

Appendix C

Solution-focused interventions for drug-related offending

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Disclaimer: The views expressed in this report are entirely those of Dr Gelb.

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Executive Summary

Interventions for offenders with a drug problem may span the whole course of the criminal justice process: pre-arrest, pre-trial, pre-sentence, post-sentence and pre-release from prison. Police drug diversions, intermediate court-based interventions and drug courts are designed to provide a continuum of responses to drug-related offending.

This report examines the literature on intervention programs for drug-related offending at each stage of the system – police, court-based bail interventions and interventions in formal dedicated courts. For each, the report presents a review of the evidence on the effectiveness of different types of intervention. For those interventions that have been proven to be effective, detail on the operation of the specific program is provided.

Police intervention programs

Police are able to intervene with alleged offenders as a way of avoiding entirely the stigma associated with being involved in the criminal justice system. Based on a long tradition (and solid theory) of the value of keeping people out of the formal processes of the criminal justice system where possible, police intervention typically takes the form of fines, cautions or warnings (either informal or formal) but may also include requirements to participate in treatment, in particular for drug offending.

A national evaluation of police intervention programs in each Australian jurisdiction found remarkably similar proportionate decreases in offending after intervention, despite differences in the design, operation and target population of interventions, suggesting that those interventions that are tailored to particular communities and drug problems can have a positive impact.¹ Indeed, ‘it appears that irrespective of the category of offender that is being targeted, interventions impacted positively on both entrenched offenders as well as predominantly non-offending drug users’.² That is, no single program or jurisdiction stands out as having a particularly effective police intervention program for drug-related offending; rather, all the different types of program appear to be similarly effective.

While the evaluation literature on police intervention programs is sparse, several conclusions may nonetheless be tentatively drawn:

- Programs that have a clear focus in terms of target population and type of drug problem may reduce reoffending.
- Programs that target more entrenched offenders – those with a history of prior offending and program non-compliance – are likely to have worse recidivism outcomes.
- Given the impact of offender type (in terms of criminal history) on intervention outcome, it is appropriate to consider offending history when streaming offenders into different types of intervention. This may include streaming people into court-based interventions, moving

¹ Payne, J., Kwiatkowski, M. and Wundersitz, J. (2008). *Police Drug Diversion: A Study of Criminal Offending Outcomes*. Canberra: Australian Institute of Criminology.

² Ogilvie, J. and Willis, K. (2009). ‘Police Drug Diversion in Australia’. *Criminal Justice Bulletin* Series 3. Canberra: National Cannabis Prevention and Information Centre; 9.

offenders through the system to respond to their drug-related offending with a more intense intervention.

Court-based intervention programs

Intermediate court-based interventions may take place at different stages of the court process, but they typically take place either at the bail stage (as a condition of bail), or as interventions at the pre- or post-sentencing stage.

Bail-related interventions

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 program, including the regional version of the program and the Alcohol-MERIT program. Details of the operational features of MERIT are presented at page 13.

The MERIT program is especially useful for adaptation in other jurisdictions as it 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 cohorts 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.

Court support and referral interventions

Court support and referral schemes attempt to deal with the underlying causes of offending, adopting a rehabilitative focus. They support offenders with issues across a range of areas, such as mental health, housing instability and unemployment.

The best developed of these, and the one with proven effectiveness across a range of outcome measures, is Victoria's Court Integrated Services Program. 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 drug and alcohol 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. Details of the operational features of CISP are presented at page 37.

Sentencing interventions

Courts have access to specific sentencing orders that aim to rehabilitate offenders as a way to address the underlying causes of their offending behaviour. 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. One potential approach that may prove useful to Queensland, with its demographic and geographic profile, is the Geraldton Alternative Sentencing Regime in Western Australia. Similar to the drug court model, the GASR uses judicial case management, therapeutic court procedures and a wide range of rehabilitation programs in an effort to improve offender wellbeing. Like CISP, it has differentiated streams that allow interventions to be matched to offender risks and needs. Operating under the power to adjourn sentencing, the GASR has also been designed to cater for the needs of local Aboriginal and Torres Strait Islander offenders.

While the evaluation of the GASR was not sufficiently robust to determine definitively if the GASR is effective in reducing reoffending, the program provides a unique example of ways in which the principles and processes underlying more formal drug courts may be applied in a mainstream court. Details of the operational features of GASR are presented at page 42.

When considering all three types of 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 – assessments made prior to the first mention of a matter may assist in expediting the identification of appropriate intervention pathways;
- clear and broad eligibility criteria that allow streaming of people based on their assessed risk, needs and responsiveness;
- the inclusion of alcohol as an eligible primary drug of concern for drug intervention programs;
- strong collaboration and communication between specially-trained magistrates, drug and alcohol 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.

Solution-focused courts

Solution-focused courts have proliferated around the world and have diversified to address a broad range of issues. The most common type of solution-focused court is the drug court, and in its wake similar courts have arisen that focus on certain offences (driving while intoxicated courts and family violence courts), certain complex issues (mental health courts) and certain offender cohorts (Indigenous courts). Other courts have adopted a holistic approach that attempts to deal with all sorts of offending, complexities and offenders in a single approach (community justice centre courts).

Drug courts

The most widely adopted type of solution-focused court in both Australia and internationally has been the drug court. The purpose of drug courts generally is to address the underlying substance use issues that contribute to the individual's offending behaviour. Drug courts arose in the United States and have since been implemented in a number of countries around the world, including New Zealand, Canada, across the United Kingdom and in Europe. In Australia, drug courts are in operation in Victoria, New South Wales, Western Australia and South Australia, and they previously existed in both Queensland and the Northern Territory.

The Australian drug court for which the strongest evidence exists for its effectiveness in reducing reoffending is the Drug Court of NSW. It is similar in its functioning to the other Australian drug courts, operating as a post-sentence program and involving three distinct stages as part of an individualised treatment plan. Close judicial monitoring, regular drug testing and a graduated system of rewards and sanctions form key components of the intervention. In all these features, the Drug Court of NSW follows most of the 10 Key Components and the Best Practice Standards espoused by the National Association of Drug Court Professionals in the United States. Details of the operational features of the Drug Court of NSW are presented at page 57.

Extensive research has shown that courts that adhere to these principles are likely to provide effective (and cost-effective) interventions. While Queensland should be able to adopt most of these principles directly into its own drug court,³ there are several issues that will need to be carefully considered.

Type of model: The review of the literature highlights the variety of models adopted in drug courts. For the most part, drug courts appear to adopt a post-sentence model. This gives the court substantial leverage, in that compliance and successful program completion means that activation of a term of imprisonment is avoided. Those courts that are offered pre-adjudication hold out the reward of a reduced or dismissed charge upon completion. However, the uncertainty of sentencing outcome in pre-sentence programs means that offender motivation may be harder to maintain. In post-sentence drug courts, offenders are afforded certainty about their sentence, allowing them to approach their participation with a 'clean slate' and a known outcome if successful.

Broad inclusionary criteria: The model should include broad inclusionary criteria and/or limited exclusionary criteria. While most drug courts automatically exclude violent offences, the evidence on the value of this is inconclusive. Suggestions have therefore been made by evaluators that violent offences should not be excluded automatically, but should be considered on a case-by-case basis. This would provide Queensland courts with a more flexible set of inclusionary criteria and allow courts to consider *on an individual basis* whether the Drug Court program would be beneficial.

Inclusion of alcohol: Most drug courts in Australia exclude alcohol, but the NADCP key components 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. To the contrary, the

³ Many of the principles underlying drug courts are applicable to other types of courts as well. For example, there is clear value in using a multi-disciplinary team to address other types of complex issues as well, such as mental illness or homelessness. Indeed, holistic service provision can be undertaken not just via dedicated courts, but in other court-based intervention programs as well. This therefore seems to be a fundamental principle for all sorts of interventions aimed at the complex problem that is criminal behaviour.

Geraldton Alternative Sentencing regime has proven the value of including a range of substances in the court's remit. 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.

Importance of assessment: The evidence shows that assessment of the offender needs to happen as early in the process as possible, especially where multiple interventions are available, to ensure that the appropriate response is provided and a single treatment plan is created. Assessment needs to be based on the proven principle of risk-need-responsivity – ensuring that the court understands the offender's risk level, criminogenic needs and readiness to engage. For drug courts, the evidence shows that those that deal with high-risk, high-need offenders are the most successful and have the greatest impact in reducing reoffending.

Sanctions and rewards: The most effective drug courts have a clear system of sanctions and rewards that is published, discussed with the offender prior to participation in the program, and referred to time and again as the person progresses through the program. The most effective systems are transparent so that expectations are consistent, including expectations that the sanction will actually be applied. At the same time, some degree of flexibility would be useful in such a system, allowing magistrates to cater for individual offenders. This is especially the case in regional and remote areas, where, for example, tickets to a movie may prove to be of little use as a reward to someone who resides a great distance from a cinema. As the evidence shows that swift and certain sanctions are more effective than uncertain ones, it is important that any guidelines be followed. One of the more difficult issues is presented by the contradictory evidence on the use of imprisonment as a sanction. On the one hand, evidence shows that very short, immediately imposed incarceration is effective at reducing reoffending. On the other hand, the financial costs associated with churning people through prison have left some courts accruing incarceration days to be served in blocks. The evidence appears to support both options to some extent (although courts that use no more than six days of imprisonment are more effective than those using longer terms), such that decisions on this issue may need to be made on considerations other than the evidence, such as practical and logistical concerns. One possibility is to vary sanctions depending on the nature of the goal: breaches of distal goals (such as abstinence) should have lesser sanctions, while breaches of more proximal goals (such as attending treatment) should be more severe. A similar approach may be taken to rewards, with rewards for proximal goals being lower than those for more distal ones. The NADCP material on sanctions and rewards should prove a useful guide for Queensland in developing its own system.

Progression through the program: The majority of drug courts use a phased approach to the program, usually with three phases during which the intensity of monitoring, reporting and testing requirements decreases. There is broad agreement that this is the most effective approach to programming. There is less agreement, however, about criteria for being terminated from the program or graduating from the program. In particular, some programs require complete abstinence in order to progress or graduate while others allow some continued use of lesser drugs (marijuana) even on graduation. While the NADCP 10 Key Components stipulate abstinence, some courts do not have such stringent progression and graduation criteria. As drug addiction is known to include frequent relapse, abstinence places a significant burden on participants. There is no evidence to identify which approach – a zero-tolerance abstinence approach or a more flexible harm minimisation approach – is more effective in reducing recidivism and further drug use. However, a degree of discretion and flexibility would be beneficial in deciding when to progress a person, when to terminate someone or when graduation is allowed. This discretion can consider the nature of non-compliance (minor or major) and the progress so far on the program.

Involvement of victims: There is little evidence of the impact of drug courts on victim perceptions. Indeed, most drug courts appear to neglect providing 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 solution-focused 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. Those 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.

Broader coverage: A particular issue for Queensland is its geographic spread, and providing access to drug courts in regional or remote areas. Given the costs associated with establishing a formal drug court, they have only been established in fairly high-density population centres. The issue for Queensland is how to provide a similar approach to the drug court, without the full model, for its less populated areas. The Geraldton Alternative Sentencing Regime provides a useful example of a way in which this may be achieved. By incorporating the key elements – judicial monitoring, a multi-disciplinary team and a clear system of rewards and sanctions – Geraldton has managed to take the drug court approach beyond the capital city. This can only be successful, however, in areas in which good treatment service provision is already in place; without adequate treatment, interventions will not succeed.

Driving while intoxicated courts

Modelled closely 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. Most DWI Courts are post-conviction programs, which means that DWI Courts cannot be used to avoid a record of conviction and/or licence 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.

DWI courts have been shown to be effective in reducing both DWI and general recidivism. They typically adhere to the 10 Key Components of Drug Courts, with the added guiding principle of addressing transportation issues for those offenders who have lost their driving licence. The guiding principle suggests that the court should caution offenders against driving without a licence and want them to alter their attitude about driving without a licence. This issue may be of particular import in Queensland, with its vast areas of remote and rural land that have limited public transport.

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.

Evaluations of mental health courts outside the US are rare, and evidence from US and Canadian studies has been inconsistent. In Australia, each of the existing mental health courts has been formally evaluated, and each has been posited to be effective in reducing reoffending, although the methodological rigour of the evaluations has not been optimal. Nonetheless, the Victorian Assessment and Referral Court List seems to have the strongest evidence for its effectiveness in reducing recidivism. Details of the operational features of the ARC List are presented at page 111.

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 fundamental principles should form the basis of Queensland's response to offenders with a mental illness and can be applied in either dedicated lists or in mainstream processes.

Early assessment and treatment: Participants should be identified and referred to a mental health court, and linked to community service providers, as early as possible. As part of this assessment process, clear eligibility criteria should be developed and different pathways should be identified for people with different levels of need.

Collaboration among criminal justice, mental health, substance abuse and other agencies: Program goals and activities should be coordinated, duplication of process should be minimised and information should be shared as mentally ill offenders move through the system. A case management approach facilitates this model of holistic care.

Training of mental health court personnel: To ensure proper understanding of the issues faced by offenders with a mental illness, and to facilitate collaboration, ongoing training should be provided to magistrates, court staff, legal practitioners and others involved in the system.

Treatment support and services: The ability of the courts to help effect positive outcomes for offenders with a mental illness is predicated on the availability of quality, evidence-based services in the community.

Monitoring of compliance: A clear set of expectations should be developed, along with guidelines for graduated incentives and sanctions for rewarding compliance or addressing non-compliance.

Family violence 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 the many family violence courts around the world, 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’.⁴

Family violence courts 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.

Evidence for the success of family violence courts varies considerably, depending on the nature of the outcome measured. For many of these courts, desired outcomes include an increase in the proportion of guilty pleas, more expedient processing of matters and an increase in victim perceptions of safety and support. There is mixed evidence about the ability of the courts to increase the proportion of guilty pleas, and their ability to expedite matters has been significantly hampered by the large lists that are common in such courts. The impact of the courts on future recidivism is also equivocal. There is some evidence, however, that family violence courts are successful in improving victim satisfaction and access to services. Given that one of the primary goals of these courts is to ensure victim safety and support, the importance of their success in achieving this outcome should not be understated.

The most notable example of domestic violence courts – and the one with the most robust evaluation – is the New York model of court, including both Domestic Violence Courts and Integrated Domestic Violence Courts. The Domestic Violence Courts handle criminal matters, while cases involving overlapping civil, criminal or family law claims arising out of a family violence incident are transferred to the IDVCs. In these courts, a single judge hears all related matters, although each remains separate with its own legal standards and burden of proof. The ‘one family– one judge’ approach allows a single judge to oversee criminal cases, protection orders, custody, visitation and divorce matters for one family, avoiding the need to navigate multiple court systems. Details of the operational features of the New York courts are presented at page 120.

On the basis of the New York experience, a number of core principles have emerged that form the ‘building blocks’ of a successful domestic violence court.

Core Principle #1: Victim services

Provide victims with immediate access to advocates: Every victim should be given immediate access to an advocate who can provide safety planning and explain court procedures, as well as long-term services such as counselling, job training, immigration services, child services and other programs aimed at improving self-sufficiency.

‘Frontload’ social services: Advocates should make linkages for victims with social service agencies, emergency shelter, food and civil legal services.

⁴ Mills, A., Thom, K., Meehan, C. and Chetty, M. (2013). *Family Violence Courts: A Review of the Literature*. Auckland: Centre for Mental Health Research; 6.

Keep victims informed: Advocates should provide victims with up-to-date information on their cases.

Schedule cases promptly: Victim safety is enhanced by scheduling domestic violence cases promptly so that victims can get an order of protection quickly.

Create ‘safe places’ within the courthouse: Design elements can include providing private space to speak with advocates, and separate waiting areas near the victim services office to enhance victim safety and provide security and comfort for victims.

Core Principle #2: Judicial monitoring

Assign a permanent judge: Having a single judge preside from the beginning to the end of a case ensures consistency, facilitates the development of expertise and also helps the judge make more informed decisions.

Supervise defendants continuously: Intensive judicial supervision from arraignment through disposition, and post-sentence, as well for those whose sentences include probation, ensures that the court is in a position to respond quickly should a violation occur.

Explore new methods of judicial monitoring: Courts currently employ curfews, phone check-ins and ankle monitors, but other mechanisms and processes may be equally appropriate.

Dedicate additional staff and resources for monitoring: Case managers can assist the judge by staying in contact with off-site partners and tracking defendants’ compliance with court orders.

Create a separate compliance docket if there is high volume: A separate ‘compliance courtroom’ may be needed in which a judge is assigned to monitor offenders’ compliance following sentence. The compliance judge can quickly identify violations and refer the case back to the sentencing judge as needed.

Core Principle #3: Accountability

Build strong relationships with service providers: Strong relationships with treatment providers ensure that when a defendant is noncompliant, the court is notified right away and can respond in a timely manner.

Hold batterers programs accountable: This principle is applicable to intervention programs more broadly, suggesting that the court communicate with local service providers to ensure that programs are reinforcing the court’s messages to defendants and so that the providers know what sort of information they need to tell the court and why.

Think creatively: Other departments, such as probation or other community corrections departments, or even local non-profit organisations, can assist the court with specialised domestic violence officers to help supervise offenders. Probation and parole departments can monitor offenders even when they are no longer being monitored directly by the court.

Use technology to enhance access to information: Dedicated domestic violence courts need to use technology to share information among relevant parties in order to help avoid contradictory rulings and to make more informed decisions about sentencing.

Core Principle #4: Coordinated community response

Create strong linkages with a wide range of partners: Domestic violence courts should aspire to expand the range of organisations that are involved in the court's efforts to strengthen the message that domestic violence is not tolerated.

Convene regular meetings with criminal justice and social service partners: Interagency collaboration is crucial to ensuring communication, consistency, and continuing education about the court and domestic violence. The domestic violence judge can provide leadership to the collaboration, inviting all of the court's partners to participate in regular meetings, creating the opportunity to clarify the court's expectation of everyone's roles.

Provide court personnel and partners with domestic violence education and training: Domestic violence courts can continually educate and update staff and partners by scheduling regular court-sponsored trainings, the goals of which are to provide ongoing support and reinforcement on domestic violence issues and to highlight the court's commitment to handling domestic violence cases in an educated and serious manner.

Other jurisdictions, such as the United Kingdom, have adopted similar principles in their approach to family and domestic violence courts, with evaluations showing that the most successful courts are those that adhere most closely to such core principles.

These principles are also very similar to those espoused by the recent Victorian Royal Commission into Family Violence (RCFV). In particular, the RCFV recommends that all family violence matters be heard and determined in specialist family violence courts⁵ and that these courts also be able to hear related matters that involve the same family (akin to the New York integrated model).⁶ In addition, the RCFV recommends specialist personnel, including magistrates, support workers, prosecutors, legal representatives⁷ and daily staff coordination meetings before hearings begin in a family violence list to facilitate streamlined processes and liaison with relevant support and legal representatives.⁸ In terms of court processes and facilities, recommendations include list management strategies such as capping lists and increasing the number of days dedicated to listing family violence matters,⁹ as well as improved court facilities, such as separate entrances, safe waiting areas and remote witness facilities.¹⁰

There is thus considerable agreement about the principles that underlie effective practice in these courts. These fundamental principles should form the basis upon which Queensland's response to

⁵ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 61.

⁶ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 60.

⁷ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 60.

⁸ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 64.

⁹ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 68.

¹⁰ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 70.

family violence should be built; even in the absence of full family violence courts, the underlying principles can be applied in either dedicated lists or in mainstream processes.

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.

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 show any great impact on reoffending.

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’.¹¹ As these outcomes reflect the stated aims of Indigenous sentencing courts, they should thus be considered effective, at least by these measures.

While the Victorian Koori Courts appear to be the most successful in terms of enhancing the experience of Aboriginal and Torres Strait Islander in the justice system, all of the Indigenous sentencing courts share a number of common features. The following may be seen as critical elements of these 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.

Further detail on the operational features of Indigenous sentencing courts is presented at page 135.

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.

Community 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

¹¹ Marchetti, E. (2009). ‘Indigenous Sentencing Courts’. *Research Brief* No 5. Canberra: Indigenous Justice Clearinghouse; 3.

life. Dealing with crime under this approach involves extending the role of the justice system to help build community resilience in relation to the problems that make crime possible or more likely.

Evaluations of the impact of community justice centres on recidivism have been mixed. The most successful court has been the Redhook Community Justice Center in New York. The only Australian community justice court, the Neighbourhood Justice Centre in Victoria, was closely modelled on Redhook and has also been proven to have positive impacts on reoffending. Details of the operational features of the Neighbourhood Justice Centre are presented at page 140.

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.

These findings suggest that judicial training in the principles and practices of procedural justice may produce similar benefits for traditional courts.

The following have been identified as the distinguishing features of a community court:¹²

1. *Individualised Justice*: Judicial decision-making characterised by access to a wide range of information about defendants and by a focus on achieving individualised rather than standardised treatment of offenders.
2. *Expanded Sentencing Options*: Availability of an enhanced range of sentencing and diversion options that draw heavily on locally-based government and non-profit providers, with a corresponding reduction in the use of jail time and fines as options.
3. *Varying Mandate Length*: Development of a system in which a (typically small) proportion of defendants may receive medium-term treatment for drug addiction or other problems under court supervision, while the majority of defendants receive short-term social service or community service sanctions, typically five days or less in length.
4. *Offender Accountability*: An emphasis on immediacy in the commencement of non-custodial sanctions as well as the strict enforcement of these sanctions.
5. *Community Engagement*: Establishment of processes through which community input can be factored into decision-making by community court leaders.
6. *Community Impacts*: Definitions of success in which community outcomes, such as reductions in crime or community restitution through community service, are among the measured evaluation criteria.

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

¹² Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 3-4.

offenders appear to be the key principles underlying this type of solution-focused response to drug-related offending.

Conclusion

The current report on solution-focused interventions has highlighted the research evidence to identify those types of programs that have been proven to have some positive impact on drug-related offending.

The following features appear time and again in the literature as critical to an effective criminal justice response to this issue:

- **Accurate and early assessment of offenders:** Robust assessment tools are needed to provide accurate assessments of offenders' risks of reoffending, criminogenic needs and readiness to change. This will then facilitate directing the person into the most appropriate pathway of interventions.
- **A variety of interventions:** As individuals vary in their risk, needs and responsivity profiles, a variety of interventions is needed. That is, there needs to be a streamed approach so that individuals with differing risk and need levels are directed to different interventions, with less intensive interventions being used for offenders with lower-level risks and needs. This principle of a streamed approach to interventions applies at all stages of the criminal justice system. Relatedly, eligibility criteria for interventions need to be sufficiently broad to allow some flexibility in their admission practices to suit local conditions.
- **A holistic approach:** As offenders often present with multiple and complex needs, wrap-around support needs to be available (whether within the court or via linkages to community services). To achieve this, treatment services must be integrated with criminal justice processes and a case management approach used to provide the social support needed to complete interventions successfully. Part of this is close collaboration among criminal justice, substance abuse, mental health and other agencies to minimise process duplication, coordinate program goals and activities and share information.
- **Monitoring of compliance:** Regardless of the type or intensity of intervention, some form of monitoring is needed to ensure compliance. In association with monitoring, a well-defined system of incentives for compliance and sanctions for non-compliance should be developed. Sanctions and rewards should be swift, certain and consistent.
- **Ongoing judicial interaction:** Given the critical role played by judicial officers in the more intensive interventions, it is preferable to maintain a small cadre of judicial officers in dedicated courts to whom offenders report throughout their intervention program. While it may not always be possible to ensure that the exact same magistrate monitors the participant every time, there must at least be a consistent level of understanding of, and commitment to, the underlying principles of the intervention.
- **Appropriate training for people working in solution-focused interventions:** The magistrate in particular has been shown to be critical in effective solution-focused court-based interventions. Given the importance of the interaction between the magistrate and the offender, appropriate training should be used to ensure that magistrates (and indeed all court staff, lawyers, police and others) are fully aware of, and supportive of, the underlying principles of any intervention. This can be facilitated via the use of practice guidelines, operational policy documents and the like to ensure a consistent approach that adheres to proven good practice.

These features are based on the evidence to date about what works for drug-related offending. While the evidence should be used to guide development of interventions in this area, a degree of flexibility and innovation is needed to cater for local conditions.

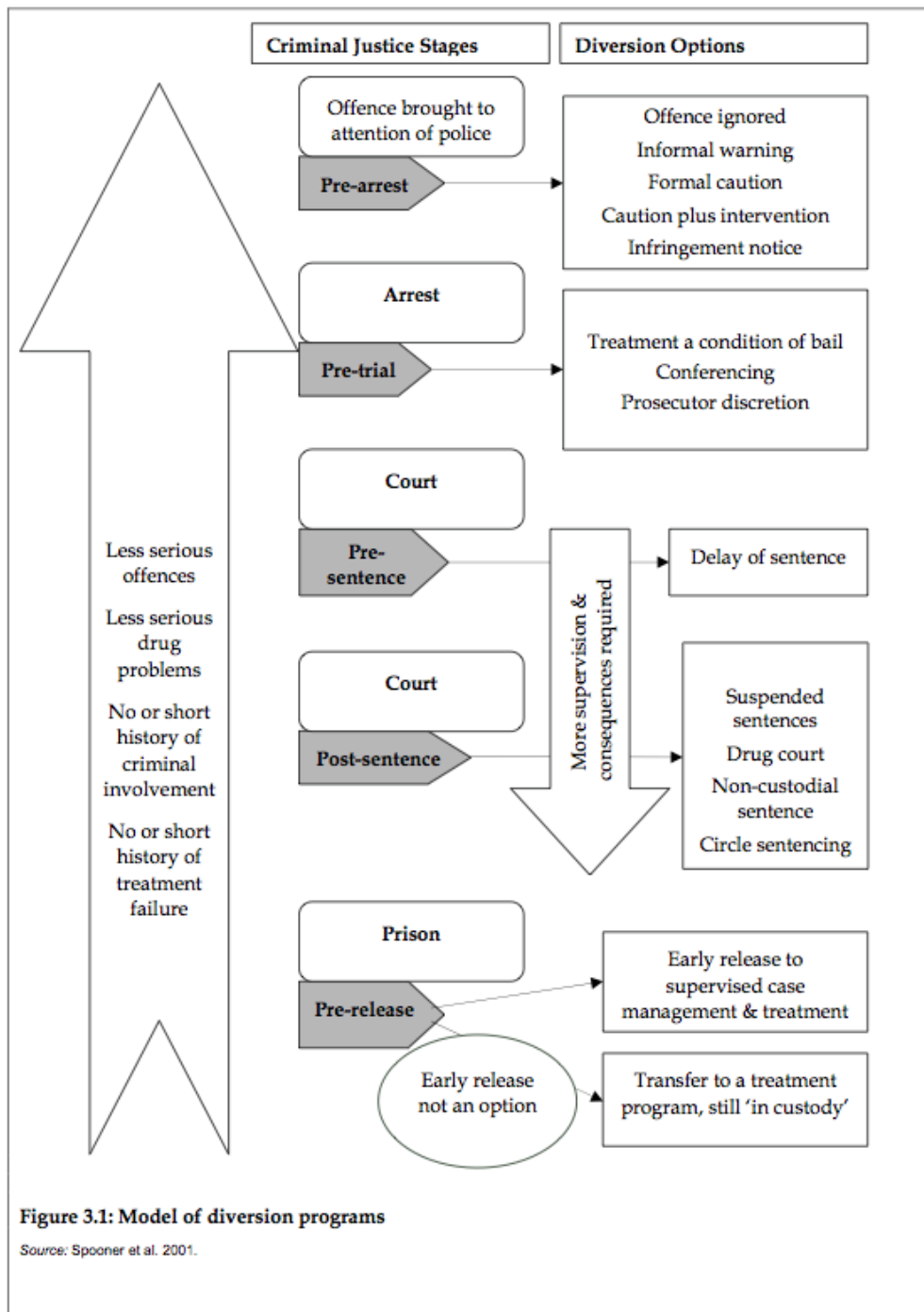
Chapter 1: Introduction

Interventions for offenders with a drug problem may span the whole course of the criminal justice process: pre-arrest, pre-trial, pre-sentence, post-sentence and pre-release from prison. Police drug diversions, intermediate court-based interventions and drug courts are designed to provide a continuum of responses to drug-related offending.

Interventions operating earlier in the criminal justice process are typically aimed at keeping first offenders and young offenders out of the criminal justice system entirely, in an acknowledgement of the stigmatising effect that criminal justice involvement may have. Interventions that operate later in the criminal justice process tend to focus more on addressing the underlying factors that contribute to repeat offending.

The following diagram illustrates the different parts of the system where interventions may be implemented.¹³

¹³ The diagram is reproduced from Australian Institute of Health and Welfare (2008). *The Effectiveness of the Illicit Drug Diversion Initiative in Rural and Remote Australia*. Canberra: Author; 17.



Among all the interventions examined in this report, the foundational principle is to employ the intervention that 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-need, high-risk 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-focused¹⁴ responses to criminal

¹⁴ Several terms are used for such responses - problem-oriented courts, solution-oriented courts and solution-focused Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 2

behaviour – solutions that attempt to address the underlying causes of offending, rather than simply offering punitive responses.

This report examines the literature on intervention programs for drug-related offending at each stage of the system – police, court-based bail interventions and interventions in formal dedicated courts. For each, the report presents a review of the evidence on the effectiveness of different types of intervention. For those interventions that have been proven to be effective, detail on the operation of the specific program is provided.

