogether. Another option is to revise the scope of the probation order to make it more useful for post-release supervision for substance abusing offenders. A third option is to adopt the Victorian and Tasmanian options of a combined imprisonment plus CCO.

⁹¹ A number of very serious offences such as murder, rape, persistent sexual abuse of a child under 16 and, trafficking large commercial quantities of drugs of dependence will not be eligible for a CCO after 2017.

11.8 EVALUATIONS OF SENTENCING INTERVENTIONS

Few evaluations have been undertaken of specific approaches in a given jurisdiction, although analyses of recidivism following different sentence types has generally shown that the most severe sentences – imprisonment in particular – have the worst reoffending outcomes. Without robust evaluations, it is difficult to state definitively if specific approaches are effective at reducing reoffending.

When considering court-based interventions, a number of key features of successful programs may be identified. These include:

- early assessment of offenders to ensure the most appropriate intervention pathway is followed –
- clear and broad eligibility criteria that allow streaming of people based on their assessed risk, needs and responsivity;
- 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.

Even with interventions of varying intensity, these features remain relevant and can be tailored to suit specific operational requirements. For example, both treatment duration and case management supervision levels can be adjusted based on the operation of the specific intervention and its offender profiles. There is thus scope for flexibility in matching program design to local environments, while still adhering to the broad principles of successful court-based interventions.

11.9 RECOMMENDATIONS

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.

12 CRIMINAL JUSTICE FRAMEWORK – POST CUSTODIAL ORDERS

12.1 INTRODUCTION

In Queensland, offenders sentenced to an immediate term of imprisonment are generally released to parole either by means of a court order (known as ‘court-ordered parole’) or a decision made by a parole board (known as ‘board ordered parole’).

The purposes of parole are to supervise and support the reintegration of offenders into the community and through supervised release, to reduce the risk that offenders will commit further offences on their release into the community.

The availability of court-ordered parole is particularly relevant to the reinstatement of a drug court as clients who may have otherwise been subject to court-ordered parole may have the choice of instead opting for participation in the drug court and, conversely, offenders sentenced to a Drug Treatment Order may withdraw from the program in preference to court-ordered parole which they may regard as a less onerous option.

12.2 COURT-ORDERED PAROLE

Under section 160B of the *Penalties and Sentence Act 1992* (Qld), courts are required to fix a date for an offender to be released on parole provided:

- the term of imprisonment imposed is no longer than 3 years;
- the sentence does not include a term of imprisonment imposed for a sexual offence or for a serious violence offence (which for shorter sentences of under 5 years means that the offender has not been convicted on indictment of an offence that involves serious violence or resulted in serious harm to another person which the court has declared is a conviction for a serious violent offence in accordance with s 161A and 161B(4) of the Act); and
- the offender has not had a court-ordered parole order cancelled under the *Corrective Services Act 2006*, ss 205 or 209 during the offender’s period of imprisonment.

Under section 160G of the *Penalties and Sentences Act 1992*, a sentencing court has discretion as to what day is fixed as the date that the offender is to be released to parole. For example, a court may fix the parole release date to be:

- the same date as sentencing; or
- a date occurring during the period of imprisonment; or
- on the last day of the sentence.

An offender must be released to parole on the date fixed by the court, unless remanded in custody for further charges. If the court fixes the date of sentence as the parole release date, the offender is immediately subject to a court ordered parole order.

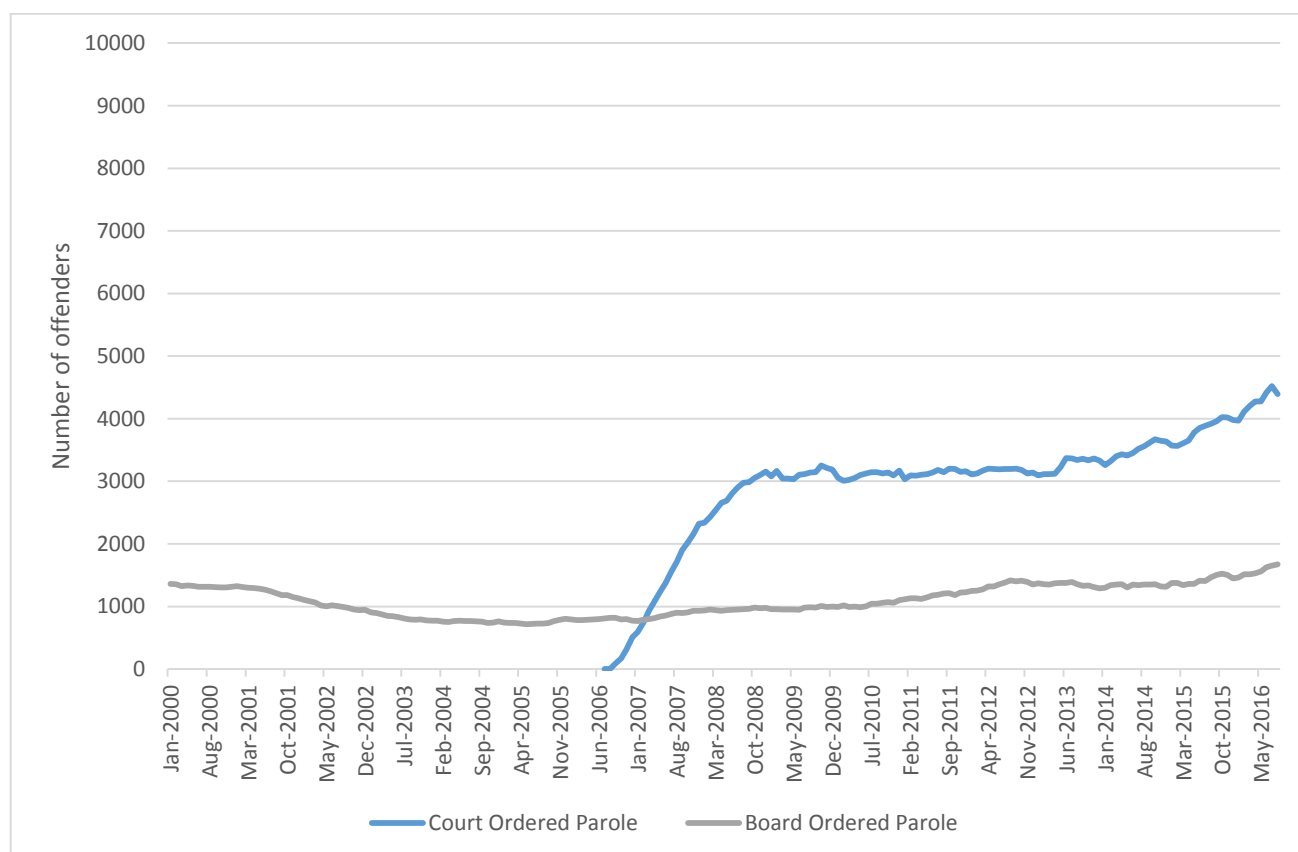
An offender on court ordered parole is subject to the standard conditions of a parole order which also apply to parole orders made by a parole board. The standard conditions of a parole order under section 200(1) of the *Corrective Services Act 2000* (Qld) are that the person who is subject to the order must:

- be under the chief executive’s supervision until the end of the period of imprisonment;
- carry out the chief executive’s lawful instructions;
- give a test sample if required to do so;
- report to, and receive visits, as directed;
- notify every change in address or employment within 48 hours of the change; and
- not commit an offence.

The number of offenders on court ordered parole (as most serious order) between August 2006 and August 2016 is shown in Figure 29. The courts favored sentences of immediate imprisonment with court-ordered

parole over other types of orders (such as prison/probation and intensive correction orders) and its use increased rapidly after its introduction in 2006 until stabilising at the end of 2008. The use of court ordered parole then increased again after mid-2014. This latter increase coincides with the relatively high growth in the number of offenders (especially where an illicit drug offence is the principal offence) coming into contact with the criminal justice system reported in Chapters 3 and 4.

Figure 29: Number of offenders on court ordered parole and board ordered parole (as most serious order), August 2006 to August 2016, Queensland



Source: QCS administrative data.

Note: Number of offenders represent the number of offenders on last day of month.

Most offenders sentenced to imprisonment will serve court ordered parole and a large proportion of these offenders do not serve time in custody. For example, in 2015–16, 44% of offenders sentenced to court ordered parole did not serve any time in custody (either on remand or under sentence) and were released to parole straight from court.⁹² There is a question whether these offenders would have received a sentence of imprisonment if the provisions for court-ordered parole did not exist, that is, whether this sanction has led to sentence escalation. The average length of stay in custody for those offenders who do serve time in custody (either on remand or under sentenced) before being released to parole is four months.⁹³

On average, 8 per 100 court ordered parole orders were suspended by QCS each month in 2015–16. The main reason for order suspension was the determination that the offender posed an unacceptable risk of committing a further offence. However, the majority of offenders on court ordered parole are not suspended

⁹² QCS administrative data prepared by QCS.

⁹³ QCS administrative data prepared by QCS.

and therefore are not returned to custody under order suspension. The average number of times an offender is returned to custody under a suspension of court ordered parole was 0.55 for those offenders completing their order, 1.15 times for those failing their order and 0.36 times for those successfully completing their order.

⁹⁴ QCS estimate that 20% of court ordered parole suspensions in 2015–16 result in the order’s cancellation.⁹⁵

12.2.1 Consultation

Feedback received during consultations on the review suggested that when court ordered parole was introduced, some offenders who had agreed to participate in the Drug Court self-terminated from the program in the hope their participation would be taken into account in sentencing and that they would likely receive a sentence of imprisonment with court ordered parole (which can commence on the date of sentence). Although these offenders assumed that the requirement of court ordered parole would be far less onerous, it was recognised that this could result in poorer outcome for these offenders who lost priority access to services and the high level of support offered under the Drug Court program, as well as facing significant repercussions for breach.

It was generally agreed that while counter-productive to the goals of the program, court-ordered parole should continue to be available to offenders whose drug dependency has contributed to their offending as an alternative to participation in the Drug Court. On terminating from the program, there was also support for court-ordered parole being available to these offenders on the basis of equity and fairness.

12.3 PAROLE BOARD ORDERED PAROLE

In addition to the standard parole conditions, a parole order granted by a parole board may also contain additional conditions that a parole board reasonably considers necessary to ensure the prisoner’s good conduct or to stop the prisoner committing an offence (*Corrective Services Act (Qld)*, s 200(2)). For example, the parole board can attach conditions imposing a curfew for the prisoner, specifying where the person must live or relating to their employment or participation in a particular program, or requiring them to give a test sample. There are no identified special conditions relating to treatment, albeit that the general provision supporting additional conditions being attached would allow such conditions to be attached.

Although the number of offenders on board ordered parole is not as high as the number of offenders of court ordered parole, the number offenders on court ordered parole and board ordered parole both increased by 15% between 2014–2015 and 2015–16 (see Figure 29). Although the number of offenders on board ordered parole is not as high as the number of offenders of court ordered parole, the number offenders on court ordered parole and board ordered parole both increased by 15% between 2014–2015 and 2015–16 (see Figure 29). Although the number of offenders on board ordered parole is not as high as the number of offenders of court ordered parole, the number offenders on court ordered parole and board ordered parole both increased by 15% between 2014–2015 and 2015–16 (see Figure 29).

12.4 RECOMMENDATIONS

A separate review of the parole system in Queensland has recently been commissioned by the Honourable Anastacia Palaszczuk MP, Premier and Minister for the Arts and the Honourable Bill Byrne MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services and is due to report later this year. The review, which is being led by Mr Walter Sofronoff QC, is examining all facets of the parole system in Queensland, including the operation of court-ordered and parole ordered parole.

As discussed in Chapter 3, just under two-thirds (65%) of offenders sentenced to imprisonment are assessed as having a high risk of substance misuse, compared to around half (51%) of all offenders sentenced to

⁹⁴ QCS administrative data prepared by QCS.

⁹⁵ QCS administrative data prepared by QCS.

probation. Alcohol and other drug issues also often co-occur with other criminogenic risk factors, such as mental health issues and housing and employment instability.

As the operation of parole is outside scope of the review, we do not make any specific recommendations in this regard apart from suggesting that the service levels provided to offenders subject to parole supervision be sufficient to meet an offender's assessed risk and need and additional resourcing be considered to support this outcome.

A closer level of equivalency between the treatment and supervision provided to high risk, high needs offenders subject to either court ordered or board ordered parole should theoretically provide less of an incentive for offenders to opt out of the Drug Court program where they will receive additional levels of support. It should also promote greater community safety through the rehabilitation of offenders who are sentenced and managed outside of the Drug Court program. However, the interaction between the proposed DTO and court-ordered parole is likely to remain problematic.

Recommendation 9	Offenders with problematic drug use issues subject to parole supervision are provided with levels of treatment that are commensurate with their assessed risk and needs
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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.

13 CRIMINAL JUSTICE FRAMEWORK – MEETING THE NEEDS OF ABORIGINAL AND TORRES STRAIT ISLANDER OFFENDERS

13.1 OVERREPRESENTATION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

Aboriginal and Torres Strait Islanders are overrepresented in all areas 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 2015.⁹⁶ In 2015, there were 13 times more Aboriginal and Torres Strait Islanders per head of population in custody than non-Indigenous people (AIHW 2016a).

As part of the Review's efforts to minimise the impact of the criminal justice system on Aboriginal and Torres Strait Islander offenders, this chapter examines Queensland's responses to Aboriginal and Torres Strait Islander drug- and alcohol-related offending and recommends the expansion of culturally-appropriate programs, interventions and sentencing orders.

13.2 THE INVOLVEMENT OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE IN DIVERSION PROGRAMS

While a person's contact with or progression through the justice system can be reduced through diversion programs, Aboriginal and Torres Strait Islander people have lower participation and completion rates in diversion programs, particularly among those who access mainstream programs (AIHW 2013). Research has also shown higher re-offending rates than their non-Indigenous counterparts following their participation in and completion of a mainstream diversionary program (Joudo 2008; Potas et al. 2003).

Access is also a contributory factor in the underrepresentation of Aboriginal and Torres Strait Islander offenders in diversion programs. This can relate both to barriers created by strict program eligibility criteria as well as geographical disadvantage, as specialist programs are often not located in areas in which many Aboriginal and Torres Strait Islander offenders reside.

Eligibility criteria often require a defendant to plead guilty to an offence, are targeted at individuals with a limited criminal history and have restrictions in relation to the type and severity of the offence(s) committed. Thus, eligibility criteria can unwittingly create the most significant barriers to Aboriginal and Torres Strait Islander people accessing mainstream diversion programs (AIHW 2013, p.12). In the former drug court in Queensland, for example, the referral of Indigenous offenders (approximately 10 percent of all referrals) was lower than anticipated in all five courts (Payne 2008), but in particular in the northern courts of Cairns and Townsville (Payne 2005). At the time of evaluation, the application of eligibility criteria that inadvertently prohibited many Indigenous offenders from participating on the drug court program – including violent offending histories, alcohol abuse, and residential status – was one of the factors contributing to the lower than expected referral rates.

Other factors cited by the Australian Institute of Health and Welfare (AIHW) as contributing to the lack of access to or use of mainstream diversionary programs by Aboriginal and Torres Strait Islander people include:

- inadequate understanding of the legal system and its diversionary processes;
- refusal of bail, therefore making people ineligible to participate;

⁹⁶ Aboriginal and Torres Strait Islanders represented 3.6% of Queensland's total population in 2011 (ABS, Census of Population and Housing, 2011, Indigenous profile).

- living in a community that does not have a relevant program;
- difficulty accessing regional programs due to lack of transport, the distances involved and/or road closures during the wet season;
- limited support for the program by magistrates, lawyers and other court staff;
- poor communication and engagement by police, magistrates and solicitors with the offender;
- cultural issues such as the age and sex of the counsellor; and
- inconsistent use of discretion by authorities to divert a defendant.

13.3 INDIGENOUS COURTS

Indigenous courts were developed as a way of providing culturally appropriate and meaningful criminal justice responses to offenders of Aboriginal or Torres Strait Islander background. Versions of these courts have been implemented in the US, Canada, New Zealand and a number of jurisdictions in Australia, including the Koori Court in Victoria (in Magistrates' Court, Childrens Court and County Court jurisdictions), the Nunga Court in South Australia's Magistrates Court, and the newly reinstated Murri Court in Queensland's Magistrates Court. There are also various circle sentencing approaches and community courts in other jurisdictions.

13.4 MURRI COURT, QUEENSLAND

In 2016, Murri Court has been reinstated in Rockhampton, Brisbane, Caboolture, Cairns, Cherbourg, Cleveland, Inala, Mackay, Mount Isa, St George, Toowoomba, Townsville, and Wynnum Magistrates Courts.

The Murri Court is a culturally appropriate court process that respects and acknowledges Aboriginal and Torres Strait Islander culture and provides an opportunity for members of the Aboriginal and Torres Strait Islander community (including Elders and victims) to participate in the court process.

A pre-sentence bail-based diversion, the Murri Court enables eligible defendants to address the underlying contributors to their offending. When proceeding to sentence the defendant in accordance with the *Penalties and Sentences Act 1992* (Qld) or the *Youth Justice Act 1992* (Qld), the magistrate is able to take the successful completion of the program into consideration in mitigation.

While the Murri Court accepts defendants with alcohol and other drug issues, the court does not have a specific alcohol and other drug focus.

In 2014–15, 466 Aboriginal and Torres Strait Islander defendants were referred to the Indigenous Sentencing List (ISL) (predated the reinstatement of the Murri Court) and 78% of these referrals (365) were accepted. The average age of defendants referred to the ISL was 31 years and the majority were men (77%).

13.5 QUEENSLAND INDIGENOUS ALCOHOL AND DIVERSION PROGRAM (QIADP)

The Queensland Indigenous Alcohol Diversion Program (QIADP) was a voluntary treatment program for Aboriginal and Torres Strait Islander peoples who appeared in either the Magistrates Court for alcohol related offences, or the Childrens Court for child protection matters where alcohol use played a part.

A three-year pilot of QIADP commenced in July 2007 in three locations (Cairns, including Yarrabah; Townsville, including Palm Island; and Rockhampton, including Woorabinda) and eventually ceased operation in December 2012.

QIADP involved various Queensland government departments and agencies, including QH, QPS and QCS.

Participants were referred to the program through the criminal justice or the child protection systems. The program had two streams:

- criminal justice stream: alcohol and other drug treatment was offered to Aboriginal and Torres Strait Islander people charged with criminal offences while they were on bail, and operated as a bail-based diversionary program; and
- child safety stream: alcohol and other drug treatment and support was offered to Aboriginal and Torres Strait Islander parents involved in the child protection system.

An evaluation of the criminal justice stream undertaken by Success Works in 2010, found that QIADP achieved its objectives in relation to:

- improved health and social outcomes for participants;
- reduced levels of alcohol consumption;
- reduced levels of offending;
- improved parenting capacity; and
- diverting offenders from higher level penalties.

However, because of limitations associated with the evaluation and it being conducted during the early implementation stage, a conclusion could not be made regarding the longer-term outcomes of the program.

A subsequent recidivism study undertaken by the Specialist Courts and Diversion branch of QPS yielded mixed results. Some of the positive findings included:

- reductions in the frequency of offending, including all offences and alcohol-related offending;
- reductions in non-arrest contacts with police;
- declines in the seriousness of offending, including all offences; and
- declines in alcohol-related offending.

The greatest reductions typically occurred while participants were on the program. Other results suggested that recidivism reductions were not fully maintained once participants exited the QIADP. Overall, it was concluded that QIADP was having a small but measurable impact on the offending behaviour of participants.

An additional finding was that alcohol was not the only issue contributing to negative behaviour (e.g. domestic violence) and that QIADP needed to address a defendant's issues in a holistic manner. The success of the QIADP was also dependent on the existence of appropriate services in the community to address offending behaviour. This is worthy of note in the future design of court-based programs for Aboriginal and Torres Strait Islander people.

QIADP was not included in the programs and specialist courts to be reinstated under the current government.

13.6 KEY FINDINGS: INDIGENOUS COURTS

Evidence has shown that programs that most effectively reduce reoffending are those that address the underlying criminogenic needs of offenders, such as substance abuse, poor impulse control and unemployment. As Indigenous sentencing courts are not designed with this purpose, it is perhaps not surprising that they do not have a significant effect on reoffending. Indeed, 'consideration should perhaps be given to combining circle sentencing with other programs (e.g. CBT, alcohol and other drug treatment, remedial education) that have been shown to alter the risk factors for further offending' (Fitzgerald 2008).

Notwithstanding the lack of evidence for Indigenous courts reducing recidivism, all the qualitative analyses in various evaluations have shown that 'Indigenous sentencing courts provide a more culturally appropriate sentencing process that encompassed the wider circumstances of defendants' and victims' lives, and facilitated the increased participation of the offender and the broader Indigenous community in the sentencing process' (Marchetti 2009). As these outcomes reflect the stated aims of Indigenous sentencing courts, they should thus be considered effective, at least by these measures.

The following may be seen as critical elements of Indigenous sentencing courts:

- increased dialogue and participation, including interaction between the offender and the magistrate, to enhance perceptions of procedural justice and ensure that sentences are fair and appropriate;
- a skilled and committed magistrate to ensure a culturally appropriate process; and
- the involvement of the Indigenous community in the sentencing process via Elders and Respected Persons in order to generate accountability between offenders, victims and the wider community.

Given the focus of Indigenous sentencing courts on goals that are broader than simply reducing reoffending, expectations of the impact of these courts must be both tempered and realistic.

13.7 ALCOHOL AND OTHER DRUG INTERVENTIONS FOR ABORIGINAL AND TORRES STRAIT ISLANDER OFFENDERS

Alcohol is well known as a common precursor to offending amongst Aboriginal and Torres Strait Islander people, with indications that it could be a factor in up to 90 per cent of all Indigenous contacts with the justice system (Hazlehurst 1987, cited in Forensic and Applied Psychology Research Group 2005). Additionally, Aboriginal and Torres Strait Islander offenders are more likely to report being under the influence of alcohol at the time of the offence or arrest and Indigenous male offenders are more likely to be dependent on alcohol than non-Indigenous male offenders (Putt, Payne & Milner 2005).

These findings highlight the importance of implementing strategies to address harmful substance use as a means of diverting Aboriginal and Torres Strait Islander people away from the criminal justice system and into education and treatment.

An evaluation undertaken by Deloitte Access Economics (2012) of the pre-sentencing diversion of offenders into Aboriginal and Torres Strait Islander community-based, residential alcohol and other drug treatment also studied costs of the program in the context of imprisonment, recidivism, usage of mental health services and drug use and mortality among those who relapsed. This and a number of other studies (see Success Works 2010) of the effectiveness of Indigenous-specific alcohol and substance use reduction programs have generally reported improved outcomes for Indigenous clients and their communities.

13.8 CULTURALLY APPROPRIATE TREATMENT OPTIONS

The over-representation of Aboriginal and Torres Strait Islanders in the criminal justice system necessitates the clear articulation of strategies that improve equity and, where possible, positively target specific cultural needs.

Identifying culturally sensitive and Indigenous-specific services is a challenge in the development of any court diversion programs. However, it is important that these services not only meet best practice treatment guidelines for the alcohol and other drug sector, but also engage in best practice principles specific to the provision of services to Aboriginal and Torres Strait Islander populations. Unfortunately, there is still limited evidence available in Australia about what constitutes good practice for Indigenous-specific alcohol and other drug treatment programs, due in large part to the lack of quality program evaluation. Of that research which does exist, the conclusions are drawn principally from research into non-Indigenous treatment programs or Aboriginal and Torres Strait Islander crime prevention programs more broadly.

In a review conducted by the National Drug Research Institute (Strempel et al. 2004), the elements of best practice across a range of Aboriginal and Torres Strait Islander alcohol and other drug projects were examined. In their conclusion, 'best practice' projects were identified as those that, in addition to using proven treatment and intervention methods, also demonstrated:

- effective management structures and procedures;
- a commitment to staff training and the provision of ongoing opportunities for professional development;
- utilisation of multi-strategy and collaborative approaches to connect with other service providers; and
- strong leadership and funding that was adequate and certain.

Also important is the need for programs to be culturally safe (Williams 1999). The concept of cultural safety can be defined as:

"...more or less—an environment, which is safe for people; where there is no assault, challenge or denial of their identity, of who they are and what, they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity, and truly listening" (Williams 1998: 2).

For a program or service to be culturally safe it requires:

- respect for culture, knowledge, experience, obligations;
- no assault on a person's identity;
- clients to be treated with dignity;
- clearly defined pathways to empowerment and self-determination;
- culturally appropriate service delivery/environment;
- the right to promote, develop and maintain own institutional structures, distinctive customs, traditions, procedures and practices;
- recognition of more than one set of principles or way of doing things;
- access to organisational and communication skills, financial resources, administration support, appropriately trained and resourced staff, and political resources, which are prerequisites for effective participation in the system of the 'dominant culture';
- commitment to the theory and practice of cultural safety by personnel and trained staff;
- debunking the myth that all Indigenous people are the same;
- working with where people are at and not where you want them to be; and
- recognition of the individual right for persons to make their own mistakes (Williams 1999, pp. 6–7).

Similarly, international literature from the United States, Canada and New Zealand suggests that a strong focus on spirituality and culture is good practice in Aboriginal and Torres Strait Islander residential treatment programs (e.g. Adamson et al. 2010; Health Canada 2010; Nebelkopf & Wright 2011; Paki 2010).

Principles of good practice can also be drawn from other areas of community-based service delivery for Aboriginal and Torres Strait Islander communities, including crime prevention. Past research has shown that projects delivered in regional and remote Aboriginal and Torres Strait Islander communities need to:

- involve local Aboriginal and Torres Strait Islander persons in the development of the project, including Elders and other respected persons from the community;
- promote the project within the wider community and work to build community support and where possible, involvement;
- involve Aboriginal and Torres Strait Islander personnel in the delivery of project activities and where this is not possible, ensure staff are provided with appropriate and adequate cultural awareness and sensitivity training;
- adopt an holistic approach to Aboriginal and Torres Strait Islander health and well-being, which takes into consideration the range of societal, cultural, community, family and individual factors that may impact upon a person's behaviour;
- be sensitive to the traditional value systems and practices of the particular community in which they are being implemented and adapt the mode of delivery accordingly;
- meet the needs of Aboriginal and Torres Strait Islander people at risk of becoming involved in crime by providing specific content;
- engage the participant's family and community in programs and services;
- develop strategies to overcome language and literacy barriers;
- consider eligibility criteria where programs are open to both Aboriginal and Torres Strait Islander and non-Indigenous participants to ensure that Aboriginal and Torres Strait Islander people can access the program;

- work to build the capacity of local communities to continue to develop and implement initiatives to improve community safety;
- establish and strengthen relationships with Aboriginal and Torres Strait Islander persons who are able to mentor others;
- be supported by good governance at the organisation, community and government levels;
- have ongoing government support including human, financial and physical resources; and
- include measures of performance that go beyond reductions in crime and victimisation rates (Cunneen 2001; Robinson et al. 2009; SCAG 2009; SCRGSP 2009).

13.9 CONSULTATION

The review consulted with the Aboriginal and Strait Torres Islander Legal Service (ATSILS) and Indigenous Justice Officers from Far North Queensland regarding the low referral rates of Aboriginal and Torres Strait Islander defendants to court diversion programs (with the exception of Murri Court), the barriers faced by Aboriginal and Torres Strait Islander defendants accessing such programs, the appropriate cultural intervention programs and service provision models, and program models that would address the identified issues.

Comments and suggestions included that:

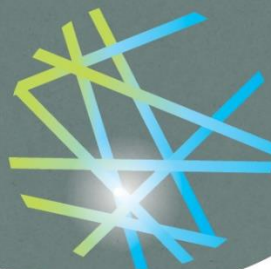
- ‘Services not sentences’ is the primary issue that would impact upon offending behaviour and alcohol and other drug use in Aboriginal and Torres Strait Islander communities. The funding of culturally appropriate services was considered essential to avoid programs simply ‘window dressing’.
- The availability of culturally sensitive treatment programs may play an important role in the willingness of drug-dependent Aboriginal and Torres Strait Islander offenders to engage with an intensive drug rehabilitation program.
- The community must have confidence and be comfortable with the service providers to which Aboriginal and Torres Strait Islander defendants are referred.
- The needs of Aboriginal and Torres Strait Islander people need to be dealt with holistically.
- As Murri Court is a ‘known brand’, legal representatives have more confidence in referring Aboriginal and Torres Strait Islander defendants to this program versus other diversion programs about which there is a perception that referrals may be ‘setting the client up to fail’.
- The engagement of supportive family was emphasised especially in maintaining the motivation of the defendant and in assisting with relapse-prevention strategies.
- A single case manager working with the offender and co-ordinating other service delivery is absent from current court diversion programs and is regarded as an important element in engaging Aboriginal and Torres Strait Islander people. The court process was described as constituting only 5 per cent of the event, whilst the other 95 per cent of the order is case management and rehabilitation.
- There could be a dovetailing of court diversion programs under the auspices of the Murri Court with the same Elders and community members being involved across all programs. This may make mainstream diversion programs more palatable to the Aboriginal and Torres Strait Islander community, while the ongoing involvement of Elders could act as a motivator for the defendant.
- In some locations, the Community Justice Groups work closely and effectively with Aboriginal and Torres Strait Islander defendants providing support and organising appropriate referral pathways.
- In relation to Drug Court specifically, twice weekly reporting to the court was regarded as too onerous and too costly in terms of transport for some Aboriginal and Torres Strait Islander defendants. Under the former Drug Court, there was a view that Aboriginal and Torres Strait Islander defendants were deemed ineligible for reasons, such as low IQ, that may not have been valid.

13.10 RECOMMENDATION

Recommendation 10 Programs, interventions and sentencing orders should appropriately meet 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, it is recommended that consideration be given to:

- clear articulation of strategies that improve equity and, where possible, positively target specific cultural needs;
- 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;
- best practice principles specific to the provision of Aboriginal and Torres Strait Islander services are adopted;
- 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 the participation of Elders.



PART C

DRUG COURT

14 OVERVIEW OF THE FORMER QUEENSLAND DRUG COURT (2000-2013)

14.1 INTRODUCTION

Part A of this report established that there is significant demand for a more effective and efficient criminal justice response to drug- and alcohol-related offending in Queensland. Part B of the report considered each stage of the system in order to create a more integrated criminal justice model.

Part C, incorporating this chapter and those following (through to Chapter 36), focuses specifically on the reinstatement of a Queensland Drug Court. After briefly describing the former iteration of the Drug Court, Part C examines the evidence on the effectiveness of drug courts and then applies evidence-based best-practice standards in developing a new Drug Court model for Queensland.

14.2 ESTABLISHMENT AND OPERATION

The Queensland Drug Court program commenced on 13 June 2000 as a pilot program in the Beenleigh, Southport and Ipswich Magistrates Courts and was intended to trial a new way of responding to drug addiction and drug-related criminal activity.

In the Explanatory Notes to the Drug Rehabilitation (Court Diversion) Bill 1999 establishing the pilot program, the reasons for seeking to establish the program were identified as including:

- the rate of imprisonment for drug and property offences now exceeding the rate of population increases in Queensland;
- Queensland having the highest rate of imprisonment in Australia at more than 40 per cent above the national rate;
- the high rate of prisoners with a drug dependency (approximately 60 per cent at that time), supporting anecdotal evidence that many property and other offences are committed to feed drug habits; and
- the absence of a drug diversion scheme in operation in Queensland courts (pp. 1–2).

In December 2002, the pilot program temporarily ceased operation pending the outcomes of a number of reports and evaluations. Following the outcomes of these evaluations the Queensland Drug Courts in South-East Queensland re-commenced their operation as extended programs in September 2003. Two additional pilot drug court programs were established in Cairns and Townsville in 2002.

Prior to its closure, the total operating costs of the program to government across the five court locations where it operated was \$14.4 million per annum across a range of agencies including Queensland Courts, Queensland Health, QCS, the former Department of Communities (for Housing), LAQ and QPS.