The programs discussed in this report are by no means all that exist; in the US alone, there are now several thousand drug courts. In Australia, a 2008 report identified more than 50 programs targeting drug and drug-related offenders, of which 31 per cent of programs were at the police stage, 22 per cent were court-based programs and 18 per cent were drug courts (29% were multi-targeted).¹⁵ Rather than being exhaustive, the discussion includes programs that may be considered as representative of a type of approach to drug-related offending. In addition, the report primarily focuses on only those programs that have been subject to (publicly available) evaluations.

Evaluating the effectiveness of drug intervention programs

Given the often substantial costs associated with implementing and operating intervention programs, it is perhaps surprising that many (if not most) of them have not been evaluated. In addition to ‘somewhat patchy coverage’, evaluations that have been undertaken have faced a range of methodological problems that have limited their ability to determine whether these programs actually work. One overview of Australian evaluations of responses to drug-related offending noted that those that had been undertaken prior to 2007 had suffered the following limitations:¹⁶

- The fact that most took place in the early stages of the programs’ operations often resulted in small sample sizes and relatively short follow-up periods within which to assess impacts on drug use and reoffending, particularly after program completion.
- Use of an interrupted time series design to measure changes in behaviour over time was often hampered by low success rates in recruiting participants and high attrition rates during the course of interviews, with the probability of response bias due to the likelihood that only the most successful participants were retained in the study.
- Of those studies that used official crime statistics to assess changes in criminal behaviour, only one (Lind et al. 2002) had access to a randomised control group against which shifts in reoffending among program participants could validly be compared.

courts among them. This report adopts the terminology of ‘solution-focused’ approaches.

¹⁵ Hughes, C. and Ritter, A. (2008). ‘A Summary of Diversion Programs for Drug and Drug-Related Offenders in Australia’. *Drug Policy Modelling Program Monograph Series* No 16. Sydney: National Drug and Alcohol Research Centre; 1.

¹⁶ These methodological issues beset all evaluations in this field and are not unique to Australian work: Wundersitz, J. (2007). *Criminal Justice Responses to Drug and Drug-related Offending: Are They Working?* Canberra: Australian Institute of Criminology; 103.

- The methodologies used to underpin the cost benefit analyses were limited because of the absence of comprehensive cost data and the difficulty (if not impossibility) of deriving quantitative estimates for intangible benefits accruing from any potential reduction in drug use and offending.

While evaluations that have been conducted in the last ten years or so have attempted to address these methodological issues, there has been only mixed success, with few methodologically strong studies being completed.

The discussions of specific programs in this report identify the varying strength of each study to identify those findings for which methodological caveats may be required when interpreting results.¹⁷

Structure of the report

This report examines the literature on different approaches to drug-related offending that are offered at each stage of the criminal justice system. The report is structured according to the general flow of people through the system, from police to mainstream courts to dedicated solution-focused courts.

Chapter 2 examines police intervention programs, including schemes that operate for cannabis offenders and those that target other illicit drug offenders. Chapter 3 examines court-based interventions, including bail programs, court support programs and sentencing interventions. Chapter 4 considers the dedicated solution-focused courts, with a primary focus on drug courts. Finally, Chapter 5 attempts to draw the literature together and identify some of the essential principles that underlie all of the interventions discussed in the report.

¹⁷ The strongest evaluation designs are those that enable a comparison on various outcome measures between the intervention group and a comparison group that is as similar as possible to the intervention group. This is achieved in randomised control trials by randomly assigning participants to either the intervention group or the ‘business as usual’ group. However, in those settings in which randomised allocation is neither practical nor ethical, a quasi-experimental design instead allows participants to be assigned as needed, then matches them to a control group via techniques such as propensity score matching. This technique statistically minimises pre-existing differences between subjects by matching them on characteristics that might potentially influence the outcomes of interest.

Chapter 2: Police Intervention Programs

Police are able to intervene with alleged offenders as a way of avoiding entirely the stigma associated with being involved in the criminal justice system. Based on a long tradition (and solid theory) of the value of keeping people out of the formal processes of the criminal justice system where possible, police intervention typically takes the form of fines, cautions or warnings (either informal or formal) but may also include requirements to participate in treatment, in particular for drug offending.

Police interventions are used in all jurisdictions in Australia and in many around the world. They tend to fall into three categories: cannabis interventions, other illicit drug interventions and those for drug or drug-related offenders.¹⁸ These interventions require offenders to admit to the offence that has been detected and to consent to participate.

While each jurisdiction has its own version of police intervention, there are some similarities in their essential structure and operation, including the following:¹⁹

- All rely on the police as the referral source, although this may involve either mandatory or discretionary referrals.
- All focus on individuals detected in possession of minor amounts of drugs and/or drug implements. They do not target individuals charged with non-drug offences even if that offending is linked to their drug use.
- All have a component that targets cannabis use; however, the amount varies. The form the drug can take (cannabis resin, oil and living plants) also varies.
- Most have a second diversionary ‘arm’ that focuses on the possession of other illicit drugs. Only a few also include licitly used pharmaceutical drugs, while even fewer extend to alcohol abuse or petrol sniffing.
- The majority involve an educational component (although the delivery of this varies from on-the-spot hand-outs of material by the detecting officer, to telephone-based education sessions, through to meetings with a specialist drug counsellor).
- The majority – particularly those targeted at illicit drugs other than cannabis – also include assessment and, where appropriate, treatment. However, the intervention provided is generally of very low intensity, often only a single session.
- Most (but not all) have clearly defined eligibility criteria. Many interventions exclude people who have been charged with a violent crime or a sexual offence. Some jurisdictions also exclude people previously convicted of more serious drug offences, such as trafficking. The original expectation was that these initiatives would deal mainly with offenders who were in the initial stage of both drug use and offending.
- There are usually restrictions on the number of diversions that a person may receive.
- In most cases, the individual must agree to the diversion and admit the offence.

¹⁸ Hughes, C. and Ritter, A. (2008). ‘A Summary of Diversion Programs for Drug and Drug-Related Offenders in Australia’. *Drug Policy Modelling Program Monograph Series* No 16. Sydney: National Drug and Alcohol Research Centre; 1.

¹⁹ Payne, J., Kwiatkowski, M. and Wundersitz, J. (2008). *Police Drug Diversion: A Study of criminal Offending Outcomes*. Canberra: Australian Institute of Criminology; 3-5.

- All initiatives now operate as statewide programs.

This section examines the three broad types of Australian police intervention programs.²⁰

2a. Cannabis interventions

Interventions that focus on cannabis offences are at the lowest intensity of formal interventions, available for cannabis use or possession in small quantities (most commonly 50 grams). There are two different mechanisms of cannabis diversion provided in Australia: cannabis cautioning and cannabis expiation. The former involves the provision of an ‘on the street’ formal caution or warning, whereas the latter involves the issuing of an expiation fee of between \$100 and \$300.²¹

Cannabis cautioning schemes typically involve a simple caution of the offender and the distribution of some educational materials, such as about the harms associated with cannabis use. They are educative, one-off responses. Programs in both Victoria and NSW are illustrative of this approach.

Some cannabis interventions require attendance at a counselling, education or assessment session, such as those operating in South Australia, the ACT and Queensland. Sessions may be used to assess patterns of cannabis use, identify any drug-related problems and provide education on the health effects of cannabis. Referrals may also be made to treatment services where appropriate. In both Western Australia and the Northern Territory, cannabis infringement notices may be expiated through payment of a fine or attendance at an education session.

The number of times an offender can enter a cannabis cautioning program is usually limited to one or two. In contrast there are no limits on the number of times offenders can enter expiation schemes.²²

Non-compliance with expiation schemes in the form of non-attendance at a required session may result in the offender facing prosecution in court for the original sentence. Most cautioning schemes do not impose penalties or follow up non-compliance.

²⁰ As police drug intervention initiatives are so common, this discussion considers only those in Australia. Interventions in other countries all have their own particular idiosyncratic features. For example, New Zealand’s Adult Diversion Scheme, operated by police following police prosecutor determination of eligibility, actually appears to be a court-based scheme in that a court case has already begun and is adjourned while police manage an offender on the program. Once the program is successfully completed, charges are withdrawn: <http://www.police.govt.nz/about-us/programmes-initiatives/adult-diversion-scheme/about>.

²¹ Hughes, C. and Ritter, A. (2008). ‘A Summary of Diversion Programs for Drug and Drug-Related Offenders in Australia’. *Drug Policy Modelling Program Monograph Series* No 16. Sydney: National Drug and Alcohol Research Centre; 14.

²² Hughes, C. and Ritter, A. (2008). ‘A Summary of Diversion Programs for Drug and Drug-Related Offenders in Australia’. *Drug Policy Modelling Program Monograph Series* No 16. Sydney: National Drug and Alcohol Research Centre; 15.

2b. Other illicit drug interventions

Interventions that address other types of illicit drugs tend to be more intensive than those for cannabis offenders. Typically they involve compulsory attendance at multiple assessment and treatment sessions, although the number of sessions varies from state to state.

Interventions for other types of illicit drug, for both young people and adults, are found in most jurisdictions; in those where there is no police intervention, offenders may instead be offered intervention at court.

Typically, these programs are restricted to individuals detected for use/possession of illicit drugs, but some jurisdictions include misuse of pharmaceutical drugs or other licit drugs in their eligibility criteria. As with cannabis cautioning schemes, most jurisdictions use threshold quantities to restrict access to those found in possession of drugs for personal use. Eligible offenders can possess between 0.5 grams and 2 grams for amphetamines, cocaine, ecstasy or heroin.²³

Some states exclude offenders with violent offence histories or convictions for drug offences and some restrict program participation to once or twice only.

2c. Interventions for drug or drug-related offenders

In addition to the drug-specific interventions, all jurisdictions provide police programs that are open to people detected for *any* offence, including drug or drug-related offences. These interventions tend to target young people, providing police with more discretion over who enters the program and the types of responses and minimum requirements. A range of sanctions including warnings, cautions or youth group conferences are available to police. There are no limits on the number of times offenders can enter programs.²⁴

Effectiveness of police intervention programs

There is one key piece of research on the effectiveness of police drug diversion initiatives in reducing reoffending, released by the Australian Institute of Criminology in 2008. This research involved a systematic evaluation of interventions across every state and territory in Australia. It is particularly valuable as most jurisdictions have not undertaken outcome evaluations of their police interventions for drug-related offending.²⁵

²³ Hughes, C. and Ritter, A. (2008). 'A Summary of Diversion Programs for Drug and Drug-Related Offenders in Australia'. *Drug Policy Modelling Program Monograph Series* No 16. Sydney: National Drug and Alcohol Research Centre; 16.

²⁴ Hughes, C. and Ritter, A. (2008). 'A Summary of Diversion Programs for Drug and Drug-Related Offenders in Australia'. *Drug Policy Modelling Program Monograph Series* No 16. Sydney: National Drug and Alcohol Research Centre; 16.

²⁵ While the ACT has undertaken an evaluation of its complete system of five intervention programs for drug- and alcohol-related offenders (three police programs and two court programs), the evaluation focused on how the programs work together as a system, rather than on the outcomes of any one program. The evaluation acknowledges that 'a key unknown thus remains whether the additional expense of a diversion into education/treatment is translating into impacts

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While the use of a control group against which to compare reoffending rates of intervention participants would have made the evaluation more robust, it was determined that it would not be feasible. Instead, pre-intervention offending was compared with post-intervention offending over 12 to 18 months. Despite this shortcoming, the national coverage of this evaluation renders this research important.

Below is a brief description of police interventions in each state and territory, as of 2008, that were included in the national evaluation:²⁶

on future drug use and/or offending, and to what extent the impacts differ across the programs': Hughes, C., Shanahan, M., Ritter, A., McDonald, D. and Gray-Weale, F. (2013). *Evaluation of the Australian Capital Territory Drug Diversion Programs*. Sydney: Drug Policy Modelling Program, National Drug and Alcohol Research Centre, The University of New South Wales; 11. The NSW Cannabis Cautioning Scheme has also been evaluated, although the impact of the scheme on reoffending was not examined. Instead, the evaluation examined the number of people who passed through the program, the number of police charges laid and the number of people and charges dealt with by the court to conclude that the scheme had successfully diverted many minor cannabis offenders from court. The evaluation was less positive about the impact of the educational material provided to offenders about the harms of cannabis use: Baker, J. and Goh, D. (2004). *The Cannabis Cautioning Scheme Three Years On: An Implementation and Outcome Evaluation*. Sydney: NSW Bureau of Crime Statistics and Research; 25-31. Finally, a data analysis of the South Australian Police Drug Diversion Initiative was released in 2012. The report showed that people who comply with their diversion were significantly less likely than expected to reoffend (23% reoffended) while those who did not comply were significantly more likely than expected to reoffend (32%). People who were aged 25 to 44 at the time of their first diversion, those identifying as Aboriginal or Torres Strait Islander and those diverted for opioids were more likely than expected to reoffend, while those aged 18 to 24 and those diverted for hallucinogens were less likely than expected to reoffend. As this analysis was not designed to be an evaluation, no definitive assessment may be made on the effectiveness of the program: Millstead, M. (2012). *Ten Years of the South Australian Police Drug Diversion Initiative: Data Analysis Report*. Adelaide: Office of Crime Statistics and Research.

²⁶ Payne, J., Kwiatkowski, M. and Wundersitz, J. (2008). *Police Drug Diversion: A Study of Criminal Offending Outcomes*. Canberra: Australian Institute of Criminology; 16. As programs are subject to funding variations and political imperatives, the list from 2008 is not necessarily complete in 2016. For example, the ACT adopted a new police intervention program in 2010. The Early Intervention Pilot Program is a police referral program for education and support of young people under 18 who are found to be intoxicated or in possession of/consuming alcohol. In addition, the two programs that were included in the 2008 evaluation have been recast: the Simple Cannabis Offence Notice Scheme involves police-issued fines of \$100 for cannabis possession or cultivation, while the Police Early Intervention and Diversion scheme involves police referral to assessment and education or treatment for possession of larger amounts of cannabis, possession of other illicit drugs, or illicit possession of licit drugs: Hughes, C., Shanahan, M., Ritter, A., McDonald, D. and Gray-Weale, F. (2013). *Evaluation of the Australian Capital Territory Drug Diversion Programs*. Sydney: Drug Policy Modelling Program, National Drug and Alcohol Research Centre, The University of New South Wales; 7-8. A more recent list of police intervention programs shows some further changes, as follows: Queensland (Queensland Police Diversion Program); Western Australia (Cannabis Intervention Requirement and All Drug Diversion); South Australia (Police Drug Diversion Initiative); Tasmania (Illicit Drug Diversion Initiative); and the Northern Territory (Cannabis Expiation Notice Scheme, Illicit Drug Pre-Court Diversion Program, and Youth Diversion Program): Australian Institute of Health and Welfare (2013). 'Diverting Indigenous Offenders from the Criminal Justice System'. *Resource Sheet No 24*. Canberra: Closing the Gap Clearinghouse.

Description	
New South Wales	
Cannabis Cautioning Scheme	Police caution for cannabis offence
South Australia	
Cannabis	Referral to assessment and treatment for cannabis
Other drug	Referral to assessment and treatment for other drugs
Tasmania	
1st Level Diversion – Cannabis Caution	Police caution for first cannabis offence
2nd Level Diversion – Brief Intervention	Referral to assessment for second cannabis offence
3rd Level Diversion – Assessment and Treatment	Referral to treatment for third cannabis or first other drug offence
Australian Capital Territory	
Police Early Intervention and Diversion Program (cannabis)	Referral to assessment (and treatment where applicable) for cannabis
Police Early Intervention and Diversion Program (non-cannabis)	Referral to assessment (and treatment where applicable) for other drugs
Victoria^a	
Cannabis Cautioning Program	Police cautioning and provision of educational material
Drug Diversion Program	Referral to assessment and treatment for drugs other than cannabis
Western Australia	
Cannabis infringement notice	Infringement notice for cannabis, expiated through payment of fine or education session
All Drug Diversion	Diversion for other drug possession offences to assessment (and treatment)
Young Person's Opportunity Program	Diversion of juveniles with underlying drug use problems
Queensland	
Cannabis diversion	Referral to assessment and treatment for cannabis
Northern Territory	
Cannabis and non-cannabis	Cannabis infringement notice to expiated by payment of fine or education

Across the different types of interventions, the research found that most schemes had higher non-compliance levels among individuals who had at least one prior offence recorded in the 18 months before the intervention compared with those who had no prior record. This finding held even once other factors were controlled for: in four of the five jurisdictions analysed, some form of prior offending (and in particular, property offending) remained a significant predictor of non-compliance even once factors such as age, gender and Indigenous status had been controlled.

In terms of reoffending following the interventions, survival analysis showed that NSW had the lowest 18-month reoffending rates for any offence (18%) and for property (8%) and violent (4%) reoffending. South Australia had the lowest reoffending rate for drug offending (8%), followed by NSW (9%). Reoffending rates for any offence were markedly higher across the other jurisdictions, ranging from 28 per cent in Victoria to 44 per cent in South Australia.²⁷ It is likely that these differences were due to the specific features of each program, such as program structure, client characteristics (in particular, demographic characteristics and offending histories) and the broader criminal justice framework within which the police interventions operate.²⁸ To illustrate: reoffending was generally lower among those programs designed specifically as interventions for cannabis possession than among those designed to respond to other illicit drugs. Indeed, the evaluation cautions that ‘any variation in reoffending from one program to another, and from one jurisdiction to another, is not indicative of variations in program success or effectiveness levels’.²⁹

Comparing pre-intervention offending rates with post-intervention rates, analysis showed statistically significant reductions in offending in all jurisdictions except the ACT and Queensland.³⁰ The shifts in reoffending rates and frequency were fairly consistent across all the jurisdictions. Even among offenders with a history of prior offending, most had either no reoffending or were apprehended for fewer offences post-intervention than before.

Finally, regression analysis showed that prior offending and program non-compliance were both statistically significant predictors of reoffending across most jurisdictions. As the different programs target different types of offender, it is thus not surprising that those targeting a more entrenched offender (with a longer criminal history) would have higher reoffending rates post-intervention.

²⁷ Payne, J., Kwiatkowski, M. and Wundersitz, J. (2008). *Police Drug Diversion: A Study of Criminal Offending Outcomes*. Canberra: Australian Institute of Criminology; 42-43.

²⁸ For example, NSW has very stringent eligibility criteria that may result in a client group that is less likely to reoffend. The program is limited to adult cannabis users only; people with concurrent offences or who have prior drug, sex or violent offences are not admitted. Only two cautions are permitted and the individual must admit the offence. Within these specified parameters, referral remains at the discretion of police. In combination, these factors help to explain the relatively low level of prior offending among the NSW program’s clients, but may also explain its low reoffending rates: Payne, J., Kwiatkowski, M. and Wundersitz, J. (2008). *Police Drug Diversion: A Study of Criminal Offending Outcomes*. Canberra: Australian Institute of Criminology; 67.

²⁹ Payne, J., Kwiatkowski, M. and Wundersitz, J. (2008). *Police Drug Diversion: A Study of Criminal Offending Outcomes*. Canberra: Australian Institute of Criminology; 65.

³⁰ Payne, J., Kwiatkowski, M. and Wundersitz, J. (2008). *Police Drug Diversion: A Study of Criminal Offending Outcomes*. Canberra: Australian Institute of Criminology; 63.

The remarkably similar proportionate decreases in offending after intervention, despite differences in the design, operation and target population of interventions around Australia, suggests that those interventions that are tailored to particular communities and drug problems can have a positive impact. Indeed, ‘it appears that irrespective of the category of offender that is being targeted, interventions impacted positively on both entrenched offenders as well as predominantly non-offending drug users’.³¹

This conclusion, however, does not necessarily apply to offenders of Aboriginal and Torres Strait Islander descent. While little research has been undertaken on the impact of police interventions on this cohort, one evaluation in NSW showed that the Cannabis Cautioning Scheme was not as effective in diverting Aboriginal and Torres Strait Islander people away from court, as they were much less likely to receive a caution under the scheme (11 per cent of Aboriginal and Torres Strait Islander people proceeded against by police for a minor cannabis offence received a caution, compared with 31 per cent of non-Indigenous offenders).³² This is thought to be due to a higher likelihood of failing to meet eligibility criteria, primarily due to the presence of prior convictions and a reluctance to admit to the offence.

There are no robust cost-effectiveness evaluations of Australian police intervention programs.³³

Key findings: Police intervention programs

While the evaluation literature on police intervention programs is sparse, several conclusions may nonetheless be tentatively drawn:

- Programs that have a clear focus in terms of target population and type of drug problem may reduce reoffending.
- Programs that target more entrenched offenders – those with a history of prior offending and program non-compliance – are likely to have worse recidivism outcomes.

³¹ Ogilvie, J. and Willis, K. (2009). ‘Police Drug Diversion in Australia’. *Criminal Justice Bulletin* Series 3. Canberra: National Cannabis Prevention and Information Centre; 9.

³² Baker, J. and Goh, D. (2004). *The Cannabis Cautioning Scheme Three Years On: An Implementation and Outcome Evaluation*. Sydney: NSW Bureau of Crime Statistics and Research; 33.

³³ Only one evaluation has examined 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. 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 caution. See Baker, J. and Goh, D. (2004). *The Cannabis Cautioning Scheme Three Years On: An Implementation and Outcome Evaluation*. Sydney: NSW Bureau of Crime Statistics and Research; 35-37.

- Given the impact of offender type (in terms of criminal history) on intervention outcome, it is appropriate to consider offending history when streaming offenders into different types of intervention. This may include streaming people into court-based interventions, moving offenders through the system to respond to their drug-related offending with a more intense intervention.

Chapter 3 examines the literature on these court-based interventions, including those that occur at the bail stage, general court support and referral programs, and interventions that take place at sentencing.

Chapter 3: Court-based Intervention Programs

Intermediate court-based interventions may take place at different stages of the court process, but they typically take place either at the bail stage (as a condition of bail), or as interventions at the pre- or post-sentencing stage.

All Australian jurisdictions have some form of court-based intervention program, with some having more than one program, although not all have undergone evaluation. Only those programs that have been proven to have a positive impact are discussed in this section.³⁴

Given the number of court-based intervention programs that exist just within Australia, the discussion remains focused only on these and does not include such programs from other countries.

3a. Bail-related interventions

Bail-related drug intervention programs operate in most Australian states, many of which have undergone some form of evaluation. The most extensively evaluated have been the NSW and Victorian programs, which are the focus of this section.³⁵

New South Wales' MERIT intervention program

The Magistrates Early Referral Into Treatment (MERIT) intervention began in July 2000, and by 2007 had spread to more than 60 courts,³⁶ in which 80 per cent of defendants appeared. It is an interagency initiative between government and non-government organisations, including police, health, Legal Aid and the courts.

The MERIT program is a 'pre-plea' drug intervention program as both referral and treatment occur prior to the defendant making a plea. It operates within the legal framework of the *Bail Act 1978*

³⁴ For example, since October 2000 the ACT has had a Court Alcohol and Drug Assessment Scheme (CADAS) that operates in all courts and is both a pre-sentence option and a sentencing assessment/treatment option. It is designed to engage clients charged with alcohol- and drug-related offences and to reduce their reoffending behaviour. While a formal evaluation of the entire ACT drug diversion system (including both police and court programs) was published in 2013, there is no outcome information or cost-effectiveness available for CADAS. The evaluation notes that 'a key unknown thus remains whether the additional expense of a diversion into education/treatment is translating into impacts on future drug use and/or offending'. It recommends that the CADAS program be redefined and re-launched to address declining referrals, reduce confusion amongst stakeholders and clarify goals and processes for the program: Hughes, C., Shanahan, M., Ritter, A., McDonald, D. and Gray-Weale, F. (2013). *Evaluation of the Australian Capital Territory Drug Diversion Programs*. Sydney: Drug Policy Modelling Program, National Drug and Alcohol Research Centre, The University of New South Wales. Given that CADAS has not been shown to have any positive impact, it is not further discussed.

³⁵ In the international literature, the vast majority of drug diversion evaluations are for programs identified as drug courts rather than intermediate court-based programs. These are discussed in a separate section of the report.

³⁶ The MERIT website lists 65 local health districts in which the program currently operates. Alcohol services are also offered in seven of those areas: <http://www.merit.justice.nsw.gov.au/magistrates-early-referral-into-treatment/coverage-statewide>.

(NSW), under section 36A, which allows bail to be granted on the condition that the defendant enters treatment to address problem drug use.³⁷

There have been several evaluations of the MERIT intervention that have assessed its effectiveness across a range of domains.

Effectiveness of the MERIT program

A 2009 report presented results on the impact of MERIT on reoffending. Reoffending outcomes for two years for a cohort of 2,396 defendants who participated in the MERIT program were compared with a comparison group of 23,960 defendants who did not participate in the MERIT program but who broadly met the eligibility criteria.

Acceptance into the MERIT program, regardless of completion, led to a significant reduction of about four percentage points in the number of defendants committing any theft offences. Among those who actually completed the MERIT program, there was a significant reduction of about 12 percentage points in the number committing any type of offence, and a reduction of more than four percentage points in theft offences. There was no statistically significant effect on drug reoffending, possibly as drug offences were deemed to be relatively rare events.³⁸

This evaluation provides strong support that participation in the MERIT program reduces defendants' propensity to commit theft offences and, for those who actually complete the program, substantially reduces their risk of committing any type of further offending. Given the more positive outcomes for those who complete the program, program effectiveness should improve if the number of people who complete it is increased.

MERIT also appears to be effective at improving participants' health outcomes. A 2007 report by the NSW Department of Health surveyed 1,411 people at both entry to and exit from the program. After three months in the program, levels and types of illicit drug use and associated risk behaviours were significantly reduced: a high proportion had significantly decreased the frequency and intensity of their drug use and many reported abstinence from their principal drug of concern (60% for all drug types except cannabis; 46% for cannabis). Thirty-eight per cent were abstinent from all illegal drugs. In terms of physical and psychological health, a high proportion of participants experienced severe psychological disturbance at the start of the program, but the mental, physical and social functioning of the great majority of participants had improved considerably by the end. While this evaluation did not involve a comparison group and did not follow participants after program completion, it is indicative at least that MERIT, in addition to improving recidivism outcomes, can improve health outcomes as well.³⁹

³⁷ While the program operates pre-plea, a 2004 survey of MERIT magistrates found that 55.6% disagreed that MERIT should only operate at this stage of the system, and 69.8% had used the program on a post-plea basis: Barnes, L. and Poletti, P. (2004). *MERIT: A Survey of Magistrates*. Sydney: Judicial Commission of New South Wales.

³⁸ Lulham, R. (2009). 'The Magistrates Early Referral Into Treatment Program: Impact of Program Participation on Re-offending by Defendants with a Drug use Problem'. *Crime and Justice Bulletin* No 131. Sydney: NSW Bureau of Crime Statistics and Research; 8-9.

³⁹ NSW Department of Health (2007). *The Magistrates Early Referral into Treatment (MERIT) Program: Health Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending* Page 14

A regional version of MERIT has also been found to be effective. The 2003 evaluation of the Lismore pilot MERIT program found that people who completed the program were significantly less likely to reoffend, and took longer to reoffend, than those who did not complete the program. At any point in time, the non-completers were twice as likely to have reoffended as the program completers. This result was found for both 'drug, theft and robbery offences' and for 'all offences'. The reduction in reoffending was significantly associated with program completion, even when other factors associated with recidivism were controlled for. The evaluation also found significant improvements in drug use, health and social functioning. An economic assessment of the 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.⁴⁰

The MERIT program was expanded to be available for people presenting with alcohol use as their primary problem. Alcohol-MERIT first began as the Rural Alcohol Diversion (RAD) Program in 2004.⁴¹ In 2009, Alcohol-MERIT and MERIT combined to provide services to clients presenting with both primary alcohol and illicit drug problems. Since then, Alcohol-MERIT has been extended to other metropolitan and regional courts.

It is not only the original form of MERIT that has been proven to be effective – NSW Alcohol-MERIT has also been shown to improve health and wellbeing outcomes. The evaluation adopted a randomised controlled trial design to allow participants to be randomly assigned to different treatments. Participants were assigned either to the program (123 participants) or to a brief intervention (127 participants). Outcomes were examined two months after program entry, six months after entry and finally 12 months after entry. This methodology is considered the most rigorous approach to evaluation because it controls for both measured and unmeasured bias by random assignments of participants.

Analyses showed improvements for the Alcohol-MERIT group across a number of areas at the six-month follow-up. There were statistically significant improvements in average scores for various measures of general health, mental health, physical health and social functioning, as well as significant reductions in both psychological distress and alcohol dependence measures.⁴²

Outcomes. Sydney: Author.

⁴⁰ Northern Rivers University Department of Rural Health (2003). *Evaluation of the Lismore MERIT Pilot Program: Final Report*. Lismore: NSW Attorney General's Department.

⁴¹ An earlier evaluation of the MERIT and RAD programs found that participants with alcohol as their principal drug of concern were more likely than cannabis users or those in the 'other' group (made up primarily of meth/amphetamine and heroin users) to complete their program and were less likely to be convicted of a new offence following completion. Compared with those in the alcohol group, those in the 'other' principal drug group were five times more likely to be reconvicted, and those in the cannabis principal drug group were three times as likely to be convicted of a new offence, even when controlling for age, program completion and previous imprisonment. The evaluation concludes: 'these data suggest that pre-plea diversion programs based upon the MERIT model have the potential for positive outcomes for participants with an alcohol PD [principal drug] despite their generally higher levels of functioning. Thus, to the extent that alcohol dependence/abuse and alcohol-related crime contribute significantly to the burden of disease and costs of crime in Australia, these data have positive implications for the prospect of diversion programs which are accessible to defendants with alcohol as their principal drug of concern': Martire, K. and Larney, S. (2009). 'Principal Drug of Concern: An Analysis of MERIT and RAD Client Characteristics and Outcomes'. *Crime Prevention Issues* No 7. Parramatta: NSW Attorney General's Department; 9.