In 2012, the former Liberal National Party Government ceased funding to the Drug Court as part of its efficiency and savings measures. In evidence to the Legal Affairs and Community Safety Committee provided during the Estimates hearings, the then Attorney-General and Minister for Justice, Jarrod Bleijie, cited as one of the reasons for the court's closure the significant costs of the program considered against the number of graduates each year (around \$400,000 per graduate) (11 October 2012, pp.35 and 40).

The *Drug Court Act 2000* was repealed on 30 June 2013.

14.3 KEY ELEMENTS OF THE FORMER DRUG COURT

The former drug court was a holistic response to drug abuse and related offending behaviour. It involved multiple government agencies and NGOs.

The former Drug Court operated as a post-sentence program that referred offenders into rehabilitation by way of an Intensive Drug Rehabilitation Order (IDRO), combining drug treatment, case management and supervision.

An IDRO was comprised of three elements:

- an initial sentence, being a term of imprisonment, which was wholly suspended;
- the requirements or conditions of the order; and
- a rehabilitation program decided by the drug court magistrate.

The core conditions attached to every order were that the offender must:

- not commit an offence during the period of the order;
- notify an authorised corrective services officer any change of address or employment;
- not leave or stay out of Queensland without the permission of an authorised corrective services officer;
- comply with every reasonable direction of an authorised corrective services officer; and
- attend before a Drug Court magistrate at the times and places stated in the order.

Other additional requirements of the order could include that the offender make restitution or pay compensation, perform community service of up to 240 hours, and do another thing the Drug Court magistrate considered may help the offender's rehabilitation.

To be eligible for an IDRO under the *Drug Court Act 2000* (the Act), the person was required to meet the following criteria:

- be drug dependent where that dependency contributed to the person committing the offence;
- be charged with an offence permitted to be dealt with by the drug court (offences excluded referred to under the Act as a 'disqualifying offence' included those of sexual nature and offences involving violence against the person, with some exceptions);
- have pleaded guilty to the offence;
- agree to the order being made and to comply with the order and its conditions;
- not be suffering from any mental condition that could prevent their active participation in a rehabilitation program;
- live within certain postcodes within the relevant Drug Court jurisdiction; and
- not be serving a term of imprisonment (other than an Intensive Correction Order being served in the community), not have a charge for a disqualifying offence pending, and not be subject to a parole order that had been cancelled.

Before making an IDRO, the magistrate was also required to be satisfied that:

- they would have otherwise sentenced the person to a term of imprisonment for the offences for which they were currently appearing in court;
- there were reasonable prospects the offender would comply with the order and it would otherwise be appropriate for the order to be made; and
- the maximum number of active IDROs had not been exceeded (Cairns – 40; Townsville – 40; South-East Queensland – 141).

The Drug Court rehabilitation program was a three-phase intervention requiring participation in a detoxification, residential or non-residential treatment program. Offenders were required to attend regular court hearings (weekly in phase 1) and be submitted to random urinalysis testing. The Drug Court program was designed as a minimum nine-month intervention with both attendance and compliance monitoring requirements that decreased over time in recognition of positive performance and continued compliance. Non-compliance was sanctioned by the Drug Court magistrate, compliance was rewarded, and continued non-compliance could result in termination of the offender's participation in the program. Successful completion of the drug court program was taken into account on final sentencing. Participants who were unsuccessful in completing the program and exited from the Drug Court were returned to the mainstream criminal justice court process for resentencing, which typically involved the imposition of a term of imprisonment (Payne 2008).

15 BUILDING AN EFFECTIVE DRUG COURT

15.1 INTRODUCTION

One of the objectives of the current Review is to ensure that the Drug Court model to be reinstated in Queensland is consistent with contemporary best practice and meets the needs of the Queensland community in responding to drug-related offending.

Inherent in the former Government's decision to cease funding to the former Queensland Drug Court was a suggestion that it was not cost-effective and did not deliver a clear benefit or cost saving to the Queensland community.

In reinstating the Drug Court, it is important to reconsider the evidence supporting the efficacy of drug courts and to consider why they work, in what circumstances and for whom. In this chapter, we review some of this evidence against which we consider in later chapters the key elements that we recommend should form part of a future Queensland Drug Court.

15.2 DO DRUG COURTS WORK AND FOR WHOM?

15.2.1 Overview of the evidence – adult drug courts

In section 6.3.3 of this report we reviewed previous evaluations of the Queensland Drug Court, including recidivism outcomes. The 2008 study on recidivism outcomes for the first 100 Drug Court graduates reported reductions in overall offending frequency when compared to the previous 12 months, with 59% of Drug Court graduates compared with 77% of Drug Court terminates having reoffended within two years of completing the program, or in the case of drug court terminates, exiting custody. The average time to reoffend was also longer for graduates than terminates (379 days compared with 139 days). While both graduates and terminates committed fewer offences after program involvement, decreases were greater among graduates (80% decrease) than for terminates (63% decrease) (Payne 2008).

In recent decades, few criminal justice interventions have been subjected to the same level of evaluation activity as drug courts (Marlowe 2010). Given the volume of program evaluations that have been completed, several systematic reviews and meta-analyses have now been conducted (Table 9). Overall, the results lend support for drug courts in terms of their ability to reduce reoffending, although the strength of this evidence has been questioned in light of the relatively small number of experimental studies (Perry 2016). Mean effect sizes from meta-analyses estimate the impact of drug court programs on reoffending as being somewhere between eight and 13 percentage points (Table 9). Results vary because of the different inclusion criteria, follow-up periods (including within and post-program) and methodological rigour applied in selecting studies.

Table 9: Mean effects of adult drug court programs, by study

Source	Number of programs	Mean effect size (percentage point change in offending)
Mitchell et al. 2012	92	-12
Shaffer 2006	82	-9
Wilson, Mitchell & MacKenzie 2006	55	-12
Latimer, Morton-Bourgon & Chretien 2006	66	-14
Drake, Aos & Miller & 2009	57	-8
Lowenkamp, Holsinger & Latessa 2005	22	-8

Adapted from Marlowe 2010

In 2005, the Government Accountability Office in the United States reviewed experimental and quasi-experimental evaluations of adult drug court programs in which the comparison group comprised non-drug court participants with adequate matching or statistical controls, focusing on recidivism, substance use relapse or program completion outcomes. They identified 27 'relatively rigorous' studies of 39 unique programs from a total of 117 studies. Their review concluded that, overall, a lower percentage of drug court program participants than comparison group members were rearrested or reconvicted while they were in the program, with fewer incidents and a longer delay until re-arrest or reconviction. This was consistent for all offence types, and the differences endured up to one year post-program. There was limited and mixed evidence in terms of substance use relapse outcomes, given the relatively small number of studies that examined drug use (only eight) and the conflicting results from urinalysis and self-report studies. Importantly, in one of the first reviews of the cost-effectiveness of drug courts, the Government Accountability Office found that the benefits outweighed program costs in all evaluations in which this information had been reported. Finally, there was no conclusive evidence that specific drug court program components, such as the behaviour of the judge, the amount of treatment received, the level of supervision provided, and the sanctions for not complying with program requirements, affected participants' within-program recidivism.

In one of the earlier meta-analytic reviews, Latimer, Morton-Bourgon & Chretien (2006) analysed 66 drug treatment court programs between 1993 and 2005 in which the study used a comparison or control group comprising non-participants. They concluded that drug treatment courts reduced recidivism by 14% when compared to traditional criminal justice responses, but also found there was considerable variation in effect size estimates across the studies, indicating a degree of heterogeneity. Importantly, however, 85% of drug treatment courts demonstrated a positive impact. Several factors were associated with improved outcomes. Drug treatment courts were more effective for adult offenders—the effect size for youth was not statistically significant different from zero (based on small number of studies), meaning it was not possible to conclude with any certainty that drug treatment courts work for young offenders. Studies with longer follow-up periods produced larger effects, while there were diminished effects for more rigorous studies, including random assignment and studies that used non-participants as the comparison group rather than dropouts or non-completers. Finally, programs that provided services for 12-18 months demonstrated a significant reduction in recidivism when compared with shorter and longer programs, which they argued demonstrated the need to allow sufficient time for CBT to take effect, but not lead to treatment fatigue.

Like Latimer et al. (2006), Wilson, Mitchell & MacKenzie (2006) conducted a meta-analysis of experimental and quasi-experimental evaluations of adult and juvenile drug courts. They applied stricter methodological criteria in selecting studies, excluding studies that did not utilise a comparison group subject to routine processing (e.g. dropouts or participants of some other alternative program). Based on 50 studies of 55 drug court programs—the majority of which were unpublished (62%), unlike in earlier reviews—they concluded that drug offenders participating in a drug court program were less likely to reoffend than similar offenders sentenced to traditional options, such as probation. These findings held for reoffending during and after program. The reduction in overall offending was 13 percentage points across all studies, although the effect size of the two high quality randomised control trials was smaller (7 percentage points). There was little evidence that juvenile drug courts reduced reoffending. Wilson et al. (2006) were critical of the overall methodological quality of evaluations, noting that only five studies involved random assignment and half made no attempt to include statistical controls for differences between the intervention and comparison groups.

In the most recent review of adult drug courts, Sevigny, Fuleihan & Ferdik (2013) conducted a meta-analysis of studies that examined the impact of drug courts in terms of reducing incarceration. This was on the basis that one of the principal reasons for introducing drug courts was as a jail diversion strategy to reduce the burden on the criminal justice system. Despite the large number of evaluations that have been completed, Sevigny et al. were only able to locate 19 studies that measured incarceration outcomes. They concluded that there was a lower incidence of incarceration among drug court participants, with an estimated 32 percent of drug court participants receiving a term of imprisonment compared with an assumed rate of 50 percent of non-drug court participants. However, there was no difference in the total time served when compared with conventional supervision. They concluded that the benefit associated with the lower incarceration rate was

offset by long sentences for drug court participants when they failed to comply with the conditions of the program. These findings suggest that, while drug courts may work as a jail diversion strategy, they may be less effective in reducing the overall burden to the criminal justice system of prolific drug offenders.

These findings also raise questions regarding the overall cost effectiveness of drug courts. Two recent studies have specifically addressed the question of drug court costs and benefits. The Washington State Institute of Public Policy (WSIPP 2016), as part of a broader program of work reviewing the costs and benefits of criminal justice policy options, concluded that the estimated program costs per drug court participant was \$4,984. This was significantly lower than the estimated benefits of \$13,015, based on 70 effect sizes, which produces a benefit to cost ratio of \$2.61 and a saving of \$8,031 per participant (all figures in \$USD).

15.2.2 Youth drug courts

In Queensland, the *Youth Justice Act 1992*, governs the sentencing of children aged 10–16 years old for criminal offences.

The former Queensland Drug Court operated for offenders sentenced as adults only.

Western Australia operates a Childrens Court Drug Court program in Perth that, based on advice provided to the Review team, accepts a maximum of 12 young people at any one time.

Both NSW and the ACT established Youth Drug Courts but subsequently closed these down. The NSW program ceased operating in July 2012, with the NSW Government at the time citing insufficient evidence of its effectiveness in reducing reoffending and high cost given small number of graduates (around 20 young people per annum at an annual cost of \$4 million per annum) (Harvey 2012).

As discussed above, the majority of evaluations of drug courts have focused on the effectiveness of adult drug courts rather than youth focused drug courts. A 2004 evaluation of the NSW Youth Drug Court Pilot Program reported that while it had “not been possible to state definitively that the Youth Drug Court program has been achieving outcomes superior than might have been gained through other forms of intervention”, the overall view of the evaluators was that the program was having “an important, positive impact on the lives of many of those participating” and also that the unit costs of achieving these impacts did not appear to be greater than involved in keeping these young people in custody (University of New South Wales Evaluation Consortium 2004, p. v).

Consultation with Youth Justice highlighted a number of possible explanations for the lower efficacy of drug courts when treating young people including:

- developmentally, young people are less mature than adults and may be less suitable for cognitive behavioural programs and less responsive to developing a therapeutic relationship with the judiciary;
- the requirement to work with young people for extended periods of time to effect behavioural change (often longer than the length of orders); and
- young people may also be less likely than adults to comply with intensive interventions attached to orders.

The relatively small number of children sentenced to detention for terms greater than one year means that relatively few young people would be eligible for an intensive drug court-type intervention, assuming the eligibility criteria were similar as for an adult drug court program.

The Review found recent growth in the number of children with an illicit drug offence as their principal offence (similar that that apparent among adult offenders) and a level of problematic drug use among children in contact with the criminal justice system that would benefit from a therapeutic response.

In consultations, Youth Justice noted that while there are young people who have a high risk of reoffending and who might benefit from a court-based therapeutic response to their drug use, any intervention would need to be youth-specific, family-centred and supported by appropriate services.

While the Review does not discount the potential utility of alcohol and other drug treatment responses for young offenders, we consider that further investigation is required to identify the types of interventions most likely to benefit young people and to be cost-effective.

The Review also suggests that other court programs that might provide integrated assessment, referral and support for young offenders pre-sentence, and the availability of alternative sentencing options, could be considered in future to enhance current responses.

15.3 THE KEY PRINCIPLES OF AN EFFECTIVE DRUG COURT

The international drug court movement can be traced to Dade County, Miami Florida, where in 1989 a group of justice professionals sought to transform the local criminal justice response to drug-related crime (Goldkamp 1994; Goldkamp & Weiland 1993). Within 10 years, a further 492 drug courts had been established across the United States (NADCP) and the first Australian drug court in NSW was in its first year of operation. By mid-2012, almost 3,000 drug courts were in operation across the United States – with at least one in every state and territory – while in Australia, drug courts had emerged in Queensland, Victoria, South Australia and Western Australia (see Payne 2007).

The report *Defining Drug Courts: The Key Components* (OJP, 1997/2004) was produced by a Drug Court Standards Committee convened by the NADCP. The Drug Court Standards Committee comprised an expert panel of drug court professionals (prosecutors, judicial officers, and public defenders), researchers, and federal administrators who, on the basis of their experience, distilled “the basic elements that define drug courts” (OJP, 1997/2004, p. 4). These basic elements have since been widely recognised as the Ten Key Components, representing a “consensus statement about how a drug courts should operate and what components should be included” for effective implementation (Hiller et al. 2010, p. 935). The components, intended as a guide to policy makers and practitioners considering the design and implementation of new drug courts, were:

1. Integration of alcohol and other drug treatment with justice system case processing.
2. Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants’ due process rights.
3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs drug court responses to participants’ compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organisations generates local support and enhances drug court program effectiveness.

Underpinning each of these 10 components was a series of performance benchmarks against which existing drug courts could assess the extent to which the “drug court ideal” had been realised in their own location. For newly developed courts, the performance benchmarks have since been interpreted as providing a roadmap to successful implementation and outcomes (Carey, Finigan & Pukstas 2008). Indeed, addressing the extent to which drug courts (existing or newly developed) will implement the 10 key components has become a requirement for drug courts wishing to receive federal funding (Bureau of Justice Assistance, 2005a, 2005b). For more than a decade, the OJP’s 10 Key Components and their associated performance benchmarks existed

as the only available tool for policymakers and practitioners considering the implementation of new drug courts.

15.4 HOW DO DRUG COURTS WORK?

15.4.1 Introduction

There is no single or unifying theory for why drug courts produce better outcomes than their alternatives. Given the complexity of the underlying intervention model, the length of its implementation, and the diversity of the offenders likely to access drug courts, there is unlikely to be a single causal mechanism that determines their effectiveness. The challenge for policy makers and practitioners, therefore, is to understand the mechanisms that are likely to contribute (and when) to the realisation of relatively better outcomes across the full length of the intervention.

To do this requires asking two separate questions. The first is *why do drug court graduates offend less often?* Understanding the factors that contribute to improved outcomes for drug court graduates is a necessary first step to understanding how and why the drug court model works. The second question then is *how do drug courts create successful graduates?* The mechanisms that help to facilitate the transition of offenders to the point of graduation are not necessarily the same as those which later influence post-graduation re-offending. Parsing the drug court into long-term outcomes and short-to-medium-term mechanisms is an important step in understanding how and why these multifaceted and longitudinally dynamic programs are relatively more effective.

15.4.2 Why do drug court graduates commit fewer crimes?

Graduates have fewer criminogenic needs. By design, drug courts require participants to undertake treatment and intervention sub-programs that seek to address their criminogenic needs.

Substance use is not the only criminogenic target of a well-designed and implemented drug court program. In addition, drug courts have the capacity to facilitate change across a number of criminogenic domains, including the stabilisation of accommodation and housing, the repatriation or reconnection to family, the reengagement with education and employment, the stabilisation or management of physical and mental health needs, the disconnection with antisocial and criminal peers, and the development of essential pro-social life skills. In all, drug court graduates should have less reason to commit crime by necessity and should be less often confronted with criminal opportunities.

As a community-based treatment alternative to imprisonment, lower rates of post-program offending may be attributed to the fact that graduates avoid the negative consequences of imprisonment. Much has been written about the criminogenic nature of incarceration; that time spent in custody can increase the likelihood of reoffending whether as a consequence of greater associations with criminal peers, the internalisation of criminal identities and labels, or the foreclosure of post-incarceration employment, education and other pro-social opportunities. In any case, drug court graduates avoid further exacerbating their criminogenic needs by avoiding lengthy terms of imprisonment. As a consequence, the process of desistance may be activated through the drug court earlier than would otherwise be the case.

A considerable body of literature now confirms that individuals with positive perceptions of procedural justice and fairness are less likely to commit crime. Therefore, it is argued that drug courts produce more favourable outcomes because graduates have an enhanced respect for the law and the legitimacy of legal institutions. Specifically, it is thought that the architecture and procedures of a drug court foster greater respect among participants for the authority of the police and judicial officer and a greater appreciation of the criminal justice system's obligations to protect community safety. This in turn limits criminal offending by enhancing pro-social attachment to formal institutions and strengthening broader social bonds.

Reaching the end of a drug court program as a 'drug free and crime free success' is often the largest and most significant lifetime achievement for many drug court clients. The process of graduation and the acknowledgement of success is potentially transformative in its own right. At graduation, it is likely that drug

court clients enter the post-program phase with new or stronger pro-social relationships (including to formal institutions such as the court, police, corrective services), a more enhanced sense of self-worth, and a positive outlook on their own individual capacity to maintain a pro-social lifestyle – each of which contributes to lower rates of drug use relapse and consequent reoffending.

15.4.3 How do drug courts create successful graduates?

Understanding why drug court graduates commit fewer crimes is only part of the drug court's complex story. What matters most is how drug courts manage, unlike other interventions, to transition previously high-risk and high-need offenders to the point of graduation such that the benefits of the program can be realised.

Perhaps most importantly, the select and specialised nature of the drug court model maximises the likelihood that offenders receive drug use and criminal justice programs and treatments that are best practice. Whereas in traditional contexts drug treatment and criminal thinking programs are geographically disparate, often underfunded and thus not widely available, in drug courts, the emerging coalition of judicial, law enforcement, corrections and health practitioners brings with it the funding and commitment to ensure that all drug court participants are afforded the necessary treatments and interventions, and more importantly, that those treatments and interventions meet standards considered best practice. This capacity of the drug court model is likely to be the single most significant contributor to their long-term success.

15.4.4 How do drug courts encourage participants to start the process of change?

Although drug courts may be able to call on significant financial and policy investment to deliver best-practice treatments to their participants, there still remains the difficult challenge of encouraging high-risk and high-need clients to engage. It is here that the drug court itself has the greatest impact by leveraging otherwise unwilling participants into treatment and motivating participants to respond positively to treatment goals and objectives.

Leverage (see Longshore et al. 2001) is the most oft cited mechanism by which it is believed drug courts encourage and achieve relatively more positive outcomes than alternative criminal justice interventions. Specifically, the ability to afford successful clients a significant penalty reduction upon graduation has the power to leverage early engagement and encourage treatment retention during the initial phases of the program. Soon after, the compliance monitoring mechanisms of the court namely the use of frequent and random drug testing, coupled with regular court appearances, send strong signals about the consequences of continued criminal or antisocial conduct, again adding to the leveraging capacity of the court to encourage persistent and proactive engagement in treatment.

Activating the motivation for change among an otherwise unmotivated and high-need population is a challenging prospect for any criminal justice intervention. However, motivating participants to be receptive to change most likely requires more than just leverage, drug testing and the fear or threat of sanctions – especially if the resulting change is to last in the longer-term. To this end, drug courts must activate individual responsivity by challenging pre-existing perceptions of the criminal justice system, identifying personal motivators for change, and rewarding success and progress in treatment.

16 OVERVIEW OF THE BEST PRACTICE STANDARDS

16.1 INTRODUCTON

The United States National Association of Drug Court Professionals 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 Standards were drafted by a diverse and multidisciplinary committee comprising drug court practitioners, subject matter experts, researchers and state and federal policymakers.

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

16.2 BEST PRACTICE STANDARD 1: TARGET POPULATION

Eligibility and exclusion criteria for the drug court are predicated on empirical evidence indicating which types of offenders can be treated safely and effectively in drug courts. Candidates are evaluated for admission to the drug court using evidence-based assessment tools and procedures.

Components include: objective eligibility and exclusion criteria, high-risk and high-need participants, validated eligibility assessments, criminal history disqualifications and clinical disqualifications.

16.3 BEST PRACTICE STANDARD 2: HISTORICALLY DISADVANTAGED GROUPS

Citizens who have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion or socio economic status receive the same opportunities to participate in the drug court.

Components include: equivalent access, equivalent retention, equivalent treatment, equivalent incentives and sanctions, equivalent dispositions and team training.

16.4 BEST PRACTICE STANDARD 3: ROLES AND RESPONSIBILITIES OF THE JUDGE

The drug court judge stays abreast of current law and research on best practices in drug court, participates regularly in team meetings, interacts frequently and respectfully with participants and gives due consideration to the input of other team members.

Components include: professional training, length of term (no less than two consecutive years), consistent docket, participation in pre-court staff meetings, frequency of status hearings, length of court interactions, judicial demeanour and judicial decision-making.

16.5 BEST PRACTICE STANDARD 4: INCENTIVES, SANCTIONS AND THERAPEUTIC ADJUSTMENTS

Consequences for participants' behaviour are predictable, fair, consistent and administered in accordance with evidence-based principles of effective behaviour modification.

Components include: advance notice, opportunity to be heard, equivalent consequences, professional demeanour, progressive sanctions, licit addictive or intoxicating substances, therapeutic adjustments, incentivising productivity, phase promotion, jail sanctions, terminations and consequences of graduation and termination.

16.6 BEST PRACTICE STANDARD 5: SUBSTANCE ABUSE TREATMENT

Participants receive substance abuse treatment based on a standardised assessment of their treatment needs. Substance abuse treatment is not provided to reward desired behaviours, punish infractions or to serve other non-clinically indicated goals. Treatment providers are trained and supervised to deliver a continuum of evidence based interventions that are documented in treatment manuals.

Components include: continuum of care, in-custody treatment, team representation, treatment dosage and duration, treatment modalities, evidence-based treatments, medications, provider training and credentials, peer support groups and continuing care.

16.7 BEST PRACTICE STANDARD 6: COMPLEMENTARY TREATMENT AND SOCIAL SERVICES

Participants receive complementary treatment and social services for conditions that co-occur with substance abuse and are likely to interfere with their compliance in drug court, increase criminal recidivism or diminish treatment gains.

Components include: Scope of complementary services, sequence of timing of services, clinical case management, housing assistance, mental health treatment, trauma-informed services, criminal thinking interventions, family and interpersonal counselling, vocational and educational services, medical and dental treatment, prevention of health-risk behaviours and overdose prevention and reversal.

16.8 BEST PRACTICE STANDARD 7: DRUG AND ALCOHOL TESTING

Drug and alcohol testing provides an accurate, timely and comprehensive assessment of unauthorised substance use through participants' enrolment in the drug court.

Components include: frequent testing, random testing, duration of testing, breadth of testing, witnessed collection, valid specimen, accurate and reliable testing procedures, rapid results and participant contract.

16.9 BEST PRACTICE STANDARD 8: MULTIDISCIPLINARY TEAM

A dedicated multi-disciplinary team of professionals manages the day to day operations of the drug court, including reviewing participant progress during the pre-court staff meetings and status hearings, contributing observations and recommendations within team members' respective areas of expertise and delivering or overseeing the delivery of legal, treatment and supervision services.

Components include: team composition, pre-court staff meetings, sharing information, team communication and decision making, status hearings and team training.

16.10 BEST PRACTICE STANDARD 9: CENSUS AND CASELOADS

The drug court serves as many eligible individuals as practicable while maintaining continuous fidelity to best practice standards.

Components include: drug court census (optimal 125 participants) supervision caseloads and clinical caseloads.

16.11 BEST PRACTICE STANDARD 10: MONITORING AND EVALUATION

The drug court routinely monitors its adherence to best practice standards and employs scientifically valid and reliable procedures to evaluate its effectiveness.

Components include: adherence to best practice, in-program outcomes, criminal recidivism, independent evaluations, historically disadvantaged groups, electronic database, timely and reliable data entry, intent-to-treat analysis, comparison groups and time at risk.

17 AIMS AND OBJECTIVES OF A DRUG COURT

17.1 BEST PRACTICE STANDARDS – SETTING CLEAR OBJECTIVES

While the best practice standards do not include suggested purposes, in the preface to the standards, the NADCP acknowledges that:

Drug Courts improve communities by successfully getting justice-involved individuals clean and sober, stopping drug-related crime, reuniting broken families, intervening with juveniles before they embark on a debilitating life of addiction and crime, and preventing impaired driving. (NADCP 2013, vi)

It is important to set clear objectives for a drug court that can be used to develop performance measures for evaluation. The United States National Institute of Justice recommends performance measures be developed for drug court programs based on program goals (e.g. promote public safety by treating drug dependent offenders) and objectives (e.g. reduce recidivism).

Setting out legislative purposes through an objectives clause can also be of assistance to courts and others in interpreting legislation (see, for example, *Tickner v Bropho* (1993) ALR 409). The *Queensland Acts Interpretation Act 1954* relevantly provides that: “In the interpretation of a provision of an Act, the interpretation that will best achieve the purposes of the Act is to be preferred to any other interpretation” (s 14A(1)).

17.2 FORMER QUEENSLAND MODEL

The objectives of the former Queensland *Drug Court Act 2000* prior to its repeal were to:

- reduce the level of drug dependency in the community and the drug dependency of eligible persons;
- reduce the level of criminal activity associated with drug dependency;
- reduce the health risks associated with drug dependency of eligible persons;
- promote the rehabilitation of eligible persons and their re-integration into the community; and
- reduce pressure on resources in the court and prison systems (s 3).

As they originally appeared in the *Drug Rehabilitation (Court Diversion) Act 2000*, when the Drug Court operated as a pilot, the objectives of promoting the rehabilitation of eligible persons or reducing their drug dependency were not included. Instead, the Act set out the ways that it would achieve this rehabilitative purpose through the identification of drug-dependent people suitable to receive intensive drug rehabilitation, improve the ability of those people to function as law abiding citizens, and improve both their employability and health.

The objectives were changed in 2006 when the Drug Court was put on a permanent footing and the Act was retitled as the *Drug Court Act 2000*. The rationale for this was to ensure that the legislative objects “more accurately reflect the drug dependency of individual offenders” and “to provide an increased focus on the needs of individual participants before the court” (Explanatory Memorandum, Drug Legislation Amendment Bill 2005 (Qld), pp.5, 13).

17.3 POSITION IN OTHER JURISDICTIONS

NSW and Victoria both include legislative purposes for their drug court programs. In NSW, these purposes are set out as legislative objectives under section 3 of the *Drug Court Act 1998* (NSW). In Victoria, these purposes attach to the order itself (known as the ‘Drug Treatment Order’).

The specific objectives of the NSW Drug Court are:

- to reduce the drug dependency of eligible persons and eligible convicted offenders;
- to promote the re-integration of such drug dependent persons into the community; and

- to reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

The NSW *Drug Court Act* provides that the Act: “achieves its objectives by establishing a scheme under which drug dependent persons who are charged with criminal offences can be diverted into programs designed to eliminate, or at least reduce, their dependency on drugs” in recognition that “reducing a person’s dependency on drugs should reduce the person’s need to resort to criminal activity to support that dependency and should also increase the person’s ability to function as a law abiding citizen” (ss 3(3)–(4)).

The objectives of the NSW Act have been relied upon in a numbers of decisions of the NSW Drug Court as a basis for interpreting relevant provisions (see, for example, *R v Wilson* [1999] NSWDRGC 4 (25 February 1999); *R v Ranse* [1999] NSWDRGC 2). The objectives clause has also been used as a basis to justify the categorisation of the NSW Act as ‘beneficial’ legislation, as it allows offenders the benefit of participating in a drug court program, thereby supporting any ambiguous provisions being construed in a way that is most favourable to those offenders (see, for example, *R v Sloane* [1999] NSWDRGC 3 (13 April 1999), Murrell J).

The purposes of a Drug Treatment Order in Victoria under section 18X of the *Sentencing Act 1991* (Vic) are to:

- facilitate the rehabilitation of the offender by providing a judicially-supervised, therapeutically-oriented, integrated drug or alcohol treatment and supervision regime;
- take account of an offender's drug or alcohol dependency;
- reduce the level of criminal activity associated with drug or alcohol dependency; and
- reduce the offender's health risks associated with drug or alcohol dependency.

This section further provides that if considering making a DTO, 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 5(1) of that Act. These provisions have not been judicially construed since their enactment in 2002.

Drug courts operating as pre-sentence programs, such as in WA and New Zealand, have similar objectives. For example, the stated principal objective of the NZ Alcohol and Other Drugs Treatment (AODT) Court is ‘to reduce drug use and associated offending through supervising the defendant and providing them with treatment programmes and life skills support, while still holding them to account for their offending’ (NZ Ministry of Justice 2014). The desired outcomes of the NZ AODT Court are to:

- reduce reoffending;
- reduce alcohol and other drug consumption and dependency;
- reduce the use of imprisonment;
- positively impact on health and well-being; and
- be cost effective. (NZ Ministry of Justice 2014)

17.4 WHAT DOES THE EVIDENCE SAY?

The NADCP Standards identify that one of the primary aims of a drug court is to rehabilitate seriously addicted individuals, which means that retaining participants in treatment, reducing alcohol and other drug use, and helping participants to complete treatment successfully are important indicators of short-term progress.

The Standards also acknowledge that policymakers, the public, and other stakeholders are likely to judge the merits of a drug court by how well it reduces crime, incarceration rates, and taxpayer expenditures. Therefore, drug courts need to measure in-program outcomes that not only reflect clinical progress, but are also significant predictors of post-program criminal recidivism and other long-term outcomes.

17.5 CONSULTATION VIEWS AND ISSUES

Feedback from stakeholders indicate that it is unrealistic to expect a drug court in and of itself to:

- reduce the general level of drug dependency in the community overall; and
- reduce pressure on the court and prison system.

Drug courts can only deal with a very small number of offenders (around 125 per year) and even if they were wholly successful, they would not significantly reduce the number of offenders entering, or staying, in the prison population which currently stands at over 7,700 prisoners.

A drug court can only contribute to reducing the level of drug dependency in the community and reducing pressure on the courts and prison when an individual comes into contact with the justice system. While any new model should consider establishing mechanisms and processes that recognise the underlying social, psychological, economic and environmental issues that may have an effect on the offender, it needs to be clear what is within the purview and control of a drug court.

The objectives of a drug court should serve as a reminder that problematic substance use is a health issue, and the drug court process can be a tool to identify people who need help. By developing a process that can identify when a person needs support, the drug court presents an opportunity to intervene and provide linkages to support and rehabilitation.

A recent study undertaken by QNADA for the Queensland Police Service found 98 percent of people voluntarily entering treatment had at least one prior interaction with the criminal justice system, primarily through the issuing of cautions from police or the courts, although 15 percent of young people and 25 percent of adults had experienced incarceration (which they often identified as related to their substance use).

17.6 RECOMMENDATIONS

Taking into account that the main objective of a drug court is to address factors contributing to an individual's offending, in particular their drug dependency, we support a focus on individual-level benefits over program-related or community-level outcomes to ensure the objectives are appropriately targeted and measurable. A focus on the means by which those objectives are achieved should also be reflected in the legislative objectives of the Act.

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.

18 PRE- OR POST-SENTENCE MODEL, PLEA AND LEGISLATIVE BASIS

18.1 FORMER QUEENSLAND MODEL

The former Queensland Drug Court was a post-sentence option and required the offender to plead guilty or indicate an intention to plead guilty before being referred for an assessment of eligibility and suitability.

As a post-sentence program, the program was supported by legislation (initially the *Drug Rehabilitation (Court Diversion) Act 2000* retitled as the *Drug Court Act 2000* in 2006 once established on a permanent basis) which provided for the sentencing of offenders to this alternative form of sentencing order.

The Queensland *Drug Court Act 2000* was repealed on 30 June 2013 giving effect to the abolition of the Drug Court.

18.2 POSITION IN OTHER JURISDICTIONS

Jurisdictions in Australia and New Zealand with a drug court have either a pre-sentence model, involving the management of a defendant appearing before the drug court while on bail, or a post-sentence model, involving the sentencing of an offender to undertake treatment and to appear before the drug court for the duration of the order.

Table 10 outlines the sentencing model for jurisdictions in Australia and New Zealand with a drug court. It shows that those jurisdictions that have a pre-sentence model (South Australia, WA and New Zealand) do not have a specific legislative basis for their drug court. This can be compared to the jurisdictions that have a post-sentence model (Queensland, Victoria, and NSW), which have a specific legislative basis, whether that be a stand-alone Drug Court Act, or provisions supporting its operation incorporated into relevant sentencing legislation. In the latter case, additional provisions are required to support the establishment of the Drug Court and the appointment of magistrates.

All jurisdictions have a requirement for the offender to plead guilty or indicate an intention to plead guilty whether or not these schemes operate as pre-sentence or post-sentence models.

Table 10: Sentencing model of drug court jurisdictions in Australia and New Zealand

Jurisdiction	Pre- or post-sentence model	Specific legislative basis
South Australia	Post-plea, pre-sentence	No - supported by the general provisions of the <i>Bail Act 1985</i> (SA)
Western Australia	Post-plea, pre-sentence	No - supported by the <i>Magistrates Courts Act 2004</i> (WA)
New Zealand	Post-plea, pre-sentence	No - supported by the general provisions of the <i>Bail Act 2000</i> (NZ)
Queensland (Former Drug Court)	Post-sentence	Yes - <i>Drug Court Act 2000</i> (repealed)
Victoria	Post-sentence	Yes - <i>Sentencing Act 1991</i> (Vic) (sentencing provisions) <i>Magistrates' Court Act 1989</i> (Drug Court establishment provisions)
New South Wales	Post-sentence	Yes - <i>Drug Court Act 1998</i> (NSW)

18.3 WHAT DOES THE EVIDENCE SAY?

The international literature is largely silent on the question of whether drug courts perform more or less favourably as post-sentence or pre-sentence courts. Instead, where research exists there has been a focus more on the value of a court's operational mechanism and its capacity to 'leverage' offenders into complying with essential program requirements, such as treatment attendance, drug abstinence and the cessation of reoffending. 'Leverage' is conceptualised as the severity of the sanction or outcome upon program failure or termination. Post-plea and post-sentencing programs are thought to have greater leverage over offenders because the maximum sentence (sometimes described as the 'head sentence') is known to the offender from the beginning of their participation and thus the consequences of failure are certain, if not significant and severe. In pre-plea style programs, there is no such indication of the 'head sentence' and so there is no certainty about the outcome of non-compliance and termination (Longshore et al. 2001). A core consideration in the design of criminal justice-based drug treatment interventions is, therefore, the extent to which the legal framework can leverage offenders into longer and more active treatment such that there is sufficient time for best-practice interventions to have their greatest effect.

In some Australian jurisdictions with pre-sentence programs, and also in New Zealand, an indicated sentence is given on acceptance into the program (that is, an indication of the sentence that would otherwise have been imposed had the person not participated in the drug court program). For example, in WA, the Drug Court magistrate nominates an Indicated Sentence (the sentence the person would receive if their matters were dealt with immediately) and the participant has the option at any time of terminating their involvement in the program and receiving this sentence. The relative merits of a pre-sentence drug court program in comparison to a post-sentence model as identified by the New Zealand Law Commission are summarised in Table 11 below:

Table 11: Comparison of advantages and disadvantages of pre-sentence vs post-sentence drug court models (based on issues identified by the NZ Law Commission 2011)

	Pre-sentence	Post-sentence
Advantages	<p>Provides more powerful incentive for offenders as sentencing process has not yet been completed and offender may feel he or she has more influence over the final sentence</p> <p>Allows greater flexibility of the court when dealing with breaches</p> <p>May more easily accommodate victim concerns about undue leniency (victims might be more accepting of the eventual sentence than they would have been if a treatment programme had been imposed as a sentence)</p> <p>Can be implemented more rapidly since can be done without supporting legislation</p>	<p>Is more transparent than a pre-sentence model and would be subject to ordinarily sentencing principles, thus ensuring a degree of proportionality between the offence and proposed programme from the outset</p> <p>Creates greater certainty as to the consequences of non-compliance</p> <p>Would avoid unnecessary delays between plea and sentencing of the offender, which could benefit victims</p> <p>Through the use of legislation, may allow greater certainty around roles and responsibilities of agencies involved</p>
Disadvantages	<p>Potential net-widening and over-punishment - some offenders may end up with greater sanctions than their offending would otherwise have attracted (due to need to comply with</p>	<p>As conditions are part of a sentence imposed by the court, there may be much greater pressure on probation officers and judges to respond to</p>

	<p>the terms of the program and then receiving a sentence similar to what they otherwise would have received)</p> <p>As sentencing will need to be adjourned for more than a year, could potentially have adverse impacts for some victims due to delays in sentencing</p> <p>There could be some practical problems in identifying and mandating an appropriate agency to coordinate services and support to the court and participants under this model</p>	<p>breaches of conditions with formal sanctions</p> <p>Would require legislative changes</p>
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The New Zealand Law Commission, which ultimately recommended a pre-sentence model, specifically rejected the form of Drug Court model that formerly existed in Queensland, and which currently exists in NSW and Victoria, on the basis of its objections to the use of suspended sentences, including due to the potential for net-widening.

Whether to offer a pre- or post-sentence drug court will depend largely on the nature of the target population. High-risk offenders, for example, require greater leverage in order to initiate and maintain ongoing contact with treatment services. For this population, especially given the likelihood of incarceration, pre-sentence programs that do not provide some certainty around the likely sentence are unlikely to be sufficient. In other Australia jurisdictions, where drug courts are conceptualised as a last-resort intervention before incarceration, post-sentence programs are formalised through legislation. The NSW and Victorian drug courts, for example, deal with serious offences committed by offenders with an extensive criminal record and a history of failed legal interventions. The high likelihood of reoffending, coupled with probable incarceration, means that in these two jurisdictions post-sentence programs have been preferred to bail-based programs that are not considered appropriate for serious offenders.

The Law Reform Commission of Western Australia (2008)⁹⁷ recommended in a consultation paper on court intervention programs that these programs be underpinned by legislation ‘in order to ensure that the programs are able to meet the aim of rehabilitating offenders and reducing crime’. The Commission argued that legislation had an important role in:

- ensuring programs are valued and understood in the criminal justice system and by the wider community;
- promoting consistency, accountability and confidence in programs;
- strengthening rehabilitative efforts and preventing future offending;
- promoting equality of justice;
- promoting awareness of a program and the benefits;
- providing legitimacy of a program and engendering community support by clearly stating the purpose of the program;
- promoting the objectives of a program and encouraging systemic change;
- giving judicial officers confidence to use a program; and
- ensuring that programs are appropriately resourced.

Both pre- and post-sentence drug courts have been criticised on the basis of the requirement that to be eligible, participants must plead guilty. Concerns have been raised, in particular, under the former Queensland Drug Court, that requiring offenders to plead guilty to access the Drug Court program unduly coerces them to undertake treatment when they might not otherwise do so. Alternatively, there are also concerns that in order

⁹⁷ See also Richardson (2016:329-330).

to avoid imprisonment and to receive treatment that is otherwise difficult to access outside of the criminal justice system, an offender might plead guilty to offences that he or she would otherwise contest. Although drug court participants generally are required to consent to participate in the drug court program, the coercive nature of drug courts that involve the threat of an alternative sanction that would otherwise be imposed, such as imprisonment, remains a key criticism. However, the net-widening and ethical concerns are balanced against strong evidence that mandated treatment works and that those who are required by court order to participate in treatment perform equally, if not more favourably than those who enter treatment voluntarily. Specifically, there is now a large body of research that confirms that criminally mandated clients do not underperform others who access treatment from outside the criminal justice sector (Kelly, Finney, & Moos 2005; McSweeney, Stevens, Hunt, & Turnbull 2007; Perron & Bright 2008; Young & Belenko 2002). Whereas during the early days of US drug courts there was concern that criminally mandated clients would monopolise the scarce resources of the health and treatment sectors, such fears have not been realised. To the contrary, the evidence supporting equality for legally-coerced or mandated clients shows that allocating treatment places and resources to criminal justice-led interventions is a worthwhile policy objective.

18.4 CONSULTATION VIEWS AND ISSUES

Stakeholders supported the post-sentence model of the former Queensland Drug Court as being effective and appropriate given the intensity of the program requirements and the seriousness of the offences with which offenders are likely to be charged. This guaranteed offenders who would otherwise be incarcerated had an incentive to complete the order and gave offenders clarity about the consequences of completing the program.

Feedback provided over the course of consultations has suggested that participation in the program, including weekly court appearances, drug testing and treatment and supervision, requires a strong commitment and resolve by participants and could well be experienced by participants as far more onerous than serving a straight term of imprisonment with the option of court-ordered or board-ordered parole. This was supported by those who pointed to the availability of court-ordered parole as reducing the attractiveness of the former Drug Court program and as having contributed to decisions made by some participants to terminate part-way through the program in the hope of receiving immediate release on parole with less onerous requirements.

Many stakeholders acknowledged that a legislative and regulatory framework and clear policies and procedures are required to achieve the objectives of the drug court irrespective of the model adopted. Specific legislation, such as a Drug Court Act, was supported, however there were different views about whether the provisions were appropriately positioned in a stand-alone Act, or would be better integrated into the *Penalties and Sentences Act 1992* so that a drug court order would be regarded as one of a number of interventions or sanctions that could be imposed upon an offender.

On the one hand, creating a stand-alone Act was considered by those who had been involved with the former Drug Court, as a useful way to navigate the provisions as they were all included in a single piece of legislation. As all the provisions were collected together in the Act and regulations made under the Act, it was suggested that it was easy for those who were called upon to participate in the Drug Court to understand quickly the key stages and processes involved without the need to refer to multiple Acts and provisions.

On the other hand, the inclusion of the main provisions supporting the Drug Court program in the *Penalties and Sentences Act*, similar to the approach in Victoria, was seen as having the benefit of establishing the order as one of a number of sentencing dispositions or sanctions that can be imposed upon an offender as part of the sentencing continuum and better integrating its provisions with the broader principles of sentencing set out under the *Penalties and Sentences Act*. Orders made by the Drug Court would not then be regarded as separate and distinct from other sentencing dispositions. Incorporating the provisions in the *Penalties and Sentences Act*, it was further suggested, may also serve to promote cultural change amongst the legal profession and judiciary. It could serve to diffuse the non-adversarial and therapeutic jurisprudence philosophies employed by the drug court through regular contact by criminal lawyers and judicial officers who might not otherwise regularly be involved with Drug Court matters. Should this approach be taken, provisions

to establish the Drug Court, including its objectives and the appointment of Drug Court magistrates, would need to be legislated in the *Justices Act 1886*.

18.5 RECOMMENDATIONS

We support the adoption of a post-sentence model in order to create greater certainty and transparency in the program's operation and to better ensure proportionality between the overall length of the program and treatment conditions and the offence or offences that have led to an offender's eligibility for the order (see Chapter 20 of this report).

Both the duration of the program and its intensity, in our view, would be too onerous to expect an offender to complete as a pre-sentence option and, regardless of the program's intent to support an offender's rehabilitation, will be experienced by offenders as having coercive and punitive elements.

Given the differences of views expressed during consultation about the appropriate positioning of the provisions to support the Drug Court's operation, we consider this is a matter best left to the Queensland Government to determine during the development of the legislation. However, in the event the model of inclusion in the *Penalties and Sentences Act* is preferred, we suggest that a provision similar to section 18X(2) of the *Sentencing Act 1991* (Vic) should be included to create clarity around the relationship between the purposes of an order made by the Drug Court and the general purposes of sentencing set out under section 9(1) of the Act.

Recommendation 12	Post-sentence model
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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.
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Recommendation 13	As a post-sentence program, the Drug Court program should be established in legislation
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| <p>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 <i>Penalties and Sentences Act 1992</i> and <i>Justices Act 1886</i>, should be determined by the Queensland Government.</p> <p>13.2 Whether the provisions that support the Drug Court appear in a stand-alone Act or are included in the <i>Penalties and Sentences Act 1992</i>, a provision similar to section 18X(2) of the <i>Sentencing Act 1991</i> (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).</p> |
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19 CASELOADS AND LOCATIONS

19.1 BEST PRACTICE STANDARDS

The NADCP Standards provide that a drug court should serve as many eligible individuals as practicable while maintaining fidelity to best practice standards.

More detailed standards set out additional background around specific considerations relating to drug court, supervision and clinical caseloads.

The Standards provide that a drug court should not impose arbitrary restrictions on the number of participants it serves, but rather be predicated on local need, available resources, and the program's ability to apply best practices. The Standards recommend that when the caseload reaches 125 active participants, program operations should be monitored carefully to ensure they remain consistent with best practice standards. If evidence suggests some operations are moving from best practice, the drug court team should be required to develop a remedial action plan and timetable to rectify the deficiencies and monitor the effectiveness of the remedial actions.

19.2 FORMER QUEENSLAND MODEL

The former Drug Court prescribed the maximum number of active orders under the *Drug Court Regulation 2006*. Prior to its closure, the Drug Court operated in five Magistrates Court locations across Queensland: Beenleigh, Southport, Ipswich, Cairns and Townsville. The maximum number of active orders that could be made under the program was as follows:

- Cairns – 40;
- Townsville – 40;
- Beenleigh, Ipswich and Southport – a total of 141 (Drug Court Regulation, s 10).

In Townsville and Cairns, one magistrate was allocated per court location on a part-time basis (sitting four days per fortnight), while in south-east Queensland, coverage of all three centres was by one magistrate (four days per fortnight in both Beenleigh and in Southport, and two days per fortnight in Ipswich).

The maximum number of active orders prescribed determined whether a person could be referred for an initial (known as 'indicative') assessment under Part 3A of the Act or full assessment under Part 4 of the Act and whether an order could be made under section 19 of the Act, with no more orders being permitted to be made once the maximum number had been exceeded.

Additional guidance was provided relating to the referral for an indicative assessment under a Practice Direction (Magistrates Courts, *Practice Direction No.4 of 2008 — Adjournments for Indicative Assessment to Drug Court Magistrates*). The Practice Direction provided that where the maximum number of active orders had been reached and there was no place available in the Drug Court program, the referring magistrate was not permitted to make an order adjourning the proceedings before a Drug Court magistrate for an indicative assessment. The defendant was instead to be dealt with in the Magistrates Court by way of a further adjournment, by sentencing or a committal hearing. If the defendant appeared on a later date charged with the same offences or different offences, the defendant was not precluded from being referred for an assessment only because they had been previously refused an adjournment to the Drug Court due to no places being available in the Drug Court program.

19.3 POSITION IN OTHER JURISDICTIONS

Other jurisdictions in Australia including NSW and Victoria, do not set a statutory maximum number of participants. Instead this is dealt with under guidelines.

19.3.1 NSW Drug Court

In NSW, the Drug Court must be satisfied that facilities to supervise and control the person's participation in a program are available, and have been allocated to the person, in accordance with the guidelines prescribed. As the number of referrals made may exceed the number of drug court places available, a ballot is held to determine who can be referred from the Local Court in NSW to the Drug Court. If the offender is successful in the ballot process, the charges are adjourned to the Drug Court. If the offender is unsuccessful in the ballot process, the charges remain in the Local Court to be dealt with.

The NSW Drug Court operates in three locations: Downing Centre, Parramatta and Toronto. The maximum number of participants outlined in guidelines for each location is 160 (Parramatta), 40 (Downing Centre) and 80 (Toronto).

19.3.2 Drug Court of Victoria

Similar to NSW, there is no legislative cap on the numbers of active orders or participants in Victoria. Instead, the availability of facilities and programs is a factor in assessing whether the Drug Court is satisfied in all the circumstances it is appropriate to make the order. In circumstances where the Drug Court does not consider it appropriate to make the order, the Drug Court is required to either sentence the offender in relation to the offence or offences, if the offender consents for the Drug Court to do so, or adjourn the matter for sentencing to the appropriate venue of the Magistrates' Court.

KPMG noted in its evaluation of the drug court in 2014, that the court has consistently had 60 or more participants throughout the evaluation period, peaking at a maximum of 77, and only falling below 60 for six months in 2012.

Victoria currently has one drug court operating in Dandenong. In April 2016, the Victorian Government announced \$32 million to be set aside in the state budget to expand the drug court's operations into the Melbourne Magistrates' Court. It is estimated the Melbourne Drug Court, which is to operate as two lists, will have a caseload of approximately 170 participants. The Melbourne Drug Court is expected to be operational in early 2017.

19.3.3 New Zealand

New Zealand has two pilot AODT Courts operating in the Auckland and Waitakere District Courts. The caseload for each court is 50 participants at any one time (NZ Ministry of Justice 2014). In determining caseloads, consideration is also given to the capacity of the AODT Court team and treatment and testing service providers.

19.4 DEMAND FOR A DRUG COURT

The Review undertook an analysis based on QCS administrative data and identified the following Queensland court locations as having the highest demand for a drug court in terms of overall volume of matters:

- Brisbane;
- Southport;
- Beenleigh;
- Ipswich;
- Townsville;
- Toowoomba;
- Cairns;
- Rockhampton;
- Caboolture; and
- Maroochydore.

This analysis is based on the assumption that the Drug Court will target offenders assessed as having a high risk of problematic substance use who would otherwise be sentenced in the Magistrates Courts to an immediate term of imprisonment (excluding suspended sentences) of between one and three years' imprisonment for any offence, or be sentenced in the District Court to a term of imprisonment of one year or more, but not more than four years, for an illicit drug offence or property offence.

19.5 CONSULTATION VIEWS AND ISSUES

Initial feedback from a number of stakeholders suggested that a drug court should be offered on a broader statewide basis than the former Drug Court to ensure that individuals identified as needing assistance with their substance use are not disadvantaged because their place of residence. On this basis, it was suggested that the reinstated drug court should be available in a greater number of locations across the State, but with a smaller number of places allocated for each court and longer period of time between appearances to facilitate engagement in treatment.

In later consultations, it was proposed that the preferred approach would be to commit to one initial Drug Court location before considering roll-out to other locations. This would provide an opportunity to test and refine the model and ensure there is fidelity to program design, taking into consideration the research findings about the importance of the regularity of drug court hearings and drug testing, the need for intensive treatment, and the time and resourcing commitment required by drug court team members.

There was general support in consultations for this model.

All stakeholders supported a cap on the maximum number of active participants in the drug court and were supportive that the cap should not be specified in legislation but dealt with administratively to allow flexibility and consideration of staff, resources and availability of services.

19.6 RECOMMENDATIONS

In our view, the maximum number of drug court participants should be determined as a matter of policy rather than prescribed in legislation. This approach will ensure flexibility and allow the court to consider the availability of treatment places when making a referral for an assessment to the drug court.

The number of active participants will depend on the location or locations of the drug court and resourcing.

Although it is desirable to expand the number of drug court locations to meet the needs of offenders across the State, the effectiveness of the drug court model depends upon the availability of services, of capable and willing judicial officers and staff and intensity and continuity of treatment. Until these conditions can be met, we recommend that the number of locations should be limited and identified based on need, court caseloads and availability of services. To allow for the model to be tested and refined before rolling out to other court locations, we recommend commencing the drug court in one location.

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 Locations based on need, court caseloads and availability of services

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.

20 TARGET POPULATION AND ELIGIBILITY

20.1 BEST PRACTICE STANDARDS

The target population of a drug court is outlined in Best Practice Standard I. Eligibility and exclusion criteria for the drug court are predicated on empirical evidence indicating the types of offenders that can be treated safely and effectively in drug courts. Candidates are evaluated for admission to the drug court using evidence-based assessment tools and procedures.

20.1.1 Objective eligibility and exclusion criteria

Eligibility and exclusion criteria are defined objectively, specified in writing, and communicated to potential referral sources including judges, law enforcement, defence attorneys, prosecutors, treatment professionals, and community supervision officers. The drug court team does not apply subjective criteria or personal impressions to determine participants' suitability for the program.

20.1.2 High-risk and high-need participants

The drug court targets offenders for admission who are addicted to, or dependent upon, illicit drugs or alcohol and are at substantial risk for reoffending or failing to complete a less intensive disposition, such as standard probation or pre-trial supervision. These individuals are commonly referred to as high-risk and high-need offenders.

20.1.3 Criminal history disqualifications

Current or prior offences may disqualify candidates from participation in the drug court if empirical evidence demonstrates that offenders with such records cannot be managed safely or effectively in a drug court. Barring legal prohibitions, offenders charged with drug dealing or those with histories of violent offending should not automatically be excluded from participation in the drug court.

20.1.4 Clinical disqualifications

If adequate treatment is available, candidates are not disqualified from participation in the drug court because of co-occurring mental health or medical conditions.

PROGRAM PARTICIPANTS

20.2 FORMER QUEENSLAND MODEL

Under the former Queensland Drug Court model, a person was eligible to participate in the Drug Court program if:

- the person was not a person who must be dealt with as a child under the *Youth Justice Act 1992*;
- the person was drug dependent and that dependency contributed to the person committing the offence;
- it was likely the person would, if convicted of the offence, be sentenced to imprisonment; and
- the person satisfied other criteria prescribed under a regulation.

The Drug Court Regulation included requirements that the person must live within specified postcodes at the time the person was referred for an indicative assessment or assessment. The person was required to live within one of the postcodes included in the Drug Court's jurisdiction at the time an IDRO was made and intended to continue to live within that catchment area. The relevant postcodes were set out in the schedules to the Regulation.

20.3 POSITION IN OTHER JURISDICTIONS

20.3.1 NSW Drug Court

Similar to Queensland, the eligibility criteria prescribed for the NSW Drug Court under section 5 of the *Drug Court Act 1998* (NSW) and section 4 of the Drug Court Regulation 2010 are that:

- the person must be aged 18 years or over;
- the person must appear to be dependent on the use of prohibited drugs (within the meaning of the *Drug Misuse and Trafficking Act 1985*) or other drugs prescribed by the regulations;
- the facts alleged in connection with the offence, together with the person's antecedents and any other information available to the court, indicate that it is highly likely that the person will, if convicted, be required to serve a sentence of full-time imprisonment; and
- the person's usual place of residence must be within one of the identified local government areas.

20.3.2 Drug Court of Victoria

The eligibility criteria for the Drug Court of Victoria are also consistent with the NSW and the former Queensland Drug Court program and include that:

- the person must be over the age of 18 years;
- the Drug Court must be satisfied that the offender is dependent on drugs or alcohol and this dependency has contributed to the commission of the offence;
- a sentence of imprisonment would otherwise be appropriate and it would not have suspended the sentence in whole or in part;⁹⁸ and
- the offender's usual place of residence must be within a postcode area serviced by the drug court as specified in the Government Gazette.

Unlike NSW and the former Queensland Drug Court, the Drug Court of Victoria also allows offenders into the Drug Court program whose primary drug of concern in terms of their drug dependency is alcohol.

20.4 WHAT DOES THE EVIDENCE SAY?

Like any criminal justice intervention, drug courts are not designed to work for everyone. An important consideration in designing an effective drug court is ensuring that the target population is appropriate and, where possible, narrowly defined. This is particularly relevant given the limited number of participants who will likely be able to participate in a drug court at any one time. Understanding which offenders are most likely to benefit from drug court, and also the needs of specific offender groups within a drug court model, can help to inform both the eligibility criteria for the program and also the specific components that may be matched or tailored to individual participants based on need.

There are two main requirements for participation in drug court. First, that the offender has a drug and/or alcohol dependency, and this dependency is directly associated with their offending behaviour. Second, that they would be unlikely to succeed under minimal to moderate supervision arrangements, such as a probation order or court-ordered parole. Recalling the earlier section on prognostic and criminogenic risk, this essentially refers to offenders who are high risk and high need.

According to Marlowe (2012), the focus of drug courts on offenders who are high risk and high need is well supported by evidence. Research suggests these offenders are the most suited and likely to benefit from a drug court intervention that employs the ten NADCP Standards. In a meta-analysis by Lowenkamp et al. (2006), the effect size for drug courts in terms of their impact on recidivism was found to be twice as high for high-risk participants, when compared with participants characterised as low-risk. Summarising the accumulated

⁹⁸ Suspended sentences have now been abolished in Victoria.

evidence from several other studies, Marlowe (2012) concluded that drug courts have the greatest effect on offenders who are comparatively young, have more serious prior convictions, have been diagnosed with an antisocial personality disorder, or have failed in less intensive alternatives.

20.5 CONSULTATION VIEWS AND ISSUES

20.5.1 Alcohol

Most stakeholders suggested that consideration should be given to including participants with alcohol addiction (and addictions to other legal drugs commonly abused in the community). It was submitted that this approach would reflect the community experience that problematic substance use and links to criminal offending is not limited to the use of illicit drugs.

The former Queensland Drug Court extended to the use of all dangerous drugs as defined in the *Drugs Misuse Act 1986* which included pharmaceutical drugs such as codeine, valium/diazepam, oxycodone (e.g. OxyContin), morphine and Xanax (alprazolam).

Stakeholders supported the full spectrum of substances being included in recognition that drug trends change rapidly. Providing for the inclusion of alcohol would also capture a broader range of potential drug court clients, such as repeat drink driving offenders. QNADA noted that alcohol is the most commonly cited principal drug of concern for people seeking specialist alcohol and other drug treatment in Queensland.

20.5.2 Imprisonment

One of the identified benefits of the former Queensland Drug Court was the provision of an alternative to imprisonment for offenders with entrenched drug use.

In order to simplify the process and remove doubt about whether a person 'would be sentenced to imprisonment' it was suggested that it would be simpler and clearer to provide from the outset that in making a Drug Court order, the court must impose a term of imprisonment. The court must then be satisfied that a sentence of imprisonment is warranted.

20.5.3 Catchment area

Stakeholders did not support the use of postcodes as a means of identifying Drug Court participants as they considered this reduced the scope of possible participants and the ability to identify and address issues relating to the reintegration of participants whose permanent residence was outside of a prescribed postcode area. The use of postcodes was also considered to restrict the ability of people in contact with the criminal justice system who may want help to address their substance use issues from accessing the Drug Court.

If postcode schedules are reintroduced, stakeholders requested greater flexibility in the legislation to enable participants in the latter stages of the drug court program to move to outside of the designated drug court area.

20.6 RECOMMENDATIONS

For the reasons set out at section 15.2.2, we support the Drug Court maintaining a focus on dealing with adult offenders with entrenched drug use issues rather than being extended in the initial period of reinstatement to young offenders.

It is also important that given the nature, duration and intensity of the program that offenders who are to be eligible for the program would otherwise have been sentenced to serve a term of imprisonment. However, to ensure that the Drug Court does not lead to net widening and the imposition of intensive treatment requirements that would not otherwise be warranted, it is recommended that the court should be required to be satisfied that it would not otherwise have suspended the term of imprisonment in whole or in part, as was the case under the former *Drug Court Act*.

In contrast to the former Drug Court, we recommend that a future Queensland drug court should target the full range of licit and illicit drugs, including alcohol, in recognition that dependency is not confined only to licit drugs and that polydrug use is not uncommon. This approach would also allow for offenders committing serious offences linked to their alcohol dependency to be targeted for appropriate intervention and bring the Queensland model in line with the approach now taken in Victoria and New Zealand.

We also recommend that the former requirement that participants should live in certain postcodes in order to be eligible for the program should not be reinstated. Instead, we propose that at the point of acceptance into the program, eligibility should be based on the person living within relevant Magistrates Courts districts or Local Government Area boundaries. This approach will still maintain practical limits on who can participate in the program, taking into account the importance of ensuring that Drug Court participants can comply with the ongoing requirements of the program, including regular court appearances, and be adequately monitored and supervised.

Once accepted into the program, there should be some flexibility around participants moving outside of the Drug Court boundary provided services can still be reasonably provided under the program. The court should be satisfied that the offender's place of residence does not unduly affect an offender's ability to comply with the conditions of the order, including regular court appearances.

Recommendation 16	Eligibility of drug court participants and catchment area
16.1	A person should be eligible to participate in the drug court program if: <ul style="list-style-type: none">(a) the person is not a person who must be dealt with as a child under the <i>Youth Justice Act 1992</i>;(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.

OFFENDERS WITH A MENTAL ILLNESS

20.7 FORMER QUEENSLAND MODEL

Under the former Queensland *Drug Court Act*, an offender was excluded from the former drug court program if they were suffering a mental condition that could prevent their active participation in a rehabilitation program.

The term 'mental condition' was not defined under the previous Act, and can be quite broad ranging from mood disorders to psychotic disorders.

20.8 POSITION IN OTHER JURISDICTIONS

Neither the NSW Drug Court nor the Drug Court of Victoria automatically excludes individuals suffering from a mental condition. Instead, assessments are undertaken that consider whether an individual can be stabilised and able to participate actively in the order.

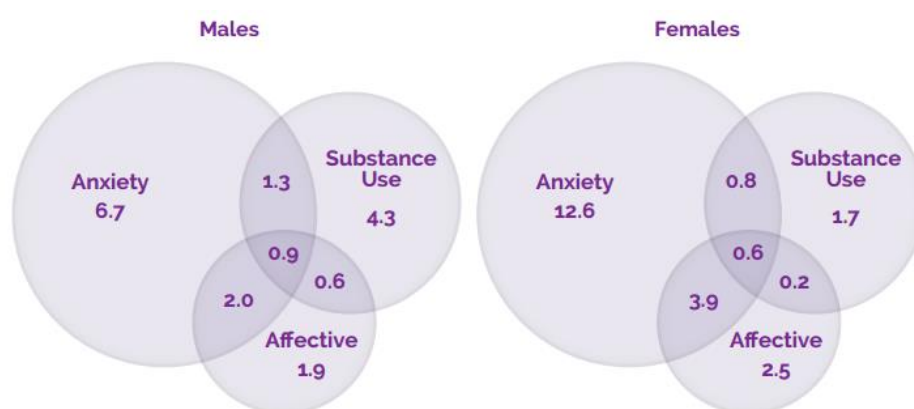
This process is consistent with NADCP Standards stating that citizens who have historically experienced discrimination or reduced social opportunities due to factors such as mental disability should receive the same opportunities to participate in drug court.

Identification of mental health issues can then be addressed, alongside the offender's substance misuse, in the case management plan.

20.9 WHAT DOES THE EVIDENCE SAY?

For drug courts, a key consideration is the extent to which those with a substance use disorder are also likely to present with other co-occurring mental health disorders. Figure 30 identifies the estimated prevalence of single and co-occurring mental health and substance use disorders in the Australian male and female population. Although these data are population estimates and are not limited to those who have regular contact with the criminal justice system, they are nevertheless informative. For example, of those males estimated to have a substance use disorder, one in three (31%) are estimated also to have at least one co-occurring anxiety or affective disorder. For women, the estimate is closer to one in two (44%) (Teeson et al. 2009).