⁴² Spratley, S., Donnelly, N. and Trimboli, L. (2013). 'Health and Wellbeing Outcomes for Defendants Entering the Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending' Page 15

While MERIT is designed to take participants from all backgrounds, there has been a consistently low proportion of participants of Aboriginal and Torres Strait Islander background. An examination of MERIT participants between 2004 and 2008 found that Aboriginal and Torres Strait Islander defendants were *referred* in proportion to their rate of appearance in NSW courts,⁴³ but that they were significantly less likely to be *accepted* onto the program (66% versus 70%), or to complete it successfully (56 % versus 67%). Reasons for non-acceptance varied: people of Aboriginal or Torres Strait Islander descent were less willing to participate in MERIT, while non-Indigenous people were more likely to be found ineligible for the program. Differences in completion rates were not due to differential impact of the program: the evaluation showed that both Indigenous and non-Indigenous participants who completed the program showed substantial gains over time, including significant improvements in drug dependence and psychological distress as well as general and mental health. Statistically, both groups were equally likely to be convicted of any new offence (62% for Indigenous participants versus 59% for non-Indigenous participants). The evaluation concludes that the proven effectiveness of the MERIT program makes it even more important to resolve existing inequalities in acceptance and retention for Aboriginal and Torres Strait Islander offenders, as the positive impacts of the program are likely to be of significant value to Indigenous communities.⁴⁴

This is clearly an issue that is of direct relevance for Queensland. As there is no evidence to date about ways in which to bolster Indigenous participation, close consideration will need to be given to improving access to intervention programs for Aboriginal and Torres Strait Islander offenders. It may well be, however, that programs such as the Geraldton Alternative Sentencing Regime (discussed below) can provide guidance on this issue, as Indigenous participation rates in that program are far higher. Close consultation with representatives of various communities and dedicated service providers will be needed to determine the best ways to address this gap.

Similar issues surround the participation of women in the MERIT program.⁴⁵ Between 2004 and 2008, female defendants were referred to MERIT in proportion to their rate of appearance in NSW courts and were as likely as males to be accepted onto the program. However, women were statistically significantly less likely than men to complete the program once accepted (61% versus 66%). Women presented with higher levels of drug dependence and poorer health and were also significantly more likely than men to be unwilling to participate. But these differences in completion rates were not due to differential impact of the program: both female and male participants who completed the program enjoyed significant reductions in drug dependence and psychological distress as well as improvements in general and mental health. There was no gender difference in the proportion of people who were reconvicted (58% of men versus 60% of women) and no difference in the time to reoffend. The

Alcohol-MERIT Program'. *Crime and Justice Statistics Bureau Brief No 92*. Sydney: NSW Bureau of Crime Statistics and Research.

⁴³ In 2009 the proportion of MERIT participants who identified as Aboriginal or Torres Strait Islander was 18.9%, which is actually higher than the proportion of Aboriginal-identified defendants appearing before all local courts that year (13.6%): Howard, M. and Martire, K. (2012). 'Magistrates Early Referral into Treatment: An Overview of the MERIT Program as at June 2011'. *Crime Prevention Issues*. Parramatta: NSW Attorney General's Department.

⁴⁴ Martire, K. and Larney, S. (2009). 'Aboriginal Participation in MERIT'. *Crime Prevention Issues No 6*. Parramatta: NSW Attorney General's Department.

⁴⁵ Martire, K. and Larney, S. (2009). 'Women and the MERIT Program'. *Crime Prevention Issues No 5*. Parramatta: NSW Attorney General's Department.

evaluation concludes that, given the considerable gains associated with MERIT completion, focusing on ways to attract and retain female participants should be a priority for ongoing program development. MERIT team members who participated in focus groups saw female participants as a more entrenched, complex and chaotic group when compared with men: parental and family demands, co-morbid chronic mental health disorders, and frequent trauma were seen as key barriers to full involvement in, and compliance with, the MERIT program among women. The staff thus suggested that female participation in the MERIT program could be improved with a number of changes:

- greater availability of detoxification and rehabilitation services specifically for women i.e., with capacity and willingness to deal with more complex client presentations;
- greater availability of general detoxification and rehabilitation places for females;
- more resources (i.e., referral networks) for female clients with children; and
- improved access to, and cooperation with, non-crisis mental health networks and services.

While there is no evidence on the impact of the interaction of gender and Indigenous status on MERIT participation and outcomes – whether female offenders of Aboriginal and Torres Strait Islander descent face additional challenges in accessing and completing the MERIT program – it is likely that the two factors compound each other to make treatment provision especially difficult for this cohort.

The following section provides information on the key features of the NSW MERIT intervention.⁴⁶

Key features

Aims

The primary goal of the MERIT program is to break the substance abuse-crime cycle by involving defendants in treatment and rehabilitation.

Target population

MERIT is a Local Court based program that targets adult defendants with a demonstrable drug problem who are motivated to undertake drug treatment and who are suitable for release on bail. Referrals may be made by the magistrate, the defendant's lawyer or the defendant him- or herself at or before the first court appearance, or by the charging police officer at arrest.

A small number of courts also offer Alcohol MERIT to defendants who have identified their principal substance abuse problem as alcohol. Defendants assessed as suitable for MERIT undertake supervised treatment, sometimes as part of their bail conditions.

To be considered eligible for MERIT and/or Alcohol MERIT, where available, a defendant must:

- be an adult;
- be eligible for bail or not require bail consideration;

⁴⁶ Information on the key features of MERIT has been taken from the NSW Justice Department website: <http://www.merit.justice.nsw.gov.au>.

- voluntarily agree to participate in MERIT; and
- be suspected of using drugs (or alcohol for the Alcohol MERIT program) or be known to have a history of drug (or alcohol) misuse.

The defendant must also have a treatable drug/alcohol problem for which treatment is available and must either reside or work in the catchment area. People charged with violent, sexual or strictly indictable offences, or having such offences pending before the court, are automatically excluded.⁴⁷

The MERIT program allows defendants to focus on treating their drug or alcohol problem in isolation from legal matters. Unlike drug court programs, which require a guilty plea, MERIT is designed so that agreement to become involved is not an admission of guilt for the offence(s) charged. Treatment generally occurs prior to any pleas being made with the adjournment of court matters until the completion of the program.

Operation

A MERIT treatment plan typically lasts for three months, reflecting the average Local Court bail period. During the bail period, participants must undertake agreed treatment, abide by all conditions of bail and the MERIT treatment plan and appear before the magistrate for an update on treatment progress. Throughout the program, participants are supported by their MERIT caseworker.

Treatments may include detoxification, methadone and other pharmacotherapies, residential rehabilitation, individual and group counselling, case management and numerous forms of welfare support and assistance.

Caseworkers report any instances of non-compliance to the magistrate, who may remove the defendant from the program. If this happens, the defendant's matters proceed to plea or hearing. A failure to respond to drug treatment is not dealt with by punitive measures.

Completion of the treatment program usually coincides with the hearing or sentencing of the outstanding court matter(s). Where possible, a detailed aftercare program is formulated.

At final sentencing, magistrates are provided with a comprehensive report regarding the defendant's participation in treatment. Types of sentences used after successful completion of MERIT vary but should reflect successful completion of MERIT and also take into account any recommendations for further treatment.

With its wide reach through the NSW criminal justice system, including into regional and rural areas, the MERIT program provides a useful model for Queensland, with its particular issues around a large geographic spread of its population. However, the model may need to be modified to improve the

⁴⁷ An evaluation of the Lismore MERIT program found support among stakeholders for extending the eligibility criteria so that people charged with an 'ongoing supply' of drugs (a wholly indictable offence) could be included. Stakeholders also supported extending the program to juveniles, or else creating a youth-specific MERIT program: Northern Rivers University Department of Rural Health (2003). *Evaluation of the Lismore MERIT Pilot Program: Final Report*. Lismore: NSW Attorney General's Department.

participation and completion rates of Aboriginal and Torres Strait Islander offenders and female offenders as well.

While there are no evaluations of drug interventions specifically offered in rural and remote areas, there is one piece of research that examined the impact of the Council of Australian Government's Illicit Drug Diversion Initiative (IDDI) in these areas. Since its inception in 1999, the IDDI has led to the development of numerous programs in rural and remote locations across Australia, with around one-quarter of all police and court interventions taking place in rural and remote Australia in 2005-06.⁴⁸

While the evaluation did not have access to adequate outcome data, it was able to use qualitative information to identify those program and process elements that were considered to be the most effective in rural and remote locations. The most effective processes or characteristics were observed in court intervention programs that:⁴⁹

- targeted young people;
- allowed drug diversion for alcohol as the primary drug of concern;
- were supported philosophically and practically by magistrates and drug and alcohol service providers;
- had well-established communication mechanisms between magistrates, drug and alcohol service providers and other relevant stakeholders at the local level;
- involved a considerable period of treatment (for example, three months);
- included high-quality case management to assist in addressing clients' broader social and health issues;
- had access to an appropriate range of treatment options;
- were able to support clients with barriers to treatment, most notably transport barriers;
- provided feedback to magistrates and drug and alcohol service providers (for example, quantitative data about client numbers and compliance levels and information from relevant follow-up studies of drug diversion participants);
- had a relatively stable and experienced workforce; and
- gave key stakeholders a perception that funding was secure.

The evaluation also found that Aboriginal and Torres Strait Islander people were particularly disadvantaged in terms of access to interventions and program compliance. Part of the reason for this disadvantage was thought to be the disproportionate impact on this cohort of exclusions of offenders with alcohol as a primary drug of concern, as well as those with a history of violent offending. In addition, the lack of availability of suitable, culturally-specific treatment options, especially in remote

⁴⁸ As of 2008, there were 22 such programs. This initiative is a large and complex response to drug use, spanning the health, police and justice sectors. It involves state/territory and Australian governments and both government and non-government drug and alcohol service delivery organisations. The initial IDDI framework focused on police interventions but was soon adapted to include court interventions as well: Australian Institute of Health and Welfare (2008). *The Effectiveness of the Illicit Drug Diversion Initiative in Rural and Remote Australia*. Canberra: Author.

⁴⁹ Australian Institute of Health and Welfare (2008). *The Effectiveness of the Illicit Drug Diversion Initiative in Rural and Remote Australia*. Canberra: Author; xi-xii.

areas, was also seen as a major obstacle to increasing Indigenous participation in intervention programs.⁵⁰

Victoria's CREDIT/BSP intervention program

The Court Referral and Evaluation for Drug Intervention and Treatment Program (CREDIT) was introduced into the Victorian Magistrates' Court in December 2004, with the combination of CREDIT and the Bail Support Program (BSP).⁵¹ It is a bail-based program that runs for up to four months, available in eight of Victoria's Magistrates' Courts.

CREDIT is open to offenders of all ages and stages of drug use, including first time, low-risk offenders and those with previous criminal and/or drug use behaviour.⁵² To be eligible for CREDIT the offender must be charged with a non-violent offence, have an illicit drug problem, be released on bail, be initially bailed to a court where the CREDIT program operates and not be subject to any other court order with a drug treatment component.

The program provides clients with access to drug treatment, accommodation, material aid and support, according to the assessed needs of the individual.

The CREDIT program has been evaluated a number of times, with the most recent being a 2008 report on the combined Bail Support Program/CREDIT intervention. Overall, the evaluation found that the design of the intervention is consistent with the good practice features identified as important for program effectiveness in comparable programs operating elsewhere. Interviews with key stakeholders found general agreement across the range of stakeholder groups that the program produces benefits – at both individual and system level – and provides an appropriate and effective response to a target group with high needs and complex issues.⁵³

The evaluation included a review of the literature and identified the following as features of good practice in bail support programs:

- cross-agency collaboration in providing a holistic response to client needs;
- detailed assessment for program suitability;

⁵⁰ Australian Institute of Health and Welfare (2008). *The Effectiveness of the Illicit Drug Diversion Initiative in Rural and Remote Australia*. Canberra: Author; xii.

⁵¹ The Bail Support Program (BSP) commenced as a pilot in January 2001. It was initially managed by Corrections Victoria and conducted out of the Melbourne Magistrates' Court. Following an evaluation in 2003, the pilot was expanded and its management was transferred to the Magistrates' Court of Victoria. In December 2004 it was combined with the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) Program: M & P Henderson & Associates Pty Ltd (2008). *Bail Support Program Evaluation*; 10.

⁵² A 2004 evaluation found that participants in CREDIT are actually usually repeat offenders whose offending is related to their drug use. The complexities of this client group means that compliance rates tend to be low: King, J., Fletcher, B., Alberti, S. and Hales, J. (2004). *Court Diversion Program Evaluation, Volume Two: Process Evaluation and Policy & Legislation Review: Final Report*. Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre Inc; 5.

⁵³ M & P Henderson & Associates Pty Ltd (2008). *Bail Support Program Evaluation*; 3.

- good working relationships with (and confidence of) court officers and effective liaison arrangements with other service providers;
- specialist staff/program coordinators located at court;
- program flexibility and individually tailored approach to support and referral;
- consistency of philosophy and practice; and
- immediacy of intervention and ongoing support.

The evaluation's review of program documentation found that the CREDIT/BSP program does include these features in the programs design and operating policies.⁵⁴

In addition, stakeholder consultation identified a number of critical success factors for the program. That the program is located at courts and delivered by court officers who report directly to magistrates was identified as a critical element, giving the program authority and promoting compliance. The location of the program at court also allows cross-referral to court-based Indigenous services, domestic violence programs and community agency support. The program's case management model was also seen as a critical success factor, as the focus on client welfare rather than mere compliance could facilitate successful bail completion and contribute to longer-term reductions in reoffending. The ability to refer people 'on the spot' was seen to ensure timely and appropriate responses to client issues. Magistrates were seen as critical to the success of the program, both in terms of monthly appearances to allow them to monitor progress directly, and in terms of having a single magistrate throughout the course of the program.⁵⁵

Effectiveness of the CREDIT/BSP program

The effectiveness of the program was determined by examining program completion outcomes and bail outcomes, and via the stakeholder consultations. As no quantitative reoffending analysis was included, it is not possible to determine from this evaluation whether the program actually reduced reoffending among participants.

More than half (54%) of the referrals during 2005 and 2006 resulted in successful program completion, with a further 12 per cent being partially completed.⁵⁶ Of those referrals where a court outcome was recorded, most resulted in a community-based order, fine or suspended sentence, with only a small proportion (11%) receiving a custodial sentence, almost half of which were under three months duration.⁵⁷ No obvious change was found in the proportion of first bail applications granted, although

⁵⁴ M & P Henderson & Associates Pty Ltd (2008). *Bail Support Program Evaluation*; 18.

⁵⁵ M & P Henderson & Associates Pty Ltd (2008). *Bail Support Program Evaluation*; 19-23. A similar range of features was seen to contribute to the program's success among stakeholders interviewed for the 2004 evaluation: King, J., Fletcher, B., Alberti, S. and Hales, J. (2004). *Court Diversion Program Evaluation, Volume Two: Process Evaluation and Policy & Legislation Review: Final Report*. Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre Inc; 7.

⁵⁶ This contrasts with the earlier evaluation, which found that 80 per cent of participants had successfully completed the program: King, J., Fletcher, B., Alberti, S. and Hales, J. (2004). *Court Diversion Program Evaluation, Volume Two: Process Evaluation and Policy & Legislation Review: Final Report*. Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre Inc; 5.

⁵⁷ In the absence of a comparison group, it is unknown whether these sentences are less severe than would have been

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this was thought to be a function of a lack of available statistics. While there appeared to be no impact of the program on the number of people held on remand, magistrates consistently advised during consultations that had the program not been available, they would have remanded a number of the people referred to the program to be held in custody. Interviews with clients themselves found high levels of satisfaction with the program and its outcomes: without their participation, many of the people believed they would have been jailed, continued to stay heavily involved in drugs or alcohol, been homeless, remained separated from their children and families, or would have been dead.⁵⁸

While no data were examined on reoffending, stakeholder consultations led to a conclusion that the program's design and delivery were contributing to reducing reoffending. This conclusion was based on the program's implementation of good practice features, stakeholder perceptions of its impact, case study examples, and the fact that more than half of participants successfully completed bail, suggesting that they did not reoffend.⁵⁹

The 2004 evaluation included analysis that was able to shed some light on those outcomes for which the 2008 evaluation could not. In particular, the earlier evaluation included comparisons between program completers and those who did not complete the program, providing at least some sense of the comparative value of the program. For example, analyses showed that CREDIT completers were more likely to receive a less severe sentence: only eight per cent of all sentences imposed under CREDIT were custodial, compared with 30 per cent among people who did not successfully complete the program. The 2004 evaluation also examined reoffending over approximately one to two years among a sample of 100 participants, finding that 43⁶⁰ were convicted of a subsequent offence in the 12 months following commencement on the program. Thirty of these recidivist offenders had completed the program, with 13 still participating. Without a comparison group, however, the authors were unable to assess the effectiveness of the program in reducing reoffending relative to other options for this group (and/or relative to the reoffending that might have occurred in the absence of the program).⁶¹

No information is available on the cost-effectiveness of the CREDIT/BSP program.

In addition to the CREDIT program, Victoria operates the Rural Outreach Diversion Worker (RODW) program. This program was developed specifically for those areas in the state where offenders do not have access to CREDIT. While it has a primary focus on offenders aged below 25, older offenders are

imposed without program participation. It is thus not possible to determine definitively whether the CREDIT/BSP program had an impact on sentence outcomes.

⁵⁸ M & P Henderson & Associates Pty Ltd (2008). *Bail Support Program Evaluation*; 39-49.

⁵⁹ M & P Henderson & Associates Pty Ltd (2008). *Bail Support Program Evaluation*; 74.

⁶⁰ There are contradictory figures in this report: page 77 claims that 'Of the 100 individuals, 43 were convicted of new offences following their commencement on CREDIT' while page 6 states that 'around 38% would be convicted of a subsequent offence in the 12 months following commencement on the program'. While the wording is slightly different, it is unclear what these differences imply.

⁶¹ King, J., Fletcher, B., Alberti, S. and Hales, J. (2004). *Court Diversion Program Evaluation, Volume Two: Process Evaluation and Policy & Legislation Review: Final Report*. Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre Inc; 5-6.

also able to access the program if they are assessed as suitable. To be eligible, offenders must have been apprehended for a non-drug related offence (and therefore not eligible to receive a police caution and participate in the Drug Diversion program), yet their drug use is a clear element in their criminality. Offenders may be referred either by police or the courts. There are 18 auspice organisations involved in the delivery of the program – specialist drug treatment services and/or community health services in hospital or community settings.⁶²

An evaluation of the RODW program uncovered a range of challenges that affected the ability of the program to deliver its services. In particular, stakeholders reported confusion about the program and its place in the system, as well as a lack of resources and support, with limited referrals from police and courts.⁶³

It appears that the RODW program is still running, at least in some areas,⁶⁴ despite the apparent lack of evidence of the program's effectiveness.

The following section provides information on the key features of the Victorian CREDIT intervention.⁶⁵

Key features

Aims

The CREDIT/ Bail Support Program seeks to increase the likelihood of an accused being granted bail and successfully completing a bail period by providing early intervention and community supports to address substance use. The objectives of the program are to:

- provide access to accommodation,⁶⁶ health, welfare, legal and other community supports;
- monitor the client's progress on the program for a period of up to four months;
- minimise harm to the client and the community by addressing the client's substance abuse-related issues;
- provide early treatment, including access to drug treatment and rehabilitation programs; and

⁶² Orchard, P., Porter, J. and Francis, S. (2005). *Rural Outreach Diversion Worker Program Evaluation*. Melbourne: Department of Health and Ageing; 6.

⁶³ Orchard, P., Porter, J. and Francis, S. (2005). *Rural Outreach Diversion Worker Program Evaluation*. Melbourne: Department of Health and Ageing; 8.

⁶⁴ Grampians Community Health appears to be operating an RODW program still:
<http://grampianscommunityhealth.org.au/service/rural-outreach-diversion-worker/youth/>.

⁶⁵ Information on the key features of CREDIT has been taken from the Magistrates' Court of Victoria website: <http://www.magistratescourt.vic.gov.au/court-support-services/credit-bail-support-program> and from M & P Henderson & Associates Pty Ltd (2008). *Bail Support Program Evaluation*.

⁶⁶ The program has access to 20 transitional housing properties in the community. Depending on availability, these are available to the program's clients until access to long-term housing can be established.

- reduce risk of the client re-offending.

The program aims to achieve the following outcomes:

- successful completion of bail by the accused who would otherwise be remanded in custody;
- reduction in the number of accused remanded due to lack of accommodation and/or treatment or support in the community;
- successful placement of the accused in drug treatment and/or rehabilitation programs; and
- long-term reduction in involvement of the accused in the criminal justice system.

Clients may be provided with a range of services while on bail, including:

- assessment and development of a plan for treatment and support;
- case management for up to four months, including support and monitoring; and
- referrals and linkages to community support and treatment services, including housing, health and welfare services and employment programs.

Target population

Any accused person who is eligible for a period of bail may be referred to the CREDIT/Bail Support Program for assessment. The program is available to the accused regardless of whether a plea has been entered or whether they intend to plead guilty. People who are on orders through Corrections Victoria that do not include access to alcohol and other drugs counselling or treatment can still be assessed for the CREDIT/ Bail Support Program. Even if they have breached an order that includes a drug treatment component and are therefore no longer eligible for drug treatment services, people can be assessed for the CREDIT/ Bail Support Program. It is thus a wide-ranging program with broad inclusion criteria.

Stakeholder consultation during the 2008 evaluation identified two groups for whom access to CREDIT/BSP was potentially less than equitable: Aboriginal and Torres Strait Islander people and those from culturally and linguistically diverse backgrounds. For the former, it was felt that this might be less an issue of any particular barriers to program access, and possibly due to the availability of other court-based services specifically targeting Aboriginal and Torres Strait Islander people. In the latter, English language proficiency was identified as the barrier, mainly because it limits the community agencies to which a person could be referred.⁶⁷

The 2004 evaluation found substantial support for including offenders with alcohol-related problems and violent offenders within the program's eligibility criteria.⁶⁸

⁶⁷ M & P Henderson & Associates Pty Ltd (2008). *Bail Support Program Evaluation*; 60.

⁶⁸ King, J., Fletcher, B., Alberti, S. and Hales, J. (2004). *Court Diversion Program Evaluation, Volume Two: Process Evaluation and Policy & Legislation Review: Final Report*. Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre Inc; 6.

Operation

Referral to the CREDIT/ Bail Support Program can be made by a magistrate, police officer, legal representative, court nominee, family or the client him- or herself. Referrals may be made prior to the first bail hearing, at the hearing or at a subsequent bail hearing for a person who has been held in remand. Clients are required to commit to treatment and attend regular support meetings with their case manager.

There is regular reporting back to the court about progress. Usually this timing coincides with the regular process of the court when considering a further period of bail, although magistrates may order an earlier appearance to confirm engagement with the program and to review progress. Program participants exit the program at sentencing, unless they have been terminated early for program non-compliance or some other breach of bail conditions.

New South Wales' CREDIT intervention program

Court Referral of Eligible Defendants into Treatment (CREDIT) is a court-based intervention program involving either voluntary or court-ordered participation by NSW adult defendants. The two-year pilot program began operation in August 2009 in two local courts in NSW – one metropolitan court and one non-metropolitan court.

The design of CREDIT was partially influenced by two Victorian programs – the Neighbourhood Justice Centre and the Court Intervention Services Program (CISP).⁶⁹ As with the Victorian programs, NSW CREDIT was designed to reduce reoffending rates by intervening early to provide targeted support to defendants with multiple and complex needs, and address any underlying factors that may be contributing to their offending and reoffending. All of these programs match the intensity of the intervention to the defendants' needs and their level of reoffending risk.

Effectiveness of the CREDIT program

A 2012 evaluation interviewed 122 CREDIT participants as well as a range of system stakeholders. It found that the vast majority of defendants (95.9%) reported that their life had changed by being on the CREDIT program, primarily in terms of improved physical or mental health, a more positive outlook, improved relationships or increased confidence. Despite strong support for the program, about half of the court-related stakeholders interviewed believed that changes were required to the eligibility

⁶⁹ The Northern Territory also has its own version of the CREDIT program: Australian Institute of Health and Welfare (2014). *Alcohol and Other Drug Treatment and Diversion from the Australian Criminal Justice System*. Canberra: Author; 5. The program is essentially a replication of Victoria's. It is a 12-week bail (pre-sentence) program that aims to refer to treatment those offenders whose charges are related to illicit drug use. It has no specific legislative basis but operates under general Bail Act and Sentencing Act provisions. Eligibility criteria include having an illicit drug problem and being willing to participate in a program. Exclusions are in place for offenders with a significant violent history, those with a mental disorder that renders the offender unable to be managed safely in a community drug treatment program and offenders subject to another order with a drug treatment component. The court reviews progress at four and eight weeks, and a final report is presented at 12 weeks. The sentence imposed reflects the effort and progress made in the program. Although the program has apparently been evaluated (Wundersitz, J. (2007). *Criminal Justice Responses to Drug and Drug-related Offending: Are They Working?* Canberra: Australian Institute of Criminology; 64), no information is publicly available on its findings. Northern Territory Government (nd). *Credit NT Program Guidelines*. Available at www.nt.gov.au/justice/ntmc/documents/CREDIT%20guidelines.pdf.

criteria, including eliminating the exclusion criteria regarding defendants on supervision orders and those charged with sex offences, allowing all offences to be eligible, and more stringently evaluating the defendant's motivation to address his/her problems related to offending.⁷⁰

To determine the impact of CREDIT on reoffending within 12 months, an evaluation used propensity score matching⁷¹ and an intention-to-treat analysis⁷² to compare a large control group of defendants who had been through normal court processes with 420 defendants who were referred to the program, irrespective of whether they entered or completed the program.

The evaluation found no statistically significant differences between the treatment and control groups in reoffending rates, number of reconvictions or time to first offence. It is possible that the intention-to-treat approach means that improvements for program completers were masked by lack of positive outcomes for program terminates.⁷³

The following section provides information on the key features of the NSW CREDIT intervention.⁷⁴

Key features

Aims

In order to achieve the overall aim of reducing reoffending, the CREDIT pilot program has the following key objectives:

- to reduce reoffending by encouraging and assisting defendants appearing at local courts to engage in education, treatment or rehabilitation programs and by assisting them to receive social welfare support; and

⁷⁰ Trimboli, L. (2012). 'NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation'. *Crime and Justice Bulletin* No 159. Sydney: NSW Bureau of Crime Statistics and Research.

⁷¹ In propensity score matching, individuals in the treatment group are matched with individuals in a control group who are identical in all observable respects except for the fact that they did not receive the treatment. This is a strong statistical approach when randomised allocation to groups is not possible.

⁷² Intention-to-treat analyses include all people who entered the program, regardless of whether they completed it. As-treated analyses separate those people who completed the program from those who were terminated from the program. Larger differences in outcomes tend to be found in as-treated analyses, with program completers showing greater benefits than those who leave the program. This evaluation used intention-to-treat analyses as they give a more conservative estimate of the treatment effect: Donnelly, N., Trimboli, L. and Poynton, S. (2013). 'Does CREDIT Reduce the Risk of Reoffending?' *Crime and Justice Bulletin* No 169. Sydney: Bureau of Crime Statistics and Research.

⁷³ Donnelly, N., Trimboli, L. and Poynton, S. (2013). 'Does CREDIT Reduce the Risk of Reoffending?' *Crime and Justice Bulletin* No 169. Sydney: Bureau of Crime Statistics and Research.

⁷⁴ Information on the key features of CREDIT has been taken from Trimboli, L. (2012). 'NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation'. *Crime and Justice Bulletin* No 159. Sydney: NSW Bureau of Crime Statistics and Research.

- to contribute to the quality of decision-making in the local court by helping ensure that information on defendants' needs and rehabilitation efforts are put before the court.

Target population

Defendants can participate in the program irrespective of their risk of re-offending. However, they must meet a number of criteria in order to be eligible for the program:

- the defendant must be an adult, aged 18 years or more;
- the defendant must have an identifiable problem related to his/her offending behaviour, for example, substance abuse, other addictions, mental health problems, unstable housing, or poor employment history/prospects;
- the defendant must be motivated to address the problems related to his/her offending behaviour; and
- the defendant must reside within areas where he/she is able to participate in treatment and other services.

The defendant is not eligible for the program if he/she is subject to management by the Department of Corrective Services or is on remand. The defendant is also ineligible if convicted of a sex offence in the previous five years or if the current charge is a sex offence.

Operation

Defendants can be referred to the CREDIT program before entering a plea. Referrals can be made by magistrates, solicitors, police officers, staff of other court-based programs or by the defendant. After a plea has been entered, the defendant can only be referred by a magistrate.

Defendants receive ongoing support and supervision from CREDIT staff while they are on the program. Depending on their underlying needs and their assessed risk of re-offending, CREDIT staff assign defendants to one of three levels of case management service. These levels determine the intensity, frequency and type of interaction between the defendant and the CREDIT staff, the length of their participation in the program and the maximum amount of brokerage funds available to them.⁷⁵

Case management service level 1 applies to defendants who are considered at low risk of reoffending and who require basic case management and support, which is provided for up to two months. Case

⁷⁵ Brokerage funds are used in NSW to assist offenders with immediate needs and are designed as a one-off payment. They are available only when all other avenues for meeting the expense (including payment by the participant) have been canvassed and dismissed as neither appropriate nor available. When the program was first implemented, brokerage funds were made available for a defendant's immediate needs, such as accommodation or transport to attend appointments with service providers. However, it became apparent that defendants required funds for other purposes, including material needs (e.g. groceries, phone credit to allow case workers to maintain contact with defendants, petrol vouchers to travel to services in rural areas); to obtain specialist counselling services; to pay admission fees for some services (e.g. residential rehabilitation and detoxification programs); and to obtain neuro- psychological assessments for disabilities, such as acquired brain injuries or to obtain a diagnosis of cognitive impairment (services cannot be accessed without a current diagnosis). Trimboli, L. (2012). 'NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation'. *Crime and Justice Bulletin* No 159. Sydney: NSW Bureau of Crime Statistics and Research; 7.

management service level 2 applies to defendants who are considered at medium risk of reoffending and who require complex case management and support, which is provided for up to four months. Case management service level 3 applies to defendants who are considered at high risk of reoffending and who require intensive case management and support, which is provided for up to six months.

A defendant can be terminated from the program if he/she fails to complete aspects of his/her intervention plan or reoffends while on the CREDIT program and this results in bail being refused.

Western Australia's POP, IDP and STIR intervention programs

Western Australia operates a number of court-based drug intervention programs for adults. The Pre-sentence Opportunity Program (POP) is a pre-sentence program for people who are experiencing drug-related problems and who have committed relatively less serious offences that would not typically result in imprisonment. The Indigenous Diversion Program (IDP) is similar to POP but specifically for people of Aboriginal or Torres Strait Islander descent, available as a regional program in select locations. Finally, the Supervised Treatment Intervention Regime (STIR) is a pre-sentence program for people whose current offences and drug-related problems are typically more serious than for people who may be referred to POP or IDP, but not so serious that imprisonment is likely. STIR is widely available in many regional locations, while the metropolitan locations of the program are managed through the Perth Drug Court in the Perth Magistrates Court.

Effectiveness of the POP, STIR and IDP programs

An evaluation of the three programs was published in 2007, considering health outcomes, recidivism outcomes, a cost-benefit analysis and a legal analysis. The methodology employed, however, was relatively weak, with a very small sample size (44 POP clients, 57 STIR clients and 34 IDP clients). In addition, rather than using a comparison group against which to compare reoffending by program participants, the evaluation relied on comparing the estimated probability of re-arrest for each participant before entering the program with that person's actual re-arrest rate after program referral, taking into account factors such as gender, age at arrest, Indigenous status and the most serious offence for which they were arrested. The maximum period over which reoffending post-referral could be measured was 2.5 years, although the median was just over one year.

Changes in pre- and post-program offending for those who completed the program were also compared with those recorded by participants who failed to complete the program. However, the analysis was unable to control for initial differences between the two groups, such that any variation between them in offending could not be attributed to the program.⁷⁶

Despite these methodological shortcomings, it has been suggested that, 'in light of the study's other finding, that persons referred to the three diversion programs had a long history of involvement with the criminal justice system, these shifts are noteworthy'.⁷⁷ But given these shortcomings, with the

⁷⁶ Wundersitz, J. (2007). *Criminal Justice Responses to Drug and Drug-related Offending: Are They Working?* Canberra: Australian Institute of Criminology; 69-70.

⁷⁷ Wundersitz, J. (2007). *Criminal Justice Responses to Drug and Drug-related Offending: Are They Working?* Canberra: Australian Institute of Criminology; 70.

results being ‘best interpreted as providing an indication only’,⁷⁸ only a brief overview of the findings is provided below.

The analysis showed that offenders in these programs typically have a long history of involvement with the criminal justice system. Program completers were more likely to receive a lower level sentence than those who were terminated. For each program, completers were less likely to have been re-arrested for any offence type and for drug offences, had a longer median time to first arrest, and were less likely to have been imprisoned post-program. In addition, those who completed each program had lower re-arrest rates than were predicted by risk estimates.⁷⁹

The evaluation also included some examination of changes in mental and physical health of POP clients, showing that those who completed the program experienced substantial gains in health and achieved significant reductions in drug use.⁸⁰

The following section provides information on the key features of each of the three programs.⁸¹

Key features

Aims and target populations

The Pre-sentence Opportunity Program (POP) aims to direct offenders with no or minimal criminal record but with a drug use problem into treatment. Eligibility criteria include having fairly stable living arrangements, having no serious offences, and being on bail or being eligible for bail. Participants in the program would normally expect to receive a fine or community based order on a plea of guilty.

The Indigenous Diversion Program (IDP) is a program for Aboriginal and Torres Strait Islander people who have committed relatively minor offences and who have an alcohol and/or other drug problem. While similar to POP, IDP provides a culturally secure regional service. As with POP, eligibility criteria include having no serious offences and being on bail or being eligible for bail.⁸² Participants in the program would normally expect to receive a fine or community based order on a plea of guilty.

The Supervised Treatment Intervention Regime (STIR) directs moderate level offenders with a greater drug use problem into treatment. Unlike POP, STIR provides ongoing case management of offenders

⁷⁸ Crime Research Centre, University of Western Australia (2007). *WA Diversion Program – Evaluation Framework (POP/STIRIDP): Final Report*. Perth: Author; 108.

⁷⁹ Crime Research Centre, University of Western Australia (2007). *WA Diversion Program – Evaluation Framework (POP/STIRIDP): Final Report*. Perth: Author; 108.

⁸⁰ Crime Research Centre, University of Western Australia (2007). *WA Diversion Program – Evaluation Framework (POP/STIRIDP): Final Report*. Perth: Author; 119.

⁸¹ Information on the programs is taken from the Government of Western Australia Drug and Alcohol Office website: <http://www.dao.health.wa.gov.au/Informationandresources/WADiversionProgram.aspx>.

⁸² Notably, it appears from the program brochures that the eligibility criterion of having fairly stable housing is not used in the IDP.

and requires a strong partnership between drug treatment services, correctional services and the judiciary. It operates in both metropolitan and regional locations and has the same eligibility criteria as the POP.

Operation

Referral to both POP and the IDP is at the magistrates' discretion. If referred, an offender's case is adjourned for six to eight weeks to allow treatment for drug use. Following treatment, the offender returns to court for sentencing.

If referred and accepted to STIR, a Drug Court magistrate makes the final decision on STIR suitability. The program provides ongoing support and counselling for up to six months. Throughout the program, participants must attend treatment with a counsellor (on average once a week), undergo regular drug testing (up to three times per week) and attend court at regular intervals (once every two weeks). Following treatment, the offender returns to court for sentencing.

The Indigenous Diversion Officer coordinates the treatment process, and following treatment, the offender returns to court for sentencing.

No further detail appears available on these programs.

South Australia's 6-month Drug Treatment intervention program

In response to a perceived gap in available interventions between the brief CARDS program⁸³ for very minor (low-risk, low-need) drug offenders and the Drug Court for serious (high-risk, high-need) drug offenders, South Australia introduced a six-month Drug Treatment Program (6DTP). The program began as an option within the Drug Court in 2009, was expanded into the Nunga Court in 2010 and was incorporated into the Treatment Intervention Program (TIP) at various locations beginning in 2010.

⁸³ Although no longer in operation, South Australia previously offered a Magistrates Court Assessment and Referral Drug Scheme (CARDS) to fill the gap between its police-based drug interventions and its Drug Court. The program was offered in three locations around the state and was designed to maximise opportunities for less serious drug-using offenders to engage with the health system. CARDS was offered as either a pre-sentencing bail or post-sentence bond option. The intended target group for CARDS was adults apprehended for minor indictable offences with a demonstrable drug problem, who were eligible and suitable for release on bail or bond, and were assessed as motivated to receive health treatment for their drug dependency. Those with a history of violent offending or for whom alcohol was the principal drug were generally excluded. Suitable candidates were required to attend four treatment sessions within a three-month period at a specified health service to satisfy the requirements of the program. An evaluation found that stakeholders and participants were both satisfied with its operation and outcomes, and quantitative analysis showed that, in the six months following involvement in the program, participants had significantly fewer criminal events and a reduction in the seriousness of their offending. These findings applied to both completers and non-completers. As with many such schemes, however, there were low referrals for Aboriginal and Torres Strait Islander offenders, who were also significantly less likely to complete the program. Harkin, K., Fletcher, B. and O'Brien, B. (2006). *Adult CARDS: Final Evaluation Report*. Adelaide: Office of Crime Statistics and Research. There is no information on reasons for the apparent termination of the program, but it may have been subsumed into the current Treatment Intervention Program approach.

The 6DTP is based on the key components of South Australia's 12-month Drug Court program,⁸⁴ including regular drug testing and court reviews, case management, group therapy and the use of sanction and reward points. However, unlike the Drug Court program, defendants do not need to be facing a possible 12-month custodial sentence to be referred to the 6DTP.

The TIP, in which the 6DTP operates, is an integrated intervention program for defendants with mental impairment and/or substance dependence. It operates under the *Bail Act 1985* (SA) and allows a response that integrates proven substance disorder treatment approaches with referral to appropriate health services for treatment and management of mental impairment symptoms. It operates three separate streams: one for offenders with a substance use issue, one for offenders with a mental health issue and a third for those with co-morbid problems.

The 6DTP operates within the substance use and co-morbid streams of the TIP. An evaluation examined outcomes for 38 people who had completed the 6DTP and 53 who had not. The study involved comparing apprehension events occurring in the six months prior to commencing the program with those occurring in the six-month period following the program. While this does not represent a particularly strong research design as there was no comparison group, the follow-up period was short and the sample size was small, it does provide some indication about the effectiveness of the program.

Effectiveness of the 6DTP

Analysis of reoffending outcomes found statistically significant reductions in drug use by program participants, with program completers engaged in significantly less post-program offending and less serious offending.⁸⁵

An analysis of sentencing outcomes for finalised cases showed that clients who completed the program successfully were less likely to receive a penalty of imprisonment than those who did not successfully complete the program.⁸⁶

Interviews with stakeholders revealed that dealing with heavy alcohol use in the program was seen to be problematic: a substantial proportion of clients reported using alcohol at risky levels, but the program was not designed to deal with alcohol use. While drug testing does not include alcohol, ongoing alcohol use undermines progress through the group programs, and can prevent clients from moving forwards with their lives. Some respondents thus wanted to see a separate alcohol treatment stream added to the TIP in the long term.⁸⁷

While one of the aims of the 6DTP is to improve access to intervention services for Aboriginal and

⁸⁴ Drug courts are discussed in detail in Chapter 4.

⁸⁵ Ransom, S. (2012). *Addendum to the Evaluation of the 6-Month Drug Treatment Program Report: Participant Offending Analysis*. Adelaide: Office of Crime Statistics and Research.

⁸⁶ Ransom, S. (2012). *Evaluation of the 6-Month Drug Treatment Program*. Adelaide: Office of Crime Statistics and Research.

⁸⁷ Ransom, S. (2012). *Evaluation of the 6-Month Drug Treatment Program*. Adelaide: Office of Crime Statistics and Research.

Torres Strait Islander people and those from culturally and linguistically diverse backgrounds, there is no information in the evaluation about whether the program had achieved this aim.⁸⁸

The following section provides information on the key features of the South Australian six-month Drug Treatment Program intervention, and the Treatment Intervention Program more generally.⁸⁹

Key features

Aims

The TIP aims to reduce reoffending, improve mental and physical health and social functioning, and lead to a cessation or significant reduction in drug use. To achieve this, the TIP employs a multidisciplinary team with backgrounds in psychology, social work, behavioural science and occupational therapy.

The 6DTP itself aims to reduce illicit drug use and reoffending, to improve the health and social functioning of participants, and to improve access to intervention services for Aboriginal and Torres Strait Islander people and those from culturally and linguistically diverse backgrounds.

Target population

TIP targets adults who have been charged with a minor indictable or summary offence, where there is a link between the offending behaviour and mental impairment and/or substance dependence.⁹⁰

To be eligible a defendant must:

- have committed an offence whilst an adult (18 years of age or above at the date of commission of the offences);
- be charged with an offence that is related to drug use (but not necessarily a drug offence); and/or
- have a mental impairment and be charged with an offence that is related to the mental impairment.

⁸⁸ Overall, 15 participants (7.9%) were recorded as being of Aboriginal or Torres Strait Islander background, but there is no mention of whether this is proportionate to the representation of this cohort in the Magistrates Court more broadly. An earlier evaluation of the initial pilot of the program showed that 14.3 per cent of participants were of Aboriginal or Torres Strait Islander background: Ransom, S. (2012). *Evaluation of the 6-Month Drug Treatment Program*. Adelaide: Office of Crime Statistics and Research; 42.

⁸⁹ Information on the key features of 6DTP and the TIP more generally has been taken from the Courts Administration Authority of South Australia website: <http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Treatment-Intervention-Court.aspx> and from Ransom, S. (2012). *Addendum to the Evaluation of the 6-Month Drug Treatment Program Report: Participant Offending Analysis*. Adelaide: Office of Crime Statistics and Research.

⁹⁰ There is also a youth version of the TIP that targets you who may not be eligible for referral for a family conference due to the nature of their offending. Treatment is provided by private psychologists.

Mental impairment is defined as a mental illness, an intellectual disability, a personality disorder, an acquired brain injury, or a neurological disorder including dementia.

The 6DTP is available to people whose offending shows a clear link to drug use, who are suitable for release on bail and who are likely to benefit from a drug treatment intervention.

Operation

Participation on TIP lasts for six months. For people who have a mental impairment and not a co-occurring substance dependence, there is low- to medium-intensity supervision with court reviews every two months. The emphasis is on linking participants to treatment services in the community and supporting them to engage in the treatment.

For people who have a mental impairment and/or a substance dependence, the program is more intensive and is separated into two phases. Phase 1 lasts two months and entails the following:

- simple bail;
- fortnightly court reviews;
- weekly or fortnightly contact with the Program Supervisor (face to face and via telephone);
- random supervised drug testing at least twice per week; and
- referral to drug treatment services.

Phase 2 lasts four months and entails the following:

- monthly court reviews;
- supervised random drug testing once a week;
- all aspects of therapeutic intervention continuing as per Phase 1;
- continuing rehabilitation and recovery plan implementation; and
- reduced contact with Program Supervisor to fortnightly, unless more support is required.

There is some flexibility with the timing of these phases: if participants need more or less time in a phase, this can be arranged.

Successful completion of the TIP requires the participant to have no new charges, to have attended and engaged in the treatment sessions, and to have demonstrated a willingness and an ability to cease or significantly reduce substance use. Ongoing non-compliance will result in termination from the program.

Tasmania's Court Mandated Diversion intervention program

Tasmania's Court Mandated Diversion (CMD) began in August 2007 and is available in all Magistrates Courts. It provides magistrates with an option to refer eligible offenders into treatment for their drug use. Tasmania was the last state to introduce a court-based drug intervention program (although it was the first to introduce a police-based one).

Following a plea or finding of guilt, eligible offenders can be directed into drug treatment by being sentenced to a Drug Treatment Order (DTO), during which a magistrate will continually review

progress on the order. A DTO is an intensive community-based sentence that has a custodial sentence attached.

As a sentencing option, the CMD is legislatively founded in division 4, part 3A of the *Sentencing Act 1977* (TAS).

Effectiveness of the CMD program

An evaluation of the first 12 months of the CMD program was published in 2008, during which time 250 offenders had been referred for screening and 157 had commenced the program. As there was only a very short follow-up period in which to examine recidivism, the findings on program impact on reoffending (measured as reappearances in court) should be viewed with caution. Nonetheless, as this program is similar to the Victorian Drug Court but is available throughout the state, it is useful to consider its operation as a possible model for Queensland in gaining greater coverage and providing more equitable access to its rural, regional and remote population.

Of the 157 offenders who commenced the CMD program, 43.3 per cent had reappeared before court for a further matter. There was no significant difference in likelihood of reoffending between Indigenous and non-Indigenous offenders, but people who successfully completed the program were less likely to reappear than those who had not.⁹¹ No information is available on the cost-effectiveness of the program.

The following section provides information on the key features of Tasmania's CMD.⁹²

Key features

Aims

The CMD aims to break the drug-crime cycle using the authority of the court to ensure that offenders access the services and treatment necessary to address the issues that contribute to their drug use and offending. It aims to provide viable pathways for offenders by increasing their access to drug, alcohol or other welfare services in order to deal with their drug use.

Other principal goals of the CMD program are to:

- provide offenders with an opportunity to acknowledge and address offending behaviour caused by drug abuse, thereby improving physical and psychological wellbeing;
- assist participants to abstain from drug use, and develop and implement relapse prevention strategies for long-term changes;
- assist participants to break the drug-crime cycle and prevent relapse into drug use and criminal behavior; and

⁹¹ SuccessWorks (2008). *Tasmania's Court Mandated Drug Diversion Program: Evaluation Report*. Melbourne: Author; 107-110.

⁹² Information on the key features of CMD has been taken from the Magistrates Court of Tasmania website: http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/court_mandated_diversion.

- help participants gain stability with their physical and mental health, building positive relationships with their family and being involved in the community through education, employment and other pro-social activities.

Treatment services while on the program include individual or group counselling, residential rehabilitation, case management and detoxification. The precise mix of treatment will depend on each individuals' specific needs.

Target population

The CMD was designed to target high risk offenders with complex needs. To be eligible to be sentenced to a DTO, an offender must:

- be 18 years of age or over;
- have entered pleas of guilty or have been found guilty to all offences referred for assessment to the CMD program;
- be facing a penalty of imprisonment for the offences that would not otherwise be wholly or partially suspended if they were not being assessed for the CMD program;
- have a demonstrable history of illicit drug use that contributed to the offences referred for assessment; and
- be willing to participate in supervised treatment with the CMD program.

Offenders are not eligible to be sentenced to a DTO if they:

- have sexual offences referred for assessment or outstanding in any court;
- have offences involving the infliction of actual bodily harm referred for assessment or outstanding in any court;
- have a violent offence against a person that is deemed not to be minor harm by the court, referred for assessment or outstanding in any court; and
- are subject to a sentencing order of the Supreme Court, Parole Order or another Drug Treatment Order.

With its eligibility criterion of the offender having to be facing a term of imprisonment, the CMD is much like the Victorian Drug Court, which uses Drug Treatment Orders in much the same fashion. While the Tasmanian CMD is perhaps less formal than a dedicated drug court, it does allow the drug court approach to be adopted in multiple areas. In Tasmania, all magistrates are able to access the CMD program.

Operation

The DTO includes conditions tailored to each individual to support change and to manage situations that may lead to relapse. The order includes a custodial component that is effectively suspended while the offender complies with the conditions of the DTO. If the offender becomes non-compliant, the court may activate the custodial component of the sentence.

Rewards for compliance may include verbal praise from the magistrate, a reduction in imprisonment days, and progression through the phases and ultimately graduation, at which time the imprisonment term is cancelled. Sanctions for non-compliance may include a verbal warning from the magistrate,

the imposition of community service requirements, time in prison, and regression back through the phases and ultimately cancellation of the DTO.

There are three different phases in a DTO – stabilisation, consolidation and re-integration – and progression is based on performance. Each phase has its own set of minimum obligations that becomes less intensive as the order progresses.

Phase 1 – Stabilisation (six to 12 months):

- weekly case management;
- weekly counselling;
- random drug testing at least weekly; and
- regular court appearances.

Phase 2 – Consolidation (four to seven months):

- fortnightly case management;
- fortnightly counselling;
- random drug counselling at least fortnightly; and
- reduced court appearances.

Phase 3 – Re-integration (three to five months):

- monthly case management;
- monthly counselling;
- random drug counselling at least monthly; and
- reduced court appearances.

There is no set time limit for either the phases or the order as a whole, but the DTO is reviewed by the court after 24 months. A dedicated Court Diversion Officer provides progress reports at each court review and acts as the offender's case manager.

While on a DTO, the offender must abstain from all illicit drug use. In addition, there is regular, random drug testing, regular face-to-face meetings with the case manager, regular court reviews and individual and/or group counselling sessions. The order may also include residential rehabilitation, medically supervised withdrawal and pharmacotherapy. Other supports offered through CMD include literacy and numeracy tutoring programs addressing anger management, family violence, parenting, drug and alcohol and gambling, education and employment support and referral to any other relevant services.

Participants will usually take between 18 and 24 months to complete the program.

3b. Court support and referral interventions

Court support and referral schemes attempt to deal with the underlying causes of offending, adopting a rehabilitative focus. They support offenders with issues across a range of areas, such as mental health, housing instability and unemployment. Arguably the best developed of these is Victoria's CISP.

The Victorian Court Integrated Services Program

Established in November 2006, CISP provides people with access to services and support to reduce rates of reoffending. It provides a coordinated, team-based approach to assessment and treatment, linking people with services such as drug and alcohol treatment, crisis accommodation, disability services and mental health support. In this way, it provides a holistic, wrap-around approach to addressing offenders' multiple and complex needs. It is currently operating in four Magistrates' Courts in both metropolitan and regional areas.

People are accepted into CISP based on a risk assessment component of the CISP Screening Assessment, allowing three separate program levels to target people at different levels of risk and need: clients assigned to the community referral program stream have been assessed as low risk, those assigned to the intermediate level are medium risk and people assigned to the intensive stream have been classified as high risk. This streaming allows for the matching of intervention level with individual needs.

Evaluation of the Victorian Court Integrated Services Program

The CISP program was evaluated in 2009. The evaluation was extremely thorough, using comparison groups where possible to measure impacts of the program. Both effectiveness and cost-effectiveness of CISP were examined.

Effectiveness of CISP

The key outcomes measured in the effectiveness evaluation⁹³ included individual client outcomes in relation to the needs addressed by intervention and support services, program completions, impact on court workload and other elements of the justice system, bail and order compliance, and reoffending.

Overall, the evaluation found that CISP had achieved its targets, successfully matched the intensity of intervention to the risks and needs of its clients⁹⁴ and had achieved a high rate of referral to treatment and support services. In terms of outcomes, CISP clients reported improvements in health and wellbeing and, compared with offenders at other court venues, CISP completers had a significantly lower rate of reoffending.

Key findings on program outcomes include:

- Around six in ten participants complete the program successfully. The most important factors 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 the chances of program completion. Completion rates were higher for clients on the intermediate program level than for those on the intensive level (61% versus 52%) and Indigenous clients were less

⁹³ Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne.

⁹⁴ People who participate in CISP are referred to as 'clients'.

likely to complete than non-Indigenous (46% versus 60%).⁹⁵

- Sentence outcomes were influenced by whether offenders completed the CISP program. CISP completers were less likely to receive a custodial sentence than non-completers (9.3% versus 1.4%).⁹⁶
- Order compliance (successful completion rates) amongst a sample of 200 CISP participants was 49 per cent, compared with 45 per cent for a matched control sample of 200 non-CISP offenders. This difference, while positive, was not statistically significant.⁹⁷
- CISP participants had lower rates of reoffending.⁹⁸ For the CISP group, around 50 per cent were classed as recidivists.⁹⁹ In the comparison group, 64 per cent were classed as recidivists.¹⁰⁰ After 200 days around 30 per cent of the CISP group and 32.5 per cent of the control group had reoffended. The difference in reoffending rates between the two groups increased over time: 37 per cent compared with 43 per cent at 400 days, and 40 per cent compared with 48 per cent by 600 days. The difference in reoffending (10 percentage points) was greatest by around 700 days.¹⁰¹

The evaluation concludes that the CISP is achieving its goals and recommends a review of the various court-based interventions available, with a view to ‘creating a court support services function that would provide the basis for the delivery of a range of clinical, support, referral, supervision and case management services’ to clients of the Magistrates’ Court of Victoria.¹⁰²

This idea 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

⁹⁵ Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne; 36-37.

⁹⁶ Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne; 38.

⁹⁷ Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne; 112.

⁹⁸ Reoffending was measured over a period of between 400 and 900 days: Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne; 114.

⁹⁹ This includes 40% who had proven charges against them, and a further 10% with charges that had not been finalised: Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne; 113.

¹⁰⁰ This includes 50% who had proven charges against them, and a further 13% with charges that had not been finalised: Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne; 113.

¹⁰¹ Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne; 113-115.

¹⁰² Ross, S. (2009). *Evaluation of the Court Integrated Services Program: Final Report*. Melbourne: University of Melbourne; 74.

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.

Cost-effectiveness of CISP

The 2009 cost-effectiveness evaluation¹⁰³ found that CISP represented good value for money.

The cost of CISP was represented by the funding for the program, while the benefits of CISP were thought to accrue through the following:¹⁰⁴

- A reduction in re-offending – which will reduce the direct costs of crime (e.g. property damage) and costs associated with sentencing of offenders (e.g. prison).
- A reduction in the number of offenders sentenced to a custodial order following participation in CISP. This will reduce the direct costs associated with imprisonment.
- For those on a Community Based Order or another type of order, a reduction in the number of offenders who breach order conditions. This reduces the cost associated with locating and re-sentencing offenders.

The 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.

Input into the analysis included the number of days of imprisonment for CISP participants, as well as their recidivism rate. 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 39.5 per cent, compared with 49.5 per cent among the control group.¹⁰⁵ When reoffending does occur, the average time to the offence is longer for the CISP group, and the average seriousness of reoffending is lower.¹⁰⁶

¹⁰³ PricewaterhouseCoopers (2009). *Economic Evaluation of the Court Integrated Services Program (CISP): Final Report on Economic Impacts of CISP*. Melbourne: Department of Justice Victoria.

¹⁰⁴ PricewaterhouseCoopers (2009). *Economic Evaluation of the Court Integrated Services Program (CISP): Final Report on Economic Impacts of CISP*. Melbourne: Department of Justice Victoria; 8-9.

¹⁰⁵ PricewaterhouseCoopers (2009). *Economic Evaluation of the Court Integrated Services Program (CISP): Final Report on Economic Impacts of CISP*. Melbourne: Department of Justice Victoria; 9-10.

¹⁰⁶ PricewaterhouseCoopers (2009). *Economic Evaluation of the Court Integrated Services Program (CISP): Final Report on Economic Impacts of CISP*. Melbourne: Department of Justice Victoria; 24-25.

While differences in order breach rates were not large (45.7% for CISP versus 48.8% for non-CISP), participation did appear to reduce breach rates somewhat.¹⁰⁷

Comparing the sample of 200 CISP participants with 200 similar offenders who had not been through CISP,¹⁰⁸ the evaluation estimated a benefit-cost ratio ranging from 1.7 to 5.9.¹⁰⁹ The benefits are comprised of avoided costs of sentencing, avoided costs of imprisonment, avoided costs of crime and avoided costs of order breach.

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 following section provides information on the key features of CISP.¹¹⁰

Key features

Aims

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;

¹⁰⁷ PricewaterhouseCoopers (2009). *Economic Evaluation of the Court Integrated Services Program (CISP): Final Report on Economic Impacts of CISP*. Melbourne: Department of Justice Victoria; 16.

¹⁰⁸ The two samples were matched on factors such as age, gender, type of offence and offending history: PricewaterhouseCoopers (2009). *Economic Evaluation of the Court Integrated Services Program (CISP): Final Report on Economic Impacts of CISP*. Melbourne: Department of Justice Victoria; 10.

¹⁰⁹ 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). *Economic Evaluation of the Court Integrated Services Program (CISP): Final Report on Economic Impacts of CISP*. Melbourne: Department of Justice Victoria; 20.

¹¹⁰ Information on the key features of CISP has been taken from the Magistrates' Court of Victoria website: <http://www.magistratescourt.vic.gov.au/court-support-services/court-integrated-services-program-cisp>.

- 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 per cent 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.

3c. Sentencing interventions

Courts have access to specific sentencing orders that aim to rehabilitate offenders as a way to address the underlying causes of their offending behaviour. For example, sentencers may make use of adjournments or deferred sentencing in order to allow defendants to take steps towards rehabilitation, prior to finalising sentence.¹¹¹ Other examples include the use of conditions attached to probation or good behaviour bonds and court-ordered parole. Few evaluations have been undertaken of specific approaches in a given jurisdiction, although analyses of recidivism following different sentence types

¹¹¹ The Victorian Magistrates’ Court and County Court may defer sentencing for up to 12 months if the court believes it is in the interests of the offender and if the offender agrees. During the deferral period, the offender can take steps, such as drug treatment, to address the offending behaviour. The offender’s progress is then taken into account when the final sentence is decided: Sentencing Advisory Council (2016). *Sentencing Options for Adults*. <https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-options-for-adults>. Deferred sentencing is also available in the Children’s Court of Victoria, for a period up to four months: Children’s Court of Victoria (2016). *Sentencing*. <http://www.childrenscourt.vic.gov.au/jurisdictions/criminal/sentencing>. No evaluation has been published of the impact of deferred sentencing.

has generally shown that the most severe sentences – imprisonment in particular – have the worst reoffending outcomes, even controlling for offender characteristics.¹¹²

The Geraldton Alternative Sentencing Regime

An ongoing challenge for the criminal justice system, including court intervention programs and drug courts, is to meet the rehabilitation needs of Aboriginal and Torres Strait Islander people, who continue to be over-represented in the system. For most drug courts, for example, Aboriginal and Torres Strait Islander participation rates have been low.

While many mainstream courts have specific liaison officers for this cohort, and some jurisdictions have dedicated Indigenous sentencing courts (discussed below), other jurisdictions have adopted models that do not target Aboriginal and Torres Strait Islander offenders, but that nonetheless appear to be effective in providing more equitable access.

One example is the explicitly therapeutic approach that has been developed in Western Australia. The Geraldton Alternative Sentencing Regime (GASR) takes a holistic, team-based approach to rehabilitating substance-abusing offenders who are not facing an immediate term of imprisonment. The target population of the GASR, therefore, is a less hardened offender, facing less serious charges, but with underlying substance abuse problems.¹¹³

After its establishment in August 2001, the GASR initially dealt only with those abusing drugs and alcohol, but the program subsequently expanded to include solvent abuse, domestic violence and other problems deemed susceptible to a therapeutic jurisprudence approach.