Figure 30: Prevalence (%) of single and comorbid DSV-IV affective, anxiety and substance use disorders amongst Australian males and females in the past 12 months



In criminal justice populations, it has long been established that both substance use and other mental health related issues are disproportionately over-represented, so these population estimates are just the starting point. Although difficult to measure among criminal justice populations, the most recent Australian research nevertheless suggests a high incidence of comorbidity. For example, Forsythe and Gaffney (2012) report on a series of pilot mental health data from the AIC's Drug Use Monitoring in Australia project. In particular, the sample of police detainees in that study were asked to answer a series of questions that comprise the Corrections Mental Health Screening tool. Overall, 46 percent of male detainees, and 64 percent of female detainees were screened as likely suffering a diagnosable mental health condition not including substance abuse disorders.

20.10 CONSULTATION VIEWS AND ISSUES

Stakeholders supported reconsideration of whether defendants with a mental illness or condition should be excluded from the program as was the case under the former program.

Given the relationship between substance abuse, mental health conditions, and criminal offending and the fact that a mental health condition may not always be apparent at the pre-assessment phase, it was suggested that a psychiatric or psychological assessment of participants be included as part of the assessment process. This could identify the range and complexity of a participant's problems (including a mental health condition that could prevent or restrict participation in the program) and their competency to consent to the drug court program.

20.11 RECOMMENDATIONS

We support an approach that would allow issues such as an offender's mental illness or cognitive impairment that may affect their ability to participate in the Drug Court program to be considered as part of the assessment of the appropriateness of the person to participate in the program rather than being identified as an exclusionary criterion under legislation.

Recommendation 17	Mental illness should be a factor when determining the suitability for the order but should not preclude participation in the program.
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Mental illness/cognitive impairment is an issue to be considered in determining the appropriateness of 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.

21 OFFENCES AND COURT JURISDICTION

ELIGIBLE OFFENCES

21.1 FORMER QUEENSLAND MODEL

As the former Drug Court operated within the jurisdiction of the Magistrates Courts, relevant offences that could be dealt with under the former Drug Court were:

- summary offences;
- indictable offences 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.

Provisions requiring or permitting indictable offences to be dealt with summarily include:

- Criminal Code, section 552A (Charges of indictable offences that must be heard and decided summarily on prosecution election);
- Criminal Code, section 552B (Charges of indictable offences that must be heard and decided summarily unless defendant elects for jury trial);
- Criminal Code, section 552BA (Charges of indictable offences that must be heard and decided summarily); and
- *Drugs Misuse Act 1986*, section 13 (Certain offences may be dealt with summarily) and section 14 (Other offences that may be dealt with summarily if no commercial purpose alleged).

A 'prescribed drug offence' was defined in schedule 4 of the Drug Court Regulation to expand the usual summary jurisdiction of the Magistrates Courts and included the following offences under the *Drugs Misuse Act 1986* that carry a 20-year maximum penalty:

- section 8 (Producing dangerous drugs), if the offence is punishable under paragraph (b)(i), (c) or (d) of the penalty for the offence;
- section 8A(1) (Publishing or possessing instructions for producing dangerous drugs), if the offence is punishable under paragraph (b) of the penalty for the offence; and
- section 9 (Possessing dangerous drugs), if the offence is punishable under paragraph (b)(i) or (c) of the penalty for the offence.

The *Drug Legislation Amendment Act 2006* amended section 20 of the *Drug Court Act* and section 552H(1)(a) of the Criminal Code (Qld) to allow offenders to be dealt with by the Drug Court if facing a term of imprisonment of more than three years and up to four years provided that the prosecution and defence consent on the ground that the person will be adequately punished on summary conviction. These changes allowed a Drug Court magistrate to issue an order sentencing the offender to serve a term of imprisonment of more than three years and up to four years where the requisite consent was given.

Almost all offenders referred to the drug court were facing one or more property charges (93%), while half (51%) were facing drug charges. In all, offenders were facing an average of around eight charges at the time of their referral (Payne 2008).

21.2 POSITION IN OTHER JURISDICTIONS

Offences that can be dealt with by the NSW Drug Court must be within the jurisdiction of the Local Court and District Court. This includes:

- summary drug offences (includes possession of prohibited drugs and equipment) – two year maximum penalty [possession of traffickable quantity taken to be for supply unless person proves otherwise];

- indictable drug offences capable of being dealt with summarily (e.g. where charged with production or supply but court satisfied involves a small quantity or not more than the indictable quantity applicable (e.g. 5g amphetamine or heroin, 1,000g cannabis leaf, 1.25g ecstasy).

Similarly, the Drug Court of Victoria hears matters where a person has been charged with a summary offence or an indictable offence triable summarily. KMPG noted in its evaluation of the Drug Court that the most common offences dealt with in the Drug Court include:

- burglary/obtain property by deception/financial advantage;
- drug dealing/trafficking (amphetamines, drug of dependence, ecstasy etc.);
- weapons possession offences;
- assault with weapon, recklessly/intentionally cause injury, robbery, assault of police officer, unlawful assault; and
- theft/attempted theft of or from a motor vehicle.

21.3 WHAT DOES THE EVIDENCE SAY?

On the question of offence-type eligibility, the best available evidence comes from a multi-site comparison conducted by Carey et al. (2012) where the outcomes of 69 US-based adult drug courts were compared. Specifically, courts of different composition and eligibility were compared in terms of their recidivism rates—measured as the number of new arrests within two years of program commencement—and cost outcomes. At the outset, the authors recognised that courts with comparatively high-risk populations—higher rates of mental illness, more severe addictions, lower educational levels and fewer economic opportunities—were more likely to have fewer positive outcomes. Nevertheless, they found that drug courts that allowed non-drug charges (i.e. not just drug possession offences), such as theft offences, had reductions in reoffending that were 95 percent higher than drug courts that only allowed drug possession charges.

21.4 CONSULTATION VIEWS AND ISSUES

Stakeholders supported the retention of offences that could be dealt with by the former Drug Court while broadening the scope of the Drug Court’s jurisdiction in relation to offences of violence.

There was also support for consideration being given to changes to allow offenders with both State and Commonwealth offences to be eligible to participate in the drug court program. Under the former Drug Court, if an offender had dual state and Commonwealth offences, they were required to split the charges and deal with them separately.

Section 20AB of the *Crimes Act 1914* (Cth) and *Crimes Regulations 1990* (Cth) provide for additional sentencing alternatives that can be imposed on offenders being sentenced for Commonwealth offences.

In *Commonwealth DPP v Costanzo & Anor* [2005] QSC 79, the Supreme Court considered whether the second respondent could be sentenced to an IDRO where the offence before the Drug Court was a Commonwealth offence. Wilson J found that an IDRO was not a ‘similar sentence or order’ within the meaning of section 20AB(1) *Crimes Act* (Cth) to the sentencing types then listed. The order made by the first defendant was found to have been made without jurisdiction and declared void.

The Commonwealth *Crimes Act* has since been amended to expand the range of state and territory alternative sentencing options listed in the *Crimes Act* as being applicable to federal offenders, while retaining the ability to prescribe additional types of alternative sentences and orders in the regulations. The alternative sentencing options listed now include “a drug or alcohol treatment order or rehabilitation order” (s 20AB(1AA)(a)(vii)).

21.5 RECOMMENDATIONS

We recommend that the offences that could be dealt with under the former *Drug Court Act* should be retained. In our view, these strike the appropriate balance between ensuring the offences are not so serious as to require determination by a higher court, while expanding the range of offences the Drug Court can deal with

by prescribing certain drug offences as offences that can be dealt with by the Drug Court where the person's drug dependency has contributed to their commission.

Under this approach, some offences will continue to be excluded from the operation of the drug court, such as non-drug offences that are strictly indictable and drug offences that are not prescribed.

While we do not have any objections in principle to Commonwealth offences being dealt with by the Drug Court, the ability to impose a DTO is a matter governed by Commonwealth legislation rather than by State legislation. Further discussions with the Australian Government may be warranted to determine whether an order imposed by the Drug Court would fall within the scope of "a drug or alcohol treatment order or rehabilitation order" following recent amendments to section 20AB of the Act, and any other consequential amendments that may be necessary to enable Commonwealth offenders to be dealt with by the Drug Court.

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).

INELIGIBLE OFFENCES

21.6 FORMER QUEENSLAND MODEL

Under section 6(3) the former *Drug Court Act*, a person was not eligible to participate in the program if:

- the person was serving a term of imprisonment other than a community term of imprisonment (defined under s 7A of the Act as a term of imprisonment to be served by way of intensive correction in the community under an ICO, or in a similar way under an order made under a law of another State of the Commonwealth);
- the person was the subject of a parole order that had been cancelled by a parole board and the person was to serve the unexpired portion of the person's period of imprisonment; or
- a charge against the person for a disqualifying offence was pending in a court.

A disqualifying offence was defined as:

- an offence of a sexual nature (not including prostitution); or
- an offence involving violence against another person with some exceptions (i.e. common assault, serious assault of a police officer and assault with intent to steal).

21.7 POSITION IN OTHER JURISDICTIONS

In NSW, a person is not eligible for the drug court if they are charged with an offence involving violent conduct or sexual assault (*Drug Court Act 1998* (NSW), s 5(2)). "Involving violent conduct" has been interpreted to apply to offences such as:

- assault of a police officer;
- robbery in company;
- armed robbery (presence of weapon as part of robbery sufficient to constitute 'violent conduct'); and
- wielding a knife in a public place.

In Victoria, a person is ineligible to participate in the Drug Court under the *Sentencing Act 1991* (Vic), s 18Z(2) if:

- the person is currently subject to a sentence imposed by the County Court or Supreme Court;
- the person is currently subject to a parole order;
- the person is charged with a sexual offence (including rape, sexual assault, incest, sexual penetration of child, indecent act with a child under the age of 16 and grooming); or
- the person is charged with an offence involving the infliction of actual bodily harm, although the court can still make an order if satisfied the harm was of a minor nature.

21.8 WHAT DOES THE EVIDENCE SAY?

The NADCP Standards state that research reveals that drug courts yielded nearly twice the cost savings when they served addicted individuals charged with felony theft and property crimes. Drug courts that served only drug-possession cases typically offset crimes that did not involve high victimisation or incarceration costs, such as petty theft, drug possession, trespassing, and traffic offences. As a result, the investment costs of the programs were not recouped by the modest cost savings that were achieved from reduced recidivism. The most cost-effective drug courts focused their efforts on reducing serious offences that are most costly to their communities.

Mixed outcomes have been reported for violent offenders in drug courts. Several studies found that participants who were charged with violent crimes or had histories of violence performed as well or better than nonviolent participants in drug courts. However, meta-analyses reported significantly smaller effects for drug courts that admitted violent offenders (Mitchell et al. 2012). The most likely explanation for this discrepancy is that some of the drug courts might not have provided adequate services to meet the need and risk levels of violent offenders. If adequate treatment and supervision are available, there is no empirical justification for routinely excluding violent offenders from participation in drug courts.

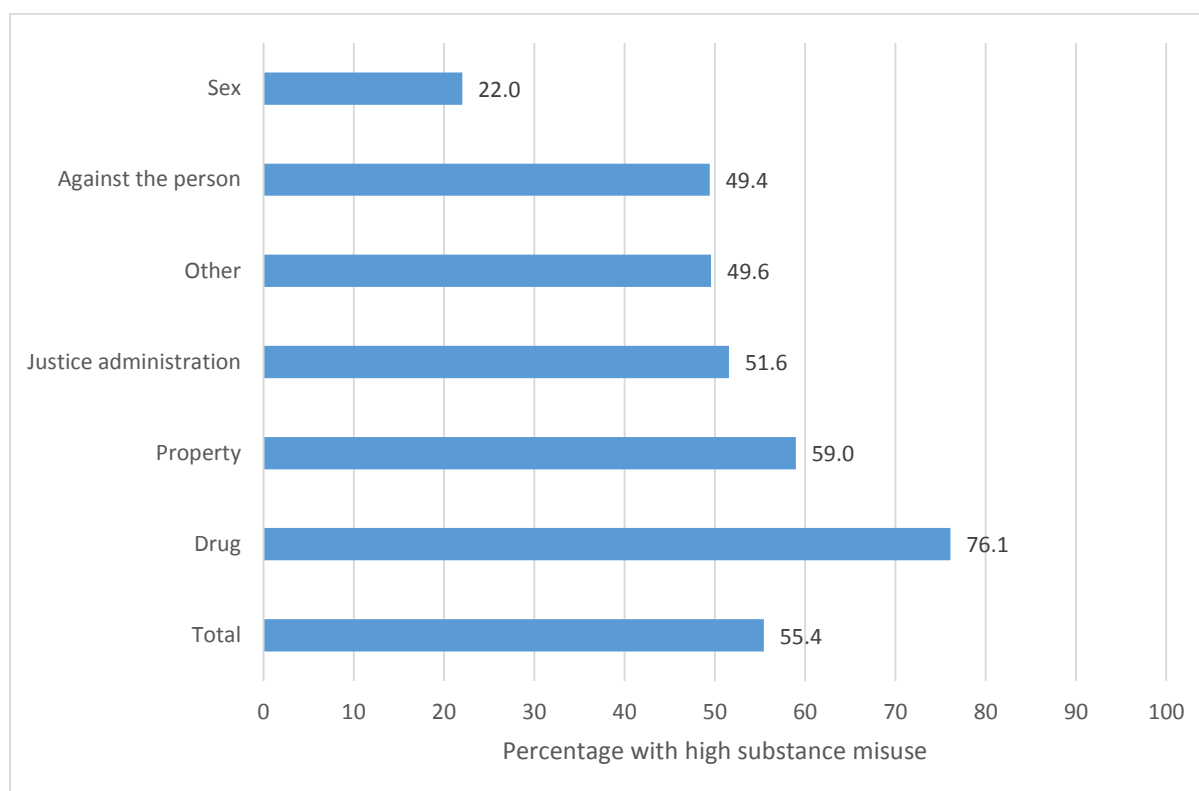
Carey et al. (2012) also concluded that drug courts that allowed participants with current charges involving violence or prior convictions for violent offences had recidivism or cost outcomes that were no better or worse than other courts. They conclude that this finding is consistent with 'other research [that] suggests allowing violent offenders into drug court programs can have a bigger positive effect on recidivism and cost outcomes than allowing only non-violent offenders because greater savings are achieved when violent crimes are prevented rather than less serious (less costly) crimes' (p. 35). This does not mean that it is not still important to consider carefully the types of violence charges that are allowed because the safety of staff and other drug court participants remains an important consideration.

Although research is sparse on this point, there also appears to be no justification for routinely excluding individuals charged with drug dealing from participation in drug courts, providing they are drug addicted.

Evidence suggests such individuals can perform as well (Marlowe et al. 2008) or better (Cissner et al. 2013) than other participants in drug court programs. An important factor to consider in this regard is whether the offender was dealing drugs to support an addiction or solely for purposes of financial gain. If drug dealing serves to support an addiction, the participant might be a good candidate for a drug court.

The relationship between sex offending and substance misuse is not as strong as the relationship between problematic substance use and other types of offending. Figure 31 shows the prevalence of high risk of problematic substance use among offenders by their principal offence. The likelihood of problematic substance use is substantially lower among offenders with a sexual offence for their principal offence (22%) than other offenders. In comparison, three in four offenders (76%) with drugs as their principal offence, 59% of offenders with a property offence as their principal offence and half (49%) of offenders with a principal offence relating to offences against the person, were assessed as having a high risk of substance misuse.

Figure 31: Percentage of offenders under QCS supervision assessed as having high risk of substance misuse within principal offence type, Queensland, 2010–11 to 2014–15



Source: QCS administrative data.

Further, the number of offenders sentenced to imprisonment for sex offences is relatively small when compared with other types of offending.

21.9 CONSULTATION VIEWS AND ISSUES

A number of stakeholders supported the adoption of broader eligibility criteria to ensure the drug court program is available to the widest pool of potential program participants. In particular, stakeholders were generally supportive of violent offences, including offences involving domestic and family violence, not being automatically excluded but rather assessed for suitability based on the circumstances of the offence and the availability of treatment.

QPS submitted that issues of violence should be examined carefully due to associated safety concerns. It further suggested that defendants subject to pending serious violent indictable offences (robbery, grievous bodily harm and the like) should be ineligible for the program and these offences should be clearly defined as excluded from the program. It also submitted that more explanation of how a magistrate's discretion should be exercised should be provided. LAQ nominated as potential candidates for a drug court program, offenders who are high level/multiple property offenders facing imprisonment, who have not been able to break the cycle of addiction and who have a significant criminal history or current charges.

QNADA supported an approach that would only exclude offenders from the program if charged with a prescribed sexual offence, rather than applying a blanket exclusion.

QPS supported excluding individuals charged with supply of a dangerous drug on the basis of the risks that these individuals may cause problems in rehabilitation programs or services. It also supported offenders with either prior sexual offences or current sexual offences being excluded from the program.

QPS also submitted that defendants on bail for any offence punishable by imprisonment who have committed a subsequent offence should be ineligible to be transferred to the Drug Court on the basis of their incapacity to comply with a court order.

21.10 RECOMMENDATIONS

We support an approach that would not prima facie exclude people charged with offences of violence from being eligible for the Drug Court program taking into account:

- the intensive nature of the program that provides a higher level of support and supervision (including judicial monitoring) of progress, than is necessarily delivered under alternative orders (such as court-ordered parole);
- the ability for the order to be terminated in the case of failure to comply with its conditions (meaning the person can be resented for the offence thereby ensuring similar safeguards to alternative forms of orders);
- the significant cost-benefits that can result from the inclusion of violent offences in the program (because greater cost savings are achieved when violent crimes are prevented than less serious and less costly forms of offending); and
- changes in the nature of drug-related offending, including use of crystal methamphetamine (ice), which stakeholders have identified as being associated with more violent offending and offending that escalates more quickly than other types of drugs.

On this basis we recommend that the appropriateness of the order for violent offenders should be assessed by the Drug Court magistrate taking into account the nature and seriousness of the offence, including whether actual bodily harm was inflicted. We do not see a need to define specific offences for exclusion. Rather, suitability for the order should be determined by the magistrate taking into account all the individual circumstances of the offence.

Given the small numbers of sexual offenders convicted of a sexual offence presenting with a high risk of alcohol and other drug use, we support the continued exclusion of offenders whose current or pending charges relate to the commission of a sexual offence. However, we consider that this should not exclude offenders with prior sexual offences from participating in the program, provided they are otherwise assessed as suitable to participate and there are service providers who are willing to work with them.

Some stakeholders, including QPS, also submitted that an offender should not be able to serve two imprisonment orders at the same time and recommended that consideration be given to excluding offenders who are the subject of a suspended sentence. Under the former Drug Court, if the suspended sentence was made by the District or Supreme Court, the Drug Court magistrate adjourned the breach of the suspended sentence to the relevant Supreme or District Court, as required under section 146 of the *Penalties and Sentences Act 1992*. Feedback provided to the Review suggested that in these circumstances the courts were loath to take action on the breach while the person was still participating in the Drug Court program, thereby delaying the matter being finally dealt with.

The Victorian provisions avoid this problem by providing that an order cannot be made if the person is currently subject to a sentence imposed by the County Court or Supreme Court. The stated rationale for this at the time the provision was introduced, was:

to ensure that there is no conflict between the intensive treatment and supervision regime which an offender undergoes under a drug treatment order, and the supervision of both offenders on higher court orders and offenders after release from imprisonment. (Explanatory Memorandum, Sentencing (Amendment) Bill 2002 (Vic), p.3)

While the reason for introducing this provision did not specifically relate to issues of breach of suspended sentences imposed by a higher court, a similar legislative approach could be considered in Queensland to exclude a person from being eligible for a Drug Court order in circumstances where the person is subject to a sentence imposed by the District Court or Supreme Court.

Recommendation 19 Ineligibility of an offender to participate in the Drug Court

19.1 A person should not eligible to participate in the Queensland Drug Court if:

- (a) the person is serving a term of imprisonment;**
- (b) the person is the 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.

22 REFERRALS, SCREENING AND ASSESSMENT

22.1 BEST PRACTICE STANDARDS

NADCP Standards indicate that candidates should be evaluated for admission to the drug court using evidence-based risk-assessment and clinical-assessment tools. Risk-assessment tools must have been demonstrated empirically to predict criminal recidivism or failure on community supervision and are equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population. Clinical-assessment tools should evaluate the formal diagnostic symptoms of substance dependence or addiction. Assessors must be trained and proficient in the administration of the assessment tools and interpretation of the results of the assessment.

22.2 FORMER QLD MODEL

Under the former Drug Court, an indicative assessment was required to be completed followed by a full assessment.

The indicative assessment was described as an initial screen to check the defendant's eligibility and suitability for the drug court. The initial assessment focused on legal eligibility and a preliminary assessment of drug dependency; the latter completed by Queensland Health. Feedback from former drug court personnel indicated that this assessment was more akin to a screening process, the results of which were not presented to the court in a formal report.

Following a defendant's assessment of eligibility for the drug court program, an adjournment of approximately six weeks was granted for the purpose of obtaining more comprehensive reports to assess the defendant's suitability for the program.

A pre-sentence report was completed by QCS. This provided information on the most suitable treatment (as indicated by Queensland Health), offender willingness to participate in drug court, offence details, attitude towards offences, criminal history, response to community based supervision, family background, accommodation, education, employment, relationships, motivation, summary and recommendation to suitability (including recommended conditions of the order). A risk of re-offending assessment was not completed.

A health assessment was undertaken by an approved Health Assessor employed by Queensland Health. The report included an assessment of drug dependence based on the DSM-IV and recommendations for treatment.

22.3 POSITION IN OTHER JURISDICTIONS

Similar to the former Queensland Drug Court, the drug courts in NSW and Victoria utilise a dual stage screening and assessment process. While lengthy, this process is largely unavoidable as the initial screening aims to rule out legally ineligible defendants. The second assessment of drug dependency and offending behaviour is more comprehensive and requires time for the relevant interviews and inquiries to be made.

The Drug Court of Victoria and the NZ AODT Court have the additional benefit of a formalised risk of reoffending assessment being conducted, which ensures that the targeted cohort of offenders is accepted onto the drug court program.

NSW Drug Court differs from the Drug Court of Victoria in its use of a random ballot when drug court places are oversubscribed, its compulsory detoxification of all referred individuals in a correctional centre and its requirement that co-residents consent to a drug court participant residing at their accommodation.

22.4 WHAT DOES THE EVIDENCE SAY?

Determining the eligibility of the offender for a drug court program and then subsequently addressing his/ her individual treatment needs is an essential component to the successful workings of a drug court program.

Existing as complementary systems, screening processes ensure that drug court clients meet formal legal and clinical criteria, while assessments provide an in-depth understanding of individual treatment and service level need. It is important that drug courts adequately differentiate between screening and assessment as two distinct processes.

Screening is typically the process by which the eligibility of the offender is determined. This is usually a two-stage process beginning with a review of legal and demographic eligibility, focusing on the current offence and criminal history specific factors that must be satisfied before program placement may be approved. This is followed by a second screening to determine the clinical appropriateness of the offender for admission to the drug court program.

Assessment is differentiated from screening by being a more comprehensive and thorough process used to determine an offender's suitability for specific treatment types and levels of service intensity. Assessment usually occurs after an offender is deemed eligible for the drug court program. In this context, the assessment is intended to provide an in-depth dynamic picture of the offender's prognostic and criminogenic needs, leading to the identification of appropriate levels and types of interventions.

Validated and standardised assessment instruments have been shown to be more effective than professional judgement in the matching of offenders to appropriate levels and types of interventions. This is supported by the NADCP Standards that indicate that candidates should be evaluated for admission to the drug court using evidence-based risk-assessment and clinical-assessment tools.

22.5 CONSULTATION VIEWS AND ISSUES

Stakeholder feedback indicated that the two-stage assessment affected the intrinsic motivation of the offender. It was, therefore, suggested that the screening and assessment process be more streamlined. Concerns were also raised that assessments were based on a defendant's self-reported drug use and that verification of information was not undertaken.

22.6 RECOMMENDATIONS

As the Drug Court is a resource-intensive program that needs to be managed effectively, we consider that it is imperative that individuals accepted onto the program match the targeted Drug Court cohort; that is, are high risk offenders with an alcohol and/or drug dependency. This can only be successfully achieved by the use of validated screening and assessment tools to determine the suitability of defendants 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.

23 STRUCTURE OF THE ORDER

23.1 FORMER QUEENSLAND MODEL

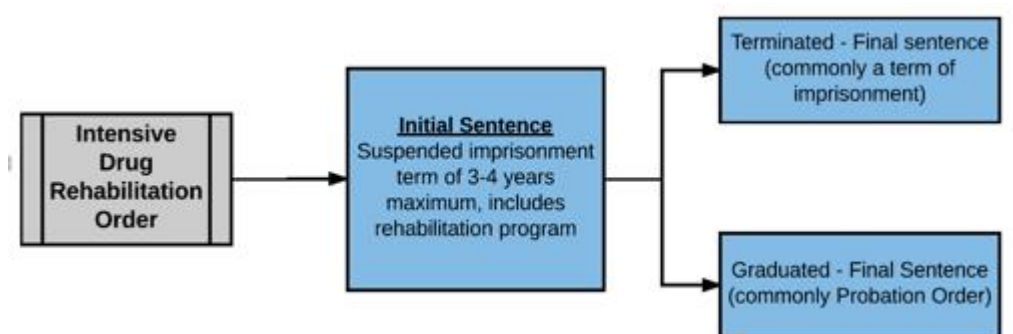
Under the former Queensland Drug Court program, upon being accepted into the program, the offender received an Intensive Drug Rehabilitation Order (IDRO). The IDRO consisted of three separate components:

1. an order sentencing the offender to serve a term of imprisonment (the *initial sentence*) and suspending the term of imprisonment;
2. the requirements of the order; and
3. a rehabilitation program (*Drug Court Act, s 20*).

The term of imprisonment was for a maximum term of three years, however under amendments to the Act in 2006,⁹⁹ the jurisdiction of the Drug Court was expanded to allow the court to impose a sentence of imprisonment of up to four years if the prosecutor appearing before the court and the offender consented to the offence being prosecuted summarily, on the ground that the defendant would be adequately punished on summary conviction.

The initial sentence of imprisonment was wholly suspended while the offender completed a rehabilitation program decided by the Drug Court magistrate. Upon termination or graduation, this initial sentence was revoked and a final sentence was imposed. See section 24.2 of this Report for more information on graduation and termination provisions.

Figure 32 Sentencing order of former Queensland Drug Court



23.1.1 Core conditions of the order

An IDRO was subject to the following core conditions:

- the offender must not commit an offence, in or outside Queensland, during the period of the order;
- the offender must notify an authorised corrective services officer of every change of the offender's place of residence or employment within two business days after the change happens;
- the offender must not leave or stay out of Queensland without an authorised corrective services officer's permission;
- the offender must comply with every reasonable direction of an authorised corrective services officer, including a direction to appear before a Drug Court magistrate at a stated time and place; and
- the offender must attend before a Drug Court magistrate at the times and places stated in the order (*Drug Court Act, s 22*).

⁹⁹ *Drug Legislation Amendment Act 2006*, s 71 (amending s 552H of the Criminal Code) and s 27 (amending s 20 of the *Drug Court Act 2000* (Qld) to insert s 20(2) of the Act).

23.1.2 Additional requirements

The IDRO could also contain requirements that the offender:

- make restitution, or pay compensation; and
- satisfactorily perform community service of up to 240 hours; and
- do another thing that the magistrate considers may help the offender's rehabilitation (*Drug Court Act*, s 23).

23.1.3 Contents and requirements of rehabilitation program

The IDRO was also required to set out, as far as practicable, details about the rehabilitation program that the offender was required to 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 (*Drug Court Act*, s 24(1)).

23.1.4 Detoxification

The Act also allowed the court to order that commencement of suspension of the sentence be delayed for up to 15 days, including for the purposes of detoxification, and to commit the offender to prison at any time if considered necessary to facilitate the offender's detoxification (up to 22 days) or the assessment of the offender's participation in the program (up to 15 days, or 30 days if due to the offender not attending a program as required) (*Drug Court Act*, ss 21, 24(3)–24(6)). However, the Act provided that the offender must not be committed to a prison unless the magistrate was satisfied no other suitable facilities are immediately available (*Drug Court Act*, s 24(4)).

23.2 POSITION IN OTHER JURISDICTIONS

23.2.1 NSW Drug Court

Under the NSW Drug Court Act, once an offender is accepted into the program, they are sentenced in accordance with the *Crimes (Sentencing Procedure) Act 1999* (NSW) (*Drug Court Act 1998* (NSW), s 7A(3)). Within 14 days of sentencing the offender the Drug Court must make an order:

- imposing conditions that the person has accepted; and
- suspending the execution of the sentence for the duration of the person's program (s 7A(5)).

The NSW Drug Court program has similar core conditions and rehabilitation requirements as the former Queensland Drug Court program, as well as the option to incarcerate an offender for detoxification for up to 21 days at a time (s 8A). However, the NSW Drug Court Act does not provide for any additional requirements to be imposed under the Act, such as restitution or community service.

Similar to the former Queensland model, once the program has been completed, on terminating a drug offender's program, the Drug Court is required to reconsider the person's initial sentence and to determine the final sentence taking into account the nature of their participation in the program, any sanctions imposed during the program and any time the offender has been held in custody (s 12).

23.2.2 Drug Court of Victoria

Under the Victorian Drug Court program, upon being accepted into the program, the offender is sentenced to a Drug Treatment Order (DTO) which consists of two parts referred to as: 'the treatment and supervision part', and 'the custodial part' (*Sentencing Act 1991* (Vic), ss 18Z and 18ZC).

The custodial part is a sentence of imprisonment of no longer than two years that the Drug Court must impose, applying the usual sentencing principles, in respect of the offences before the court (s 18ZD). However, the

sentence of imprisonment is not activated and instead the offender must serve the term in the community while undertaking the treatment and supervision part (ss 18ZC and 18ZE).

If, applying the usual sentencing principles, the offences before the Drug Court would attract a term of imprisonment of more than two years, the defendant does not qualify for a DTO.

The DTO operates for a period of two years unless it is cancelled earlier (s 18ZC(2)(b)).

The Drug Court of Victoria has similar core conditions and rehabilitation requirements as the former Queensland Drug Court program, as well as the option to order restitution or compensation. The Drug Court of Victoria does not provide for an additional requirement to be attached to the order of community service, although community service may be imposed as a sanction.

23.3 CONSULTATION VIEWS AND ISSUES

Most people consulted supported recasting the former IDRO as a straight sentencing order to create greater certainty and transparency in its operation.

While there was some support for the concept of an initial and final sentence, this was based on the assumption that a probation order could be made if the offender still required support after completing the program rather than it providing an effective incentive for completion. Most of those consulted considered the transition of offenders from the program should be able to be achieved without the need to resort to the making of a new sentencing order for this purpose, exposing the offender to the risk of breach. It was also generally agreed that it was important, given the intensity of the program, to ensure that treatment and other requirements do not extend beyond what would otherwise be proportionate given the nature of the offence and level of offending.

In relation to additional conditions that can be imposed on the order, one of the criticisms of the former Queensland Drug Court program was that offenders were overloaded at the start of the program with commitments such as community service, appointments with treatment providers, case management appointments with Probation and Parole, urinalysis testing and court appearances.

Most people consulted supported retaining the expanded jurisdiction of the former Drug Court to deal with offenders who otherwise would have been sentenced to up to four years' imprisonment. Those involved with the former Drug Court noted that the court did have a number of participants who had received sentences of between three and four years. The recommended length of the sentence was partly driven by the need to generate a sufficient pool of offenders for the court, given the alternative option available to offenders of court-ordered parole, which is far less onerous. In Victoria the maximum length of an order is two years.