Similar to the drug court model, the GASR uses judicial case management, therapeutic court procedures and a wide range of rehabilitation programs in an effort to improve offender wellbeing. It is primarily a post-conviction option, although defendants may at times be admitted to the program pending a determination of guilt.

There are two tracks in the GASR. The Brief Intervention Regime is for people with less-established offending problems who do not require intensive supervision. The Court Supervision Regime is for those with substantial problems that contribute to offending behaviour. Both tracks involve the offender participating in a range of treatment programs. Successful completion of the program is considered in mitigation of sentence.

Like the Drug Court Regime of the Perth Drug Court, both tracks rely for their legal basis on the power of the court to adjourn sentencing under section 16 of the *Sentencing Act 1995* (WA) and to set conditions of bail under section 17 of the *Bail Act 1982* (WA).

¹¹² See, for example, Gelb, K., Fisher, G. and Hudson, N. (2013). *Reoffending Following Sentencing in the Magistrates' Court of Victoria*. Melbourne: Sentencing Advisory Council.

¹¹³ Information on the Geraldton Alternative Sentencing Regime is taken from King, M. and Ford, S. (2006). 'Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The Example of the Geraldton Alternative Sentencing Regime'. *Special Series eLaw: Murdoch University Electronic Journal of Law*, 1: 9-26.

The GASR is also designed to cater for the needs of local Aboriginal and Torres Strait Islander offenders and has a higher participation rate for this cohort than other court programs in Western Australia. Unlike the Perth Drug Court, it has a high participation rate by Aboriginal and Torres Strait Islander people – about 40 per cent. One of the reasons for the high participation rate in Geraldton is the involvement of the Aboriginal Legal Service with the other agencies and the court in the design and management of the program. But the GASR also takes an open approach to offending-related problems, not restricting admission to those with illicit drug problems, but including alcohol, solvent abuse, gambling, less serious violence and other problems. The less restrictive admissions policy is thought to address problems of particular concern to the West Australian Indigenous community that are not targeted by other programs.

An innovative but somewhat controversial aspect of the GASR was its initial inclusion of a stress-reduction and self-development technique.¹¹⁴ Based on the idea that Indigenous offenders face an added challenge of coming from a background of intergenerational stress due to historical, political, social and economic factors, the inclusion of this stress-reduction was designed to assist in reducing offending and also in alleviating stress-related disorders and improving physical and psychological health.¹¹⁵

Effectiveness of the Geraldton Alternative Sentencing Regime

While the GASR has been evaluated, a lack of funding meant that the evaluation was not a controlled, longitudinal, quantitative one. Instead, exit surveys were administered to participants about the nature and effectiveness of the processes and programs used as part of the GASR. While only 18 surveys had been returned at the time of the evaluation, results showed perceived improvements in physical health and mental health, reduction in depression/anxiety and greater motivation to work or study after participation in the Court Supervision Regime. All also reported improved motivation to stop offending. While 61 per cent reported improvements in housing and their financial situation, 78 per cent reported that they had stopped or reduced their use of alcohol and drugs. Twelve respondents reported improved relationships, while 51 per cent of those participating in the Court Supervision Regime (the more entrenched offenders) had not reoffended.¹¹⁶

The results of the survey support the hypothesis that the GASR promotes participants' wellbeing in multiple dimensions of their lives.

¹¹⁴ Transcendental Meditation was used as it has been shown to be more effective than other stress-reduction techniques in promoting self-actualisation and in alleviating substance abuse and anxiety, all of which were thought to be especially pertinent to the Indigenous population: King, M. and Ford, S. (2006). 'Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The Example of the Geraldton Alternative Sentencing Regime'. *Special Series eLaw: Murdoch University Electronic Journal of Law*, 1: 9-26; 13.

¹¹⁵ The use of this technique was halted in 2003 due to a lack of secure funding: King, M. and Ford, S. (2006). 'Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The Example of the Geraldton Alternative Sentencing Regime'. *Special Series eLaw: Murdoch University Electronic Journal of Law*, 1: 9-26; 14.

¹¹⁶ King, M. and Ford, S. (2006). 'Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The Example of the Geraldton Alternative Sentencing Regime'. *Special Series eLaw: Murdoch University Electronic Journal of Law*, 1: 9-26; 19.

While the evaluation is not sufficiently robust to determine definitively if the GASR is effective in reducing reoffending, the program provides a unique example of ways in which the principles and processes underlying more formal drug courts may be applied in a mainstream court. Its ability to provide access to substance abuse programming to offenders of Aboriginal or Torres Strait Islander descent is of particular note, and provides a model that may be applicable to other jurisdictions with a relatively larger Indigenous population. Indeed, the evaluation found that ‘the Regional Programme Coordinator, a Yamatji person widely known and respected in the Aboriginal community, saw the GASR court processes as a positive experience for Indigenous participants – an empowering and essentially remedial and restorative experience for them’.¹¹⁷ Clearly there are lessons to be drawn from this approach.

The Victorian Criminal Justice Diversion Program

While not an actual sentence, the Criminal Justice Diversion Program (CJDP) is a disposition available to the courts to provide defendants with the opportunity to avoid a criminal record by undertaking specific conditions, such as apologising or paying compensation to the victim, undertaking counselling and/or community work. The program began in 1997 and focuses on first-time or low-risk offenders and those who have committed relatively minor offences. The defendant must be willing to acknowledge responsibility for the offence, although this does not constitute a formal plea such that there is no finding of guilt.

The objectives of the CJDP are to reduce re-offending, avoid a first criminal conviction, assist an offender’s rehabilitation, make use of the community’s resources for appropriate counselling or treatment and ensure that appropriate reparation is made to the victim of the offence. While a referral may be made by several parties to the matter, it must be approved by the police.

In order to avoid a conviction, the offender must fulfill any conditions set out in a Diversion Order. These may include an apology or compensation for the victim, counselling or treatment, community service, abiding by a curfew or making a donation.

The CJDP is governed by section 128A of the *Magistrates’ Court Act 1989* (Vic). The CJDP operates by the court adjourning the matter for up to 12 months to enable participation. Once the program is completed, the defendant is discharged without a finding of guilt.

While the CJDP appears to be used only rarely for drug-related offences,¹¹⁸ magistrates are able to attach a drug awareness course or drug counselling as a condition on a CJDP.¹¹⁹ It therefore presents another option for intervention to address drug-related offending.

¹¹⁷ King, M. and Ford, S. (2006). ‘Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The Example of the Geraldton Alternative Sentencing Regime’. *Special Series eLaw: Murdoch University Electronic Journal of Law*, 1: 9-26; 20.

¹¹⁸ In 2006-07 only 4.7 per cent of people placed on a CJDP had a principal offence related to drugs (possess or cultivate cannabis): Fisher, G. (2008). *The Criminal Justice Diversion Program in Victoria*. Melbourne: Sentencing Advisory Council; 6.

¹¹⁹ The drug awareness course condition is used sparingly, with only 2.0 per cent of participants having this condition included in their plan, and even fewer people are ordered to seek drug counselling: Fisher, G. (2008). *The Criminal Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending* Page 44

Effectiveness of the Criminal Justice Diversion Program

The CJDP has undergone one early evaluation, alongside evaluations of the Victorian CREDIT program and the Victorian Drug Court.¹²⁰ Although weak methodologically,¹²¹ the evaluation is indicative that the CJDP may be effective at reducing recidivism. Using a random sample of 100 people who commenced a CJDP during July to December 2002, reoffending was examined through November 2003. Of the 100 people in the sample, only four people were convicted of eight offences during this period. Compliance with the orders was found to be high (94%).

A subsequent report on the CJDP in 2008 examined the program in terms of an analysis of reoffending following sentencing. Compared with a matched sample of people who received a fine, a Cox regression analysis¹²² showed that participation in the CJDP was associated with a 43.6 per cent decrease in the risk of reoffending and that CJDP participants were predicted to refrain from offending the longest.¹²³

While the evidence to support the effectiveness of the CJDP is not strong, it does present another option for responding to drug-related offending that keeps low-level offenders from progressing further into the criminal justice system and leaves them without a criminal record.

Key findings: Court-based intervention programs

Combining the different types of court-based intervention programs, 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 – assessments made prior to the first mention of a matter may assist in expediting the identification of appropriate intervention pathways;
- clear 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;

Justice Diversion Program in Victoria. Melbourne: Sentencing Advisory Council; 7.

¹²⁰ King, J., Fletcher, B., Alberti, S. and Hales, J. (2004). *Court Diversion Program Evaluation, Volume Two: Process Evaluation and Policy & Legislation Review: Final Report.* Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre Inc.

¹²¹ The evaluation used a small sample and no comparison group with a fairly short follow-up for at least some of the people whose matters were originally heard toward the end of 2002. There was also no comparison of post-program offending with the level of offending prior to the program.

¹²² The Cox regression analysis provides a hazards ratio for each variable included in the model. This ratio is a measure of the likelihood of an offender with the given characteristics being reconvicted at any point in the follow-up period, compared with an offender without that characteristic. Ratios close to 1.00 indicate that the variable had little effect on reconviction. Ratios less than 1.00 indicate that an offender with that characteristic is less likely to be reconvicted, while those greater than 1.00 indicate an offender is more likely to be reconvicted if that characteristic is present.

¹²³ Gelb, K., Fisher, G. and Hudson, N. (2013). *Reoffending Following Sentencing in the Magistrates' Court of Victoria.* Melbourne: Sentencing Advisory Council; 26-28.

- strong collaboration and communication between magistrates, drug and alcohol 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 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.

Chapter 4: Solution-focused Courts

Solution-focused courts have proliferated around the world and have diversified to address a broad range of issues. The most common type of solution-focused court is the drug court, and in its wake similar courts have arisen that focus on certain offences (driving while intoxicated courts and family violence courts), certain complex issues (mental health courts) and certain offender cohorts (Indigenous courts). Other courts have adopted a holistic approach that attempts to deal with all sorts of offending, complexities and offenders in a single approach (community justice centre courts). Each of these approaches is discussed in turn below.

4a. Drug courts

The most widely adopted type of solution-focused court in both Australia and internationally has been the drug court. The purpose of drug courts generally is to address the underlying substance use issues that contribute to the individual's offending behaviour. As with other solution-focused courts, drug courts are based in notions of therapeutic jurisprudence, which involves a collaborative, largely non-adversarial approach that is focused on participants' needs, and aims to focus on improving future outcomes, rather than punishing past behaviours.¹²⁴

Drug courts arose in the United States (US) and have since proliferated there, now numbering more than 3,000.¹²⁵ They have been implemented in a number of countries around the world, including New Zealand, Canada, across the United Kingdom and in Europe. In Australia, drug courts are in operation in Victoria, New South Wales, Western Australia and South Australia, and they previously existed in both Queensland and the Northern Territory.

While drug courts vary in target population and program design, they all adopt a non-adversarial approach to intervention and typically involve the following essential elements:¹²⁶

- offender screening and risk assessment (often based on assessment of offenders' risks, needs and responsivity to treatment);
- regular judicial monitoring of offender progress via development of a therapeutic relationship with the offender;
- formal monitoring in the form of drug testing and supervision by a case worker;
- graduated incentives and sanctions through the course of the program; and
- treatment services.

The National Association of Drug Court Professionals in the US has developed two key sets of principles that provide a framework for the establishment and successful operation of a Drug Court:

¹²⁴ King, M. (2006). 'Therapeutic Jurisprudence in Australia: New Directions in Courts, Legal Practice, Research and Legal Education'. *Journal of Judicial Administration*, 15: 129-141; 130.

¹²⁵ The National Institute of Justice estimates that, as of December 2014, there were more than 3,000 drug courts operating in the United States, with more than half targeting adults, and others including driving while intoxicated offenders, veterans, juvenile offenders and others; see <http://www.nij.gov/topics/courts/drug-courts/pages/welcome.aspx>.

¹²⁶ See <http://www.nij.gov/topics/courts/drug-courts/pages/welcome.aspx>.

the ten key components of drug treatment courts,¹²⁷ and the best practice standards for adult drug courts.¹²⁸ Both are based on many years spent ‘reviewing scientific research on best practices in substance abuse treatment and correctional rehabilitation and distilling that vast literature into measurable and enforceable practice recommendations for Drug Court professionals’.¹²⁹ Indeed, in the two years following the release of Volume I of the standards, 20 out of 25 states that responded to a national survey indicated that they had adopted the standards, leading to an assessment that ‘Drug Courts are changing their policies and procedures in accordance with scientific findings and improving their outcomes as a result’.¹³⁰

Key components of successful drug courts

Key Component #1: Drug courts integrate alcohol and other drug treatment services with justice system case processing.

Key Component #2: Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights.

Key Component #3: Eligible participants are identified early and promptly placed in the drug court program.

Key Component #4: Drug courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services.

Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.

Key Component #6: A coordinated strategy governs drug court responses to participants’ compliance.

Key Component #7: Ongoing judicial interaction with each drug court participant is essential.

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

Key Component #9: Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

¹²⁷ National Association of Drug Court Professionals (1997). *Defining Drug Courts: The Key Components*. Washington, DC: US Department of Justice. Available at: <http://www.ndci.org/publications/more-publications/ten-key-components>.

¹²⁸ National Association of Drug Court Professionals (2013). *Adult Drug Courts: Best Practice Standards Vol. I*. Alexandria: Author; National Association of Drug Court Professionals (2015). *Adult Drug Courts: Best Practice Standards Vol. II*. Alexandria: Author. Available at: <http://www.ndci.org/standards>.

¹²⁹ National Association of Drug Court Professionals (2015). *Adult Drug Courts: Best Practice Standards Vol. II*. Alexandria: Author; 1.

¹³⁰ National Association of Drug Court Professionals (2015). *Adult Drug Courts: Best Practice Standards Vol. II*. Alexandria: Author; 1.

Key Component #10: Forging partnerships among drug courts, public agencies, and community-based organisations generates local support and enhances drug court program effectiveness.

Adult drug courts best practice standards

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

The closer a drug court stays to these two sets of principles, the more effective it is likely to be.

Effectiveness of drug courts in reducing recidivism

Australian drug courts have generally been modelled on the American ones, with one key difference: while the US drug courts have typically targeted lower-level offenders, those in Australia have focused their attention on more serious offenders who are facing a term of imprisonment – typically those who are repeat, long-term offenders whose criminal behaviour is directly linked to their drug dependencies.¹³¹ This key difference means that research on the effectiveness of US drug courts may not necessarily be directly applicable to the Australian approach.

Nonetheless, the vast majority of research on the effectiveness of drug courts has been undertaken in the US, where the evidence shows that most drug courts work. There are variable effects depending on the quality of the court, but 78 per cent of drug courts have been found to reduce crime, while 16 per cent have been found to have no effect on crime. Recidivism has been shown to be decreased for up to 14 years after participation in a drug court, with an average reduction of about 18 per cent (although some courts achieve reductions in recidivism of more than 60%).¹³²

¹³¹ For example, participants in the Drug Court of NSW are 'less likely to be first offenders, more likely to be facing prison and more able to access pharmacotherapies': Weatherburn, D., Jones, C., Snowball, L and Hua, J. (2008). 'The NSW Drug Court: A Re-evaluation of its Effectiveness'. *Crime and Justice Bulletin* No 121; 1-2.

¹³² Carey, S. and Finigan, M. (2013) examined 101 drug courts around the US, in which 69 had evaluated their recidivism rates and costs. Their study of recidivism and cost outcomes across this sample included 32,719 people: 16,317 drug court participants and 16,402 as a comparison group: Carey, S. and Finigan, M. (2013). *Top 10 Drug Court Best Practices and More! What Does the Research Tell Us and how does it Relate to the New National Drug Court Standards?* NPC Research and National Association of Drug Court Professionals. Available at: http://npcresearch.com/wp-content/uploads/Top_10_DC_Best_Practices_and_More.pdf.

A 2013 overview of the impact of drug courts in the US identified a number of practices that were statistically significantly¹³³ associated with reductions in both recidivism and costs. These included:¹³⁴

- Drug courts with a caseload of fewer than 125 participants had 567 per cent greater reductions in recidivism.
- Drug courts where the judge spends more time per participant (more than three minutes) had 153 per cent greater reductions in recidivism.
- Drug courts in which reviews of data had led to operational modifications had 105 per cent greater reductions in recidivism, as did those in which a representative from treatment attends court team meetings.
- Drug courts that allowed non-drug charges had 95 per cent greater reductions in recidivism.
- Drug courts in which law enforcement is a member of the court team had 88 per cent greater reductions in recidivism.
- Drug courts in which review of data had led to modifications in operations had 131 per cent higher cost savings.
- Drug courts where sanctions are imposed immediately following non-compliance had 100 per cent higher cost savings, as did those where evaluations have led to modifications in operations.
- Drug courts where the defence attorney attends drug court team meetings had 93 per cent higher cost savings.
- Drug courts in which participants must have a job or be in school to be able to graduate had 83 per cent higher cost savings.
- Drug courts in which drug test results were returned within 48 hours had 68 per cent higher cost savings.
- Drug courts where law enforcement attends court sessions had 64 per cent higher cost savings.

In addition, courts that use jail for more than six days (to sanction non-compliance) had worse recidivism outcomes and higher costs, and those that accepted participants with a history of prior violence had equal reductions in recidivism as courts that excluded violent offenders. This is a notable finding, as most of the drug courts in Australia currently exclude people who have a history of violent offending, as well as those with a sexual offence history. However, research supports the inclusion of violent offenders in such interventions. For example, a study of 452 offenders in a post-plea drug court program showed that a history of violent offending was not statistically significantly related to three-year recidivism rates. Rather, multivariate analyses that controlled for age, ethnicity, drug of choice, time at risk and discharge status showed that it was the extent of criminal history that predicted recidivism, as well as age – the more extensive the criminal history, the higher the likelihood of reoffending, while the higher the age, the lower the likelihood of reoffending. Having a violent offence

¹³³ At the $p < .05$ level. This means that there is less than a five per cent likelihood that the demonstrated results occurred by chance.

¹³⁴ Carey, S. and Finigan, M. (2013). *Top 10 Drug Court Best Practices and More! What Does the Research Tell Us and how does it Relate to the New National Drug Court Standards?* NPC Research and National Association of Drug Court Professionals.

history was not predictive of recidivism. The authors conclude that ‘violent offenders should not be systematically excluded from the opportunity to participate’ in drug court programs.¹³⁵

Studies of drug courts in the US have also been the subject of a number of meta-analyses. For example, a Campbell Collaboration Systematic Review in 2012 examined quasi-experimental and experimental evaluations of the effectiveness of drug courts in reducing recidivism. One hundred and fifty-four independent evaluations of drug courts met the review’s eligibility criteria; 92 of these assessed adult drug courts, 34 examined juvenile drug courts, and 28 investigated DWI drug courts. Overall, the review found that adult drug courts reduce general and drug-related recidivism, with a mean effect size analogous to a drop in recidivism from 50 per cent for non-participants to approximately 38 per cent for participants.¹³⁶ The impact of drug courts in reducing recidivism appeared to persist for at least three years. Even the three fully experimental evaluations of adult drug courts found sizeable reductions in recidivism, although they do show inconsistency in the durability of the effects over time. The review concludes that ‘the evidence finds strong, consistent recidivism reductions in evaluations of adult drug courts’.¹³⁷

In contrast to these positive findings, the review found considerably smaller effects on recidivism for youth drug courts (typically set up as special dockets or lists within juvenile courts), with a mean effect size analogous to a reduction in reoffending from 50 per cent for non-participants to 43.5 per cent for youth drug court participants.¹³⁸ Drug courts for young offenders thus do not appear to be as effective as those for adults.¹³⁹

¹³⁵ Saum, C. and Hiller, M. (2008). ‘Should Violent Offenders be Excluded from Drug Court Participation? An Examination of the Recidivism of Violent and Nonviolent Drug Court Participants’. *Criminal Justice Review* 33(3): 291-307; 291.

¹³⁶ Mitchell, O., Wilson, D., Eggers, A. and MacKenzie, D. (2012). *Drug Courts’ Effects on Criminal Offending for Juveniles and Adults*. Campbell Systematic Reviews 2012:4. Norway: The Campbell Collaboration; 21.

¹³⁷ Mitchell, O., Wilson, D., Eggers, A. and MacKenzie, D. (2012). *Drug Courts’ Effects on Criminal Offending for Juveniles and Adults*. Campbell Systematic Reviews 2012:4. Norway: The Campbell Collaboration; 7.

¹³⁸ Mitchell, O., Wilson, D., Eggers, A. and MacKenzie, D. (2012). *Drug Courts’ Effects on Criminal Offending for Juveniles and Adults*. Campbell Systematic Reviews 2012:4. Norway: The Campbell Collaboration; 7.

¹³⁹ Juvenile drug courts in the US are operationally similar to adult courts. They aim to provide treatment to young, drug-involved offenders, although violent offenders are typically excluded. The juvenile drug court model is comprised of six stages. The stages include: (1) screening and assessing of young people to identify alcohol or substance use problems; (2) coordinating services across agencies; (3) helping young people and their families make contact with service providers; (4) encouraging offenders to be actively engaged in services; (5) transitioning offenders out of services; and (6) transitioning into long-term supports, such as helping relationships and community resources. Other key elements include collaborative and interdisciplinary planning, frequent judicial reviews, regular drug testing, and clear systems of incentives and sanctions. As substance-abusing adolescents seldom are addicted to alcohol and other drugs in the same way that adults experience addiction, and typically misuse drugs for different reasons, juvenile drug courts focus on changing offenders’ behaviour. They shift the emphasis from a single participant to the entire family and expand the continuum of care to include more comprehensive services. Thus, applying drug court principles to juvenile populations is not as simple as replicating the adult model. The first juvenile drug court was established in the US in 1993, and by 2009 there were more than 500 across the country: National Institute of Justice (nd). *Practice Profile: Juvenile Drug Courts*. <https://www.crimesolutions.gov/PracticeDetails.aspx?ID=14>.

Even worse results for juvenile drug courts were found in a robust analysis that adopted a quasi-experimental design to compare drug court participants with a matched sample of young probationers. Examining reoffending while still on the program and after completion, the analysis showed that juvenile drug court participants actually had worse reoffending outcomes than those on standard probation. The authors suggest that the failure of the juvenile drug courts may be due to many of the courts in the analysis not adhering to best practice standards. In addition, many of the courts and also the treatment agencies were not adhering to principles of risk-need-responsivity, using ‘talk therapy’ and education-based therapy instead of the cognitive behavioural therapy that has proven to be most effective. The review suggests that ‘policymakers, practitioners, and researchers need to seriously consider the question of whether drug court programs should be used with juveniles—at least as presently constituted. The intensity and inherent structure of drug courts may be resulting in the poor outcomes identified in this study’.¹⁴⁰

A similarly robust study across multiple drug court sites compared outcomes in 23 adult drug courts with those of six comparison sites. Comparing 1,157 drug court participants with 627 matched comparison offenders, the study examined both recidivism outcomes and psychosocial outcomes. Analyses showed that drug court participants were significantly less likely than the matched comparison offenders to relapse into drug use after 18 months (29% versus 46% testing positive for drugs; 56% versus 76% self-reporting illicit drug use), and those who did relapse used drugs significantly less frequently. Drug court participants also committed significantly fewer criminal offences following the program (40% of participants reported criminal activity versus 53% of the comparison group) as well as reporting about half as many criminal acts on average (43.0 versus 88.2). Drug court participation reduced drug possession and sales offences, driving while intoxicated and property-related crime. More broadly, drug court participants reaped psychosocial benefits in other areas of their lives, including significantly less family conflict. They were also more likely to be enrolled in school and were less likely to need assistance with employment, education or financial issues. Participants with histories of violence reduced their drug use just as much as those without, and reduced their criminal activity even more. Those reporting more frequent drug use at baseline showed a particularly large reduction in drug use at the 18-month interview. Participants showing symptoms of mental health problems, however, showed smaller reductions in both drug use and crime. The impact of the court was durable: improved outcomes at the six-month interview were nearly identical to those at the 18-month interview.¹⁴¹

In terms of best practice, the study found that the most effective drug courts held more frequent judicial status hearings (at least twice per month), had higher and more consistent levels of praise from the judge, involved more frequent urine drug testing (at least twice per week), had more frequent clinical case management sessions (at least once per week), and involved a minimum of 35 days of formal drug-abuse treatment services.¹⁴²

¹⁴⁰ Latessa, E., Sullivan, C., Blair, L., Sullivan, C. and Smith, P. (2013). *Final Report Outcome and Process Evaluation of Juvenile Drug Courts*. Cincinnati: Center for Criminal Justice Research, University of Cincinnati; 15.

¹⁴¹ Rossman, S., Roman, J., Zweig, J., Rempel, M. and Lindquist, C. (2011). *The Multisite Adult Drug Court Evaluation: Executive Summary*. Washington, DC: Urban Institute; 5-7. See also Rossman, S. and Zweig, J. (2012). *The Multisite Adult Drug Court Evaluation*. Alexandria: National Association of Drug Court Professionals; 2-3.

¹⁴² Rossman, S. and Zweig, J. (2012). *The Multisite Adult Drug Court Evaluation*. Alexandria: National Association of Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 53

A handful of studies have attempted to examine the moderator variables that influence whether drug courts will be effective at reducing recidivism. While these have generally been hampered by a lack of detailed information on court policies and procedures, one meta-analysis supplemented data from 60 primary outcome evaluations (representing 76 distinct drug courts and six multi-site evaluations) with data collected via a survey of drug courts about their policies and practices at the time they were evaluated.¹⁴³

Results of the meta-analysis suggested a number of policy implications to improve current practice in drug courts:¹⁴⁴

- Adult drug courts, on average, reduce recidivism by about 10 per cent, while juvenile drug courts have an average reduction of five per cent. The limited ability of juvenile drug courts to reduce recidivism may be the result of accepting juveniles who are inappropriate for the drug court services. While further research is necessary to explore this issue, juvenile drug courts should take great care to ensure that they are admitting appropriate clients and matching them to appropriate services on the basis of risk, need, and responsiveness.
- Pre-adjudication drug courts have a larger effect size (13%) than post-adjudication courts (10%), although the difference was not statistically significant. Mixed models were found not to be effective at reducing recidivism. These findings seem to suggest that drug courts are more effective when the consequence of failure is the imposition of charges rather than the imposition of a sentence (or, alternatively, when the benefit of graduation is avoiding a conviction rather than avoiding a proscribed sanction). When designing drug courts, therefore, the focus should be on a 'pure' drug court model. That is, jurisdictions should seek to implement either pre- or post-adjudication models, but should refrain from implementing mixed model drug courts.
- Drug courts designed to last between eight and 16 months were more effective (11% reduction in recidivism) than those designed to last less than eight months or more than 16 months (3% reduction). As such, drug courts should design their programs so that successful participants can graduate from their programs within that time frame to allow enough time for genuine behavioural change to take effect, while not creating treatment fatigue.
- Courts that accept violent offenders were associated with reduced effect sizes.¹⁴⁵ It is likely that this is due to an inability of courts to provide adequate treatment services that match violent offenders' criminogenic needs. Drug courts should therefore not accept violent offenders or

Drug Court Professionals; 4.

¹⁴³ Shaffer, D. (2006). *Reconsidering Drug Court Effectiveness: A Meta-analytic Review: Executive Summary*. Las Vegas: University of Nevada; 2.

¹⁴⁴ Shaffer, D. (2006). *Reconsidering Drug Court Effectiveness: A Meta-analytic Review: Executive Summary*. Las Vegas: University of Nevada; 12-13.

¹⁴⁵ This finding is consistent with the systematic review undertaken by Mitchell et al (2012) but conflicts with the findings of research such as that by Rossman and Zweig (2012) and Saum and Hiller (2008). It is likely that the conflicting findings are due to the different units of analysis: whereas these meta-analyses and reviews are focused on the *court* as the unit of analysis, the statistical analyses of predictors of recidivism use the *individual* as the unit of analysis. The inconsistency of findings suggests that violent offenders should not necessarily be automatically excluded from drug courts; rather, their inclusion should be determined on a case-by-case basis.

those with a history of non-compliance unless they are able to provide services targeting those areas. Drug courts should also reconsider policies allowing past failures to re-enter the drug court program.

- Objective, validated assessments of risk, needs and responsivity should be used by drug courts and should guide decision-making.
- Drug courts should match program requirements (i.e. education, community service, fines) to the needs of the participants. Similarly, drug courts should consider matching the number of required contacts (status hearings, drug tests, treatment hours, supervision contacts) to the risk level of the offender.
- Drug courts should reconsider requiring participants to attend AA/NA services and should take care to ensure that treatment activities, including family training, relapse prevention, and aftercare services, are consistent with the literature on effective interventions.
- Drug courts should retain some control over the type of services being provided by treatment agencies.
- Program participants should be made aware of the benefits and consequences of graduation or failure through formal policies. It is also important that the benefits and consequences are salient. While further research should explore this issue, the current findings would suggest that imposing charges upon failure or dismissing charges upon graduation may be sufficient for promoting continued participation throughout the drug court program.
- Participants should be held accountable on their first positive drug test and should receive a formal sanction. Similarly, courts should respond to major infractions immediately and should have a formal system of punishments.
- Drug courts should provide meaningful (i.e. individualised) rewards within a structured system of reinforcers.
- Successful graduates of drug courts should receive stepped down services following graduation rather than immediately being released from all supervision.
- Drug court staff should participate in national conferences and should attend weekly team meetings. Initial training opportunities may need enhancement and should likely include information on effective interventions in addition to the drug court model. The certification process for treatment staff may also need to be reconsidered; it will be important that this process provides training on evidence-based practices for offender populations.