In comparing the length of order to the Victorian DTO, it was observed that sentencing levels in Queensland do not necessarily correspond to those in Victoria. In *R v Donald* [2000] QCA 399, Chief Justice de Jersey (with whom Pincus and Thomas JJA agreed) said that a three year term for breaking and entering committed by an offender who was a drug addict was "at least mid-range...and arguably low range" in circumstances where an offender has a substantial criminal history (see *R v Donald* [2000] QCA 399, de Jersey CJ), however, this observation does not take into consideration the onerous nature of a drug treatment order. The average (median) length of imprisonment sentence imposed in 2014–15 of offenders convicted of unlawful entry with intent/burglary, break and enter as their principal proven offence was 12 months, although 22% of those convicted of this offence who were sentenced to imprisonment (270 offenders) received a sentence of between two years and less than five years (ABS 2016b).

23.4 RECOMMENDATIONS

A straight sentencing order is recommended to address concerns raised about the uncertainty of the final sentence following the completion of an IDRO under the former Queensland Drug Court. This would mean that, in most cases, offenders should be able to complete their treatment program successfully within the two-year period provided for under the order. However, in the event that a further period of treatment is warranted, we recommend that the treatment and supervision component of the order should be able to be

extended, provided it does not extend beyond the term of imprisonment that is ordered under the custodial part of the order.

While some stakeholders raised concerns that the nature of the incentive provided by having an initial and final sentence will be removed, there are other, better ways to encourage offenders to comply with the conditions of the order and successfully complete their treatment. Under the proposed order, it would be possible to cancel the rehabilitation part of the order, allowing the person to be subject only to the core conditions of the order for the remainder of the two year treatment and supervision part of the order. This should provide a significant incentive even in the case of breach, provided it does not involve offending outside of the drug court's jurisdiction. The drug court would have the option of supporting the offender by reactivating the rehabilitation program and placing them back into treatment.

It is also proposed that the maximum penalty of imprisonment able to be imposed should be retained at four years, as was the case under the former Drug Court program. This is primarily to ensure a large enough pool of eligible offenders who may be suitable and motivated to complete a Drug Court program, rather than being an ideal length for a program such as this. The maximum penalty is set in the context of a sentencing system in which some offenders will view a drug court order as overly onerous and may be more attracted to alternative sentences such as a straight sentence of imprisonment with court-ordered parole. In the absence of changes to sentencing laws, a longer than optimal maximum penalty may be required to ensure the viability of the drug court.

In order to allow persons sentenced to this order to focus on the treatment aspect of their order rather than be overloaded with other commitments such as community service, we recommend that the only additional conditions that can be attached are restitution and compensation orders but not community work. However, community work would be available as a sanction for non-compliance with the conditions of the order and it would still be possible for an offender to undertake community service voluntarily towards the end of the order should they want, for example, to discharge a monetary debt with the State Penalties and Enforcement Registry.

Evidence supports the exclusion of community work as an option, with a meta-study by Shaffer (2011) finding that courts that utilised other criminal justice options alongside the treatment order (including the imposition of fines and community service orders) were among the least effective. It is possible that adding such requirements created opportunities for breach and sanctioning that, if it occurs early in the program, may undermine the therapeutic alliance.

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 the 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 given by an authorised corrective services officer;
- 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.

24 TERMINATION, CANCELLATION AND GRADUATION

24.1 BEST PRACTICE STANDARDS

The NADCP Standards provide that the consequences for participants' behaviour should be predictable, fair, consistent, and administered in accordance with evidence-based principles of effective behaviour modification. They provide that policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments should be specified in writing and communicated in advance to drug court participants and team members. Policies and procedures should provide a clear indication of matters including: criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination.

In accordance with these standards, participants may be terminated from the drug court if they can no longer be managed safely in the community or if they fail repeatedly to comply with treatment or supervision requirements. Participants are not to be terminated from the drug court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community. This recognises that the cessation of drug use is a distal goal and difficult to achieve for someone with a long history of serious drug use, whereas compliance with supervision requirements, such as keeping appointments, is a proximal goal and should be achievable for participants.

If a participant is terminated from the drug court because adequate treatment is not available, the NADCP Standards suggest the participant should not receive an augmented sentence or disposition for failing to complete the program. Rather, they should receive a sentence or disposition that is appropriate for the underlying offence that brought them into the drug court. In the event that an augmented sentence is to be imposed for failure to complete the drug court program, the Standards provide that participants should be informed in advance of the circumstances under which this might occur.

24.2 FORMER QUEENSLAND DRUG COURT MODEL

Under section 34 of the former Queensland *Drug Court Act*, there was a range of circumstances in which an offender could be terminated from the program either on application or on the Drug Court magistrate's own initiative. These circumstances were:

- if the participant asked the magistrate to terminate the rehabilitation program (for example, because they decided they no longer wanted to be on the program or their circumstances had changed);
- if the participant did not agree to comply with an amended order;
- if the participant did not attend before a magistrate as required;
- if the offender had otherwise failed to comply with the IDRO; or
- the magistrate was satisfied that there were not reasonable prospects of the person satisfactorily complying with the IDRO.

Whilst there were minimum drug-free periods required for progression between stages, the former Drug Court did not provide clear graduation criteria.

Upon graduation or termination, as required under section 36 of the Act, the court was required to reconsider the initial sentence, vacate the IDRO and impose a final sentence taking into consideration the offender's participation on the program including, whether any rewards or sanctions were given to or imposed, including if sanctions imposed included the imposition of a term of imprisonment, the number and length of those terms. There was a limiting provision that provided that if the person was ordered to serve a term of imprisonment, with or without it being ordered to be suspended, the term of imprisonment must not be greater than the term imposed in the initial sentence.

The most common final sentence imposed for Drug court participants who graduated from the program was probation (90%), with offenders terminating from the program most likely to receive a sentence of imprisonment (91%) (Payne 2008).

24.3 POSITION IN OTHER JURISDICTIONS

24.3.1 NSW Drug Court

The position under the NSW legislation is similar to that under the former Queensland *Drug Court Act*. Section 11 of the *Drug Court Act 1998* (NSW) provides that an offender may be terminated from the program if:

- the Drug Court is satisfied that the offender has substantially complied with the program (that is, has progressed successfully through all the program phases);
- if the offender asks the Drug Court to terminate the program; or
- if the Drug Court decides to terminate the program on the basis that the offender is unlikely to make any further progress on the program, or that the person's further participation poses an unacceptable risk to the community that they may reoffend (ss 10(1)(b) and 11).

Similar to Queensland, on terminating the program, the Drug Court is required to reconsider the initial sentence imposed taking into consideration the nature of the offender's participation, any sanctions imposed and any time spent in custody. The Drug Court then imposes a final sentence (*Drug Court Act* (NSW), s 12). This can include an order confirming the initial sentence imposed.

24.3.2 Drug Court of Victoria

In Victoria, as discussed in section 23.2.2 of this Report, a Drug Treatment Order is a straight sentence comprised of an unactivated term of imprisonment (the 'custodial part') and a 'treatment and supervision part' – the Drug Court program, which lasts for a period of two years unless it is cancelled.

Cancellation under the Act can occur for the same types of reasons as in NSW, including poor compliance, a lack of willingness to comply with one or more conditions attached to the order, a lack of progress, or for committing offences whilst on the DTO (*Sentencing Act* (Vic), s 182P). If the DTO is cancelled, the court may activate some or all of the custodial part but is required to subtract from the length of imprisonment imposed any pre-sentence detention declared as time served under the sentence and time served in custody as sanctions (*Sentencing Act* (Vic), s 182E). Also, if the total of the remaining length of the custodial part of the order and the period during which the treatment and supervision part of the order has already operated is more than two years, the court must reduce the remaining length of the custodial part so the total is two years. In activating the custodial part of the sentence, the Drug Court may also fix a non-parole period as if the court had just sentenced the person to serve the term of imprisonment.

The court may also, on its own initiative, cancel both the treatment and supervision part and custodial part of a DTO early if it considers that the offender has 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.

24.4 CONSULTATION VIEWS AND ISSUES

There was general consensus that the criteria for 'graduation' from the rehabilitation component of the Drug Court program should be completion of the three program phases and substantial compliance with the program (see further Chapter 31). On successful completion of the program, it was suggested that the order should either continue with some form of supervisory requirement (such as requiring the offender to continue to comply with the core conditions of the order) or continue on as an unactivated sentence. If there were a breach of conditions, or further offending, during the remaining part of the sentence, the offender may be required to serve part of the original custodial sentence imposed as well as any additional sentence for the breaching offence.

There was a variety of views as to whether an option should be included, similar to the Victorian model, of terminating the order in its entirety for substantial compliance. While it was considered this would offer a potentially powerful incentive for those who otherwise would have been sentenced to a substantial term of imprisonment, there were concerns about the equity of enabling an offender to serve a significantly shorter sentence than they otherwise would have served on this basis. This might create a perception of undue disparity between the original court-imposed sentence and the time actually served under the order. On the other hand, it might provide an incentive for offenders to consent to the order where they might otherwise be sentenced to court-ordered parole, possibly for a longer period.

Past experience of the Drug Court was that some offenders self-terminated from the program if or when they realised that they could be sentenced to court-ordered parole, which was considered to be less onerous. Some consultees suggested that there should be a minimum period before an offender could apply to terminate from the program.

In relation to the criteria for adverse termination, that is, by non-compliance with the order, there was some concern that under the former model there were no consistent criteria as to when an application should be made for termination. Some offenders continued on the program who some considered should have been terminated from the program earlier. There was general agreement that while clear lines should be drawn where it was apparent that an offender would fail to comply with the program, equally, there needs to be some measure of flexibility, particularly during the early phases of a person's participation in the program when lapses could be expected.

In relation to termination for further offending, some were of the view that any further offending was unacceptable whilst others were of the view that termination should depend upon the nature of the new offence and the context in which it was committed. Most were of the view that the commission of a serious offence should result in the termination of a drug court order. There was agreement that the exercise of discretion in relation to terminations should not compromise the integrity of the Drug Court program.

24.5 RECOMMENDATIONS

We recommend a clear legislative structure for the new Queensland Drug Treatment Order (DTO) that details the circumstances in which a participant is able to complete, graduate or be terminated from the DTO (see below). However, in its application, we recommend some flexibility should be retained around the completion and graduation criteria taking into account an offender's history of past drug use and progress on the order.

We recommend that the legislation clearly specifies the powers available to the court when an offender fails to comply with the conditions of the order

Where the offender has substantially complied with the order, we also support consideration being given to permitting the court to cancel the treatment and supervision part of the order. The court must be satisfied that the continuation of the order is no longer necessary to meet the purposes for which it is made.

This course of action should only be taken by the drug court on its own initiative, not by the participant or other parties on application. In deciding whether the order's continuation is necessary to meet the purposes for which it was made, the court may continue to consider whether the nature and seriousness of the original offence warrants the order continuing.

Recommendation 25 Graduation and completion of the DTO

- | | |
|-------------|--|
| 25.1 | <p>A person should be considered as having completed the treatment and supervision part of a DTO:</p> <ul style="list-style-type: none"> (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 | <p>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</p> |

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 DTO

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 DTO

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

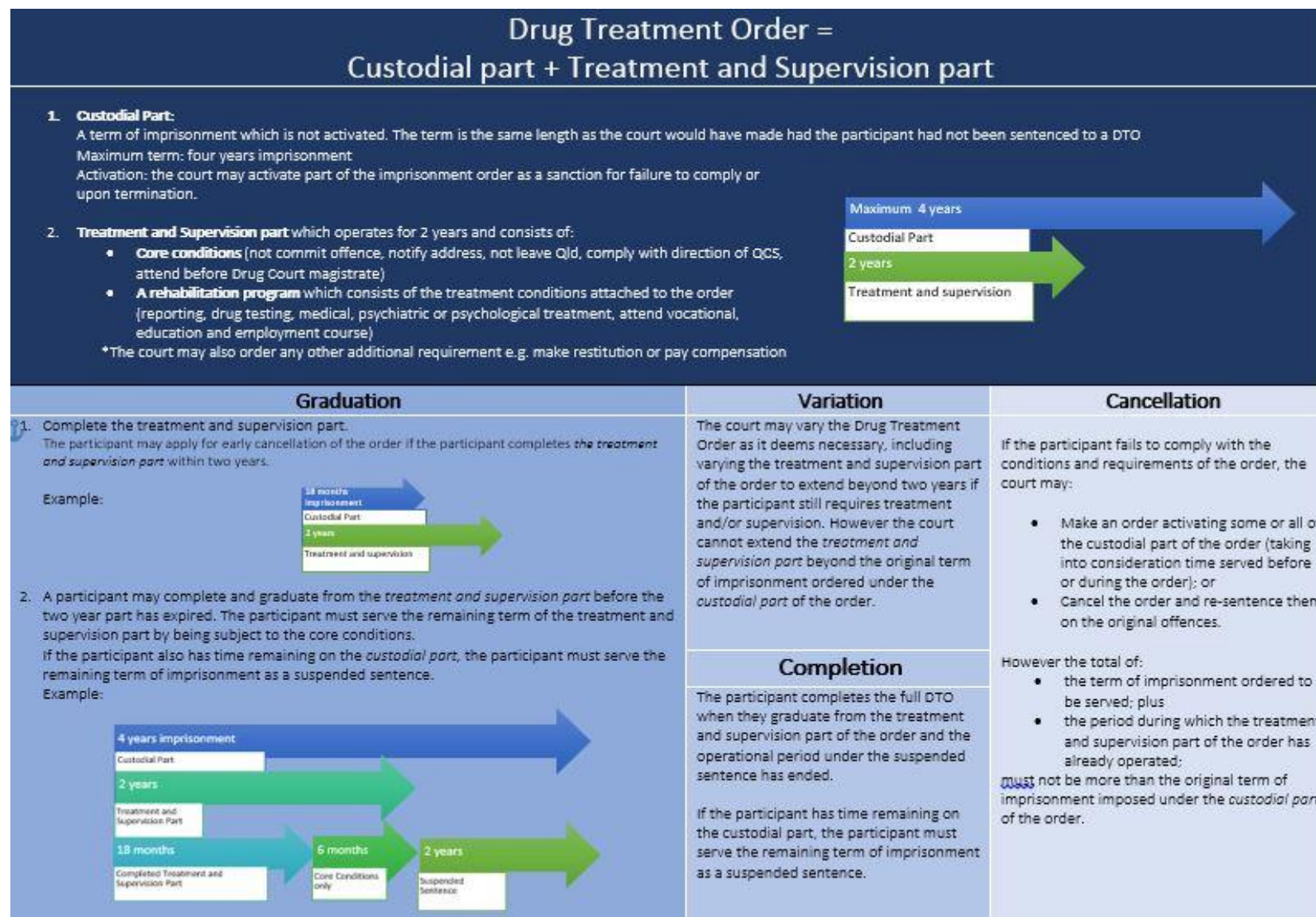
- make an order activating some or all of the custodial part of the order (taking into consideration any time served before or during the order including as a sanction); or
- cancel the order and deal with offender in any way it could deal with the offender as if just convicted of the offence.

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.

Figure 33 Proposed sentencing order (Drug Treatment Order)



25 DRUG COURT TEAM

25.1 BEST PRACTICE STANDARDS

The drug court team is a multidisciplinary group of professionals responsible for administering the day-to-day operations of a drug court, including reviewing participant progress during pre-court staff meetings and status hearings, contributing observations and recommendations within team members' respective areas of expertise, and delivering or overseeing the delivery of legal, treatment, and supervision services.

25.1.1 Team composition

According to the NADCP's Adult Drug Court Best Practice Standards:

"The drug court team comprises representatives from all partner agencies involved in the creation of the program, including but not limited to a judge or judicial officer, program coordinator, prosecutor, defense counsel representative, treatment representative, community supervision officer, and law enforcement officer" (NADCP 2013, p. 38).

Each member of the team plays an important and unique role in facilitating the criminal justice and therapeutic aims of the court.

The roles of the team are summarised as follows:

Judicial officer: most often the leader of the Drug Court team, responsible for authorising sanctions and actions which impose restrictions on the liberties of participants.

Program coordinator: an administrative officer or clerk, typically employed by the court, to manage the court schedule, organise team meetings, and undertake the relevant administrative tasks of the court.

Prosecutor: usually a police representative whose responsibility it is to advocate on behalf of the community and in the interests of public safety. The prosecutor represents victim interests and plays an important role in holding participants accountable for meeting their legal obligations.

Public defence representative: (LAQ Officer) representing the responsibility to ensure participants' legal rights are protected.

Community supervision officer: typically responsible for overseeing or implementing the court's alcohol and other drug testing program, conducting home or employment visits, and enforcing curfews and travel restrictions, where applicable. Ideally, community supervision professionals also deliver or make available through referral, cognitive-behavioural interventions designed to improve participants' problem-solving skills and challenge dysfunctional criminal-thinking patterns.

Alcohol and Other Drug representative: represents the therapeutic interests of each participant. The health and clinical expertise of the AOD representative is vital to the decision-making process of the court – especially as it relates to the interpretation of relapse-related non-compliance and the value of sanctions and rewards.

Law enforcement officer: it is not uncommon for a law enforcement officer to be included in the drug court team. In the US context, this is considered essential as the public prosecutor is not necessarily a representative of the state police agency. The involvement of law enforcement is seen as essential in reshaping offender attitudes towards the criminal system, especially as it is the police with whom participants will have the most criminal justice-related interaction once in the community.

There is no substantial or direct evidence in favour of a particular drug court team model. Where there are variations between different courts, there has been no direct examination of their differences in terms of individual or program level outcomes. Some meta-studies have pointed to the potential

importance of particular key agencies, although in most cases this analysis has focused on the consistency of participation and attendance, rather than on the specific roles each team member performs. The one exception to this was Zweig et al.'s (2012) meta-study of 69 adult drug courts in which it was found that recidivism reductions were 87 percent greater in drug courts where law enforcement was specifically identified as a member of the drug court team. Barring this, teams are often brought together by necessity, given the complex legal and therapeutic functions and objectives of the court program. What seems to matter most, is that each party to the drug court team manages their responsibilities through a non-adversarial approach and shares in the court's overarching therapeutic philosophy and objectives.

25.1.2 Pre-court team meetings

It is standard practice for drug court status hearings to be preceded by a pre-court team meeting at which the matters relevant to and/or affecting drug court clients are discussed within the confines of a closed court. Nominally, all team members are encouraged to participate, regularly and consistently. According to the NADCP's Adult Drug Court Best Practice Standards:

"Team members consistently attend pre-court staff meetings to review participant progress, determine appropriate actions to improve outcomes, and prepare for status hearings in court. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case."
(NADCP 2013, p. 38)

According to various meta-studies, consistent attendance fosters stronger inter-departmental relationships and has been shown to be linked to significantly better drug court outcomes (Carey et al. 2012; Cissner et al. 2013; Rossman et al. 2011; Shaffer 2011).

Unfortunately, between-court comparisons have only examined the general consistency of attendance by drug court team members and agency representative. They have not examined whether the presence of specific agencies or individuals are critical to overall success.

25.1.3 Information sharing and communication

For every member of the drug court team, the court process and procedures will be unfamiliar and differ significantly from traditional practice. Though each member of the team will bring an individual perspective and philosophy, the combined effort of the court and its underlying therapeutic focus will be a significant challenge for all members of the program. Key to ensuring inter-agency and intra-agency success of the drug court program is the ability and willingness of drug court team members to commit to sharing information (via the execution of memoranda of understanding) about clients that would not otherwise be shared in a criminal justice context. For a drug court to work most effectively, the magistrate and drug court team must establish a trusted therapeutic relationship with its participants and this requires all drug court team members to share information that is important and relevant to each client's therapeutic and criminal justice management.

The need for inter-agency data and information sharing has been recognised as a key practice principle by the NADCP:

"Team members share information as necessary to appraise participants' progress in treatment and compliance with the conditions of the Drug Court. Partner agencies execute memoranda of understanding (MOUs) specifying what information will be shared among team members. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. Defense attorneys make it clear to participants and other team members whether they will share communications from participants with the Drug Court team." (NADCP 2013, p. 38)

Similarly, the importance of intra-team communication, specifically as it relates to client participation and progress, has been noted as essential for an effective drug court program:

“Team members contribute relevant insights, observations, and recommendations based on their professional knowledge, training, and experience. The judge considers the perspectives of all team members before making decisions that affect participants’ welfare or liberty interests and explains the rationale for such decisions to team members and participant.” (NADCP 2013, pp. 38-39)

25.1.4 Team training

All members of the drug court team, including new members, should be adequately and appropriately trained before taking their position within the court. Commitment to the overall drug court philosophy and understanding the therapeutic inclination of the court is essential so that all team members work in unison for the sake of participants. Training should be thorough and ongoing. It should educate practitioners not only about their agency-specific requirements, but about the roles and responsibilities of other agencies represented on the court. Accordingly, the NADCP notes that:

“Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behaviour modification, community supervision, alcohol and other drug testing, team decision making, and constitutional and legal issues in Drug Courts. New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.” (NADCP 2013, p. 39)

25.2 FORMER QUEENSLAND MODEL

The former Queensland Drug Court team was led by a dedicated magistrate and comprised four other core members. These were representatives from QCS; Queensland Health, LAQ and QPS (Prosecutor). Their roles were as follows.

25.2.1 Magistrate

In addition to the usual functions of a mainstream magistrate, the dedicated Drug Court magistrate adopted a therapeutic jurisprudence role in the management of drug court participants. This included the chairing of all pre-court interagency team meetings and presiding over regular interactive court hearings with participants.

25.2.2 Queensland Health

The representative conducted the indicative assessment of the offender’s drug dependency at court and would also be involved in the subsequent full assessment regarding suitability for the IDRO. Once individuals were placed on IDROs, the role of the representative was to coordinate information and reports undertaken by other prescribed Drug Court assessors, usually Alcohol Tobacco and Other Drug Services (ATODS) officers and from service providers regarding the progress of the offender on the Drug Court program. This position contributed to the Drug Court team meetings in respect of all decisions to be made regarding the offender’s case management.

25.2.3 Queensland Corrective Services

Like Queensland Health, QCS provided a coordinator position to the Drug Court team to gather pre-sentence reports and information updates to the court from community corrections officers assessing and managing drug court participants. This position represented QCS views on the ongoing management of the Drug Court participant.

25.2.4 Queensland Police

The prosecution representative dealt with all prosecution tasks associated with individuals proceeding through the Drug Court. As with other agencies on the team, this position also offered QPS's views about the management of each Drug Court participant.

25.2.5 Legal Aid Queensland

The LAQ represented the defendant's interests in the adversarial process prior to the making of the IDRO and in ongoing issues throughout the duration of the IDRO.

Although some team members were not directly involved with drug court participants, a relationship was still developed with the individual through ongoing court hearings. Government agencies were required to provide staff to the drug court team. Some staff worked exclusively on the Drug Court whilst for others, this formed only a part of their workload. The Drug Court team was not co-located and staff remained based within their agency. A primary case manager was not identified. Both QCS and QH concurrently worked with the drug court participants addressing their criminogenic and health needs.

25.3 POSITION IN OTHER JURISDICTIONS

The NSW and Victorian Drug Courts both include the same team representation as in Queensland but with some variations to the model.

In the case of NSW, a District Court Judge presides over all matters as District Court cases are also eligible for inclusion. A representative from the Office of the Director of Public Prosecutions is also included in the team. Staff from all agencies are seconded into the drug court for designated periods, but team members are not co-located. Case management of the offender is shared by NSW Corrective Services and NSW Health staff.

The Drug Court of Victoria model is a mixture of staff directly employed by the court or seconded from partner agencies. In the case of the case manager role, whilst staff are employed by the court, they retain positions with Corrections Victoria. The model differs from the typical drug court team in that Victorian Police supplies an administrative position only. The reliance upon mainstream prosecutors is reported to cause some difficulties because of their unfamiliarity with and lack of connection to the program. The inclusion of housing support workers on the team is considered to be a major benefit as they are directly involved in assisting drug court participants with accommodation issues. With the exception of QPS and LAQ, all other team members are co-located close to the drug court. Corrections Victoria has primary responsibility for the case management of the offender.

Other than the exceptions identified, the roles of drug court team members are similar in NSW, Victoria and under the former Queensland model.

The AODT Court in New Zealand includes a Maori advisor (Pou Oranga). This position is intended to make the court more appropriate and meaningful for Maori participants. Staff in this role provide advice on how to engage with Maori participants and work alongside the team and participants to ensure that Maori aspects are included in the court process and treatment plan. The Maori advisor brings knowledge of Te Reo and tikanga Maori (correct Maori procedure) and opens and closes the court with karakia (Maori incantations and prayers used to invoke spiritual guidance and protection).

25.4 CONSULTATION VIEWS AND ISSUES

The multi-disciplinary team approach was viewed as a strength of the former drug court model. However, the team needs to be coordinated and cohesive with a broad commitment to the drug court's underlying goals.

Involving Drug Court team members in the selection of new team members was identified as one strategy that could be considered to help maintain its philosophy, ability to work with offenders with complex needs and to build a shared understanding of the nature of drug dependency and effective drug treatment. It was also considered important that staff supporting the court should have a dedicated Drug Court caseload, rather than carrying a mixed caseload to ensure fidelity to the Drug Court principles and philosophy and appropriate levels of support and service provision.

The lack of a lead agency coordinating or case-managing the defendant throughout the Drug Court program was viewed by some as problematic, as was staff having to cover several court locations under the former South East Queensland model.

In relation to the composition of the Drug Court team, there was general support for the continued involvement of QCS, QPS, Queensland Health and LAQ as all playing an important role in a future Drug Court. Some also suggested there could be benefits in having a housing service provider on the drug court team, similar to the approach in Victoria.

QNADA advocated for alcohol and other drug service providers to be directly involved as members of the drug court team, both in the interests of promoting better information sharing and providing appropriate advice to the team about treatment interventions. QNADA also suggested this approach would support the effectiveness of the Drug Court program by improving understanding between the magistrate and broader court team and treatment providers to ensure treatment interventions are correctly targeted.

There was support for a central coordinating agency or position to manage the court and court process and for this position being located within Queensland Courts. The central coordinator role should sit with Queensland Courts and operate as the drug court manager.

It was generally agreed that all roles within the drug court team should be clearly defined and articulated in policies and procedures and that all team members should be involved in ongoing professional development and joint training.

25.5 RECOMMENDATIONS

We consider the non-adversarial and inter-disciplinary approach of the drug court to be one of its key strengths. Where possible, we recommend, multidisciplinary teams should be developed for each Drug Court established in Queensland with representation from each of the key agencies – courts, corrections, health, legal aid, and police. We also recommend that consideration be given to include a housing representative on the team, given that access to accommodation is a priority need for many Drug Court participants.

While resource intensive, we also consider it necessary for the effective functioning of the team and promotion of a consistent Drug Court philosophy that, wherever possible, dedicated Drug Court officers should be recruited to the team, either directly employed or employed by their home agency, and that team members should be co-located.

The Drug Court manager should be employed by DJAG and manage all of the administrative aspects of the court on behalf of the Drug Court magistrate. This will ensure clear leadership is provided to the Drug Court team at times when the Drug Court magistrate is unavailable or in circumstances where their direct involvement may not be required (e.g. to deal with administrative and routine operational matters).

While we consider the direct involvement of alcohol and other drug treatment providers on the Drug Court team has potential benefits, such as the team receiving more direct input about the participant's performance and for relationship-building purposes, further consideration will need to be given as to how these arrangements might operate in practice given the logistical issues and time commitment involved in attending court on a weekly, if not daily, basis.

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.

26 DRUG TESTING REGIME

26.1 INTRODUCTION

Mandatory drug testing is widely regarded as an essential component of the drug court model. Specifically, drug testing provides readily available and objective information to the judicial officer, other justice system officials, treatment practitioners and caseworkers about a participant's progress in treatment. The drug testing process, coupled with immediate program responses, encourages participants to address their substance abuse problems immediately and continuously.

26.2 WHAT DOES THE RESEARCH SAY?

Drug testing is an essential feature of any drug court program and is almost universally recognised as key to both individual-level and court-level success. Evaluation results have consistently recognised that without drug testing, drug courts would be significantly less successful in navigating high-need offenders through drug treatment. Importantly, drug testing serves the drug court model in two ways. First, it provides participants and the drug court team information and feedback on treatment progress – indicating where treatment is working successfully, or if not, where modifications to the treatment plan may be required. This is essential if early intervention is to be successful for participants who are struggling to adjust to a drug-free lifestyle. Second, drug testing forms a critical component of a drug court's broader deterrence capabilities, signaling to participants the importance of compliance and the swift and certain responses to non-compliance. As most other antisocial and criminal behaviour remains hard to detect by the court, drug testing is one of the few mechanisms with which the court can impose certain and swift consequences.

Drug court evaluations have isolated five key drug testing components that are associated with more favourable drug court outcomes: frequency of testing, random testing, sufficient breadth of testing, rapid results and maintaining pre-graduation abstinence.

26.2.1 Frequent testing

Research has found that the more frequently drug testing is performed as part of the drug court program, the more effective the court will be at maximising graduation rates, lowering drug use and reducing criminal recidivism. (Banks & Gottfredson 2003; Gottfredson et al. 2007; Griffith et al. 2000; Harrell et al. 1998; Hawken & Kleiman 2009;). According to Carey and colleagues (2008), although graduation rates are not significantly higher for courts with more frequent drug testing, nevertheless, twice-weekly testing (or more) can yield criminal recidivism reductions that are approximately 38 percent greater, and cost savings that are approximately 61 percent greater, than courts with less frequent testing regimens.

26.2.2 Random testing

Several studies have shown that drug testing is most effective when performed on a random basis (ASAM 2013; ASAM 2010; Carey 2011; Harrell & Kleiman 2002) and where the odds of being tested are the same on weekends and holidays as they are on any other day of the week (Marlowe 2012). Further, drug testing regimens should be designed to avoid what is often described as 'respite from detection' by ensuring that there are no long periods during which there is a predictable absence of testing (Marlowe & Wong 2008).

26.2.3 Sufficient breadth of testing

Without an appropriate and sufficient breadth of testing (as is often the case on limited drug testing equipment and screening panels), participants can evade detection for their substance use simply by switching to other drugs of abuse (ASAM 2013). Heroin users, for example, can often avoid detection by using pharmaceutical opioids, such as oxycodone or buprenorphine (see Wish et al. 2012), while marijuana users have been known to substitute temporarily (Perrone et al. 2013) with synthetic cannabinoids specifically developed for purposes of avoiding detection (Castaneto et al. 2014). Where the potential for drug

substitution exists, it is imperative that drug courts select testing procedures that have the capacity to identify a sufficiently wide range of potential drugs and their psychoactive substitutes.

26.2.4 Rapid results

The efficacy of frequent and random drug testing may depend largely on the court's ability to respond rapidly when a test is positive. For experts in behavioural modification, timing has been shown to be among the most influential factors (Harrell & Roman 2001; Marlowe & Kirby 1999). Carey and colleagues (2008) found that both graduation and long-term recidivism rates were more favourable in drug courts where the results of a drug test were typically reported back within 48 hours.

26.2.5 Mandating pre-graduation abstinence

A trend analysis conducted by Carey and colleagues (2012) provided indicative evidence that abstinence was an important goal for at least the last 90 days of program participation. Consistent with this, some drug court programs (including the NSW Drug Court) may elect to increase the frequency of testing in the weeks prior to final graduation.

26.2.6 Alcohol testing

The same general principles apply to alcohol testing, including ensuring that testing is random enough to ensure the risk of detection is equal at all times. For alcohol, transdermal monitoring (Secure Continuous Remote Alcohol Monitors referred to as 'SCRAM' bracelets) or urine testing for two compounds, EtG or EtS (ethyl alcohol metabolites (biomarkers) that allow the detection of recently consumed alcohol in people who have agreed to abstain from drinking), can be used.

Cary (2011) notes that:

"Both [EtG and EtS] remain in the body considerably longer than alcohol itself. While methods measuring alcohol in breath, urine, saliva, and blood provide a detection window only for a matter of hours, EtG/EtS testing can extend the detection window of recently consumed alcohol to a couple of days. This extended detection window is especially useful for alcohol abstinence monitoring by DWI [Driving While Intoxicated] courts".

26.3 IMPLEMENTATION – WHAT DOES THE EVIDENCE SAY?

An effective drug testing regime, one that is both frequent and random, can only be effective if supported by a solid implementation framework that meets the needs of both the court and the participants. Importantly, the implementation framework must be accompanied by clear objectives and expectations with respect to the conduct, handling and use of drug testing outcomes within the drug court procedure. According to Payne & Piquero (2016), when drawn together the evaluation evidence and best practice literature identifies a number of key ingredients to the implementation of a successful drug testing regime within the drug court context. These are as follows:

26.3.1 Maintaining the integrity of the process

The reliability of a drug court drug testing system is dependent upon sample integrity. To ensure sample integrity, effective techniques must be instituted and practiced regarding sample collection (ASAM 2013; Cary 2011). Specifically, this requires adherence to sample collection procedures that eliminate doubt about the test outcome (NADCP Benchmark 5.4), such as:

- direct observation of urine sample collection;
- verification of temperature and measurement of creatinine levels to determine the extent of water loading;
- specific, detailed, written procedures regarding all aspects of urine sample collection, sample analysis, and result reporting;
- a documented chain of custody for each sample collected;

- quality control and quality assurance procedures for ensuring the integrity of the process;
- procedures for verifying accuracy when drug test results are contested; and
- policies and procedures that anticipate situations and develop responses to the possibility of false-positive tests.

26.3.2 Educate and train everyone involved about the process and procedures

Drug testing procedures must be current and consistent with evolving best-practice and scientific standards. Specifically, those responsible for the administration of drug testing must remain vigilant, up-to-date and informed of common and newly emerging adulteration practices. To do this requires a commitment to the ongoing training and education of those charged with the responsibility of drug testing as part of a drug court program.

26.3.3 Develop contracts with participants that increase responsibility for eliminating situations that challenge the test results

Drug Courts should develop contracts with participants regarding expectations in relation to behaviour that may affect drug testing results. As has been shown in drug-court meta-studies, the best performing programs are those that clearly articulate their policies and procedures in a participant manual or handbook (Carey et al. 2012).

26.4 FORMER QUEENSLAND DRUG COURT MODEL

Under the former Queensland Drug Court, drug testing was primarily carried out by Corrective Services Officers either at the District Office or on 'roving' drug testing vans. Some residential rehabilitation and other treatment providers also conducted urinalysis as part of their program requirements.

All Drug Court participants were subject to scheduled and random tests; the frequency and amount determined by which phase of the program the participant was in. All clients were tested on court hearing days and randomly throughout the week, including weekends.

MINIMUM DRUG TESTING FREQUENCY

Phase 1 – 5 times in any fortnight

Phase 2 – 3 times in any fortnight

Phase 3 – 3 times in any fortnight

Drug Court Regulation 2006 s17(1)

26.5 POSITION IN OTHER JURISDICTIONS

Both the NSW Drug Court and Drug Court of Victoria have determined a schedule of testing for each phase of the program. In NSW, maximum testing levels are resumed four weeks prior to a participant's graduation. DCV also requires participants to be breath tested if they have an alcohol ban in place.

Under the NSW Drug Court, all urine tests are conducted by NSW Health nurses. In Victoria, testing is conducted by an accredited pathology laboratory. Both processes have been established to maintain the chain of custody and ensure the integrity of drug testing.

26.6 CONSULTATION VIEWS AND ISSUES

Feedback from the consultations indicated that urinalysis was an essential and beneficial part of the drug court program. When the drug testing van operated by QCS was withdrawn, the amount of testing and integrity of the testing regime declined.

An issue of duplication of testing was raised when program participants were drug tested as part of a residential rehabilitation program but also tested by QCS staff. Feedback suggested that if drug tests are undertaken by a service provider on behalf of the drug court that the service provider should support the philosophical reasons for the testing and comply with the standards required for the administration of the tests.

26.7 RECOMMENDATIONS

To ensure accountability of participants' behaviour, we recommend that a regime of alcohol and other drug testing be incorporated into the Drug Court model. These tests should be carried out with sufficient regularity, including both scheduled and random testing, for the duration of the drug court program to ensure that any new drug use is detectable.

Drug testing should meet industry standards and procedures should be implemented to ensure the integrity of the process. This will allow for greater confidence in the results presented to the court.

The proposed model for the reinstated Drug Court includes the acceptance of offenders for whom alcohol is their principal drug of concern. Monitoring for the use of alcohol will need to be conducted to the same extent as drug testing to ensure the same level of detection of alcohol as for illicit and licit drug use. In the New Zealand AODT Court, this is achieved by the use of SCRAM (Secure Continuous Remote Alcohol Monitors) anklets worn by the participant, which allow for 24 hour monitoring of alcohol consumption. As noted in section 26.2.6 above, there are also other emerging testing regimes that could be explored to ensure effective monitoring of alcohol use for Drug Court purposes.

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; and
- (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.

- (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.

27 JUDICIAL STATUS HEARINGS AND COURT APPEARANCES

27.1 INTRODUCTION

Among drug court practitioners, there is an overwhelming consensus that the regular judicial monitoring of clients is essential to a drug court's success. For example NDCSP identified the integration of alcohol and other drug treatment with justice system case processing (Key Component 1), coupled with ongoing judicial interaction with each drug court participant (Key Component 7) as critical features of a drug court program that were subsequently enshrined in the 10 Key Components.

27.2 WHAT DOES THE EVIDENCE SAY?

Requiring drug court participants to attend judicial status hearings regularly is a unique and important feature of the drug court model. Importantly, it is an element of the court that has often been linked to more favourable individual-level and court-level outcomes. According to Payne & Piquero (2016), in drug courts, unlike any other community-based criminal justice intervention, the regular attendance at court helps to:

- promote the therapeutic alliance with participants by facilitating regular contact with the judicial officer and drug court team;
- activate and promote perceptions of deterrence through the court's ability to apply swift and certain sanctioning for non-attendance and non-compliance;
- alter the participant's routine activities and strengthen their ties to positive and prosocial institutions, such as the court; and
- create a non-adversarial environment in which a participant's existing perceptions of the criminal justice system can be challenged, leading to an enhanced perception of procedural justice and greater respect for the legitimacy of the law and the contribution of parties to the legal process (police, prosecution, legal aid).

27.2.1 Frequency of court appearances

The optimal frequency with which participants are required to attend the court remains a matter of some debate, however the frequency of attendance must be highest in the initial phase of the drug court program (to activate perceptual deterrence), and at least weekly attendance is required for high-risk participants (those for whom strong perceptual deterrence is required) (Jones 2013). Less frequent attendance may be granted by agreement of the drug court team if more frequent attendance is likely to interrupt treatment, employment, family or other educational activities. Importantly, the court must also consider the perception of equity and fairness among clients when deciding on non-standard attendance arrangements.

27.2.2 Length of court interactions

When it comes to judicial status hearings, quality is better than quantity. Regular attendance to a poorly functioning court is likely to undermine the therapeutic alliance, and limit the capacity of the court to motivate clients through their treatment journey. Therefore, mandating regular appearances at court is only of benefit to a drug court program when the drug court magistrate and drug court team are functioning in accordance with the other best-practice principles identified throughout this review.

Ideally, the drug court magistrate should spend a sufficient length of time with participants to ensure that a therapeutic alliance can be established. International literature points to more favourable outcomes for longer court sessions, however the international benchmark has been set at three minutes or more (Carey, et al. 2012).

27.3 FORMER QUEENSLAND DRUG COURT MODEL

A schedule of regularity was prescribed according to the phase of the program. Beginning with weekly court hearings in phase one, this graduated down to a minimum of once every six weeks. Each case took approximately five to 15 minutes to be dealt with at the court hearing.

27.4 POSITION IN OTHER JURISDICTIONS

The NSW and Victorian Drug Courts both conduct judicial hearings that adhere to best practice standards. The judicial officers typically spend between five and ten minutes with each participant discussing the individual's progress on the drug court order and dealing with case management issues and rewards and sanctions, as required. The Drug Court of Victoria lists an average of 20 people per court session of 2.5 to three hours' duration.

27.4.1 Consultation views and issues

Concerns were raised that the requirement for participants to attend weekly status hearings was onerous for participants, particularly at the commencement of the order when they were usually coping with drug withdrawal while also being required to attend multiple other appointments and/or undertaking a residential rehabilitation program.

Stakeholders also submitted that Aboriginal and Torres Strait Islander people were likely to experience difficulty in attending weekly court hearings for a number of reasons including other personal obligations and limited access to transport to travel to court. This aspect of the Drug Court may therefore make the program a less attractive and viable option for Aboriginal and Torres Strait Islander offenders and may affect their ability to complete the order successfully.

Residential rehabilitation providers also commented that weekly judicial hearings placed a great strain on their resources in that Drug Court clients had to be transported to and from court. The need to attend court so regularly was also considered to be disruptive to the offender's program participation and unfair to non-Drug Court rehabilitation program participants when some individuals missed aspects of the therapeutic program.

The regularity of judicial hearings was also regarded as one of the aspects of the Drug Court that contributed to the resource intensive nature of the program for Drug Court team members as participants were traditionally required to attend weekly court reviews during phase one. Due to resourcing difficulties, the Ipswich Drug Court adapted the model so that judicial hearings were held fortnightly with the team meeting during alternate weeks to review participants' progress. In the opinion of one of the former staff of the Ipswich Drug Court, its results were not as favourable as the other South East Queensland Drug Courts but it was difficult to conclude whether reduced judicial hearings was a contributory factor.

27.5 RECOMMENDATIONS

Judicial hearings are regarded as a unique and important feature of drug courts that contributes to building the crucial therapeutic relationship between the judicial officer and the drug court participant. There is also strong evidence to suggest that more favourable drug court outcomes are achieved when regular, quality judicial hearings are conducted.

For this reason, it is important that judicial hearings be held in accordance with best practice standards. These standards stipulate that drug court participants attend court for review at least weekly in the first phase of treatment with the regularity tapering off with each consecutive phase of participation, and that judicial officers spend a sufficient length of time with participants, but no less than three minutes per participant.

In circumstances where participants are undertaking a residential rehabilitation program, we recommend that either variation can be made to the regularity of judicial hearings, providing that the individual is progressing well, or that these be conducted by a means other than personal attendance at court, for example, by telephone or video conference.

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.

28 ROLE OF THE JUDICIAL OFFICER

28.1 BEST PRACTICE STANDARDS

Key drug court practices and benchmarks presume a level of interaction and engagement by the judicial officer that is therapeutic in nature and not often seen in traditional court settings.

The only specific acknowledgement of the judicial officer in the 10 Key Components is to recognise that, in the interests of consistency and stability for the drug court and its operations, 'the judge ... should be assigned to the drug court for a sufficient period of time to build a sense of teamwork and to reinforce a non-adversarial atmosphere' (Benchmark 2.2). Judicial support for the therapeutic goals of the court is also seen as important for the longevity and stability of the team.

28.2 WHAT DOES THE EVIDENCE SAY?

On the balance of the available evidence there appears little doubt that the attitude and approach of the judicial officer can significantly influence the outcomes of an entire drug court program. Judicial officers who actively engage and motivate clients appear to produce more favourable outcomes than those who do not, and the effect of the judicial officer seems so significant that in one of the most rigorous evaluation studies to date (Rossman et al. 2011), the participant's perception of the judicial officer was the single most important factor predicting longer term success for both drug use and recidivism outcomes.

From the perspective of RNR these results are consistent with the view that among the most significant benefits of a drug court program is its capacity to activate individual responsivity to treatment and motivation for behavioural change. A positive, therapeutically safe interaction with clients within the court can assist all other case management and treatment interventions, without which drug courts are not likely to be any more effective than standard community supervision programs such as probation and parole. For future drug courts, therefore, it is of paramount importance that magistrates are selected based upon their *willingness* and *capability* of engaging with participants in a therapeutically focused environment – one in which participants are appropriately and fairly sanctioned for their transgressions, but where the court is seen as a safe and trusted environment that is empathetic to the challenges and difficulties of drug dependency. As the leader of the court, the judicial officer is critical to maintaining this philosophy over the longer term.

28.2.1 Judicial tenure

Though difficult to test empirically, the accumulated evidence suggests that more favourable outcomes are achieved in drug courts where the judicial officer has a period of tenure lasting longer than two years. In a meta-evaluation, Carey and colleagues (2008) found that criminal and drug use outcomes were more favourable for those drug courts where the judicial officer was allocated for a term of no less than two years. Similarly, in a later study of 69 drug courts, Carey et al. (2012) also found that longer-term recidivism outcomes were 35 percent greater for courts where the judicial officer's term was indefinite.

28.2.2 Judicial attributes

The drug court literature has long recognised the importance of the 'courtroom dynamic' and the nature of the interaction between clients and the judicial officer as important factors underpinning the relative success of drug courts internationally. Specifically, the relationship between the judicial officer and the participant has been shown to be among one of the most important factors predicting longer term success (Rossman et al. 2011) and in interviews with drug court magistrates (Plotnikoff & Woolfston 2005) a number of key attributes have been defined as important in fostering a positive and therapeutically inclined drug court, including:

- the willingness and ability to 'talk straight' with participants;
- good organisational skills;
- an ability to work with defendants presenting multiple problems;
- an understanding of personal development;

- an understanding of addiction;
- an understanding of the role of social services;
- acceptability to both prosecution and defence;
- patience; and
- a sense of humour.

28.2.3 Judicial leadership

Drug court magistrates play an important and pivotal role in the leadership of the drug court team and the court more generally. Without this leadership, the philosophy of the court is difficult to maintain, as is the broader community and political support. As a result, the magistrate must lead the court and its development of its strong public profile by (Plotnikoff & Woolfston 2005):

- leading a collaborative approach to working across criminal justice system agencies and solution providers;
- showing active commitment to the community by leading the court and court staff in discovering local concerns and priorities;
- ensuring that a dialogue is maintained with the community about their priorities for community penalties;
- participating in non-court community activities designed to knit court and community together or to divert people from crime; and
- ensuring that the court is seen as integral to the community and an essential part of the criminal justice response to drug-related offending.

28.2.4 Professional training

Judicial education and training should be seen as an essential element of any drug court program, ensuring that judicial officers are regularly engaged in educational and training programs that connect them to current research evidence and best practice principles in an evolving policy and practice environment. Existing drug court judicial officers, for example, would benefit significantly from ongoing engagement with emerging treatment and drug addiction literature, as well as new or promising best practice principles in therapeutic jurisprudence. Similarly, where and when judicial rotation or replacement is required, new or substitute judicial officers should be adequately trained on the functional and therapeutic nature of the drug court program.

28.3 FORMER QUEENSLAND DRUG COURT MODEL

Under the former Queensland Drug Court, the magistrate had a leadership role and was involved in all drug court team meetings.

Under the former *Drug Court Act*, the Chief Magistrate allocated the functions of a drug court magistrate to one or more magistrates (s 10). Under the South East Queensland model, one magistrate was appointed as the Drug Court magistrate to cover all three court locations, whereas in Cairns and Townsville, magistrates allocated to the Drug Court performed these functions on a part-time basis.

28.4 POSITION IN OTHER JURISDICTIONS

The current Victorian Drug Court magistrate, Magistrate Tony Parsons, is employed full time on the Drug Court of Victoria. The role is undertaken in accordance with the NADCP Standards. Magistrate Parsons chairs all pre-court meetings and presides over all court hearings where he performs a range of judicial functions including accepting participants into the program through the making of a DTO, granting rewards and imposing sanctions, issuing warrants for an offender's arrest where required, canceling orders and graduating individuals from the program.

In addition to the core functions, Magistrate Parsons plays a significant role in relation to high-level management of the team, promotion and marketing of the program, stakeholder engagement and developing service level agreements.

The Senior Drug Court Judge of the NSW Drug Court is His Honour Judge Roger Dive. As in Victoria, Judge Dive leads the team, making all final decisions after hearing from all of the relevant parties. He attends all pre-court meeting and participates fully in all discussions. Both Magistrate Parsons and Judge Dive have held their positions for well in excess of the recommended minimum tenure of two years.

28.5 CONSULTATION VIEWS AND ISSUES

Stakeholders regarded the magistrate's role as pivotal, being the person in authority, the ultimate arbiter and the person who filters all of the information with an objective mind. Having a dedicated magistrate appointed to the Drug Court was regarded as critical to providing a consistent reminder of the authority of the court and providing legitimacy to the court process.

Given the significant time commitment involved and in the context of increasing pressures on the courts, some magistrates raised questions about whether they necessarily need to play such an intensive and therapeutic role. Retaining the role of the magistrate as the decision maker was nevertheless considered important, with suggestions made, for example, that greater use could be made of reports to communicate key issues to the magistrate.

A number of former Drug Court magistrates also felt their role was critical to the successful operation of the court, while also describing the role of a Drug Court magistrate as highly demanding at times. A potentially exacerbating factor in South East Queensland was the appointment of one Drug Court magistrate to cover the three established South East Queensland Drug Courts, rather than a dedicated magistrate being appointed at each court location.

Taking into consideration the intensive nature of the role and the specific skills required of the Drug Court magistrate, it was suggested that a selection process be instituted for the judicial officer as well as succession strategies and backfilling arrangements to cover periods of leave or absences. For similar reasons, there was support for magistrates being identified through an expression of interest process to identify those with an interest in and commitment to the philosophy of the drug court. There was also support for magistrates being allocated to the Drug Court by the Chief Magistrate, as was the case under the former *Drug Court Act*, rather than appointed by Governor-in-Council to keep some flexibility in these appointments.

28.6 RECOMMENDATIONS

In our view, having the right judicial officers appointed to the Drug Court is critical to the success of any future Queensland Drug Court.

We recommend that Drug Court magistrates should be selected on the basis of having the requisite skills and attributes required to undertake a therapeutic jurisprudence role and recruited to the court on a voluntary basis. There should also be a commitment made to offer initial and ongoing professional development and training of all Drug Court magistrates in order to maintain currency in emerging treatment and drug addiction literature, as well as new or promising best practice principles in therapeutic jurisprudence.

To support the court operating as effectively as possible, we recommend that a dedicated magistrate be assigned to each drug court where possible for sufficiently lengthy periods, but no less than two years. This will allow for consistency in practice and the opportunity for Drug Court magistrates to develop their skills in applying the therapeutic jurisprudence approach required of the Drug Court and to become experienced therapeutic jurisprudence practitioners.

Although the cost of a dedicated Drug Court magistrate may be regarded as an expensive resource for a small number of offenders, evidence suggests that these costs are likely to be offset by the benefits gained from the therapeutic relationship developed between the magistrate and the offender.

Recommendation 31	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.

29 ROLE OF THE VICTIM

29.1 BEST PRACTICE STANDARDS

Victims have rarely been involved in drug courts, however, a review of the literature on this issue has concluded that there is little evidence of the effect of drug courts on victim perceptions.

While the NADCP Standards do not currently address the role of the victim, the NADCP notes that restorative justice interventions, such as victim restitution, is a potential area for inclusion in future standards (NADCP 2015, vol II, p. 3).

29.2 INCORPORATING VICTIMS IN THE QUEENSLAND DRUG COURT

Most drug courts appear not to provide any formal statement of the role of the victim in their processes. Those that do, however, have shown little appetite on the part of victims for close involvement in the drug court process. Nonetheless, the role of the victim in a drug court can be consistent with standard procedures for involving the victim, including being kept informed of progress, making a victim impact statement, and being offered restorative justice options if desired.

If restorative justice options were to be incorporated into the Queensland Drug Court – and there is no evidence to suggest that they should not – consideration should be given to the timing of the process. Most drug court programs that include a restorative component tend to do so in the last (third) stage of the program, once the offender has made substantial progress toward recovery. This does, however, tend to introduce delay into the process, with the victim being required to wait a substantial period before having the opportunity to face the offender. The tension between offender readiness and victim closure needs to be carefully considered. It may be that the timing of restorative justice need not be prescribed, allowing the magistrate greater flexibility in decision-making on this issue.

The Drug Court will also be required to operate in accordance with the *Fundamental Principles of Justice for Victims of Crime* that apply in Queensland (see further section 1.6 of this Report). This will require relevant agencies represented on the Drug Court team and who are otherwise in contact with the victim in their dealings with that victim, to provide them with timely information about:

- available welfare, health, counselling, medical and legal help, financial assistance and other support services;
- in the case of investigating agencies, matters including the progress of investigations being conducted, the availability of diversionary programs in relation to the crime and the charges laid; and
- in the case of prosecuting agencies, information about the prosecution of the offender including:
 - details about relevant court processes and when a victim may be required to attend court;
 - details of the availability of diversionary programs in relation to the crime;
 - notice of a decision to substantially change to a charge, or to not continue with a charge, or accept a plea of guilty to a lesser charge; and
 - the outcome of the decision, including any sentencing imposed.

Victims of an offence committed against the person or otherwise prescribed are also permitted to give the prosecutor details of the harm caused to the victim by the offence for the purposes of informing the court in the sentencing of the offender, including in the form of a victim impact statement (see *Victims of Crime Assistance Act 2009*, s 15).

A key consideration for the Drug Court will be how to manage the expectations of a victim where an offender may be being provided with rehabilitation and treatment rather than serving a more traditional form of sentence, like imprisonment or imprisonment with parole. For this reason, during consultations, it was suggested that it will be especially important for victims of people being dealt with through the Drug Court to be referred to a victim support service to receive support during the court process. Some potentially useful

lessons, it was also suggested, could be drawn from processes used with victims of offenders who are dealt with by the Mental Health Court who are supported by a QH Victim Support Service.

29.3 FORMER QUEENSLAND DRUG COURT MODEL

Under the former Drug Court model, victims had the same rights as in relation to other mainstream court processes and could request to be kept informed about the progress of the case through the standard process available to all courts. There were no additional special procedures in place to support victims through the Drug Court process.

29.4 POSITION IN OTHER JURISDICTIONS

As in mainstream courts and drug courts in other jurisdictions, New Zealand's AODT Court allows for victims to:

- attend AODT Court hearings;
- be kept informed about the defendant's progress through the court;
- provide their views to the court (via the Victim Advisor , New Zealand Police or a support person);
- attend sentencing;
- apply to the court to read their Victim Impact Statement at sentencing;
- choose to be involved in a restorative justice conference with the defendant;
- be informed about the reparation or financial restitution to which they may be entitled; and
- be advised of any financial help to which they may be entitled.

The appropriateness and timing for restorative justice in the AODT process is guided by the AODT Court Judge. As with other drug courts, this was formerly introduced in phase three of the program. However, in response to requests from police prosecutors that any restorative justice process should be initiated earlier, restorative justice is now considered in phase one.

The AODT in New Zealand benefits from being able to refer defendants to service providers specifically contracted to facilitate a restorative justice intervention. This may include some form of communication between the defendant and his/her actual victim(s) but where victims are unwilling to be directly involved in the process, defendants can be referred to a community panel that represents victims' views generally.

29.5 CONSULTATION VIEWS AND ISSUES

The need to consider victims' issues generally was raised in consultation sessions. This was considered particularly important if the eligibility criteria for the court were broadened to allow offenders who have committed acts of violence to be accepted into the Drug Court.

It was also suggested that it may be appropriate for a Drug Court to refer participants to Victim Assist while they are on the Drug Court program if they themselves have been victims of crime. The observation was made that a person's alcohol and other drug use related to their offending may also be connected with the person having experienced a psychological injury or trauma as a consequence of being a victim of an act of violence in the past, such that dealing with these issues may assist in their recovery.

29.6 RECOMMENDATIONS

It is important to ensure that under any future Drug Court process, victims retain the same rights as other victims of offenders who are dealt with through mainstream court processes. This includes the right to make a victim impact statement and to be informed throughout the process of available support and the progress of matters.

Should the adoption of broadened eligibility criteria for a future Drug Court be supported to include offences that could involve violence against the person, an important threshold issue for the Drug Court in determining whether it is appropriate to make such an order will be the nature and seriousness of the offence, including any physical, mental or emotional harm done to a victim. The need to take harm to the victim into account in sentencing is a well-established sentencing principle and is reflected legislatively in section 9(2)(c)(a) of the *Penalties and Sentences Act 1992*.

Under the model proposed, the Drug Court would also have the ability to order the offender to make restitution or pay compensation in making the order (see further section 23.1.2 of this Report).

In addition to these general measures, there is also scope once the Drug Court is established, to consider how the program in future might better support the involvement of victims, including incorporating restorative justice processes as in New Zealand, where these are available and supported.

We suggest that the issue of referrals of Drug Court participants who themselves are victims of crime to victim support services is a matter that could be addressed in any future policies and procedures manuals developed to support the court so that appropriate referrals and linkages can be made.

Recommendation 32 Victim's involvement

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| <p>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 <i>Victims of Crime Assistance Act 2009</i> including to be kept informed of progress by the relevant agencies and enabled to make victim impact statements.</p> <p>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.</p> |
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30 REWARDS AND SANCTIONS

30.1 BEST PRACTICE STANDARDS

The NADCP Standards discusses the use of incentives, sanctions and therapeutic adjustments in the context of drug courts, stating that consequences for participants' behaviour (be they positive or negative consequences) must be predictable, fair, consistent and administered in accordance with evidence-based principles of effective behaviour modification. In particular, participants should be made aware of the possible rewards and sanctions that await various types of behaviours, giving them a clear indication of expectations for their behaviour.

30.2 WHAT DOES THE EVIDENCE SAY?

30.2.1 Introduction

It is almost universally recognised that drug courts offer two distinct advantages over traditional criminal procedures. The first is the court's ability to impose sanctions for non-compliance in a swift and certain manner, and the second is the capacity to incentivise compliance and reward clients for meeting treatment and rehabilitation goals.

Under the principle of *Therapeutic and Individualised Jurisprudence*, Hiller et al. (2010) found strong endorsement for those drug courts in which the judicial officer tends to individualise both rewards and sanctions and where the rewards are matched to the level of compliance shown by the participant.

Sanctioning non-compliance and rewarding progress are both essential elements of a drug court program. Specifically, swift and certain responses to episodes of non-compliance are an important mechanism through which the drug court can activate a strong perceptual deterrence among drug court clients, while rewards are important for incentivising motivation for treatment and responsivity to long-term behavioural changes. According to the available best-practice literature, the most successful drug courts are those that achieve an equal mix of sanctions and rewards, but where there is a preference for positive recognition of even the smallest achievements over punitive responses to small and/or infrequent bouts of non-compliance.

30.2.2 Specificity

With regard to sanctions, it appears that an effective regimen is one that has specificity (Marlowe 2008), namely, that participants be informed in advance about the specific behaviours that constitute a breach or infraction. Drug court protocols should avoid the use of vague terms, such as "irresponsible behaviour" or "not complying" as these can be open to misinterpretation and reinterpretation. There should be no equivocation by the drug court team about the evidence required to substantiate a breach and participants of the drug court program should be left with little doubt about the forthcoming consequences (Marlowe 2008).

30.2.3 Participant contract

The sanctioning parameters of a drug court should be 'memorialised in a written manual that clients can refer to and that can be consulted to resolve disputes concerning the rules of the program' (Marlowe 2008). Using clear participant contracts allows the drug court to provide unequivocal and advance notice about the range of possible consequences for non-compliance.

30.2.4 Individualisation of sanctions

Individualisation is recognised as a unique and key feature of drug courts, although no specific empirical evidence exists to suggest that courts that individualise sanctions perform more favourably – except that individualisation may assist to activate a client's perception of procedural justice. In any case, where a court decides to offer a more tailored approach to the sanctioning of non-compliance, it should still attempt to

articulate fully a set of clear breach-to-sanction rules even if these exist in written documentation as a permissible range.

30.2.5 Swift and Certain

Once specified, sanctions must be certain to be effective (Marlowe 2008). To be certain in sanctioning requires close monitoring and vigilance on the part of program and treatment providers. Clearly specified sanctions that are certain to be applied are likely only to be effective if they can be imposed with immediacy because, according to Marlowe (2008), the behavioural effect of any sanction is “likely to degrade within only hours or days after an infraction has occurred” (Marlowe 2008, p. 110). For sanctions requiring the authority of judicial officer, there should be the capacity for status hearings to be rapidly scheduled if the client is not already required to attend within a few days of a breach.

30.2.6 Severity

The severity of a sanction is likely to be the weakest contributor to behavioural change and there is relatively little evidence to suggest that the imposition of harsh sanctions in a drug court program improves individual- or court-level outcomes (Brown et al. 2011, McRee & Drapela 2012). In fact, excessive incarceration sanctions have been shown to weaken drug court outcomes and are especially ineffective, it seems, for those with a prior history of imprisonment (Brown et al. 2011).

30.2.7 Therapeutic adjustments

Not matter how clearly specified, certain, and serious a sanction is, it is critical not to undermine the therapeutic intentions of the court unless there is a reason to believe that a client poses an immediate and unacceptable risk to the community. Most importantly, drug courts must recognise that treatment is rehabilitative, not retributive and thus they should avoid using the dosage of treatment as a punishment for non-compliance (Marlowe 2008).

30.2.8 Incentivising with rewards

Incentives and rewards are now widely recognised by drug court professionals as an essential component, and individual drug court evaluations, both qualitative and quantitative, have demonstrated better outcomes for clients who are rewarded for their compliance and success in treatment (Long & Sullivan 2016).

For drug using populations, including drug court clients, evidence has also consistently shown that the development and application of a clear strategy for positive reinforcement is a key to success (Garland et al. 2011). Studies have shown, for example, that points or vouchers systems can be used to encourage abstinence from drug use (Lussier et al. 2006; Stitzer & Petry 2006), as well as attendance at drug rehabilitation, treatment sessions (Sigmon & Stitzer 2005), and adherence to other treatment goals (Petry et al. 2006). Marlowe (2012) recommends that best practice for drug courts would be to ensure that the opportunity for incentives is at least equal to the opportunity for sanctions.

30.2.9 Individualisation of rewards

Not unlike sanctions, the effectiveness of rewards in the drug court context is likely to depend on the perceived value of the reward to the client. The more valuable a reinforcer is (the higher its perceived value), the more effective it will be in promoting a sustained behavioural pattern (see Lussier et al. 2006). Importantly, the reinforcing value of any reward is not intrinsic to the reward itself. Rather, it is the value of the reward as perceived by its recipient and this will depend, in large part, on the views and needs of individual drug court clients. To achieve this, individualised reward schedules should be developed as part of the client’s case management plan and should be flexible enough to incorporate the changing needs and circumstances of the client as he/she progresses through the program.

30.3 FORMER QUEENSLAND DRUG COURT MODEL

The former Queensland *Drug Court Act* prescribed a number of rewards and sanctions outlined in Table 12. The range of rewards and sanctions were used but not in a formalised fashion and the stated privileges were not clear.

Table 12: Rewards and sanctions under the *Drug Court Act 2000* (Qld), ss 31 (rewards) and 32 (sanctions)

Rewards	Sanctions
Stated privileges	Withdrawal of stated privileges
Decreases in the amount of any monetary penalty payable	The imposition of a monetary penalty
Decrease in the frequency of drug testing	A term of imprisonment for up to 15 days but not longer than 22 days
Decreases in the level of supervision of the offender by a drug court magistrate or someone else	An increase in the level of supervision of the offender by a drug court magistrates or someone else
A change in the nature of the vocational educations and employment courses	A change in the nature of the vocational education and employment courses
A change in the nature of medical, psychiatric or psychological treatment the offender is undergoing	A change in the nature of medical, psychiatric or psychological treatment the offender is undergoing
A decrease in the frequency with which the offender must attend the courses or treatment	An increase in the frequency with which the offender must attend the courses or treatment
A decrease in the amount of community service the offender must perform under the order	An increase in the amount of community service the offender must perform under the order

30.4 POSITION IN OTHER JURISDICTIONS

30.4.1 NSW Drug Court

Section 16 of the NSW *Drug Court Act* provides that the conditions of a program may allow the Drug Court to confer rewards and impose sanctions, including:

- the conferral of specified privileges (as a reward) or withdrawal of privileges conferred (as a sanction);
- a change in the frequency of counselling or other treatment (both as a reward or sanction);
- a decrease in the degree of supervision (as a reward) or increase in the degree of supervision (as a sanction);
- a decrease in the frequency of drug testing (as a reward) or increase (as a sanction);
- a requirement that the offender pay a monetary penalty to the Drug Court (as a sanction) and decrease in that amount (as a reward); and
- a change in the nature of the vocational and social services attended by the drug offender or the frequency with which the drug offender is required to attend vocational and social services (both as a reward or sanction).