These conclusions are broadly consistent with the best practice principles identified above, but are additionally valuable in that they are based on robust statistical analysis to identify those characteristics of drug courts that are likely to increase their effectiveness. They are also, for the most part, directly relevant to courts in other jurisdictions.

Cost-effectiveness of drug courts

The Washington State Institute of Public Policy (WSIPP) has undertaken a benefit-cost analysis¹⁴⁶ of implementing drug courts in Washington State.¹⁴⁷ The analysis calculates the total financial benefits of these courts (at December 2015) as \$12,972 per person, the net program financial costs as \$4,958 per person, with an overall benefit to cost ratio of \$2.62.¹⁴⁸ The analysis finds that there is a 100 per cent chance that drug courts will produce benefits greater than their costs, although benefits start outweighing costs only five years following the initial investment. While only 10 courts were able to be assessed in their benefit-cost analysis of juvenile drug courts, WSIPP calculated a benefit to cost ratio of \$4.50 for this intervention, with a 94 per cent chance of a positive net present value.¹⁴⁹ However, the small number of courts means that these results must be interpreted with some caution.

Another study conducted a review of the literature to identify the impact of drug courts on both recidivism and costs. The review concluded that ‘evaluations of the net costs and benefits of drug courts nationwide generally find that drug courts save taxpayer dollars compared to simple probation and/or incarceration, primarily due to reductions in arrests, case processing, jail occupancy and victimization costs’.¹⁵⁰

The review identified the following conclusions from a number of key evaluations:¹⁵¹

- In 2005, the Government Accountability Office found that seven drug courts evaluated had net benefits of between \$1,000 and \$15,000 per participant due to reduced recidivism and avoided costs to potential victims.
- Evaluations of 11 drug courts in Oregon, Washington, Kentucky and Missouri found substantial cost savings. The Oregon drug court was estimated to save \$3,500 per participant

¹⁴⁶ The Washington State Institute of Public Policy approach to identifying evidence-based programs and policies has three main steps: 1) using meta-analysis to identify ‘what works’ (and what does not work) to improve outcomes, based on ‘credible’ evaluations; 2) calculating whether the benefits of a program exceed its costs; and 3) estimating the risk of investing in a program by testing the sensitivity of the results. For this analysis, 70 separate effects of drug courts on recidivism rates were examined in the meta-analysis, published in 56 different reports. The total number of individuals in the treatment groups in the studies was 28,281. For more information, see Washington State Institute for Public Policy (2016). *Benefit-cost Technical Documentation*. Olympia, WA: Author.

¹⁴⁷ WSIPP has drawn the per-participant cost estimate from Barnoski, R. and Aos, S. (2003). *Washington State's Drug Courts for Adult Defendants: Outcome Evaluation and Cost-Benefit Analysis*. Olympia: Washington State Institute for Public Policy. Dollar values from 2003 are adjusted to 2014 value.

¹⁴⁸ These figures are life cycle benefits and costs. Dollars are expressed in US dollars for the base year of 2014.

¹⁴⁹ These figures are life cycle benefits and costs. Dollars are expressed in US dollars for the base year of 2011. Drake, E. (2012). *Chemical Dependency Treatment for Offenders: A Review of the Evidence and Benefit-Cost Findings*. Olympia: Washington State Institute for Public Policy; 46.

¹⁵⁰ King, R. and Pasquarella, J. (2009). *Drug Courts: A Review of the Evidence*. Washington, DC: The Sentencing Project; 8.

¹⁵¹ King, R. and Pasquarella, J. (2009). *Drug Courts: A Review of the Evidence*. Washington, DC: The Sentencing Project; 8.

due to reduced recidivism and incarceration. Six drug courts in Washington saved an average of \$6,800 per participant based on reduced rearrests and victimisation costs.

- A study of five drug courts in Washington found \$1.74 in benefits for every dollar invested in drug courts. This benefit results from reduced court costs associated with a decline in recidivism.
- A study in St. Louis found that the initial cost of drug courts (\$7,800 per graduate) exceeded that of someone completing simple probation (\$6,300 per person), but two years after the completion of the program, drug court graduates were realising a net savings of \$2,600 per person resulting from lower jail costs, reduced crime victimisation, and healthcare costs.
- A 1997 national survey of court administrators in 97 drug courts reported savings of as much as \$400,000 per year accumulated from the reduction in pre-trial stays and jail beds alone. The Multnomah County evaluation found that ten years of operating a drug court resulted in \$9 million in savings based on case processing alone. Taking into account factors such as reduced recidivism and jail time and the savings due to reduced victimisation, the court saved taxpayers \$88 million.
- Two counties in Michigan reported cost savings of \$1 million over a two-year period (or \$3,000 per participant) from fewer re-arrests, less probation supervision time and fewer new court cases.

Clearly, then, drug courts in the US have achieved significant (although quite variable) cost savings. The costs associated with drug courts are found primarily in drug treatment services, while the primary benefit is to be found in averted victimisations, via reductions in recidivism.¹⁵²

While there have been no meta-analyses of evaluations of Australian drug courts, most of the existing courts have undergone individual evaluations. The NSW Drug Court has been evaluated more closely than any of the other courts in Australia.

Evaluation of the Drug Court of NSW

The Drug Court of NSW was the first Drug Court to be trialled and evaluated in Australia. The Court began operation at Parramatta in February 1999, and is now found in a further two locations – in the Hunter Region of NSW and in the Sydney central business district.¹⁵³

¹⁵² Downey, P. and Roman, J. (2014). *Cost-Benefit Analysis: A Guide for Drug Courts and Other Criminal Justice Programs*. Washington, DC: National Institute of Justice; 24.

¹⁵³ NSW also established a Youth Drug Court in 2000. An evaluation in 2004 found that young women were less likely than expected to be referred to, or accepted into, the court and were less likely to complete the program successfully than were young males. Around 60 per cent of participants offended while on the program, and two-fifths went on to spend time in detention, 'indicating that diversion from incarceration is often only temporary'. Participants reported that their motivation to use drugs had decreased and that their health and mental health had improved, although these improvements seemed to be transient. The evaluation concludes that it was not possible to state definitively that the Youth Drug Court had achieved better outcomes than might have been possible with other interventions. It recommended, however, that the program continue, with improvements to clarify and codify sanctions for non-compliance, to develop guidelines or practice directions for the operations of the court team, to review eligibility criteria and to engage a single manager to oversee the program and coordinate the different agencies involved: Eardley, T., McNab, J., Fisher, K. and Kozlina, S. (2004). *Evaluation of the New South Wales Youth Drug Court Pilot Program*. Sydney: University of NSW Evaluation Consortium. The court was closed in July 2012. A similar fate appears to have

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Unlike many other drug courts, the Drug Court of NSW takes referrals from both the Local and District Courts, allowing offenders who have committed more serious offences to participate.

The court has been evaluated twice by the NSW Bureau of Crime Statistics and Research: once in 2002 and again in 2008. The two sets of evaluations are complementary, in that the earlier evaluation examined both cost-effectiveness and broader health and wellbeing outcomes of drug court participants, while the later evaluation examined costs and recidivism outcomes.¹⁵⁴ Evaluation of the drug court was integrated into the planning stages of the project from the outset, such that the evaluation that resulted was arguably one of the most rigorous drug court evaluations yet conducted.¹⁵⁵

Effectiveness of the Drug Court of NSW

The health and wellbeing component of the 2002 evaluation involved face-to-face interviews with 202 participants in the NSW Drug Court prior to the start of the program and three follow-up interviews at four-month intervals with people who remained on the program. Approximately one third of the baseline sample (51 participants) completed all three follow-up interviews.

The evaluation found that statistically significant improvements were achieved in each of the outcome measures examined: health, social functioning and drug use. These improvements were sustained over the twelve-month follow-up period. In addition, illicit drug use was significantly reduced throughout participation on the program: median weekly spending, used as a proxy measure for illicit drug use, fell from \$1000 per week prior to commencing the program to \$175 per week after four months on the program.¹⁵⁶

Despite the success of the program at improving health, wellbeing and drug use outcomes, it should be noted that 62 per cent of participants were terminated from the program within the first year. Comparing those who left the program with those who remained after 12 months, analysis showed that the only statistically significant predictor of retention was the length of the suspended sentence that was initially imposed to allow program participation: of the participants who received a suspended sentence greater than six months, 47 per cent remained on the program for at least twelve months (or

befallen the ACT Youth Drug and Alcohol Court, established in 2011 as a pre-sentencing program in the Children's Court that employed judicial and therapeutic interventions to address alcohol and other drug use and other needs young people who might otherwise have been incarcerated: Hughes, C., Shanahan, M., Ritter, A., McDonald, D. and Gray-Weale, F. (2013). *Evaluation of the Australian Capital Territory Drug Diversion Programs*. Sydney: Drug Policy Modelling Program, National Drug and Alcohol Research Centre, The University of New South Wales. No mention of the court now appears on the ACT Magistrates Court website.

¹⁵⁴ There was also a process evaluation of the court in 2002. Given that the processes of the court changed following the 2002 series of evaluations, a summary of the process evaluation is not included here.

¹⁵⁵ Freeman, K. (2003). *Evaluating Australia's First Drug Court: Research Challenges*. Presented at the Evaluation in Crime and Justice: Trends and Methods Conference convened by the Australian Institute of Criminology in conjunction with the Australian Bureau of Statistics, Canberra, 24-25 March 2003.

¹⁵⁶ Freeman, K. (2002). *New South Wales Drug Court Evaluation: Health, Well-Being And Participant Satisfaction*. Sydney: NSW Bureau of Crime Statistics and Research; 18-25.

graduated within this period), compared with 25 per cent of participants who had received a suspended sentence of less than six months.¹⁵⁷

Finally, participant satisfaction with the NSW Drug Court program was very high. Less than 15 per cent of participants indicated any dissatisfaction with treatment services, Legal Aid or Probation and Parole.¹⁵⁸

For the 2008 evaluation, while a randomised assignment to the court was no longer possible, a rigorous statistical methodology was used to re-evaluate the effectiveness of the drug court following a number of changes to its operation. Since the earlier evaluation, sanctions for non-compliance were made more flexible, participants were given formal warnings for failing to progress, police were given a greater role in screening for eligibility and the threshold for program termination was reduced.

The evaluation compared reconviction rates among 645 Drug Court participants¹⁵⁹ with those among a matched sample of 329 offenders who had been deemed eligible for participation but who were excluded either due to residing out of the catchment area or having been convicted of a violence offence. The results confirmed the earlier evaluation. Controlling for other factors, participants in the NSW Drug Court were less likely to be reconvicted than offenders given conventional sanctions (mostly imprisonment). Specifically, Drug Court participants were 17 per cent less likely to be reconvicted for any offence, 30 per cent less likely to be reconvicted for a violent offence and 38 per cent less likely to be reconvicted for a drug offence at any point during the follow-up period. No significant differences were found for property offences.¹⁶⁰ Drug Court participants were also slower to reoffend.

Acknowledging the impact on outcomes of people who did not complete the program, the evaluation identified characteristics of people in the different groups in order to control for these characteristics in a subsequent analysis comparing only those who completed the program with the control group. Participants who completed the program were:¹⁶¹

- less likely than the Drug Court Terminated Group but more likely than the Comparison Group to have multiple concurrent offences;
- less likely than either the Drug Court Terminated Group or the Comparison Group to have a violent index offence;

¹⁵⁷ Freeman, K. (2002). *New South Wales Drug Court Evaluation: Health, Well-Being And Participant Satisfaction*. Sydney: NSW Bureau of Crime Statistics and Research; 26.

¹⁵⁸ Freeman, K. (2002). *New South Wales Drug Court Evaluation: Health, Well-Being And Participant Satisfaction*. Sydney: NSW Bureau of Crime Statistics and Research; 27.

¹⁵⁹ As the Drug Court group included both program completers and those who were terminated from the program, this group was labeled the 'intention-to-treat' group.

¹⁶⁰ Weatherburn, D., Jones, C., Snowball, L and Hua, J. (2008). 'The NSW Drug Court: A Re-evaluation of its Effectiveness'. *Crime and Justice Bulletin* No 121; 8.

¹⁶¹ Weatherburn, D., Jones, C., Snowball, L and Hua, J. (2008). 'The NSW Drug Court: A Re-evaluation of its Effectiveness'. *Crime and Justice Bulletin* No 121; 11.

- less likely than either the Drug Court Terminated Group or the Comparison Group to have multiple prior convictions;
- more likely than the Drug Court Terminated or Comparison Group to have no prior conviction for a violent offence;
- more likely than the Comparison Group to reside in the catchment area; and
- less likely than the Drug Court Terminated or Comparison Group to be reconvicted of an offence against the person.

Controlling for these factors, Cox regression analysis¹⁶² in the second stage of the analysis found even greater support for the effectiveness of the Drug Court, as those who completed the program were:¹⁶³

- 37 per cent less likely than Comparison Group participants to be reconvicted of any offence at any point during the follow-up period (compared with a 17 per cent advantage for the Drug Court Group in the intention-to-treat analysis);
- 65 per cent less likely than Comparison Group participants to be reconvicted of an offence against the person (compared with a 30 per cent advantage for the Drug Court Group in the intention-to-treat analysis);
- 35 per cent less likely than Comparison Group participants to be reconvicted of a property offence (compared with no significant effect for the Drug Court in the intention-to-treat analysis); and
- 58 per cent less likely than Comparison Group participants to be reconvicted of a drug offence (compared with a 37 per cent advantage for the Drug Court Group in the intention-to-treat analysis).

Program completers were also slower to reoffend across all four offence measures.

Both evaluations thus provide strong support for the effectiveness of the Drug Court of NSW in reducing the rates of various types of reoffending and increasing the time to reoffending.

Cost-effectiveness of the Drug Court of NSW

As part of the 2002 evaluation, the cost-effectiveness of the NSW Drug Court was also examined. The evaluation took advantage of the fact that, when there were more offenders who were eligible for the court than there were places in detoxification, a random ballot was used to determine who would be able to participate. This essentially allowed a randomised control trial that compared recidivism outcomes for 309 people who participated in the drug court with 191 who were deemed eligible, but were not selected and were instead treated in the usual way (usually via a sentence of imprisonment). Recidivism was measured as the time to reoffending and the frequency of the offending for a range of

¹⁶² The analysis showed that people who had completed the program had a hazard ratio for any reoffending of 0.63, meaning that they were 37 per cent less likely to be reconvicted of any offence: Weatherburn, D., Jones, C., Snowball, L and Hua, J. (2008). 'The NSW Drug Court: A Re-evaluation of its Effectiveness'. *Crime and Justice Bulletin* No 121; 13.

¹⁶³ Weatherburn, D., Jones, C., Snowball, L and Hua, J. (2008). 'The NSW Drug Court: A Re-evaluation of its Effectiveness'. *Crime and Justice Bulletin* No 121; 11-12.

theft, fraud and drug offences. Controls for age, gender, prior imprisonment and the number of prior convictions were also included.

The evaluation found that the Drug Court was more effective than conventional courts in reducing the risk of recidivism, although the effect was fairly modest, as the mean time to the first reconviction for the 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.¹⁶⁴

The cost per day per participant¹⁶⁵ 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 Drug Court were health care treatment, court attendances and the cost of sanctions (particularly imprisonment) for non-compliance.¹⁶⁶

The 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.¹⁶⁷

¹⁶⁴ Lind, B., Weatherburn, D, and Chen, S. (2002). *New South Wales Drug Court Evaluation: Cost-Effectiveness*. Sydney: NSW Bureau of Crime Statistics and Research; vii.

¹⁶⁵ Overall, the average cost per episode of treatment in the Drug Court was \$46,224 and the average cost of sanctioning someone in the control group was \$35,334. This calculation, however, was deemed unreliable due to the low graduation rate of the program. An average daily cost was calculated to deal with this problem: Lind, B., Weatherburn, D, and Chen, S. (2002). *New South Wales Drug Court Evaluation: Cost-Effectiveness*. Sydney: NSW Bureau of Crime Statistics and Research; 62.

¹⁶⁶ One of the major costs of the Drug Court was the cost of imprisonment used as a sanction for non-compliance or in response to program termination. The court actually changed its practices to introduce suspended sentences and permit participants to reduce their sanctions through good behaviour. This was designed to improve efficiency (reducing the 'churn' of offenders through the prison system when breaches were being punished with short periods in custody) and to improve effectiveness (introducing loss of prison time as a reward). The removal of short, sharp prison stays (as short as a single day) as a sanction for non-compliance runs counter to the recent waves of 'swift and certain' programs developing in a number of jurisdictions. Based on Hawaii's Opportunity Probation with Enforcement (HOPE) program, the 'swift and certain' approach advocates immediate, predictable sanctions for program non-compliance, often involving terms in custody for one or two days. While evaluations of this approach have shown it to be effective in reducing reoffending while on the program, it does create logistical difficulties in terms of increasing the 'churn' (and therefore the cost) of people entering and exiting prison. Despite this, there have been calls for 'swift and certain' justice to be trialled in Australia, and the Northern Territory is currently developing a trial of its COMMIT program (Compliance Management or Incarceration in the Territory). This trial will involve 30-50 medium-high risk offenders who have been placed on a suspended sentence for alcohol and/or drug issues and who have previously been imprisoned and have also been non-compliant. As short prison stays will be used as a sanction for breach, the problem of 'churn' will be addressed by having a separate, abbreviated intake process for this cohort, as well as reduced services available. Consideration of testing a 'swift and certain' approach is also taking place in Victoria. Deakin University workshop: *Implementing Swift, Certain and Fair Justice in Victoria*. Melbourne, 27 June 2016.

¹⁶⁷ Lind, B., Weatherburn, D, and Chen, S. (2002). *New South Wales Drug Court Evaluation: Cost-Effectiveness*.
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The evaluation concludes that the cost-effectiveness of the program is heartening, given the lack of experience in Australia with establishing and running a drug court. This is particularly so given that the cost perspective was limited to measuring treatment costs; broader societal benefits, such as reduced demand on health and criminal justice systems, and reduced pain and suffering associated with victimisation, were ignored.

Following the encouraging results of the 2002 evaluation, the 2008 evaluation also included an assessment of the costs of the NSW Drug Court. Examining outcomes of 287 program participants, the analysis showed that the average Drug Court participant would require one pre-program assessment, 32 report-back appearances in court and one graduation or termination appearance. The average number of urinalysis tests was 89 and average number of days spent in detoxification was 22 days.

The total cost of the program was estimated to be \$32.752 million over two years (or \$16.376 million per annum), giving a mean cost of \$114,119 per participant. The largest drivers of this total cost were found to be the cost of final imprisonment following unsuccessful participation in the Drug Court program (51%) and the cost of staffing and running the court (19%). However, the analysis estimated 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 was thus estimated at \$1.758 million.¹⁶⁸

The evaluation concludes that the Drug Court of NSW 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’.¹⁶⁹

In a related study, a non-blinded randomised control trial was undertaken in the Parramatta Drug Court to examine whether intensive judicial supervision during the early stages of drug court participation reduces subsequent rates of drug use and sanctioning. Two groups were assessed: 70 people in a supervision as usual group, involving once per week appearances before the judge for the three months of phase 1 of the program, and 66 people in an intensive judicial supervision group, involving twice weekly appearances and an extended phase 1 duration of four months. There were no statistically significant differences between the groups on a range of demographic and offending characteristics.¹⁷⁰

The research showed that participants in the treatment group (intensive supervision) were significantly less likely to return positive urinalysis tests and had a significantly greater number of episodes of abstinence than participants in the control group. Treatment group participants were also less likely to

Sydney: NSW Bureau of Crime Statistics and Research; viii.

¹⁶⁸ Goodall, S., Norman, R. and Haas, M. (2008). ‘The Costs of NSW Drug Court’. *Crime and Justice Bulletin* No 122; 10.

¹⁶⁹ Goodall, S., Norman, R. and Haas, M. (2008). ‘The Costs of NSW Drug Court’. *Crime and Justice Bulletin* No 122; 14.

¹⁷⁰ Jones, C. (2011). ‘Intensive Judicial Supervision and Drug Court Outcomes: Interim Findings from a Randomised Controlled Trial’. *Crime and Justice Bulletin* No 152; 4.

accrue sanctions. There was no significant difference between the two groups in the odds of having sanctions waived or having to serve sanctions in prison.¹⁷¹

While the author accepts the value of intensive judicial supervision in improving drug court outcomes, some caution is suggested, especially with regard to understanding the mechanisms that lead to the effect. He notes: ‘it is not clear at present whether the IJS [intensive judicial supervision] effect is due to greater exposure to the judge and the other team members, or whether it might be explained by changes in the perceived risk or celerity of apprehension for non-compliant behaviour. Likewise, it is not clear from this study whether IJS is more effective for people who present with particular characteristics’.¹⁷²

The mechanisms underlying the effectiveness of intensive judicial supervision remain untested in Australia.

The following section provides information on the key features of the Drug Court of NSW.¹⁷³

Key features

Aims

The objectives of the Drug Court of NSW are to:

- reduce the drug dependency of eligible persons;
- promote the re-integration of such drug dependent persons into the community; and
- reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

These objectives are set out in the *Drug Court Act 1988* (NSW). Only the Drug Court of NSW and the Victorian Drug Court are underpinned by specific legislation.

Target population

To be eligible for the Drug Court a person must:

- be highly likely to be sentenced to fulltime imprisonment if convicted;
- have indicated that he or she will plead guilty to the offence;

¹⁷¹ The author recommended that the Drug Court should increase levels of supervision during the early stages of the program, and notes that the Parramatta Drug Court had, in fact, already implemented this change in policy: all new entrants are supervised twice per week for the first six weeks of the program and levels of supervision are decreased only if participants show sustained periods of compliance with the program.

¹⁷² Jones, C. (2011). ‘Intensive Judicial Supervision and Drug Court Outcomes: Interim Findings from a Randomised Controlled Trial’. *Crime and Justice Bulletin* No 152; 12.

¹⁷³ Information on the key features of the court has been taken from the Drug Court of NSW website: <http://www.drugcourt.justice.nsw.gov.au>.

- be dependent on the use of prohibited drugs;
- live in the catchment area served by the court;
- be referred from either the Local Court or the District Court in the catchment area;
- be 18 years of age or over; and
- be willing to participate.

People are not eligible if they are:

- charged with an offence involving violent conduct;
- charged with a sexual offence or a strictly indictable supply of prohibited drugs offence; or
- suffering from a mental condition that could prevent or restrict participation in the program.

Operation

Before the offender is brought to the Drug Court, the Drug Court Registry staff conduct a preliminary eligibility screening based on the person's age, location of residence and referring court. Whenever there are more eligible applicants than there are available program places, a weekly random selection process occurs to determine which applicants are assigned to available places on the program.

At first appearance before the Drug Court preliminary inquiries as to eligibility are made, including an evaluation of drug dependency. If the Court decides that an applicant is eligible, the person is remanded in custody for detoxification and assessment. All participants enter custody, even if they are referred to the Drug Court whilst they are on bail. During the time in custody, further information about the requirements of the Drug Court are explained.

The initial assessment takes up to two weeks, and includes general and mental health reviews.

After the initial assessment stage the offender appears before the Drug Court where a guilty plea is entered. A suspended sentence is then imposed to allow for participation in the Drug Court. Treatment options include abstinence, methadone and buprenorphine programs, conducted either in the community or within residential rehabilitation settings.

Although each participant has an individualised treatment plan, all plans will involve three phases of treatment. Each phase has distinct goals that must be achieved before the participant graduates to the next phase.

Phase 1 is the 'initiation' phase where participants are expected to reduce drug use, stabilise their physical health and cease criminal activity. In this phase, participants are required to undergo drug testing at least three times a week and to report back to the Drug Court once a week. The average duration of this phase is three months.

Phase 2 is the 'consolidation' phase where participants are expected to remain drug-free and crime-free, and develop life and job skills. In this phase, testing for drug use is conducted twice weekly and participants report back to the court every two weeks. The average duration of this phase is four months.

Phase 3 is the 're-integration' phase where participants are expected to gain or be ready to gain employment, and to be financially responsible. In Phase 3, drug testing is conducted twice weekly and participants report back to the court monthly. The average duration of this phase is five months.

All participants are closely monitored by the court throughout the program. The Drug Court team meets before court each day to receive reports from treatment providers and Probation Officers, and to discuss those participants who will be appearing that day. The Judge then speaks to each participant about progress based on information provided at this meeting.

The court may confer rewards on a participant for maintaining a satisfactory level of compliance with their individual program. Rewards may be as simple as a round of applause, but may also include:

- special privileges such as being allowed to seek and take part in employment;
- a change in the frequency of counselling or other treatment;
- a decrease in supervision;
- a decrease in the frequency of testing for drugs; or
- a change in the nature or frequency of vocational and social services which the participant is required to attend.

Conversely, the court may impose sanctions for failure to comply with the program. The most severe form of sanction available to the court, short of program termination, is a custodial sanction of up to 14 days. Community-based sanctions, such as increased supervision or community work, are also available to the court.

Sanctions may include:

- withdrawal of privileges;
- an increase in the frequency of counselling or other treatment;
- an increase in supervision;
- an increase in the frequency of testing for drugs;
- imprisonment in a correctional centre; or
- a change in the nature or frequency of vocational and social services that the participant is required to attend.

A program will last for at least 12 months unless it is terminated sooner. A Drug Court program can be terminated when:

- the court decides that the participant has substantially complied with the program;
- the participant applies to have it terminated; or
- the court decides that the participant is unlikely to make any further progress in the program, or that further participation poses an unacceptable risk to the community that the offender will re-offend.

When a program is terminated, the court must reconsider the initial sentence. If appropriate, that sentence may be set aside and another sentence imposed in its place. In deciding the final sentence the court will take into consideration the nature of the offender's participation in the program, any sanctions that have been imposed and any time spent in custody during the program.

If a participant has substantially complied with a program, a non-custodial order is the typical sentence imposed.

The Drug Court of NSW may also impose a Compulsory Drug Treatment Order (CDTO) that allows the court to imprison eligible offenders¹⁷⁴ in the Compulsory Drug Treatment Correctional Centre (CDTCC), a small 70-bed prison outside of Sydney. While this approach is unusual, the centre was established in 2006 to address the small, persistent group of drug-related offenders who kept reappearing before the court after exhausting all other intervention options. The three defining features of the Compulsory Drug Treatment Program are that the Senior Judge of the NSW Drug Court provides ongoing judicial supervision throughout the sentence until the offender is eligible for parole, the program requires abstinence and also addresses other offending behaviour, and the treatment is clearly compulsory, with no consent required and no way to appeal. While compulsory treatment is antithetical to principles of therapeutic jurisprudence, the CDTCC incorporates therapeutic policy, principles and practices to support offender freedom and wellbeing. The result of this adherence to the rights of offenders has resulted in offenders and their families actually requesting access to the program.¹⁷⁵

The CDTCC operates as a five-stage post-sentencing program for men who have repeatedly offended in order to support a severe drug dependence. There are three stages to the drug treatment program, followed by Stage 4 (parole) and Stage 5 (voluntary case management) in the community. Stage 1 involves closed detention for at least six months. This stage aims to stabilise participants and to address physical and mental health needs, while providing adult education, work readiness and skills programs, and therapeutic programs that target dynamic risk factors for drug-related offending. Stage 2 involves semi-open detention for at least six months with access to programs in the community, such as employment, training and approved social activities. Therapeutic programs are used in this stage to maintain positive behaviour change. Stage 3 involves community custody at approved accommodation and under intensive supervision. Stage 3 aims to consolidate gains made in earlier stages and increase access to mainstream community services. The Drug Court then determines release on parole.¹⁷⁶

An early evaluation of the pilot program found some promising aspects to the program, including improvements in health and wellbeing and positive perceptions of the program from participants. Drug

¹⁷⁴ Eligibility criteria require participants to be adults, living in metropolitan Sydney, and having been sentenced to a term of imprisonment of between 18 months and six years. Offenders convicted of several specific sexual and violent offences are excluded. If the eligibility criteria are met, the defendant is referred by the sentencing court to the Parramatta Drug Court. At that point the Drug Court considers three additional eligibility criteria: the defendant must have a long-term drug dependence, the facts and antecedents of the offence must indicate long-term drug dependence and associated lifestyle, and the defendant must not suffer from a serious mental condition that may lead to violence or restrict active participation in the program. If this second round of criteria are met, the defendant is assessed for suitability. If a CDTO is imposed, a Personal Plan is developed within three weeks for the judge to approve: <http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/custodial-corrections/table-of-correctional-centres/compulsory-drug-treatment-centre.aspx#CompulsoryDrugTreatmentProgram>.

¹⁷⁵ Birgden, A. and Grant, L. (2010). 'Establishing a Compulsory Drug Treatment Prison: Therapeutic Policy, Principles, and Practices in Addressing Offender Rights and Rehabilitation'. *International Journal of Law and Psychiatry* 33: 341-349.

¹⁷⁶ Information on the operation of the CDTCC has been taken from the NSW Department of Justice website: <http://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/custodial-corrections/table-of-correctional-centres/compulsory-drug-treatment-centre.aspx#CompulsoryDrugTreatmentProgram>.

use, however, appeared to continue throughout the program, with 61 per cent having at least one positive drug test.¹⁷⁷ As the evaluation involved a small sample and no comparison group, the effectiveness of the program remains unproven.

Evaluation of the Victorian Drug Court

The Victorian Drug Court has been operating in Dandenong since 2002 as a division of the Magistrates' Court of Victoria. It was implemented in response to the failure of traditional criminal justice measures to address drug use and related offending adequately.

The court was first evaluated in 2004, when the pilot Drug Court underwent process, program and cost-benefit evaluations, as well as a legislative and policy review.¹⁷⁸ As these evaluations were undertaken when the program was still in its pilot phase, most of the 28 Drug Court participants were still in Phase I of the program, with only four having moved to Phase II. None had completed the program. As these evaluations provide no information on post-intervention outcomes, they are not further discussed.¹⁷⁹

A separate cost-benefit analysis was undertaken for the Department of Justice in 2005. Ten years later, the court was evaluated once again.

Effectiveness of the Victorian Drug Court

In 2014, KPMG released a report on the effectiveness and cost-effectiveness of the Victorian Drug Court for the period 1 July 2010 to 30 June 2013. This report provides more reliable information than the 2004 series of evaluations, as those original analyses were undertaken while the court was still in its pilot phase, so were limited by a lack of outcome data.

The 2014 report showed that the Drug Court was effective in delivering its objectives. Overall, the analysis showed evidence of reduced risk factors, such as medical and psychiatric risk, as well as drug and alcohol risk, indicating that participants had improved health outcomes. All of the participants who had progressed to phases II and III also reported improvements in their family relationships and housing situations, as well as improvements in general life skills.

¹⁷⁷ Dekker, J., O'Brien, K. and Smith, N. (2010). *An Evaluation of the Compulsory Drug Treatment Program (CDTP): Final Report*. Sydney: NSW Bureau of Crime Statistics and Research.

¹⁷⁸ This series of reviews, undertaken by Turning Point Alcohol & Drug Centre and Health Outcomes International Pty Ltd, considered the impact of the Criminal Justice Diversion Program, the Court Referral and Evaluation for Drug Intervention and Treatment program, and the Drug Court. Only Volume One: Overview Report – Final Report and Volume Two: Process Evaluation and Policy & Legislative Review – Final Report appear to be publicly available. The two volumes that focus on the Victorian Drug Court's health and wellbeing outcomes (Volume Three) and cost effectiveness (Volume Four), which includes a comparison of recidivism outcomes between Drug Court participants and a control group, could not be located.

¹⁷⁹ Nonetheless, the evaluations showed that the court was improving participants' social and physical wellbeing and decreasing both criminal behaviour and some types of substance use while on the program. Interestingly, use of cannabis actually increased during the program. These results need to be viewed with extreme caution due to the small sample size and the fact that there were no program completers in the group.

Only a fairly small number of Drug Court participants had completed their program during the period of the evaluation: of the 130 who began the program, 61 either completed the full two-year intervention or had graduated through each phase at an earlier stage. This group was compared with a group of another 61 people who had been imprisoned for a two-year term. Recidivism frequency and severity was measured for both groups over a two-year follow-up period. The control group was matched to the treatment group on the nature of their principle primary offences. This provided a well-matched group in terms of their substance use and entrenched criminal behaviour.¹⁸⁰

Analysis of the effectiveness of the Drug Court showed that the court did indeed reduce recidivism among participants. Compared with the control cohort, the Drug Court cohort recorded the following improvements:¹⁸¹

- a 31 per cent lower rate of reoffending in the first 12 months (51% versus 74%);
- a 34 per cent lower rate of reoffending in the first 24 months (56% versus 85%);
- a shorter time until reoffending rates stopped increasing and plateaued (220 days versus 440 days – the control group’s rate continues to increase until 440 days before plateauing);
- a greater reduction in the average seriousness of offences being committed (a 67% reduction in more serious offences¹⁸² versus a 47% reduction), including:
 - a 90 per cent reduction in trafficking offences;
 - a 54 per cent reduction in assaults with a weapon;
 - a 60 per cent reduction in weapon possession offences;
 - a 70 per cent reduction in burglary and deception offences; and
 - a 30 per cent reduction in theft from of motor vehicle.

Not all recidivism outcomes were positive. For example, analysis showed a 383 per cent increase in theft offences, compared with a 254 per cent increase for the control cohort, as well as a 133 per cent increase in dealing stolen goods (although the control cohort’s drug use offences increased by 500 per cent). In addition, among those Drug Court participants who reoffended, their frequency of offending was higher than among the control group (an average of 1.01 offences per day versus an average of 0.85 offences per day). Thus the court had a significant impact on the rate of reoffending, but not on the frequency of reoffending.¹⁸³

¹⁸⁰ KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 4.

¹⁸¹ KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 4-6.

¹⁸² More serious offences are those listed from 23 to 71 on the National Offence Index: KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 4.

¹⁸³ KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 76.

Notably, stakeholders interviewed for the evaluation strongly suggested that the court alone would not be as effective at reducing reoffending and improving wellbeing without the wrap around support services provided in Dandenong.¹⁸⁴

The evaluation also examined whether the Victorian Drug Court aligns with the leading principles of drug courts developed by the US National Association of Drug Court Professionals and the National Drug Research Institute. Overall, the Drug Court was assessed as reflecting ‘a strong degree of alignment with contemporary leading practice approaches to the design and delivery of drug courts’.¹⁸⁵

Cost-effectiveness of the Victorian Drug Court

Acumen Alliance undertook the first benefit-cost analysis of the Drug Court in 2006.

The overall cost of the Drug Court was assessed at \$2.87 million. The benefits, valued at \$16.65 million in total, were divided into financial, economic and social benefits.¹⁸⁶

Financial Benefits

- fewer cases to be heard through reduced recidivism;
- fewer prison days required whilst participants are supervised in the community;
- fewer prison days required after completion of the order, based on reduced rates of reoffending;
- fewer crimes being committed leading to reduced demand for services for victims of crime;
- fewer drug treatment places required in future;
- fewer emergency accommodation placements required;
- fewer public housing placements required;
- improved health status leading to reduced demand for a range of health services; and
- reduced likelihood of contracting blood borne diseases.

Economic benefits

- impact of reduced number of crimes;
- reduced unemployment;
- improved safety and security in the community; and
- reduced loss of life and disability resulting in increased productivity and economic capacity.

Social benefits

¹⁸⁴ KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 7.

¹⁸⁵ A few slight divergences were noted: the recommended case load is fewer than 125 participants, but the Victorian Drug Court oversees only 60 at any one time; the recommended time for being sober prior to graduation is 90 days, but the Victorian Drug Court requires 84 days of negative tests: KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 41-42.

¹⁸⁶ Acumen Alliance (2005). *Benefit and Cost Analysis of the Drug Court Program: Final Report*. Melbourne: Author; 39.

- reduced costs of preventing crimes and reduced security and insurance expenses;
- improved quality of life for participants, families and communities;
- stabilised family and living situations;
- reduced likelihood of ‘second generation’ effects with fewer drug driven lives amongst the children of participants;
- potential for drug free births;
- improved perceptions of safety and security; and
- community cohesion resulting from increased re-integration and reduced impact of drugs in neighbourhoods.

The overall benefit to cost ratio was assessed as 5.81.

The KPMG 2014 study also showed that the Drug Court is cost-effective. In the absence of detailed cost data, the analysis calculated cost per participant as a straight average of operational costs for 2012-13 divided by the target number of participants at any given time (60 people). On the basis of this calculation, the unit cost of the program was determined to be \$26,000. This is similar to the unit cost of the Drug Court of NSW, which has been assessed as \$24,000.¹⁸⁷

The reduction in the frequency and severity of offending by the Drug Court cohort during the recidivism study was determined to result in 4,492 fewer days of imprisonment (6,125 versus 10,617). At \$270 per day, this represents over \$1.2 million in reduced costs of imprisonment over the two years.¹⁸⁸

In its recommendations for improvements to the Drug Court, KPMG suggested ways to improve service delivery, such as staggered court hearings, longer operating hours and opportunities to include principles of restorative justice in the administration of Drug Treatment Orders. This last suggestion was seen as a way to provide an apology to people who had been affected by the offending, as well as an understanding of the reasons for using a Drug Treatment Order as an alternative to imprisonment.¹⁸⁹

The inclusion of restorative justice principles in drug courts is unusual, but by no means unheard of. For example, the New Zealand Alcohol and Other Drug Treatment Court provides a restorative justice option as part of its program. The process is useful for educating victims on the Drug Court process, allowing victim impact statements to be heard and apologies to be written by the offender, and even allowing victims to attend participant graduations.¹⁹⁰

¹⁸⁷ The estimate for NSW is said to be indicative only: KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 5.

¹⁸⁸ KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 93.

¹⁸⁹ KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates’ Court of Victoria; 98.

¹⁹⁰ New Zealand Ministry of Justice (2014). *Alcohol and Other Drug Treatment Court Handbook*.

The following section provides information on the key features of the Victorian Drug Court.¹⁹¹

Key features

Aims

The Drug Court seeks to improve the safety of the community by focusing on the rehabilitation of offenders with a drug or alcohol dependency and providing assistance in reintegrating them into the community. Its objectives are to improve the health and wellbeing of participants and to reduce the severity and frequency of their reoffending.

The *Sentencing (Amendment) Act 2002* (Vic) is the primary piece of legislation supporting and guiding the Drug Court in its policy, legislation and operations. The Act amended the *Sentencing Act 1991* (Vic) to provide for a Drug Treatment Order (Part 3, Division 2, Subdivision (1C)), amended the *Magistrates' Court Act 1989* (Vic) to establish a Drug Court Division of the Magistrates' Court, and amended the *Corrections Act 1986* (Vic) with respect to the custody of a person subject to a DTO.

In line with evidence-based good practices, the model has adopted the following key features:¹⁹²

- judicial supervision;
- a multi-disciplinary team approach;
- timely intervention;
- requiring consent to participate;
- good access to broader services; and
- an underpinning of harm minimisation.

Target population

The court provides for the sentencing and supervision of the treatment of offenders with a drug and/or alcohol dependency who have committed an offence under the influence of drugs or alcohol or to support a drug or alcohol habit.

To be eligible for participating in the Drug Court program, the offender must meet the following conditions:

- the offender must not be subject to a Parole Order, Combined Custody and Treatment Order or a Sentencing Order of the County or Supreme Court;
- the offender must plead guilty;
- the offender's usual place of residence must be within a postcode area serviced by the Drug Court as specified in the Government Gazette;

¹⁹¹ Information on the key features of the court has been taken from the Magistrates' Court of Victoria website: <https://www.magistratescourt.vic.gov.au/drug-court>.

¹⁹² Alberti, S., King, J., Hales, J. and Swan, A. (2004). *Court Diversion Program Evaluation: Volume One: Over Report – Final Report*. Melbourne: Turning Point Alcohol and Drug Centre and Health Outcomes International; 14.

- the offence must be within the jurisdiction of the Magistrates' Court and punishable upon conviction by up to two years' imprisonment;
- the offence must not be a sexual offence or an offence involving the infliction of actual bodily harm;
- on the balance of probabilities the Drug Court must be satisfied that:
 - the offender is dependent on drugs or alcohol; and
 - the offender's dependency contributed to the commission of the offence;
- the Drug Court considers that under normal conditions, it would not have ordered that the sentence be served by way of intensive corrections in the community nor would it have suspended the sentence; and
- the offender must be willing to consent, in writing, to such a Drug Treatment Order.

Offenders may still be eligible for the Drug Court if they have previously served a term of imprisonment or have previously been found guilty of an offence related to a dependency on drugs or alcohol.

As with other Australian drug courts and the New Zealand Alcohol and Other Drug Treatment Court, the offender must plead guilty prior to being accepted into the Drug Court. Violent and sexual offences are excluded, as is common in drug courts,¹⁹³ and a location-based criterion is in place.¹⁹⁴ Notably, the Victorian Drug Court requires that the substance dependency must be a significant causal factor in the offending behaviour.¹⁹⁵

Operation

Offenders appearing before the Drug Court can be sentenced to a Drug Treatment Order (DTO) for two years. The DTO includes a treatment and supervision component and a custodial component. Custody must not exceed two years, and is held in abeyance to allow for the treatment of the offender. It may, however, be activated by the Drug Court at any time throughout the DTO. In this way, the DTO may be seen as performing a similar function to the suspended sentence employed by the Drug Court of NSW. As in NSW, it uses a formal sentencing option to provide leverage to the court to encourage program compliance.¹⁹⁶

The Drug Court has a dedicated magistrate who is responsible for each person's treatment and supervision. The DTO will include specific conditions that are designed to address the drug and alcohol

¹⁹³ Western Australia, in contrast, does not specifically exclude any offence types. South Australia has a broader exclusion of major indictable offences.

¹⁹⁴ The catchment area for the Victorian Drug Court is large: more than 50 postcodes and over 100 suburbs are included.

¹⁹⁵ Other jurisdictions, such as NSW, have a lower threshold for the relationship between substance use and crime, in that they do not require the dependency to be causally related to the offending.

¹⁹⁶ In contrast, drug court programs in South Australia, Western Australia, and New Zealand act as pre-sentence options. The leverage associated with the pre-sentence approach is based on receiving a lesser sentence than might otherwise be imposed if the offender were to fail to complete the program. The leverage associated with the post-sentence approach is based on the threat of a custodial sentence being activated.

dependency.¹⁹⁷ As in all drug courts, a multi-disciplinary team is involved in supervising program participants, consisting of case managers, clinical advisers, and a dedicated police prosecutor and defence lawyer.

The DTO comprises three phases, each with different treatment requirements and expectations of the participants: Stabilisation (Phase I), Consolidation (Phase II), and Re-integration (Phase III). The principal goals of Phase I focus on stabilizing accommodation, income and health, as well as reducing drug use and criminal behaviour. This phase is anticipated to last an average of 12 to 24 weeks. Phase II aims to see participants be drug and crime free, consolidate their social and domestic environment, develop life skills, identify major life issues and improve health and wellbeing. This phase is also anticipated to last 12 to 24 weeks on average. The goals of the final phase include accepting a drug free and crime free lifestyle and remaining relatively drug free, maintaining a stable environment and good health, gaining employment or returning to study, and being fiscally responsible. This phase is anticipated to last 26 to 52 weeks on average.¹⁹⁸ Notably, court addresses the issue of homelessness by accessing transitional housing and specialist homelessness support from existing community-based providers, acknowledging the role of stable housing in reducing drug use.

The DTO includes both core conditions and program conditions. The core conditions applying to all participants include attending the court as required, regular reporting, attending treatment and not offending or leaving the state without notification. Program conditions may include substance use testing, detoxification or other treatment, health and mental health assessment, participation in life skills programs (such as vocational, education or employment programs) and residence or non-association restrictions. Conditions of the order may be varied at regular review hearings.

If any of the conditions included in the DTO is breached, the order may be cancelled and the offender sentenced to serve the unexpired portion of the sentence in prison.

Prior to each review hearing, the Drug Court team holds a case conference to discuss the person's progress and performance, and to consider appropriate sanctions or rewards. While the treatment provider may be invited to the conference, the participant is not to be present.

Review hearings may be weekly, fortnightly or monthly depending on the phase of the program. The purpose of the hearing is to hear from the participant about progress and discuss any issues that may have been raised in the case conference. The magistrate then decides whether the DTO needs to be varied or whether a reward or sanction should be imposed. The participant signs a new DTO prior to leaving the court.

¹⁹⁷ Unlike other drug courts in Australia, the Victorian Drug Court includes alcohol in its purview. The New Zealand Alcohol and Other Drug Treatment Court also allows alcohol dependency. In contrast, courts in NSW, South Australia and Western Australia were designed to address illicit drug abuse only.

¹⁹⁸ Alberti, S., King, J., Hales, J. and Swan, A. (2004). *Court Diversion Program Evaluation: Volume One: Over Report – Final Report*. Melbourne: Turning Point Alcohol and Drug Centre and Health Outcomes International; 16. As the initial pilot found that each phase was taking up to twice as long as originally expected, the anticipated average durations were changed from single figures to a range. For example, Phases I and II were originally anticipated to take 12 weeks, but were amended to an anticipated 12 to 24 weeks: Acumen Alliance (2005). *Benefit and Cost Analysis of the Drug Court Program: Final Report*. Melbourne: Author; 19.

The Drug Court uses a system of escalating rewards to acknowledge progress and encourage continued compliance as well as escalating sanctions to motivate compliance. Possible rewards and sanctions include:¹⁹⁹

	Guideline sanctions	Guideline rewards
Low	Verbal warning Keep a drug diary	Verbal praise
Moderately low	Admonishment from DCV Magistrate Write a journal entry Write an essay	Verbal praise and clapping
Moderate	Court Review Sit-In Sanction ²⁸ Community work days imposed Increase in frequency of court appearance Increase in frequency of case management Increase in frequency of drug testing Imprisonment days imposed	Court Review Quick List ²⁹ Reduction of community work days Reduction of imprisonment days Reduction in frequency of court appearance Reduction in frequency of case management Reduction in frequency of drug testing Fishbowl reward ³⁰
Moderately high	Phase demotion Activation of imprisonment days, ³¹ following by full phase demotion if not recently actioned	Phase progression
High	Warrant of arrest issued Order suspension Order cancellation and resentencing	Order completion Order graduation

The Drug Court magistrate also has the power to activate the custodial component of the DTO in response to non-compliance. The purpose of imposing a short term of imprisonment is to maximise an offender's compliance and ultimately to retain offenders on the program. The minimum period of imprisonment that a magistrate can impose in response to non-compliance is seven days.²⁰⁰ The DTO may also be cancelled as a reward.

Evaluation of the South Australian Drug Court

The South Australian Drug Court was established in June 2000 and operates only in the Adelaide Magistrates Court. Based on the US drug court model, it combines intensive judicial supervision, mandatory drug testing, escalating sanctions and treatment and support services.

¹⁹⁹ KPMG (2014). *Evaluation of the Drug Court of Victoria: Final Report*. Melbourne: Magistrates' Court of Victoria; 22. Footnotes in the image are not presented in this report.

²⁰⁰ The restriction on the minimum imprisonment term allowed to be imposed may be problematic, as research has shown that courts that use custodial terms of more than six days tend to have worse recidivism outcomes and higher costs: Carey, S. and Finigan, M. (2013). *Top 10 Drug Court Best Practices and More! What Does the Research Tell Us and how does it Relate to the New National Drug Court Standards?* NPC Research and National Association of Drug Court Professionals.

Effectiveness of the South Australian Drug Court

While the South Australian Drug Court has been evaluated a number of times by the Office of Crime Statistics and Research, earlier evaluations were more akin to statistical monitoring reports than analysis of the court's effectiveness. One evaluation that did examine post-intervention outcomes found that there was a reduction in the number of program completers who were charged with a criminal event after the intervention compared with before, as well as a reduction in the number and seriousness of events charged.²⁰¹ This evaluation, however, did not include any control group against which to compare outcomes.

A more robust methodology was employed in the 2012 evaluation of the impact of the court on recidivism outcomes. Using apprehension data as a measure of recidivism, the evaluation compared 131 program completers with 232 people who had either been terminated from the program or who had withdrawn from the program (a 'terminates' group) and with a sample of 204 prisoners who had not participated in the Drug Court.

Comparisons of the three groups showed that, after two years, 68 per cent of completers were apprehended,²⁰² compared with 78 per cent of terminates and 79 per cent of prisoners. The median time to the first apprehension of any type for completers was 348 days, while both terminates (271 days) and prisoners (285 days) were apprehended more quickly. A similar pattern was seen in analysis of reapprehension for drug events: within two years, 5 per cent of the program completers had been apprehended, compared with 13 per cent of terminates and 8 per cent of prisoners. The median time to the first drug apprehension was 5.7 years for completers, 4.7 years for terminates and 5.1 years for prisoners. In both analyses, therefore, the worst recidivism outcomes were seen for those who either withdrew or were terminated from the Drug Court program. No statistically significant differences were found for property offence apprehensions or serious offence apprehensions (based on the National Offence Index).²⁰³

While all three groups significantly reduced the frequency of their apprehensions, there was no statistically significant difference between the groups in the size of the reduction. All three groups also showed a decrease in the severity of reoffending among those who reoffended, but the reduction in the proportion of serious offenders in the completers group (from 71.4% to 51.4%) was smaller than in either the terminates (from 71.8% to 36.3%) or the prisoners (from 80.8% to 34.9%). Thus the Drug Court did not appear to reduce either the frequency or the severity of reoffending to a greater extent

²⁰¹ Corlett, E., Skrzypiec, G. and Hunter, N. (2005). *Offending profiles of SA Drug Court Pilot Program 'Completers'*. Adelaide: Office of Crime Statistics and Research.

²⁰² The authors note that this recidivism rate is comparable to that found in evaluations of other jurisdictions' drug courts. Specifically, they point to a 61% recidivism rate for NSW Drug Court completers and a 62% recidivism rate for Queensland Drug Court completers. They note, however, that different methods for measuring recidivism (apprehensions versus convictions) mean that such comparisons must be made with caution: Ziersch, E. and Marshall, J. (2012). *The South Australian Drug Court: A Recidivism Study*. Adelaide: Office of Crime Statistics and Research; 26.

²⁰³ Ziersch, E. and Marshall, J. (2012). *The South Australian Drug Court: A Recidivism Study*. Adelaide: Office of Crime Statistics and Research; 24-25.

than imprisonment. The authors suggest that this may be due to the higher level of supervision imposed on the terminates and the prisoners compared with program completers.²⁰⁴

The evaluation authors conclude that there is a ‘small program treatment effect’ of the South Australian Drug Court. They note, however, that a more intensive program was introduced in 2008 (beyond the period studied), and call for further evaluation of the revised approach.

There is no information available on the cost-effectiveness of the South Australian Drug Court.

The following section provides information on the key features of the South Australian Drug Court.²⁰⁵

Key features

The South Australian Drug Court functions as a pre-sentence option. Unlike NSW and Victoria, there is no statutory basis for the court, and it operates within the *Bail Act 1985* (SA), whereby offenders are placed on bail in order to complete the program. Successful completion may result in mitigation of sentence.

Aims

The aims of the South Australian Drug Court are two-fold: to minimise/stop the use of illicit drugs, and to prevent/decrease any further offending.

The court also has the following broader treatment goals:

- to develop self-awareness about the effects of behaviour on self and others;
- to increase accountability for self and actions;
- to develop a commitment to acting honestly;
- to decrease dishonest behaviour in both the public and private spheres;
- to develop understanding about what is important to self (values) and recognise one’s strengths; and
- to increase capacity to set life goals and monitor progress.

The treatment goals are achieved via a combination of court monitoring, case management, rewards and sanctions, drug testing and the use of specific treatment programs.

²⁰⁴ Ziersch, E. and Marshall, J. (2012). *The South Australian Drug Court: A Recidivism Study*. Adelaide: Office of Crime Statistics and Research; 28-29.

²⁰⁵ Information on the key features of the court has been taken from the Courts Administration Authority of South Australia website: <http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Drug-Court.aspx>.

Target population

The Drug Court is designed for offenders who have a current or prior drug dependency and who are likely to face a term of imprisonment. Specifically, the following eligibility criteria must all be present, in which the person must:

- have committed an offence whilst an adult (18 years of age or above at the date of commission of the offences);
- live in the boundaries of the Adelaide Metropolitan Area at a residence that is suitable for electronically monitored home detention bail;
- be charged with an offence that is related to their drug use (but not necessarily a drug offence), for which they are likely to be imprisoned;
- have either:
 - a current dependency on illicit drugs; or
 - a previous dependency, which is not current due to an involuntary or forced abstinence; and have a high probability of returning to drug use;
- indicate a willingness to participate in the Drug Court Program and comply with the case management plan developed for them; and
- plead guilty to both the most serious offence and the majority of offences with which they have been charged.

A person is not eligible if charged with a major indictable offence or if living outside the catchment area for the court (the metropolitan boundaries).

As with other Australian drug courts, the location criterion means that offenders are only eligible if living in certain areas. The court only includes offenders with a drug dependency (not including alcohol), and offenders must be facing a term of imprisonment. Offenders with very serious offences are excluded.

Operation

The Drug Court is a 12-month program that combines intensive judicial supervision, strict bail conditions, rewards and sanctions, drug testing, intensive treatment and practical support. Low cost, furnished rental accommodation is provided for participants and an initial home start pack of household staples is provided. Additional support is provided for Aboriginal and Torres Strait Islander participants with a designated Community Support Worker and access to culturally appropriate rehabilitation activities. Offenders accepted into the program have a case management plan individually designed to meet their requirements although there are key treatment components that apply to everyone.

The Drug Court program has clearly defined rules and a system of rewards and punishments to reinforce positive behavior and respond to non-compliance. Rewards consist of non-monetary ‘social reinforcers’ such as recognition for progress, with program staff providing small tangible rewards such as bus tickets and food vouchers to reinforce sustained compliance with the treatment regime. Sanctions for non-compliance are imposed by the magistrate. A point system operates and points are issued for minor non-compliance such as failure to attend treatment sessions, minor breaches of bail, lying about drug use or delivering a positive drug test. While relapses in drug use are common during the early phases of the program, continued drug use is a sign that progress is not being made.

Increasingly severe sanctions may be issued for more serious or continued problem behaviour. These sanctions may include bail revocation and a period of incarceration.

The program is divided into 3 phases:

Phase 1 – Three months

- Intensive judicial supervision is undertaken via fortnightly court
- Home detention bail is mandatory
- Treatment consists of individual counselling and group programs especially designed to address the nexus between offending and drug use
- Drug testing three times a week

Phase 2 – Six months

- Monthly court appearances
- Bail conditions reduced to night curfew
- Treatment continues
- Drug testing reduces to twice a week

Phase 3 – Three months

- Monthly court appearances
- Night bail conditions continue
- Drug testing is random

Unlike other jurisdictions, the South Australian Drug Court does not require that participants be completely drug free prior to graduation. Successful completion is achieved if the person remains on the program for the 12-month period without reoffending and progresses through the treatment, ultimately being able to reduce significantly, or totally abstain from, drug use.

The prosecutor in the Drug Court ensures that victims' rights are met. These rights, which are consistent with the rights afforded to all victims, include the right to be informed of conditions of bail, the right to inform the court of the impact of the crime and the right to be advised of the final sentence.

Evaluation of the Perth Drug Court

The Perth Drug Court was established in December 2000.²⁰⁶ Based on the US drug court model, it combines intensive judicial supervision, mandatory drug testing, escalating sanctions and treatment and support services.

²⁰⁶ There is also a Children's Drug Court in Western Australia. To participate, offenders must admit they have an illicit substance abuse problem, plead guilty to all charges, be willing to undergo treatment and be willing to be supervised by the court. Conditions of the program include drug testing, living at a fixed address and attending counselling sessions. The Drug Court Regime lasts six to 12 months and includes an indicated sentence, a point system for breaches, regular court appearances, urinalysis testing and supervised bail. Offenders are sentenced once the program is completed and efforts to change behaviour are taken into account with a reduced sentence. This program is designed as an intensive

Effectiveness of the Perth Drug Court

The Perth Drug Court has been evaluated twice: in 2003 and in 2006. As the earlier evaluation is not publicly available, the focus of this discussion is on the second of the evaluations.²⁰⁷

The Department of the Attorney General's 2006 review covers the first three years of the court's operations. While the specific nature of the interventions available in the court have since changed somewhat, the evaluation nonetheless provides a valuable examination of the effectiveness of the court in reducing recidivism in the two years following program completion.²⁰⁸

The review found 'strong evidence' that involvement in the Perth Drug Court reduced recidivism. Compared with a sample of 214 prisoners and a second comparison group of 150 people serving community-based sentences,²⁰⁹ the 194 Drug Court participants showed a 17.0 per cent reduction of reoffending over two years compared with the prison group, and a 10.4 per cent reduction compared with the community corrections group. The proportion of people who did not return to corrections due to new offending was 46.4 per cent for Drug Court participants, 29.4 per cent for prisoners and 36.0 per cent for those serving their sentences in the community. These differences were statistically significant.²¹⁰

People who had completed the Perth Drug Court program also exhibited a reduced frequency of burglary offences and had substantially fewer drug-related offences in subsequent offending. While just under half of the Drug Court sample did not reoffend, among those who did, the rate of burglary declined to one quarter the pre-program rate. Again, these differences were statistically significant.²¹¹

intervention; for those young offenders who require less intensive involvement, the Children's Court also offers a youth version of STIR (Youth Supervised Treatment Intervention Regime). Government of Western Australia, Department of the Attorney General (nd). *What is the Children's Drug Court?* Perth: Author.

²⁰⁷ As reported in the 2006 evaluation, the 2003 review found that Drug Court participants had lower recidivism rates, slightly lower probabilities of re-arrest and a longer median time to fail: Department of the Attorney General, Government of Western Australia (2006). *A Review of the Perth Drug Court*. Perth: Author; 11.

²⁰⁸ Department of the Attorney General, Government of Western Australia (2006). *A Review of the Perth Drug Court*. Perth: Author.

²⁰⁹ The comparison groups for this evaluation were not ideal. The review involved matching people to the Drug Court group by applying similar selection criteria as those used by the court, by selecting only offenders based in Perth and those who had either drug-related convictions or for whom drugs were noted to be a significant issue in their lives. Despite this process, there are likely to be many other variables on which the groups may have differed and which may affect their recidivism outcomes. Prior offending history, for example, is a key such variable.

²¹⁰ Department of the Attorney General, Government of Western Australia (2006). *A Review of the Perth Drug Court*. Perth: Author; 25-26.

²¹¹ Department of the Attorney General, Government of Western Australia (2006). *A Review of the Perth Drug Court*. Perth: Author; 26-27.

Cost-effectiveness of the Perth Drug Court

The Department of the Attorney General's review also considers the cost of the Perth Drug Court relative to prison and a community order. Overall, the offender management costs associated with the 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).²¹² 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.