The NSW Drug Court also keeps a schedule of general sanctions that it can impose and prospective participants are made aware of this process prior to entering the program. Currently, the NSW Drug Court uses a points system to apply sanctions and rewards. Tangible rewards such as gift cards are no longer used. Rewards and sanctions are dependent upon the offender being drug-free and compliant with the order. The offender's

circumstances are taken into consideration when sanctions are imposed with an individual being dealt with more leniently for honesty about their behaviour. Once a participant reaches 14 sanctions, they are ordered to serve two weeks' imprisonment.

30.4.2 Drug Court of Victoria

In Victoria, available rewards and sanctions are set out under sections 18ZJ, 18ZL and 18ZK of the *Sentencing Act* (Vic). Rewards include:

- varying the treatment and supervision part of the order by:
 - adding or removing program conditions; or
 - varying one or more core conditions, other than the condition not to commit an offence, or program conditions, for example to reduce the frequency of treatment, degree of supervision or the frequency of drug or alcohol testing.
- varying or cancelling an order imposed as a sanction (curfew condition, perform up to 20 hours of unpaid community work or remain at a place (e.g. residential rehabilitation facility) for a period of up to 14 days);
- making an order that some or all of a period for which the custodial part of the order is activated under, but which the offender is yet to serve, is no longer activated; and
- conferring on the offender any other reward that the Drug Court considers appropriate.

A failure to comply with the conditions of the order can lead to the Drug Court either confirming the treatment and supervision part of the order, varying the order, ordering that the offender be subject to a curfew between specified hours for a specified period, ordering the offender to perform up to 20 hours of unpaid community work, ordering them to remain at a specified place, or ordering that the custodial part of the order be activated for between one and seven days.

Similar to NSW, the rewards and sanctions that are routinely used are articulated in a participant manual provided to each participant at the commencement of their program. This includes details of the number of points deducted or awarded for rewards and sanctions respectively (summarised in Table 13 below).

Rewards and sanctions are discussed by the team at pre-court meetings but formalised by the magistrate at the court hearing. These can translate, for example, as days to be spent in custody or community work days.

Table 13: Rewards and sanctions applied by the Drug Court of Victoria

Incentives	Sanctions
-1 Getting 3 clear drug tests in a row in Phase 1	+1 Failing to attend a court review
-1 Getting 2 clear drug tests in a row in Phase 2	+1 Missing a meeting with a Clinical Advisor
-1 Getting 1 clear drug test in Phase 3	+1 Missing a meeting with a Case Manager
-1 Attend first AA or NA meeting (as suitable)	+1 Missing a meeting with a Counsellor
-1 Attend 3 AA or NA meetings (as suitable)	+2 Not following directions given by the Magistrate
-1 Attend appointment with your doctor or other health professional	+2 Failing to attend testing
-1 Attend a community work day as arranged with case manager	+1 When testing, admission of illicit substance , or alcohol, use since the previous test

-1 Attend Odyssey House prep group	+2 When testing , failing to admit illicit substance , or alcohol , use since the previous test (+1 for the substance use and +1 for not admitting the use)
-1 Attend face-to-face assessment for residential rehab or detox	+1 Failing to produce a sample for drug testing
-1 Admission to residential rehab or detox	Producing a dilute sample for drug resting following a previous dilute warning sample
-1 Each day spent in a residential rehab or detox	+1 Failing to lodge medications for daily pick up at a pharmacy on a daily basis (is so ordered)
-1 Attend SMART Recovery sessions	+7 Bringing drugs or drugs paraphernalia to court or into custody

The types of rewards used can include things such as verbal praise, praise and clapping, being prioritised on the court review list, a reduction in community work days or imprisonment days, a reduction in the frequency of court appearances, vouchers (e.g. supermarket vouchers, movie tickets or tickets to the football) and phase progression. Sanctions can include verbal warnings, the keeping of a drug diary, admonishment by the magistrate, writing a journal entry or essay, having to sit in on other participants' court reviews, having imprisonment or community work days imposed, being subject to more frequent court appearances, case management meetings or drug testing, phase demotion, activation of imprisonment days, having a warrant of arrest issued or having their order suspended (KPMG 2014, p. 22).

30.5 CONSULTATION VIEWS AND ISSUES

Feedback suggests that there was an overreliance upon custodial sanctions in Queensland. This type of sanction created some operational difficulties for the police watch-houses and QCS and was also considered to have contributed to the overall cost of the former Drug Court program.

Stakeholders were generally supportive of non-custodial sanctions being used, and custodial sanctions being used sparingly, although some involved in the former Drug Court suggested that imposing a custodial sanction shortly after the breach of conditions had occurred was effective in getting participants who might have been actively using drugs back on track.

30.6 RECOMMENDATIONS

We support the availability of sanctions for non-compliance and rewards for progress as essential elements of a drug court program.

To encourage adherence to the conditions of the program and behavioural change, program participants should be made aware of the range of sanctions and rewards that are available and can be expected in the event of both compliance and non-compliance.

An appropriate balance of rewards and sanctions should also be maintained, providing some capacity for the individualisation of this process rather than strict adherence to inflexible criteria.

We note the general view that imprisonment was overused as a sanction under the former program and that this also added to the overall costs of the program. While flexibility should be maintained, we support the approach in Victoria of custodial sanctions being used sparingly and only being activated once a certain threshold has been met in relation to non-compliance with conditions.

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.

31 PHASE PROMOTION

31.1 BEST PRACTICE STANDARDS

Phase promotion is predicated on the achievement of realistic and defined behavioural objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time. As participants advance through the phases of the program, sanctions for infractions may increase in magnitude, rewards for achievements may decrease, and supervision services may be reduced. Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use. The frequency of alcohol and other drug testing is not reduced until after other treatment and supervisory services have been reduced and relapse has not occurred. If a participant must be returned temporarily to the preceding phase of the program because of a relapse or related setback, the team develops a remedial plan together with the participant to prepare for a successful phase transition.

31.2 WHAT DOES THE EVIDENCE SAY?

Drug courts have significantly better outcomes when they have a clearly defined phase structure and concrete behavioural requirements for advancement through the phases (Carey et al. 2012; Shaffer 2006; Wolfer 2006). The purpose of phase advancement is to reward participants for their accomplishments and put them on notice that the expectations for their behaviour have been raised accordingly. Therefore, phase advancement should be predicated on the achievement of clinically important milestones that mark substantial progress towards recovery.

31.3 FORMER QUEENSLAND DRUG COURT MODEL

The former Queensland Drug Court was a three-phase program (see Table 14),

Phase one was aimed at promoting drug abstinence and required that participants undergo a number of drug treatment and rehabilitation programs. Successful completion was reached when a participant had been free of illicit drugs for a period of no less than 12 weeks (84 days).

Phase two aimed at stabilisation. Participants were required to satisfy the drug court team that they could remain drug and crime free.

In phase three, participants were encouraged to seek education and employment opportunities while abstaining from drugs and crime. This phase aimed at community re-integration. The aim was, that by the time of final graduation, participants would have developed social and support networks to continue a lifestyle without drugs and crime and without the coercion and intensive supervision of the court.

Table 14: Drug Court Rehabilitation Program Phases under the former Queensland Drug Court program

Drug Court Rehabilitation Program Phases		
Phase I Drug Free & Crime Free	Phase II Stabilisation	Phase III Integration
12 to 24 weeks	12 to 24 weeks	12 to 24 weeks
Aims: <ul style="list-style-type: none"> • Improve physical/mental health • Commitment to recovery • Stop illegal drug use • Eliminate criminal activity • Identify support network • Establish suitable accommodation • Stop all criminal activity • Significant sanction free period • Identify and start addressing Counselling issues • Negative urinalysis tests and compliance minimum 12 weeks 	Aims: <ul style="list-style-type: none"> • Remain illegal drug-free • Remain crime-free • Stabilise home and social environment • Improve life skills • Improve education and work skills • Address major life issues • Maintain good health • Maintain commitment recovery • Update support network • Significant sanction free period • Negative urinalysis tests and compliance minimum 12 weeks 	Aim: <ul style="list-style-type: none"> • Acceptance of drug-free, crime free lifestyle • Remain illegal drug-free and crime-free • Maintain stable home and social environment • Commitment to recovery • Improve employment prospects and be employable or employed • Improve financial management skills • Plan or complete family reunification (if sought) • Adequately address all counselling issues • Update support network • Significant sanction free period • Negative urinalysis tests and compliance minimum 12 weeks

31.4 POSITION IN OTHER JURISDICTIONS

The NSW and Victorian Drug Courts have both adopted a three-phase program with aims and stage lengths similar to that of the former Queensland Drug Court. Stage lengths are not definitive and depend upon the individual progress of participants.

31.5 CONSULTATION VIEWS AND ISSUES

Stakeholders indicated that the phased program was positive, giving participants' goals to which to aspire. However, there was no flexibility to the minimum 12-week period without sanction before a participant could graduate from one phase to the next. Several stakeholders noted that the transition from phase one to two was often difficult for individuals owing to changes in their cognitions and, for this reason, consideration should be given to extending phase one.

31.6 RECOMMENDATIONS

We recommend that the Drug Court adopt a staged program that requires all participants to attain predetermined goals before proceeding to the next phase. We suggest that a staged progression through the program is important to ensure that individuals have clear objectives and expectations that they need to meet in relation to behaviour change and that form the basis of a successful completion of the sentencing order.

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.

32 DRUG TREATMENT

32.1 BEST PRACTICE STANDARDS

The NADCP Standards emphasise the need for standardised assessment of each individual's treatment needs, allowing a tailored response to drug-related offending. Substance abuse treatment is not designed to reward desired behaviours, punish infractions or to serve other non-clinically indicated goals; it is conceptually separate from systems of sanctions and rewards.

32.2 HEALTH FRAMEWORK FOR EFFECTIVE TREATMENT

In their report, *Principles of Drug Addiction Treatment for Criminal Justice Populations: A Research Based Guide* (2009), the US National Institute of Drug Abuse (NIDA) identifies 13 key principles for the delivery of effective treatment in the criminal justice sector. Of these, system- and community-level recognition of drug addiction as a chronic disease is perhaps the most important.

For criminal justice interventions with drug-using or drug-dependent offenders, some appreciation of the neurobiological nature of drug use, and its predictable behavioural consequences, is essential to designing appropriate drug-treatment interventions with the greatest chance of therapeutic and criminal justice success.

Treatment of this cohort also needs to recognise that:

- recovery is a long term process;
- no single treatment modality is appropriate for everyone and thus there is a need for individualised treatment strategies that are flexible and responsive to individual and changing needs;
- expectations for drug treatment participants in terms of program compliance and progression should differ, depending upon their individual situation(s) and stage of program participation; and
- effective treatment must address the multiple needs of the individual, both substance addiction specifically and ancillary services, with particular focus on 'criminogenic' factors.

32.3 WHAT DOES THE EVIDENCE SAY?

The principal and most significant active component of any drug court program is the treatment of drug use and criminogenic needs. Drug courts work more favourably than alternative programs because their non-adversarial therapeutic approach motivates participants to engage with treatment for periods of time long enough to activate behavioural change. Coupled with evidence-based and best-practice treatments, suitably tailored to individual needs, drug courts are well placed to transition high-risk and high-need offenders into relatively crime and drug free lifestyles.

Accordingly, the identification of treatment programs underpinning a drug court should be made cognisant of the best practice principles underpinning the provision of drug treatment generally. In particular, drug courts should (Holloway et al. 2006; NIDA 2009):

- ensure that each client's needs are assessed individually so they are matched with appropriate treatment settings, interventions and services, based on accurate assessments;
- include medications as an important element of treatment for many patients, especially when combined with counselling and other behavioural therapies;
- recognise the high level of comorbidity between drug use and mental illness, which suggests that patients must be assessed for co-occurring problems and treated accordingly; and
- continuously monitor drug use treatments during treatment as lapses can occur.

More information on the evidence on assessment and treatment of drug users in the criminal justice system can be found in Chapter 8.

32.3.1 Number of treatment options

Determining the best number of treatment providers to support a drug court program is a difficult task and the evaluation and best practice literature provides relatively little guidance. On the one hand it is argued that individual treatment plans should be tailored and individualised, suggesting that treatment options should be many and varied. On the other, meta studies and evaluations have shown that courts with only a small number of treatment providers produce more favourable drug treatment and recidivism outcomes. Overall, the literature suggests that the most important ingredient to a successful drug court is best-practice and evidence-based treatments, provided by agencies that share the non-adversarial and therapeutically-inclined philosophy of the drug court, but who respect the court's obligations to manage and respond appropriately to non-compliance.

32.3.2 Length and intensity of treatment

In the general drug treatment literature, the evidence suggests that high need clients should be engaged in treatment for no fewer than 90 days (Simpson et al. 2006; NIDA 2009). For criminal justice clients, however, the most favourable outcomes are found when drug-dependent offenders complete a period of treatment that lasts for between nine and 12 months (Peters et al. 2000; Huebner & Cobbina 2007) and during which time a client receives between six and 10 hours of drug treatment and counselling per week in the initial phases (Landenberger & Lipsey 2005).

In practice therefore, a drug court should aim to:

- provide drug treatment that is no shorter in length than is considered best-practice in the drug treatment literature (90 days), but aim for a continuum of treatment that facilitates contact with treatment services for a period of between nine and 12 months;
- individualise treatment plans (duration and intensity) to meet individual client needs. This includes extending treatment or lessening treatment where deemed appropriate by a qualified treatment clinician;
- communicate to prospective participants clearly and at the earliest possible opportunity the expectations of the court regarding the length and intensity of treatment. Participants should understand that drug treatment is just one part of their multifaceted rehabilitation plan and that their commitment to the court will extend beyond the period of drug treatment alone; and
- longer drug treatment interventions should be preferred when coupled with key elements of rehabilitation best practice, such as individualised case management, motivational interviewing and cognitive behavioural interventions.

32.3.3 Modality

According to the general correctional (Andrews et al. 1990; Andrews & Bonta 2010; Gendreau 1996) and drug court literature (Bourgon & Gutierrez 2012) drug courts should favour treatments that: include behavioural strategies (incentives and sanctions) and cognitive behavioural counselling interventions; are carefully documented with treatment manuals; involve treatment providers who are appropriately trained and adequately equipped to offer treatment in accordance with the relevant guidelines and manuals (see Southam-Gerow & Mcleod 2013); are adequately funded (Andrews et al. 1990) to maintain fidelity to the treatment model throughout the entirety of the treatment program, including sufficient funding to support the use of homework style activities that reinforce treatment goals (Kazantzis et al. 2000; Sobell & Sobell 2011); and are subject to ongoing implementation monitoring and outcome evaluation. This includes the extent to which those programs are monitoring and evaluating their own performance, and the extent to which this information is relayed back to the drug court program (Blair et al. 2015).

32.3.4 Settings

In terms of residential and non-residential (out-patient) treatment, there is no specific or strong evidence in favour of either for a drug court program. Instead, the research evidence favours those drug court programs that utilise multiple treatment settings as part of a broader continuum of care that can be tailored to suit

individual treatment needs (Carey et al. 2012). Accordingly, the settings within which treatment is offered need not be directed specifically by the drug court program, but identified and delivered according to individual treatment need and prior experience and history of treatment in different contexts. However, in principle:

- drug courts targeting high-risk and high-need offenders will require a range of residential and outpatient services;
- high-intensity outpatient services should exist as part of the transitional treatment arrangements for clients exiting residential care;
- clients should not be placed into residential treatment unless otherwise indicated by appropriate and validated screening;
- each individual must receive treatment in the setting best suited to their individual treatment needs; and
- treatment services should operate across a continuum of care that is, where possible, transitional and seamless to the client.

32.3.5 Equity and diversity

It is important that drug treatment programs and services that support the drug court program are designed to cater to a diverse range of potential participants. Culturally safe drug treatment services should be identified to support Aboriginal and Torres Strait Islanders, in addition to the use of culturally safe practices within the drug court program itself. Encouraging the presence of Indigenous Elders into the drug court team, where requested and appropriate, may be an important first step in building a drug court program that seeks to provide a culturally safe environment beyond just the selection of Aboriginal and Torres Strait Islander specific treatment providers.

Further, recognising the high prevalence of mental health and other comorbidities among high-risk and high-need populations, including assessment and treatment of trauma and PTSD is critical to the success of a drug court program. Specifically tailoring treatment programs, as well as courtroom practices, is key to ensuring that the drug court program provides a therapeutically safe environment in which treatment engagement can be facilitated and where specific relapse triggers can be identified and managed.

32.3.6 Co-morbidity and co-occurring disorders

Due to the high prevalence of mental health disorders, a key consideration for drug courts is the extent to which those with a substance use disorder are also likely to present with other co-occurring mental health disorders.

There is, therefore, a need to recognise the prevalence and complexities of concurrent and co-morbid disorders in the criminal justice system. This is for a number of reasons, not least of which is because some studies have shown that clients with co-morbid mental health and substance use disorders have poorer treatment outcomes (Lubman et al. 2007; Schafer & Najavitis 2007), often continuing to drink or use drugs more, be in poorer physical and mental health, and display poorer functioning following treatment (see Milby et al. 2015; Hildebrand and Noteborn 2015; SAMHSA 2005). For drug courts in particular, understanding the contribution of these other factors can be important in tailoring appropriate treatment interventions and court-level responses to non-compliance.

32.3.7 Trauma-informed care

Given the high rates of trauma and PTSD in drug courts, universal screening for these disorders should be provided for all drug court participants. A number of evidence-based trauma screens are available to facilitate this.

Assessments should be conducted by a trained mental health professional/clinician for drug court participants who receive a positive screen for PTSD and trauma. The assessment should examine the interaction between trauma history and substance use disorders, and provide the foundation for then referring the participant to

specialised services, including individual counselling, treatment groups, and consultation for use of psychiatric medications.

The drug court program should identify all possible community resources to maximise and leverage the necessary services and supports for participants who have a history of trauma, recognising that specialised trauma services may be limited in some communities.

32.4 FORMER QUEENSLAND DRUG COURT MODEL

Substance abuse treatment was provided by either Queensland Health (ATODS) or by non- government organisations. There was a tendency to direct participants into residential rehabilitation programs where beds were pre-purchased for exclusive use by drug court. Other treatment modalities such as counselling were also used.

The Matrix program was introduced at the Beenleigh Drug Court in its latter years. Matrix is a holistic and intensive program that integrates several evidence based treatment techniques into a comprehensive, individualised treatment plan targeting a participant's behavioural, emotional and, cognitive and relationship issues. More information on the Matrix programs can be found in section 8.9.1.6.

32.5 POSITION IN OTHER JURISDICTIONS

Alcohol and other drug treatment is compulsory for Drug Court participants in NSW and Victoria. The delivery of treatment differs between these jurisdictions with all NSW participants being required to attend counselling with a dedicated team of Drug Court counsellors established within NSW Health, whereas in Victoria, treatment is provided by NGOs. These are funded through a brokered services system which is administered and coordinated by the State Department of Health and Human Services.

Both jurisdictions refer to a range of interventions including residential rehabilitation programs, pharmacotherapy treatment or out-patient client services.

32.6 CONSULTATION VIEWS AND ISSUES

Feedback from the consultation sessions indicates that, under the former Queensland Drug Court, there was a strong preference for residential rehabilitation to be used. This was, in part, a risk management strategy as the offender was considered to be under closer supervision while in a full time residential program.

The introduction of the Matrix Program at the former Beenleigh Drug Court was generally regarded as a positive addition to the Drug Court treatment options. This also resulted in less reliance on residential programs.

In the current health context, Queensland Health and QNADA have identified that there is now greater scope to make use of outpatient programs where it is possible to maintain the client at home with support, with the appropriateness of this intervention depending on an individual's assessed needs. A former Drug Court participant who was interviewed identified that in his case, outpatient options were unsuitable for him during the early phases of the program as they did not address the amount of free time and criminal thinking.

Some stakeholders identified that the different and sometimes conflicting rules and philosophies between the Drug Court and some residential rehabilitation services is an issue that will need to be resolved under the new model. One example given was where clients were sometimes asked to leave the rehabilitation service for failing to comply with the residential rehabilitation service's rules without there being arrangements in place to secure these participants alternative accommodation. This often left clients with no accommodation and sometimes resulted in the participant absconding.

32.7 RECOMMENDATIONS

As drug treatment is fundamental to the success of a Drug Court program, we recommend that a range of evidence-based treatment types are available in order to individualise drug treatment plans for Drug Court

participants so that treatment is appropriately matched to their needs. The availability of alcohol and other drug services is one of the critical factors for consideration in the analysis of proposed locations for the Queensland Drug Court.

We recommend that, where possible, treatment should be provided by a limited number of service providers. This may not only enable treatment providers to attain a greater understanding of the Drug Court process and requirements and the needs of Drug Court participants, but it may lead to enhanced relationships between the Drug Court team and treatment providers.

The Review has not considered the funding requirements to support a future Drug Court, including what funding would be required to ensure appropriate access to treatment services, as it is considered this is a matter for implementation.

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.**

33 ADDRESSING CRIMINOGENIC RISKS AND NEEDS

33.1 INTRODUCTION

As highlighted earlier in this report, the relationship between drug use and crime is the result of a complex system of causal relationships that varies from individual to individual and at different points in the life course. Importantly, by the time an offender reaches the point of being both high-risk and high-need, their criminal offending is likely the consequence of many different factors of which their substance abuse is just one. Consequently, the delivery of best-practice drug treatment as a single intervention is unlikely to be sufficient to encourage longer-term reductions in criminal offending and the prevention of drug use relapse. To this end, drug court programs require integrated treatment responses that recognise drug treatment as just one component of the treatment matrix aimed to address a more complex series of criminogenic needs.

33.2 WHAT DOES THE EVIDENCE SAY?

The term ‘criminogenic need’ has been variously defined in the drug court literature without any clear or consistent conceptualisation. According to Andrews and Bonta (2010) criminogenic needs are those clinical disorders or functional impairments that, if treated, substantially reduce the likelihood of continuing engagement in crime. Put simply, these are factors that predispose an individual to the ongoing commission of crime, independently of other factors. Among the clinical disorders, Marlowe (2012) includes major psychiatric disorders, brain injury and the lack of basic employment or daily living skills. More broadly, Andrews and Bonta (2010) include under their central eight criminogenic factors other static and dynamic domains such as anti-social personality disorder, pro-social criminal attitudes, social supports for criminal involvement, family or relationship problems, and the lack of prosocial activities.

Incorporating into a drug court treatments and program elements that address criminogenic needs other than drug use is essential to facilitate what Marlowe (2012) describes as “prosocial habilitation” and “adaptive habilitation”. Specifically, prosocial habilitation recognises that many high-risk and high-need offenders may not actively or naturally endorse pro-social attitudes or values and therefore lack the inclination to engage in prosocial activities such as work, schooling or pro-social parenting. Consequently, drug courts should afford opportunities to address ‘criminal thinking’ patterns using programs shown to be effective in reducing recidivism (Heck 2008; Knight et al. 2008; Lowenkamp 2009). Ideally, drug court participants should be afforded a minimum of 200 hours contact with best-practice programming involving cognitive behavioral interventions (see Bourgon & Armstrong 2005; Latessa & Sperber 2010).

Adaptive habilitation, as described by Marlowe (2012), is required when high-risk offenders lack the necessary education, employment and life skills to adapt to a life without drug use and crime. As such, drug court programs must recognise the importance of upskilling their participants with the necessary skills to navigate the complexities of life after drug court (see Belenko 2001). Ideally, this means engaging offenders in the development of vocational skills, addressing educational deficits and improving daily living skills (such as cooking, homemaking, budgeting, etc.).

Consistent with the best-practice literature, CBT has been shown to be the most effective method in treating antisocial behavioral patterns and criminal thinking. Such interventions typically focus the participant to think about the triggers for their offending (the people, places and behaviours that make crime more likely to occur) and to recognise the errors in their thinking patterns and rationalisations (sense of hopelessness or victimisation). Cognitive restructuring is then used to disrupt automatic thinking patterns and feelings that lead to participation in crime.

Of the various CBT-based programs that exist, two have been subject to considerable evaluation with positive results. These are:

- Reasoning and rehabilitation – a program facilitated by trained practitioners for delivery with medium-to-high risk offenders. The program seeks to engage participants using cognitive and behavioural techniques to further develop lateral thinking skills, critical thinking skills, and social skills. Evaluations have

demonstrated the program to be effective at reducing recidivism (Tong & Farrington 2006; Lipsey, Landenberger & Wilson 2007; Wilkinson 2005).

- Thinking for change – an integrated cognitive behavioural change program comprised of 25 lessons together with an aftercare program (Bush, Glick and Taymans 1997). The program is offered as a closed group, meaning that new members cannot join the intervention mid-cycle. Evaluations have similarly demonstrated this as effective in reducing reoffending (Lowenkamp et al. 2009).

33.2.1 Case management

Notwithstanding the importance of individual programs and treatments for criminal thinking, the core programmatic element of the most instrumental benefit for a drug court program is quality case management. Case management is conceptualised as the coordination of services that best help individuals meet their specific needs and goals. In the drug treatment literature case management has been shown to improve treatment retention (Laken & Ager 1996; Mejta et al. 1997; Rapp et al. 1998; Siegal et al. 1997), while in the social and criminal justice literature it has been linked to the reduction of employment problems (McLellan et al. 2003; Siegal et al. 1997) and the improvement of family functioning (Leonardson & Loudenburg 2003; McLellan et al. 2003; Sharlin & Shamai 1995).

Of the three different case management models (minimal, brokerage and comprehensive), comprehensive case management is the most appropriate for a drug court program managing high-risk and high-need offenders (Hall et al. 2008). Comprehensive management is characterised by the provision of and support for intensive treatments and interventions, requiring frequent contact with participants and, as a consequence, lower than average caseloads per case manager (1:10, according to Hall et al. 2008). In their view, Hall and colleagues (2008) make a number of recommendations for the development of case management principles and programs within the drug court setting, including:

- drug court systems should choose a case management model appropriate to their needs and services;
- case managers should have formal training in the case management model and the duties and functions of a case manager;
- case management involvement should begin with assessment of a potential participant for the drug court system;
- to avoid conflicting roles, the case manager should take care to align the tasks of the team members within their respective purviews.;
- with the exception of reporting suspicion of child or elder neglect or abuse and duty to warn, the responsibilities of the case manager should not include reporting parole violations to the court; and
- the integration of various models of case management within drug court systems should include formal, rigorous, and ongoing evaluation of the implementation process and participant outcomes.

33.3 FORMER QUEENSLAND DRUG COURT MODEL

In south-east Queensland, drug court participants were referred to cognitive-behavioural therapy based offending behaviour programs, facilitated at the District Office, alongside offenders under Special C supervision on other types of orders. This type of intervention was not available in the latter years of the drug court.

In Cairns, drug court participants were referred to Moral Reconciliation Therapy (MRT) programs facilitated by ATODs.

Queensland Corrective Service case managers addressed criminal thinking and other criminogenic needs (in addition to alcohol and other drug use) in individual interviews with offenders. Queensland Health assumed primary responsibility for substance use issues.

33.4 POSITION IN OTHER JURISDICTIONS

33.4.1 NSW Drug Court

Participants are referred to relevant CBT-based offending behaviour programs facilitated at the Community Corrections District office. As well as alcohol and other drug programs, these may include anger management and domestic violence programs, where appropriate to the individual offender. The Pathways to Education and Employment Program (PEET), facilitated by TAFE and Community Corrections, is also available to drug court clients. The drug court team has access to supported accommodation through a NGO service provider. This provider also facilitates alcohol and other drug programs as part of its support package.

Individual sessions to address criminogenic needs are also undertaken by Community Corrections and NSW Health staff from the drug court team.

33.4.2 Drug Court of Victoria

Specific offending behaviour programs to address criminal thinking are not offered to drug court participants. This is regarded as an aspect of the program in need of improvement. Assistance to address criminogenic needs is provided by drug court case managers and health clinicians. The Drug Court of Victoria benefits from a partnership with a NGO providing temporary accommodation and wrap-around support.

33.5 CONSULTATION VIEWS AND ISSUES

Feedback suggested that the focus of the former Queensland drug court program was primarily upon drug issues, with insufficient emphasis being placed upon addressing criminal thinking and other criminogenic issues. Particular mention was made of the lack of attention to education and employment. It was suggested that programs to develop participants' social and daily living skills should also be an integral part of the program.

33.6 RECOMMENDATIONS

While it may be a significant factor, drug use alone is rarely the only contributory factor to an individuals' offending behavior. In acknowledgement of other criminogenic factors also impacting upon a drug court participant's assessed risks and needs, and to improve their chances of reduced drug use and offending, we recommend that all criminogenic needs are dealt with in a holistic manner as part of the participant's case management plan. The same issues apply as with access to drug treatment services.

As interventions specifically addressing criminal thinking are reported to have been minimally used in the former Queensland Drug Court, we recommend that the means of addressing this issue are appropriately considered in developing the new Drug Court model.

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.

34 DISADVANTAGED GROUPS

34.1 BEST PRACTICE STANDARDS

Drug treatment and other criminal justice interventions should be equally accessible to all members of the community. In Australia, it is often the case that issues of equity and accessibility are reduced to an Indigenous/non-Indigenous dichotomy. However, in culturally and socially diverse communities, programs must also consider the gender, sexual orientation, sexual identity, physical or mental disability, religion or socio-economic status of potential clients.

According to the NADCP Standards, drug courts should accommodate equally those citizens who have historically experienced sustained discrimination or reduced social opportunities, which for drug court programs includes ensuring equivalency in access, retention, treatment, incentives and sanctions, dispositions and team training.

34.2 EQUIVALENT ACCESS

Although criminal justice interventions should be equally accessible to all those who appear before the criminal justice system, in reality, not all programs are as easily accessed by all social and cultural groups. Understanding the factors associated with underrepresentation can be difficult, however, some have argued that eligibility criteria are often unnecessarily restrictive with the consequence of limiting the representation of minority populations in Drug Court programs (Belenko et al. 2011; O’Hear 2009). Similarly, in the former Queensland Drug Court the referral of Aboriginal and Torres Strait Islander offenders (approximately 10 per cent of all referrals) was lower than anticipated in all five courts (Payne 2008), but in particular in the North Queensland courts of Cairns and Townsville (Payne 2005). At the time of evaluation, the application of eligibility criteria was thought to have inadvertently prohibited many Aboriginal and Torres Strait Islander offenders from participating on the drug court program because their violent offending histories, alcohol abuse, and residential status were among the factors which typically limited access to the program.

Mental health status is also another factor likely to limit an offender’s access to a drug court program. To overcome this, suitable mental health screening and assessment procedures are required, together with programs and interventions capable of working with offenders who present with mild or moderate mental health symptoms. The acceptance of individuals experiencing mental health conditions has been discussed in section 20.7 of this Report. Stakeholder feedback supports the view that a person with a mental illness should not be automatically excluded from participation from the drug court program. Instead, an individualised assessment should be undertaken to determine the person’s capacity to participate in the program, and ongoing assessment is needed to ensure that mental health needs are met through the appropriate treatment and supports.

34.3 EQUIVALENT RETENTION

The barriers faced by minority populations and other socially disadvantaged groups can occur at any point during the intervention process. Where they exist, they are most likely to be seen in programs with disproportionally higher termination (or lower retention) rates. Importantly, the experience of socially disadvantaged populations is not the same in all drug court locations, suggesting that location-specific societal and environmental characteristics (rather than characteristics specific to the individual) are most likely to be responsible for the disparities seen at the local level, such as lesser educational or employment opportunities (Belenko 2001; Dannerbeck et al. 2006; Fosados, et al. 2007; Hartley & Phillips 2001; Miller & Shutt 2001).

A similar view identified during the stakeholder consultations, in particular from the feedback received from ATSILS, Queensland, who indicated that Aboriginal and Torres Strait Islander people may struggle to meet the requirements of an intensive drug court program because of the multiple issues experienced by many in everyday life.

One method that has been suggested to address issues of retention is to confidentially survey participants and staff members about their perceptions of disparate treatment and outcomes in the program (Casey et al. 2012; Sentencing Project 2008). According to Szapocznik et al. (2007), programs that continually engage clients and service providers about cultural competence and cultural sensitivity can identify different and unique ways to produce better outcomes for individuals and drug court programs as a whole. Similarly, drug courts should be required to engage independent evaluators to objectively identify areas requiring improvement, especially as they might relate to the improvement of outcomes for socially disadvantaged populations (Carey et al. 2012; Rubio et al. 2008).

Taking this into consideration, the acknowledgment of culture, embedding of cultural protocols and the engagement of cultural advisory positions as part of the core drug court team may assist in the recruitment and retention and graduation of Aboriginal and Torres Strait Islander defendants to the Drug Court. Advice from the AODT Court Pilot in New Zealand suggests that the embedding of culture into the program has proved successful in a Drug Court context, attracting high numbers of Maori defendants equivalent to the level of representation of this group in the prison system.

34.4 EQUIVALENT TREATMENT

Some studies have concluded that racial and ethnic minorities often receive lesser quality treatment than non-minorities in the criminal justice system (Brocato 2013; Janku & Yan 2009; Fosados et al. 2007; Guerrero et al. 2013; Huey & Polo 2008; Lawson & Lawson 2013; Marsh 2009; Schmidt et al. 2006). Although not drug court specific, NADCP suggests that drug courts note the outcome of these results by ensuring that the treatment they provide is valid and effective for members of historically disadvantaged groups in their programs.

For example, there is now a substantial body of research that shows that women, especially where there is a history of trauma, perform significantly better in gender-specific substance abuse treatment groups (Dannerbeck et al. 2002; Grella 2008; Liang & Long 2013; Powell et al. 2012). In drug courts, it has been shown that programs offering gender-specific services reduced criminal recidivism significantly more than those that did not (Carey et al. 2012).

The individualisation of treatment plans and appropriate matching of treatment as opposed to standard expectations of all drug court participants would also serve to meet the specific needs and circumstances of drug court participants, for example, women with child care responsibilities. Culturally appropriate treatment with service providers with whom Aboriginal and Torres Strait Islander people were comfortable was also cited by ATSILS, Queensland as a significant factor that would affect the success of engaging this cohort in the drug court program.

34.5 EQUIVALENT INCENTIVES AND SANCTIONS

Although no empirical studies have been conducted as to whether racial or ethnic minority groups are sanctioned more severely than non-minorities in drug courts, anecdotal observations have been cited to support this concern (NACDL 2009). Acknowledging this issue, the NADCP minority resolution places an affirmative obligation on drug courts to monitor continually whether sanctions and incentives are being applied equivalently for minority participants and to take corrective actions if discrepancies are detected.

34.6 EQUIVALENT DISPOSITIONS

Evidence from at least one study suggests that some participants terminated from Drug Court receive harsher sentences than traditionally adjudicated defendants who were charged with comparable offences (Bowers 2008). There is no evidence, however, to indicate whether this practice differentially affects minorities or members of other historically disadvantaged groups. In fact, one study in Australia found that Aboriginal and Torres Strait Islander Drug Court participants were less likely than non-Indigenous participants to be sentenced to prison (Jeffries & Bond 2012). Nevertheless, due process and equal protection require drug courts to remain vigilant to the possibility of sentencing disparities in their programs and to take corrective actions where indicated.

34.7 TEAM TRAINING

One of the most significant predictors of positive outcomes for racial and ethnic minority participants in substance abuse treatment is culturally-sensitive attitudes on the part of the treatment staff, especially managers and supervisors (Ely & Thomas, 2001; Guerrero 2010).

Although cultural-sensitivity training can enhance counselors' and supervisors' beliefs about the importance of diversity and the need to understand their clients' cultural backgrounds and influences (Cabaj 2008; Westermeyer & Dickerson 2008), NADCP argues that merely sensitising court staff to cultural concerns is not sufficient.

34.8 RECOMMENDATIONS

As discussed at Chapter 13, Aboriginal and Torres Strait Islander people in Queensland are significantly over-represented at all stages of the criminal justice system, including in custody. There has also been a growth in women in custody, with the rates of imprisonment growing from 24 per 100,000 of the adult population in 2011 to 38 per 100,000 in 2015 (an increase of 57%).

As evaluations of drug courts, including the former Queensland Drug Court, have shown, disadvantaged groups may be further disadvantaged as a result of factors that may make access, participation or completion of drug court programs especially difficult. These factors may include not only eligibility pathways and criteria, but also the supporting structures and personnel who support people's participation in the program and access to appropriate treatment services.

Enabling equitable access to the drug court for historically disadvantaged groups may also serve to address some of the existing issues associated with that disadvantage.

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.

35 TRANSITIONAL SERVICES AND AFTERCARE

35.1 INTRODUCTION

It is widely recognised that the outcomes of drug treatment are more favourable and longer-lasting when drug treatment clients are afforded access to transitional or aftercare services (Butzin et al. 2006; Dennis & Scott 2012; McKay 2009). For drug courts, this requires two things: maintaining continuity in service contact during the drug court program, but after the formal drug treatment program has ended; and affording graduates of the drug court transitional arrangements that facilitate voluntary post-court contact with treatment and other support services.

35.2 WHAT DOES THE EVIDENCE SAY?

After the completion of any formal drug treatment program, the risk of relapse is high irrespective of whether treatment was voluntary or court-mandated. According to McLellan and colleagues (2000) for example, as many as two in three drug treatment graduates will have relapsed within one year, with the risk of relapse being highest in the first three to six months of completion (Marlatt 1985). For drug courts in particular, given the risks of re-engagement in criminal and other antisocial behaviour, these general clinical findings suggest that the treatment continuum must also include a system of ongoing case management and aftercare once formal contact with drug treatment has concluded.

It is generally recognised that the most effective aftercare programs provide support for up to 12 months or longer, are adaptive to individual needs (McKay 2009) and include active efforts to deliver aftercare services to the individual, rather than relying on the individual to seek aftercare support (Godley et al. 2006). In this context, two different service delivery models have been identified:

- Adaptive Telephone Continuing Care – comprised of telephone-delivered structured sessions of up to 30 minutes per week, graduated to monthly. The focus of these telephone sessions include the monitoring of symptoms and progress, the identification of problems and barriers to recovery, and concrete planning and problem solving for relapse (see McKay et al. 2005).
- Recovery Management Check-up (RMC) – comprised of three-monthly in-person patient interviews involving motivational interviewing and relapse prevention assessments (Dennis et al. 2003; Dennis & Scott 2012).

There is also an emerging literature that supports the development of aftercare strategies that see drug court graduates engaged with current participants in their capacity as program alumni (Burek 2011; McLean 2012). Although not well studied to date, developing a drug-court graduate alumni community and utilising their success as an example to current participants may serve to increase motivation for treatment and self-confidence about the likelihood of treatment success. In addition, the engagement of drug court alumni may also serve to strengthen the social bonds of graduates and afford opportunities for aftercare that improve longer-term drug use and recidivism outcomes.

In a review of the aftercare research and outcomes for both drug courts and drug treatments generally, a panel of experts convened by the American University concluded that aftercare is an essential but often unrecognised element for best practice in drug courts (Adult Drug Court Research to Practice Initiative 2013). Specifically, it was recommended that to improve drug treatment and recidivism outcomes, drug courts should:

- ensure that each participant has developed a recovery plan by the time the participant enters the final phase of the drug court program;
- provide multiple paths for participants to sustain their recovery and promptly access additional services when/as needed;
- develop a simple and short instrument for drug court personnel and peer mentors to use as a follow-up questionnaire;

- train staff on Motivational Interviewing and the associated skills that can be incorporated in post-program contacts with participants; and
- develop a database to indicate when telephone follow-up contact should occur with each drug court graduate and have a plan in place for responding to the range of needs that may be uncovered, including resumption of treatment if/as needed.

Finally, engaging drug court clients early in education and employment has been shown to be important for improving the longer term outcomes for drug courts. The reasons for this are twofold. First, connection to education and employment facilitates the development of strong social bonds which have long been recognised as important for promoting criminal desistance. Second, increasing the skills and employability of drug court participants may improve employment outcomes, leading to greater income stability and weakening unemployment as a post-graduation criminogenic need.

35.3 FORMER QUEENSLAND DRUG COURT MODEL

In the former Queensland Drug Court, most graduates were sentenced to some form supervision with the Department of Corrective services. Whilst there was no additional follow up with health or treatment service providers by the Drug Court, follow up and referral to relevant and appropriate services may have been undertaken by the supervising Corrective Services officer.

35.4 POSITION IN OTHER JURISDICTIONS

Exit planning is undertaken by the Drug Court of Victoria in order to mitigate any potential anxiety or sense of loss about the absence of services and support when a participant completes a Drug Treatment Order. In the final phase of the order, a planned approach is undertaken to the reduction of contact and to the establishment of community links to support the participant upon completion. The exit plan is produced in consultation with the participant and includes the goals achieved on the program, future goals, possible obstacles that the individual may face and a related contingency plan and contact list for post program support.

In the NSW Drug Court, a Continuing Care Plan is developed by NSW Health and Corrective Services NSW. This report outlines the participant's current situation and services with which the participants may need to be linked after leaving the Drug Court.

35.5 CONSULTATION VIEWS AND ISSUES

Some stakeholders suggested that some former Queensland Drug Court graduates were so concerned about their ability to cope after graduation that they openly welcomed or requested the imposition of supervision and drug testing requirements as part of their final sentence to 'keep them on the right track'.

While this was suggested by some as a benefit of having the order structured with an initial sentence given at the outset and final sentence imposed on graduation in that the offender could continue to be supervised and receive support under another sentencing order, such as a probation order, many considered that the transition from treatment should be able to be appropriately managed without the need to resort to this conditional form of order.

35.6 RECOMMENDATIONS

The risks of drug court participants resuming drug use and re-engaging in criminal activity, coupled with the decrease in levels of support and intervention post-drug court completion, point to the need for good transitional and after care services for drug court participants. The need for these services is also supported

by the best practice standards for drug courts and the operational practices of drug courts in other jurisdictions.

The development of a transitional plan will ensure that drug court participants are linked to ongoing support services that may assist in the maintenance of progress and benefits achieved during the drug court program.

This transition should occur while the participant is still subject to the order and should form part of their supervision and treatment program. Where this is not possible the court may decide to either vary the order by extending the period of supervision and treatment (but not beyond the term of imprisonment imposed) or transitional and aftercare support can be provided post-sentence after the offender is no longer subject to the order by connecting them with relevant services.

As in the New Zealand model, participants could be supported throughout the program and following completion of the program by being linked to peer support from former graduates of the drug court program.

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.

36 GOVERNANCE, MONITORING AND EVALUATION

36.1 BEST PRACTICE STANDARDS

According to the NADCP Standards, drug courts must routinely monitor their adherence to best practice standards and must employ scientifically valid and reliable procedures to evaluate their effectiveness. This includes using appropriate data to measure outcomes and having independent evaluators undertake scientifically rigorous analyses.

This chapter discusses the importance of governance, monitoring and evaluation. These elements are vital features of program delivery in that they ensure that program objectives are achieved and resources are used effectively and efficiently.

36.2 GOVERNANCE

Public sector governance encompasses a set of responsibilities exercised by an agency to provide strategic direction, to ensure that objectives are achieved, risks are managed and resources are used responsibly and with accountability.

Particularly, in view of the complexity of Queensland's court diversion programs and the need to ensure adherence to program objectives and issues of efficiency and effectiveness, a governance structure should be established to oversee all court based programs. This would involve the creation of a reference group comprised of representatives from all key agencies, service providers and academics

36.2.1 Former Queensland Drug Court

Under the former model, a Drug Court Reference Group was established that had responsibility for the oversight of the former Queensland Drug Court. This was an interdepartmental consultative committee formed and maintained for the purposes of seeking and maintaining consensus and integration of service delivery in support of the program, and to identify and resolve problems encountered.

The partner agencies on this Reference Group were primary government departments and agencies cooperating to achieve the objects of the *Drug Court Act 2000*. They included DJAG, QPS, QH, QCS, LAQ and the DCCSDS.

36.2.2 Other jurisdictions

Most other jurisdictions with drug courts have established reference groups or steering committees similar to that which formerly existed in Queensland. For example, the New Zealand AODT Court has established a Steering Group comprised of representatives from the Ministry of Justice (District Courts and Policy), New Zealand Police, the Police Prosecution Service and Police Policy Group, Judiciary, Ministry of Health and Department of Corrections.

As the AODT Court is still in its pilot stage, the objective of the AODT Court Steering Group is to ensure that the project delivers an AODT Court model in accordance with Cabinet's directive and to ensure integration between organisations, oversee the implementation of the court, provide effective project steering and maintain budget oversight.

The Steering Group's primary role is to:

- ensure the project's objectives are being adequately addressed and progressed;
- act as an escalation and decision making body for issues that cannot be resolved within the project team;
- take an active approach to solutions around costs and requirements of the pilot;
- take ownership for the delivery of the pilot and champion the project with staff;
- monitor effective stakeholder engagement and change management;

- ensure the project's scope aligns with the requirements of the detailed business case and Cabinet decision; represent stakeholder interests and provide a steering link with sector partners;
- monitor the project's progress and review risks; and
- be engaged in, and provide advice on, the development and direction of the pilot evaluation.

As Queensland is developing a new drug court model, we recommend that a Drug Court Reference Group be established with similar objectives to that of the New Zealand AODT Court Steering Group.

36.3 MONITORING AND EVALUATION

It is widely accepted that drug courts are an expensive intervention for the highest risk and highest need offenders in the criminal justice system. Proving their efficacy and cost-effectiveness is essential to maintaining their support both within government and across the wider community. As frequently described throughout the consultations, the absence of ongoing evidence of effectiveness (following the transition from pilot to full program status) undermined confidence in the program, both among drug court practitioners, as well as in the broader policy community.

36.3.1 Performance monitoring

Performance monitoring refers to the process of regularly collecting and monitoring performance information, reviewing program performance (i.e. using this information to assess whether a project is being implemented as planned and is meeting stated objectives), and using this information to identify where improvements might be made (Lipsey et al., 2006). The distinction between performance monitoring and evaluation is that, while monitoring key indicators of performance may help provide some evidence that certain outcomes are being delivered, it does not provide immediate evidence as to the contribution of a program to those outcomes.

It is generally the case that programs should select a sample of key indicators within the evaluation framework relating to outputs and outcomes and establish processes and systems that enable data for these indicators to be collected and reported on a regular basis. Monitoring key indicators relating to both outputs and outcomes for each of the program areas will offer two important benefits. First, the information collected for performance monitoring can be used as part of an evaluation, therefore it helps to determine whether data on key outcomes are available and ensures it has been routinely collected prior to an evaluation being conducted. Secondly, regular monitoring of the performance will provide capacity to monitor program outputs and outcomes over its lifetime (although it does not address the impact of the program on these outcomes). This information is particularly useful for monitoring program implementation (so that any issues can be identified and addressed), but can also provide preliminary evidence for some short-term outcomes (such as the proportion of program clients whose assessment scores improve). Regular reporting as part of a performance monitoring system can enable short-term progress to be monitored, while investment in rigorous research designs and methods can help determine the long-term impact on individuals and communities (Weatherburn 2009).

36.3.2 Evaluating with transparency

Evaluation processes should be transparent, both in terms of the methodology used to evaluate programs and the dissemination of evaluation findings to relevant stakeholders (where appropriate). The development of an overarching evaluation framework will help further encourage greater transparency in evaluation methods and approaches. Future evaluation reports should clearly demonstrate how they adhere to the framework and requirements and, more importantly, where they do not adhere to them, the reasons for this and the implications for evaluation.

To provide an objective and impartial assessment of the effectiveness, efficiency and appropriateness of policies and programs, it is important that evaluations continue to be undertaken by someone independent of the program, preferably by external evaluators. Whether an evaluation can be undertaken internally will

depend on an assessment of what is required, whether staff are equipped with the skills and expertise to undertake the work and the advantages and disadvantages of undertaking the research internally. Performance monitoring and process evaluations may be better suited to being conducted internally, while rigorous and systematic outcome evaluations are more likely to be better suited to external evaluation.

36.3.3 Evaluating process

Two types of evaluation are necessary for a drug court program—process and outcome evaluation. A process evaluation aims to improve understanding of the activities that are delivered as part of a program and assess whether they have been implemented as planned. An outcome evaluation is more concerned with the overall effectiveness of the program. The range of questions that can be addressed by both types of evaluation is presented in Table 12.

Table 15: Questions that can be addressed as part of process and outcome evaluations

Process evaluation questions	Outcome evaluation questions
<ol style="list-style-type: none"> 1. What are the main components or activities delivered as part of a program? 2. Is the program currently operating or has it been implemented as it was originally designed (ie program fidelity)? 3. Are the intended recipients of a program accessing the services being provided, do they remain in contact with the program and does the program meet the needs of participants? 4. Is the program consistent with best practice in terms of its design and implementation? 5. What factors impact positively or negatively upon the implementation or operation of the program? 6. How appropriate are the governance arrangements, operating guidelines and, where applicable, legislative framework in supporting the operation of a program? 7. What is the cost associated with the operation of the program? Is the program adequately resourced? 8. How efficient has the program been in delivering key activities? 9. What improvements could be made to the design, implementation and management of the program? 	<ol style="list-style-type: none"> 1. To what extent has the program achieved its stated objectives? 2. Did the program make a difference in terms of the problem it sought to address? 3. What outcomes have been delivered as a result of having implemented the program? 4. What impact has the program had in the short and medium term on participants' knowledge, attitudes, skills or behaviour? Are these outcomes sustained over time? 5. What longer-term impact has the program had on reoffending among participating offenders? 6. Were there any unintended consequences or outcomes from the program? 7. Which program activities or components contributed to the outcomes that have been observed? 8. What external factors impacted positively or negatively on the effectiveness of the program and the outcomes that were delivered? 9. What are the financial benefits of a program relative to the costs associated with its operation (return on investment)? 10. What changes could be made to the program to improve its overall effectiveness?

Source: Morgan & Homel 2013

The evaluation of drug court programs should incorporate both process and outcome evaluation (Weatherburn 2009). However, the staging and timing of a process and outcome evaluation will vary depending on the circumstances of each program. In some cases, such as programs that are new (or have been modified) and are in the initial stages of implementation, it may be beneficial to conduct a process evaluation (providing valuable information to improve program delivery) followed by an outcome evaluation. In other cases, a process and outcome evaluation can be undertaken simultaneously (and can overlap both in terms of evaluation questions and methods).

A process evaluation can determine whether an intervention has implementation fidelity. This refers to the extent to which an intervention was implemented in accordance with its original design, whether the required dosage of the intervention has been delivered, the overall quality of intervention delivery, and the extent to

which participants are engaged and involved in the program (Mihalic et al. 2004). Assessing implementation fidelity is important because this can help to explain why certain outcomes are or are not observed. It can also identify valuable lessons for implementing similar interventions in the future, helping to avoid implementation failure.

Related to this point, a process evaluation can also examine whether a program is consistent with international best practice. This is particularly important when there is evidence from overseas models that a particular program has been effective elsewhere—as is the case with many of the prison programs examined as part of this project. While adaptation to suit local circumstances is necessary and inevitable, certain program characteristics have been found to be key to the success of interventions and therefore must be maintained.

For each of the programs examined as part of this project, it is recommended that a process evaluation be conducted as early as possible—ideally within 12 months of implementation.

36.3.4 Commitment to rigour and scientific method

It is important that evaluations of the drug court program adopt research designs that are consistent with internationally accepted standards for drawing meaningful conclusions about program effects. In order to reliably assess the impact of prison programs on outcomes such as reduced reoffending, evaluations must aim for a high level of internal validity. That is, there must be some degree of confidence that any observed changes or differences were the result of the intervention being evaluated and not some other confounding factor. There are a variety of different approaches to measuring the impact of programs designed to prevent and reduce offending. Selecting an appropriate evaluation design and research method requires consideration of the characteristics of a program, the purpose of the evaluation, the available options, and the views of key stakeholders (English, Cummings & Stratton 2002; Lipsey et al. 2006).

Experimental (especially quasi-experimental) and observational methods are the most common approaches used in criminal justice research (MacKenzie 2006). The Scientific Methods Scale (SMS) was therefore developed to assess the quality of outcome evaluations in crime prevention and criminal justice research (Table 16). The SMS forms the basis of systematic reviews and meta-analyses undertaken by the Campbell Collaboration (Farrington et al. 2006; Sherman et al. 2006), while a slightly modified form is used by the WSIPP (Lee et al. 2012), and has been applied to a variety of settings and strategies designed to prevent and reduce crime. It is primarily focused on ensuring the highest possible level of internal validity and drawing valid conclusions regarding the causal relationship between interventions and the outcomes observed. The scale ranges from a correlation between a program and a measure of the outcome (level one) through to randomised control studies (level five), which are widely (but not universally) regarded as the gold standard for evaluation research (Farrington et al. 2006).

Table 16: Scientific Methods Scale

Level	Criteria
1	Correlation between a prevention program and measure of crime at one point in time
2	Measures of crime before and after the program, with no comparable control condition
3	Measures of crime before and after the program in experimental and comparable control condition
4	Measures of crime before and after the program in multiple units with and without the program, controlling for other variables that influence crime, or using comparison units that evidence only minor differences
5	Random assignment of program and control conditions to units

Source: Farrington et al. 2006: 16-17

In practice, randomised control trials have proven difficult to achieve, particularly within Australian criminal justice research. A research design that achieves level three on the SMS, with measures of the outcome (usually a reduction in crime) pre and post intervention and an appropriate comparison group against which to compare results (a quasi-experimental design) is therefore considered the minimum design for drawing

valid conclusions about the effectiveness of a strategy (Farrington et al. 2006; MacKenzie 2006; Sherman et al. 1997).

36.3.5 Cost-efficiency and cost-benefit analysis

Economic analysis must become a key feature of any drug court evaluation in Queensland:

“...while determining whether a program reduces crime remains the necessary first condition for rational public policy making, an economic analysis constitutes the necessary additional condition for identifying viable and fiscally prudent options” (Drake, Aos & Miller 2009, p. 194).

There is good evidence of the value of including economic analysis in evaluation and the assessment of program performance. Several forms of economic analysis are possible when evaluating criminal justice programs:

- Financial analysis: Estimating the impact of a program on an agency’s budget, including the efficiency of services delivered (ratio of outputs to inputs).
- Cost-savings analysis: A comparison between the costs and benefits realised by a program’s funding body.
- Cost-effectiveness analysis: Cost incurred to produce each unit of benefit.
- Cost-benefit analysis: Compares all of the benefits associated with a program (in dollar terms) with program costs to develop a cost-benefit ratio.

Rigorous and systematic evaluations of drug courts should include a cost-efficiency, cost effectiveness and cost-benefit analysis. This will require robust estimates of program costs and the measurement of intervention effects in a way that is amenable to quantifying in financial terms. It will also require valid estimates of the financial benefits associated with improved prisoner outcomes.

36.4 EVALUATION OF THE DRUG COURT

The reinstated Queensland Drug Court should be independently evaluated and open to modification in response to evaluation findings.

The reinstatement of the drug court should include:

- a legislative commitment to the evaluation of the program, which should be undertaken as an independent process and outcome evaluation;
- 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;
- 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;
- 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;
- 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;
- 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;
- 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.

36.5 RECOMMENDATIONS

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.

37 OTHER FORMS OF PROBLEM-ORIENTED COURTS

37.1 INTRODUCTION

This chapter provides a brief overview of some of the other types of problem-oriented courts that have been developed. The Review suggests that other promising programs such as these should be monitored and considered as part of future planning.

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

- Driving whilst intoxicated courts created to provide close supervision of repeat 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.
- The Assessment and Referral Court (ARC) 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.
- Family violence courts: Although there is no consistent model, these address criminal and/or the 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 specialist 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.

Some of these programs are discussed in more detail below and in Appendix C “Solution-focused Interventions for Drug-related Offending: Review of the Literature.”

37.2 DRIVING WHILE IMPAIRED COURTS

Driving While Impaired (DWI) courts were created to provide close supervision of repeat DWI offenders and improve their compliance with substance abuse treatment. Modelled on the US drug courts, DWI courts require participants to attend frequent status hearings in court, complete an intensive regimen of substance abuse treatment, and undergo random testing for alcohol and other drugs. DWI Courts adhere to [‘The Ten Guiding Principles of DWI Courts’](#), published by the National Center for DWI Courts, a professional services division of the US NADCP.

Most DWI courts are post-conviction programs, which means that DWI courts cannot be used to avoid a record of conviction and/or license sanctions. Along with a variety of other requirements, DWI courts may require participants to serve some portion of a jail sentence, with the remainder of detention being suspended pending completion of treatment. As of 2014, there were 242 DWI courts and 448 hybrid DWI/drug courts in the US. There have been proposals for the establishment of similar courts in Australia (Richardson 2013).

DWI courts have been shown to be effective in reducing both DWI and general recidivism.

37.3 MENTAL HEALTH COURTS

Mental health courts were modelled after other therapeutic courts with the aim of providing offenders with mental health issues with treatment in the community to improve their outcomes – ameliorating mental health issues and reducing criminal behaviour. They typically include separate court lists, specialised mental

health assessments and individualised treatment plans, intensive case management by a court-based interdisciplinary team, and judicial monitoring, including graduated sanctions and incentives.

The US Bureau of Justice Assistance has developed the 10 essential elements of mental health court design and implementation, which are founded on the key principle of collaboration among the criminal justice, mental health, substance abuse treatment, and related systems. These are very similar to the key elements of drug courts, with the added imperatives of ensuring informed choice before people agree to participate and confidentiality of people's health and legal information.

Although there is a limited body of robust evidence on the effectiveness of mental health courts, there is considerable agreement about the key principles that underlie effective practice in these courts. These include:

- early assessment and treatment, linking people to community service providers as early as possible;
- collaboration among criminal justice, mental health, substance abuse and other agencies, using a case management approach to facilitate a model of holistic care;
- training of mental health court personnel to ensure proper understanding of the issues faced by offenders with a mental illness;
- treatment support and services must be high quality, evidence-based and available in the community; and
- monitoring of compliance, via a clear set of expectations and guidelines for graduated incentives and sanctions.

37.4 FAMILY VIOLENCE COURTS

As with drug courts, family violence courts first appeared in the US in 1987, with an integrated family violence court model introduced in New York in 1996. This model, which influenced the subsequent development of many family violence courts, aims to address both the criminal and civil elements of family violence matters. Despite this influence, however, there is 'no agreed upon set of principles, structure or functions of these courts'. Family violence courts therefore do not enjoy the relative consistency of approach that is seen amongst drug courts around the world. Nonetheless, they share some general characteristics with other solution-focused courts, such as a therapeutic approach and a preference for a one-judge, one-court and one-stop-shop response to offending that incorporates treatment, support and education. But they have a stronger focus on victims and their safety, with specialised court personnel and procedures and a strong emphasis on offender accountability.

The Center for Court Innovation (2007, pp. 14–15) has identified four key models of domestic violence courts. These include:

- 1) Multi-jurisdictional domestic violence courts, which are overseen by one judge who handles criminal cases and overlapping family law and divorce cases.
- 2) Criminal domestic violence courts, which handle criminal cases with an adult defendant and an adult victim who have been involved in an intimate relationship.
- 3) Civil/family domestic violence courts, which deal with cases where a victim files a restraining or protection order against a defendant who is a current or former intimate partner, as well other cases involving the victim and the defendant.
- 4) Juvenile domestic violence courts, which consider cases where the defendant is a juvenile.

Evidence for the success of family violence courts varies considerably, depending on the nature of the outcome measured. While there is mixed evidence about the ability of family violence courts to reduce reoffending, there is some evidence that the courts are successful in improving victim satisfaction and access to services.

Four key principles have emerged that form the 'building blocks' of a successful domestic violence court:

- 1) Victim services, including providing victims with immediate access to advocates, linking them with social services, keeping them informed and creating safe spaces within the courthouse.

- 2) Judicial monitoring, preferably with a single judge throughout the entire case, to supervise defendants continuously and respond quickly should a violation occur.
- 3) Accountability, via strong relationships with service providers so that the court is notified quickly of non-compliance and so that programs reinforce the court's message, as well as using technology to share information among relevant parties to facilitate more informed decisions about sentencing.
- 4) Coordinated community response, creating strong linkages with a wide range of partners, with interagency collaboration as crucial to ensuring communication, consistency, and continuing education about the court and domestic violence.

See section 5.2.9 for information on Queensland's Domestic and Family Violence Specialist Court.

37.5 FAMILY DRUG TREATMENT COURTS

A Family Drug Treatment Court was established in early 2014 in the Childrens Court of Victoria as a list within that court. The aim of the court is: "to protect children and reunite families by providing substance-abusing parents with support, treatment, and comprehensive access to services for the whole family" (Levine 2012, para 5, citing Wheeler and Fox, 2006, p 3).

King at al. 2014 (p.164) note:

The evidence from studies in those jurisdictions where such courts operate is that rates of family unification are increased and that the costs to the justice system are reduced (Levine 2012).

The main features of this court are that it adopts a problem-solving rather than an adversarial approach to decision-making; it uses a court-based, multi-disciplinary team approach to case management; it provides for judicial supervision and continuity through a docket system; it aims to be more expeditious in making decisions regarding family unification or permanent placement outside the home; it closely monitors the parents' rehabilitation and recovery and provides for frequent court reviews to foster compliance and connection. Unlike the criminal drug court, where the incentive is to avoid incarceration, the key incentive in this program is family reunification (Levine 2012).

Given the strong linkages between child protection issues in Queensland and family substance abuse, this may be an option that is worth exploring for introduction in Queensland. As discussed in section 4.2.6 of this Report, approximately two-thirds of households substantiated for harm or risk of harm to a child had a parent with a current or past drug/alcohol problem. The proportion of parents presenting with these issues is also reported to be increasing.

37.6 COMMUNITY COURTS AND JUSTICE CENTRES

Community 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. At the same time, they test new approaches to reduce both crime and incarceration (Centre for Court Innovation n.d.).

The Neighbourhood Justice Centre (NJC) in Collingwood, Victoria opened in 2007 to service the City of Yarra. It is the first and only NJC in Australia, and was established to provide new and innovative ways of dealing with crime and other forms of social disorder, disadvantage and conflict in the area.

The NJC comprises 20 independent but interdisciplinary treatment agencies that work hand-in-hand with the multi-jurisdictional Magistrates' Court to offer a wide array of support services and community initiatives. It also supports programs that tackle disadvantage, to provide real and practical benefit to the community. This 'embedded' approach is seen as a cornerstone of community justice. The Centre offers a range of justice and social services including:

- a Magistrates Court of Victoria with jurisdiction to hear all matters that the Criminal Division hears (except for sex offences);
- matters involving Family Violence and Personal Safety Intervention Orders;

- a Childrens Court;
- a Victim's of Crime Assistance Tribunal; and
- a Victorian Civil and Administrative Tribunal.

The impact of community courts on recidivism is thought to result primarily from its legitimacy to offenders and the local residential community rather than from strategies of deterrence or intervention. This legitimacy is seen as arising primarily from the exercise of procedural justice in judicial decision-making, but also from its perceived status as a genuine community institution that shares and upholds the values of local residents. It is the legitimacy of the court that appears to motivate offenders and residents to obey the law voluntarily, rather than fear of punishment.

While a fully implemented community justice centre is a substantial exercise, the principle of wrap-around support and on-site services may be more readily transferrable to mainstream courts. In particular, close linkages with service providers and an individualised approach to dealing with offenders appear to be the key principles underlying this type of solution-focused response to drug-related offending.

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