The following section provides information on the key features of the Perth Drug Court.²¹³

Key features

The Perth Drug Court functions primarily as a pre-sentence option for serious offenders who have complex substance use problems. Final sentencing is deferred while the participant undertakes the program under judicial case management and review, providing an incentive in the court possibly imposing a less serious sentence. As with South Australia, there is no statutory basis for the court, but its legal basis is the power to adjourn sentencing under section 16 of the *Sentencing Act 1995* (WA) and to set conditions of bail under section 17 the *Bail Act 1982* (WA).²¹⁴ Successful completion may be deemed a mitigating factor at sentence.

Unusually, the court accepts referrals from both the District and Supreme Courts, as well as other Magistrates' Courts around the state. There is a Children's Court Drug Court that operates in the Perth Children's Court.

There are several programs currently available within the Perth Drug Court:

Supervised Treatment Intervention Regime (STIR): A four- to six-month pre-sentence program for offenders facing sentencing for relatively less serious offences for which they would be unlikely to be imprisoned.²¹⁵

²¹² Cost determinations were based on an assumption employed in the 2003 evaluation that 70 per cent of Drug Court offenders would have received a 12-month imprisonment term if they had not appeared in Drug Court, while the remaining 30 per cent would have received a 15-month community-based order. Department of the Attorney General, Government of Western Australia (2006). *A Review of the Perth Drug Court*. Perth: Author; 33.

²¹³ Information on the key features of the court has been taken from the Department of the Attorney General website: http://www.courts.dotag.wa.gov.au/D/drug_court.aspx?uid=5227-1163-1055-5774.

²¹⁴ King, M. and Ford, S. 'Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The Example of the Geraldton Alternative Sentencing Regime'. *Special Series eLaw: Murdoch University Electronic Journal of Law*, 1: 9-26;12.

²¹⁵ While this program operates from within the Drug Court, it is also available in a number of regional Magistrates Courts. It is 'not strictly a drug court program' but is more akin to a court-based intervention program that, in other jurisdictions, operates separately from a drug court (The Law Reform Commission of Western Australia (2009). *Court Intervention Programs: Final Report*. Perth: Government of Western Australia; 56). It is therefore discussed in Chapter 3 Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 80

Drug Court Regime (DCR): A six-month pre-sentence bail program for participants with significant histories of offending, criminal records and drug-related problems, who are facing moderately serious and serious charges. Offenders may be facing short terms of imprisonment or non-custodial sanctions.²¹⁶

Pre-Sentence Order (PSO): A pre-sentence program for offenders with serious offending who face an immediate and substantial prison sentence. This is the most intensive option available to the Drug Court. It is a generic order available in other courts, but additional statutory provisions provide the Perth Drug Court with additional powers to set specific requirements of the order.

Conditional Suspended Imprisonment Order (CSI): A post-sentence program for offenders who committed the referral offences while on parole or a suspended sentence of imprisonment. It can only be imposed by the Supreme Court, District Court, Children's Court and Perth Drug Court, and is a suspended prison term with specific conditions attached.²¹⁷

With all these different streams, the Drug Court can therefore operate at both a pre-sentence and post-sentence stage.²¹⁸ The different tracks allow for streaming of offenders based on the seriousness of their offending, the level of substance abuse and their likely (or existing) sentence outcomes. The needs and backgrounds of offenders are also considered to help determine the obligations and program duration for each participant. The streaming of participants by adding an intermediate drug court program is unique in Australian drug courts, as other courts target only those offenders who face a term of imprisonment.

Aims

Drug courts aim to break the cycle of drug-related offending by facilitating access to treatment programs as part of the court process. Specifically, the Perth Drug Court aims to:

- support Drug Court participants in addressing their drug-related problems and associated lifestyle;
- reduce the imprisonment of those with drug-related problems, by addressing those problems that are integral to offending behaviour; and

of this report that examines other court-based interventions.

²¹⁶ The Law Reform Commission of Western Australia proposed that the Drug Court Regime be subsumed under the Supervised Treatment Intervention Regime so that there is only one intervention for offenders facing imprisonment (recommended to be a Drug Treatment Order instead of the Pre-Sentence Order) and one intervention for offenders facing a non-custodial sentence (the Supervised Treatment Intervention Regime): The Law Reform Commission of Western Australia (2009). *Court Intervention Programs: Final Report*. Perth: Government of Western Australia; 57.

²¹⁷ The Conditional Suspended Imprisonment Order has been proven to be ineffective for the purposes of the Drug Court, and is rarely used there (The Law Reform Commission of Western Australia (2009). *Court Intervention Programs: Final Report*. Perth: Government of Western Australia; 56). As such, no further discussion of this order is included in this report.

²¹⁸ While the Perth Drug Court may be used at either stage in the system, 'in practice it is invariably used as a pre-sentence option': The Law Reform Commission of Western Australia (2009). *Court Intervention Programs: Final Report*. Perth: Government of Western Australia; 51.

- reduce post-treatment supervision requirements for participants of the Drug Court by having them address relevant requirements at the earlier stage prior to final sentencing.

Target population

To be eligible, an accused person must be facing criminal charges, be experiencing drug-related problems, plead guilty at an early stage and be willing and available to participate in treatment under the supervision of the Drug Court. It is not necessary for the drug-related problems to be a direct causal factor in the offending; rather, the presence of drug-related problems is sufficient to allow eligibility. Offenders dealing solely with alcohol-related problems, however, do not fall within the court's eligibility criteria.²¹⁹

For those offenders with drug problems who are not appearing in Perth, other programs may be available. For example, Geraldton Court runs the Geraldton Alternative Sentencing Regime, which is similar to the Drug Court. Offenders from regional areas may also participate in the Perth program if they live in Perth for the duration of their participation.

Operation

The Drug Court is overseen by a single magistrate, as in Victoria. Programs typically last between three and 12 months, depending on the program and individual circumstances. All of the programs require regular appearances in Drug Court, regular monitoring (including drug screen urine testing) and participation in treatment and support services and programs.

A system of rewards and sanctions is used as part of the regime, based on a points system in which points are added for non-compliance and deducted for good behaviour. Incentives that may be offered during the program include such rewards as a reduction in the level of supervision, reduced frequency of court appearances, fewer drug tests and encouragement and praise from the bench. The overall incentive is a reduction in the sentence ultimately imposed. Sanctions may include warnings and reprimands from the judicial officer, increased frequency of urinalysis, increased supervision requirements, increased court appearances, a remand in custody or, as the ultimate sanction for non-compliance, termination from the program and possible imprisonment.

On successful completion of a program, the magistrate will sentence the participant, taking into consideration the participant's performance in the program. Participants subject to sentencing in the District or Supreme Courts return there for final sentencing with comprehensive advice provided by the Drug Court to assist the sentencing process.

Evaluation of the New Zealand Alcohol and Other Drug Treatment Court

The New Zealand Alcohol and Other Drug Treatment (AODT) Court began in November 2012 and is a pilot program with two courts, located at Waitakere District Court and Auckland District Court, with a dedicated list one day per week. They are designed to supervise offenders whose offending is driven

²¹⁹ The Law Reform Commission of Western Australia has recommended that a pre-plea and post-plea alcohol court intervention program be established in Western Australia for alcohol-dependent offenders: The Law Reform Commission of Western Australia (2009). *Court Intervention Programs: Final Report*. Perth: Government of Western Australia; 70.

by their alcohol and other drug dependency. They are focused on preventing reoffending through dealing with and treating people's AOD issues to help prevent them from committing crime in the future. The courts also provide offenders with an opportunity to acknowledge and address offending caused by their AOD abuse and the harm their behaviour has caused to the victim/s of their crime.

The AODT Court adopts a pre-sentence model, with participants being on bail while participating. It does not have legislative underpinning, but works in accordance with the purposes and principles of the *Sentencing Act 2002* (NZ).

Two evaluations of the AODT Court have been undertaken: a formative evaluation in 2014 and the first stage of a process evaluation in 2015. A cost-effectiveness evaluation has not yet been undertaken but is planned. While neither evaluation used a robust methodology to examine the outcomes of the court, they do provide recommendations about improving court processes that provide valuable lessons for other jurisdictions. In particular, the New Zealand model of implementing specific cultural practices for Māori offenders, and its formal role for victims, are both of particular relevance to Queensland.

Effectiveness of the New Zealand Alcohol and Other Drug Treatment Court

The first evaluation of the AODT Court was undertaken one year after its commencement. While the evaluation found that, for the most part, the court had broadly followed the intended design and aligned with international best practice principles, there were some areas in which processes could be improved. For example, the review found that victims' voices were not well represented, with minimal involvement of Victim Advisors as few victims had asked to be kept informed. In addition, while the original plan called for restorative justice processes to take place in phase 3 of the program, for victims this was seen as being too late in the process, given the long delay between the offending and the offender moving into that phase of the program.²²⁰

A number of recommendations were made to improve the functioning of the AODT Court, some of which are particularly salient and broadly generalisable:²²¹

- Determine the feasibility of using a checklist to record and provide evidence that participants met the eligibility criteria at the Determination Hearing.
- Investigate the feasibility of establishing clear criteria for offenders with violent histories.
- Develop a process to review eligibility decisions where there is disagreement within the AODT Court team on whether a potential participant meets the defined criteria.
- Review the scope of the AODT Court case managers, the AODT Court co-ordinator, and defence counsel roles and responsibilities to address their current expansion and ensure they can complete their expected tasks within their current FTE and expected caseload.
- Determine where the responsibility lies for addressing participants' financial and social needs (e.g., their accommodation and income) to take part in the AODT Court.

²²⁰ Litmus Limited (2014). *Formative Evaluation for the Alcohol and Other Drug Treatment Court Pilot*. Wellington: New Zealand Ministry of Justice; 4.

²²¹ Litmus Limited (2014). *Formative Evaluation for the Alcohol and Other Drug Treatment Court Pilot*. Wellington: New Zealand Ministry of Justice; 7-8.

- Review the AODT Court data collection to ensure the data collection is fit for purpose.

Clear eligibility criteria and processes, well-defined roles and responsibilities and high-quality data collection practices are relevant for all types of interventions in all jurisdictions.

The 2015 process evaluation examined many of these same issues. Of note, it included interviews with people who had graduated from the program. The interviews revealed that AODT Court graduates reported feeling happier, accessing employment, re-engaging with family, building new friendships and finding new hobbies. They felt that their thinking had greater clarity since stopping their alcohol or drug use and they had become more honest and open.²²²

The following section provides information on the key features of the New Zealand Alcohol and Other Drug Treatment Court.²²³

Key features

Aims

The AODT Court aims to reduce drug use and associated offending through supervising defendants and providing them with treatment programs and life skills support while still holding them to account for their offending. The desired outcomes of the pilot program are to:

- reduce reoffending;
- reduce drug and alcohol consumption and dependency;
- reduce the use of imprisonment;
- positively impact health and wellbeing; and
- be cost-effective.

In order to achieve these aims with its Māori clients, the AODT Court has a dedicated Māori Cultural Advisor (Pou Oranga) who, while not a member of the AODT Court team, is always represented at the court and informs the process. The purposes of this role are to support Māori participants and their families, enhance their engagement, develop a Māori framework for the court and provide Māori cultural support for the court judges, team members and staff. While stakeholders were reported to be broadly satisfied with this approach, it was acknowledged that more work remains to be done.

Notably, the New Zealand AODT Court assigns an important role to victims, as well as providing a dedicated Victim Advisor to advise victims of the progress of their case through the court and of their rights in the process.

Victims and people affected by crime committed by an AODT Court participant are able to:

²²² Litmus Limited (2015). *Process Evaluation for the Alcohol and Other Drug Treatment Court, Te Whare Whakapiki Wairua: Interim Report*. Wellington: New Zealand Ministry of Justice; 111.

²²³ Information on the key features of the court has been taken from the New Zealand Ministry of Justice (2014). *Alcohol and Other Drug Treatment Court Handbook*.

- attend open AODT Court hearings including the sentencing;
- be informed about the defendant's progress through the AODT Court;
- provide their views to the AODT Court (via the Victim Advisor, Police or a support person);
- apply to read their Victim Impact Statement at sentencing;
- choose to be involved in a restorative justice conference with the defendant (where appropriate);
- be informed about the reparation or financial restitution to which they may be entitled; and
- be advised of any financial assistance to which they may be entitled.

Where a participant faces charges involving an identifiable victim, there is a presumption that the participant will attend a restorative justice meeting, at the direction of the judge. Where an individual victim does not exist, consideration may be given to a restorative justice process with appropriate community members. There is thus a strong preference for using restorative justice process in the AODT Court.

This is the most formal role for victims in any of the drug courts examined in this report.

Target population

The pilot deals with defendants who have pleaded guilty and are facing a term of imprisonment of up to three years for any offence, except for serious violence, sexual offending or arson. The current offending must be driven by AOD dependency at the moderate to severe end of the addiction/dependency spectrum, and the offender must be facing a term of imprisonment and have a medium/high risk of reoffending.

The formal eligibility criteria stipulate that participants:

- be aged 17 years or over;
- be New Zealand citizens or permanent residents;
- have been charged with offending and that offending is being driven by AOD dependency, including recidivist drink drivers;
- are at high risk in terms of reoffending and risk to themselves, their family and the community;
- have a moderate-severe substance-related dependency (as per DSM IV or DSM V);
- do not have a serious mental health condition (other than the AOD addiction/dependency) that would prevent participation in the Court;
- are not facing a charge that the Crown is required to prosecute;
- reside in the Auckland or Waitakere District Court catchment areas;
- are facing charges in the Auckland or Waitakere District Court, for which, on a guilty plea, they could be sentenced to imprisonment (for a period of up to three years); but the completion of the AODT Court program will mean that a non-custodial sentence can properly be imposed on a principled sentencing basis;
- are charged with their third or subsequent drink driving offence in the aggravated form and/or (for all non-drink driving charges) have a medium/high risk of reoffending;
- are not facing current charges of serious violence, sexual offending, arson or breaching a sentence or order managed by Corrections (unless the breach or resentencing is accompanied by other, new charges); and
- have no other charges going through the Court that cannot be brought together with these charges (i.e. ineligible if going to trial on other charges). Existing Category 1 and 2 offences

can be brought into the AODT Court and dealt with at the same time as the offence/s that have triggered the AODT Court referral.

Distinctive features of the AODT Court are its inclusion of Māori cultural practices and its inclusion of participants who have been charged with driving while intoxicated. With its focus on alcohol-related offending as well as drug-related offending, the AODT Court is distinctive in that it incorporates the 12-step model of alcohol abuse intervention as an integral part of its program.

Operation

The AODT Court caters for about 100 participants each year, although there should be no more than 50 in each court at any one time. The number of participants in Phase One is limited to ensure that the full list can be completed in the one dedicated AODT Court day per week.

The program has three phases. Initially the participant appears before the AODT Court more frequently for monitoring; however, as their treatment needs are being met these appearances become less frequent and the participant is expected to spend increased amounts of time engaging in community-based activities. During the first few months, the participant is required to attend the AODT Court fortnightly, and be subject to regular and random AOD testing (five times over a two week period which then continues throughout the full AODT Court program). If the participant complies with the program and the treatment plan, they move into a less intensive phase of the AODT Court program whereby the number and frequency of appearances decrease over time.

The detailed expectations and advancement criteria for each phase are set out in the court handbook:

Phase One

Phase one expectations include:

- engagement with treatment readiness groups if in custody;
- development of, and compliance with, a detailed treatment plan;
- engagement with 12-step meetings;
- regular and random testing, including the fitting of a SCRAM bracelet if directed;²²⁴
- regular reporting to the Case Manager and engagement with peer support worker as directed; and
- fortnightly AODT Court appearances, or as determined by the AODT Court Judge.

Court-required advancement criteria include:

- attendance and participation in agreed treatment program;
- satisfactory attendance at other aspects of the treatment plan;
- acknowledgement of the extent of the AOD dependency problem, and a commitment to live an AOD free lifestyle;

²²⁴ The SCRAM system (Secure Continuous Remote Alcohol Monitor) is a transdermal alcohol monitoring system, designed for high-risk, recidivist alcohol offenders (often convicted of drink-driving offences).

- no unexcused absences from scheduled services or Court-required appointments for at least 14 consecutive days; and
- a minimum of 30 consecutive days of demonstrated sobriety.

The AODT Court is an abstinence-based model, and this is reflected from the first phase of the treatment program, and continues throughout. However, the court acknowledges that addiction is a chronic, relapsing condition, and that there may be some lapses in AOD use, particularly at an early stage. Where such a lapse occurs, if the participant is meeting the more immediate goals of attending court appearances, treatment and all other support program, the court would likely apply a treatment response to the lapse in the first instance.²²⁵

Phase Two

Phase two expectations include:

- attendance at, participation in and completion of program detailed in the treatment plan;
- continued engagement with 12 step meetings;
- continued regular and random testing (and it may be that any SCRAM bracelet would be removed during this phase);
- identification of personal/educational/vocational goals with steps taken to pursue these;
- regular engagement with voluntary community work;
- rebuilding family bonds where possible;
- regular reporting to the Case Manager and engagement with peer support worker as directed; and
- three-weekly AODT Court appearances, or as determined by the AODT Court Judge.

Court-required advancement criteria include:

- progress with treatment plan;
- satisfactory attendance at other aspects of the treatment plan;
- progress with other courses or program, including voluntary community work;
- evidence of continuing commitment to living an alcohol and drug-free lifestyle;
- no unexcused absences from scheduled services or court-required appointments for at least 14 consecutive days; and
- a minimum of 60 consecutive days of demonstrated sobriety.

Phase Three

Phase Three expectations include:

²²⁵ Some critics of alcohol and drug courts have suggested that the promotion of abstinence is at odds with a harm minimisation approach to drug policy. McIvor (2010) has shown that abstinence-based programs are more successful if the harshness of the model is tempered by a sympathetic judicial response to relapse if the offender has otherwise been making genuine efforts to cease drug use: Thom, K., Mills, A., Meehan, C., and McKenna, B. (2013). *Evaluating Problem-Solving Courts in New Zealand: A Synopsis Report*. Auckland: Centre for Mental Health Research; 16.

- completion of all aspects of the treatment plan;
- continued engagement with 12 step meetings;
- regular and random testing (with removal of SCRAM bracelet if still in use);
- further advancement of personal/educational/vocational goals with completion of relevant programs;
- obtaining a driver's licence where appropriate;
- regular and significant engagement with voluntary community work;
- restorative justice meeting at judge's direction;
- clarification of reparation payments to be ordered at sentencing;
- engaging in suitable paid work, or study;
- continued rebuilding of family bonds where appropriate;
- reporting to the Case Manager as directed; and
- four-weekly AODT Court appearances, or as determined by the AODT Court judge.

Court-required advancement (graduation) criteria include:

- completion of treatment plan;
- satisfactory attendance at relapse prevention/recovery based supports;
- appropriate progress made with other personal/educational/vocational goals
- evidence of clear commitment to living an alcohol and drug-free lifestyle;
- engagement in fulltime work or study or suitable community-based activity;
- no unexcused absences from scheduled services or Court-required appointments for at least 14 consecutive days; and
- a minimum of 180 consecutive days of demonstrated sobriety.

The length of the AODT Court program varies depending on the needs of the participant and lasts between 12 and 18 months (or longer if warranted).

The AODT Court has a system of graduated incentives and sanctions, with the ultimate sanction being removal from the program. Incentives may include verbal recognition in open courts, being moved to the front of the daily list, formal recognition of progress with tokens such as medals, longer periods between court appearances, and graduation to the next phase of the program. Sanctions may include verbal correction in open court, appearing at the end of the list after sitting for the whole day in court, a piece of written work, apologies in writing or verbally, increased attendance requirements, application of a curfew, more frequent court appearances or substance tests, or a short remand in custody where behaviours increase the risk of reoffending.

If a participant withdraws or is exited from the AODT Court, they proceed to sentencing in the normal manner, with the sentencing judge determining the weight to be given, if any, to the AODT Court participation.

Evaluation of Drug Treatment Courts in Canada

The first Drug Treatment Court (DTC) in Canada was established in Toronto in 1998, and there are now six federally funded courts across the country plus four that do not receive federal funding.

The Canadian Drug Treatment Courts are based closely on the US drug courts. Process evaluations

have shown that, while they generally follow best practice approaches,²²⁶ there is some variation from these standards. For example, while the literature suggests that consistently appearing before the same judge is important to participant outcomes, some DTCs have multiple judges who rotate, so that participants may appear before different judges. While courts are primarily admitting offenders at high risk of reoffending, some lower-risk offenders are also being admitted, thus including people with little prior criminal history. Another area in which there is variation from best practice is around the targeting of historically disadvantaged groups, such as youth and Aboriginal men and women, with DTCs experiencing continued difficulties in reaching these target groups.

The courts include a system of sanctions and incentives, as do most drug courts. While sanctions are considered a useful component of the DTC process and help participants stay ‘on track’, there is the perception that they are not always consistently applied.

Effectiveness of the Drug Treatment Courts in Canada

There has been one methodologically strong outcome evaluation of the impact of DTCs on recidivism and other outcomes. The evaluation compared the rates of reconviction within at least three years of people who participated in a DTC program from 2006 to 2010 with two separate comparison groups: a) 151 people who met the DTC eligibility criteria but who were arrested in a jurisdiction that does not have a DTC; and b) 45 people who were eligible and referred to a DTC but did not participate in the program. The criteria to select offenders for the comparison group were similar to the DTC eligibility criteria, and a Cox regression model was used to control for variables that might affect outcomes. The DTC group (the ‘treatment’ group) was comprised of 104 people who successfully completed the program and 290 who were terminated from the program.²²⁷

Evaluation of the DTCs found a reduction in drug use during the program (a greater reduction among program graduates than among non-completers), increased social stability in the form of improvements to family relationships, finding employment and better housing situations, and reductions in criminal involvement (recidivism rates were significantly lower among DTC graduates than non-completers or a comparison group, and DTC participants had fewer drug offences than the comparison group).

Specifically, recidivism rates were significantly lower among DTC graduates at every point examined.²²⁸

²²⁶ Department of Justice Canada (2015). *Drug Treatment Court Funding Program Evaluation: Final Report*. Ottawa: Author; iii-v.

²²⁷ While this evaluation is not a true experimental design, it uses a fairly strong methodology: it divides the treatment group into completers and terminators to avoid a ‘treatment effect’, it includes two comparison groups, it has a substantial follow-up period and it uses a sophisticated statistical analysis to control for factors that might otherwise affect recidivism.

²²⁸ Department of Justice Canada (2015). *Drug Treatment Court Funding Program Evaluation: Final Report*. Ottawa: Author; 67. When all DTC participants were considered as a single group, these differences disappeared, and the DTC group appeared to have higher reoffending rates. This illustrates that separating treatment groups into completers and terminators is critical for understanding the impact of solution-focused courts.

- At one year, 13.9 per cent of DTC graduates had been convicted of at least one crime, compared with 24.6 per cent of the participants of the comparison groups and 38.0 per cent of those who were terminated from the DTC program.
- At two years, 26.0 per cent of the DTC graduates had been convicted of at least one crime, compared with 43.2 per cent of the participants of the comparison groups and 61.7 per cent of those who were terminated from the DTC program.
- At three years, 34.1 per cent of the DTC graduates had been convicted of at least one crime, compared with 54.3 per cent of the participants of the comparison groups and 73.5 per cent of those who were terminated from the DTC program.
- At four years, 38.7 per cent of DTC graduates had been convicted of at least one crime, compared with 60.2 per cent of the participants of the comparison groups and 79 per cent of those who were terminated from the DTC program.

The evaluation also found that DTC participants (both graduates and terminates) committed fewer drug offences when they did reoffend: 30 per cent of DTC participants who reoffended committed drug offences, compared with 59 per cent of the comparison group.

Cost-effectiveness of the Drug Treatment Courts in Canada

The 2015 evaluation described three types of benefits of the DTCs: avoided or delayed prosecution and incarceration costs, reduced dependence on social services and increased positive economic contribution, and enhanced quality of life. Only the first was included in the 2015 cost analysis, which showed that DTCs offer ‘substantial savings’ to government when compared with the alternative of incarceration.²²⁹

As the analysis of recidivism rates showed that graduates have a significantly lower recidivism rate than the comparison group, it was thought that DTCs will increase their cost effectiveness over the long term as they improve their graduation rates.

The following section provides information on the key features of the Drug Treatment Courts in Canada.²³⁰

Key features

Aims

The objective of Drug Treatment Courts is to reduce substance abuse, crime and recidivism through the rehabilitation of persons who commit crimes to support their substance dependency. Drug Treatment Courts provide the focus and leadership for community-wide, anti-drug systems, bringing

²²⁹ Department of Justice Canada (2015). *Drug Treatment Court Funding Program Evaluation: Final Report*. Ottawa: Author; 72.

²³⁰ Information on the key features of the court has been taken from the Canadian Association of Drug Treatment Court Professionals website: <http://cadtc.org/dtc-program-title/> and from Department of Justice Canada (2015). *Drug Treatment Court Funding Program Evaluation: Final Report*. Ottawa: Author.

together criminal justice, treatment, education and other community-based partners in the reduction of substance dependency, abuse, criminality and related harm.

Target population

The DTC model has evolved to address local community contexts and population needs. DTCs are provincial courts. Currently, they target adult, non-violent offenders in cases where their drug addiction was a factor in the offence, although courts in Toronto and Vancouver have begun relaxing their criteria regarding violent offences, in acknowledgement that a history of violence does not necessarily classify participants as a public safety threat and that it is unhelpful to exclude people from the DTC's target population unnecessarily.²³¹

In addition to an exclusion of violent offences, there is a further exclusion: that the charge must not involve children under the age of 18 or have occurred near places frequented by children or in their presence. This criterion has been criticised on the grounds that it is likely to affect women disproportionately as they are more commonly primary caregivers. The exclusion is also likely to affect low-income women, women of colour and Aboriginal women disproportionately, as, in Canada at least, they are less likely to be sufficiently financially stable to pay for safe childcare, thereby having children generally in their vicinity at all times.²³²

The vast majority of DTC participants have multiple issues, such as serious addiction to illicit drugs, mental health concerns, inadequate housing, reliance on income assistance, minimal employment/education opportunities, and being assessed as medium to high risk of reoffending.

Operation

Drug Treatment Courts handle cases involving drug-using offenders via a system involving comprehensive supervision, mandatory drug testing, treatment services and immediate sanctions and incentives, such as a few days in jail as a sanction or a coffee card as a reward. The DTC program lasts approximately one year and includes a variety of bail conditions.

The accused must enter a guilty plea to be admitted into the DTC program and has a 30 day 'cooling-off period' to withdraw the guilty plea and re-enter the traditional criminal justice system. The participant is assessed in order to create a treatment plan that is tailored to his or her specific needs and DTC staff ensure that the participant has safe housing, stable employment, and/or an education. Each participant is subject to random urine screening.

²³¹ Allard, P., Lyons, T. and Elliott, R. (2011). *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use in Canada*. Toronto: Canadian HIV/AIDS Legal Network; 23.

²³² Allard, P., Lyons, T. and Elliott, R. (2011). *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use in Canada*. Toronto: Canadian HIV/AIDS Legal Network; 23. The concern about providing culturally appropriate and gender-specific services has led some courts to offer separate programming for women and for Aboriginal participants: Allard, P., Lyons, T. and Elliott, R. (2011). *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use in Canada*. Toronto: Canadian HIV/AIDS Legal Network; 34.

Canadian Drug Treatment Courts reflect internationally recognised Drug Court principles, tailored to the needs of individual jurisdictions:

- Drug Treatment Courts integrate addiction treatment services with justice system case processing.
- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' Charter rights.
- Eligible participants are identified early and placed in the Drug Treatment Court program as promptly as possible.
- Drug Treatment Courts provide access to a continuum of drug, alcohol and other related treatment and rehabilitative services.
- Compliance is objectively monitored by frequent substance testing.
- A coordinated strategy governs Drug Treatment Court response to participants' compliance and non-compliance.
- Sanctions or rewards for non-compliance or compliance are swift, certain and consistent.
- Ongoing judicial interaction with each Drug Treatment Court participant is essential.
- Monitoring and evaluation processes measure the achievement of program goals and gauge effectiveness.
- Continuing interdisciplinary education promotes effective Drug Treatment Court planning implementation, and operations.
- Forging partnerships among courts, treatment and rehabilitation programs, public agencies and community-based organisations generates local support and enhances program effectiveness.
- Ongoing case management provides the social support necessary to achieve social reintegration.
- Appropriate flexibility in adjusting program content, including incentives and sanctions, achieves better program results with particular groups such as women, indigenous people and minority ethnic groups.

Incentives and sanctions may take various forms. Penalties may include verbal reprimands, community service orders, writing a letter to the court, bail revocation (i.e., incarceration) or expulsion from the DTC. Rewards may include verbal praise, gift cards, tokens, and privileges such as reduced court appearances.²³³

To graduate from the program, participants must meet several criteria, including being abstinent for two to four months, complying with all conditions of the program and showing evidence of life skills improvement, such as finding stable housing or employment. Participants who successfully graduate from the DTC may receive a non-custodial sentence.

While abstinence remains a central principle of the Canadian DTC system, some DTCs will allow, on a case-by-case basis, an alternative type of 'graduation' referred to as substantial compliance. For instance, a person may be deemed substantially compliant with program requirements if she or he succeeds in abstaining from certain substances of problematic use that were the target of treatment, even if there is use of another substance that is not deemed problematic. For example, a person who

²³³ Allard, P., Lyons, T. and Elliott, R. (2011). *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use in Canada*. Toronto: Canadian HIV/AIDS Legal Network; 19.

enters a DTC program to tackle cocaine dependence could meet the criteria for substantial compliance notwithstanding marijuana use.²³⁴

There have been criticisms of the abstinence model in Canada. Operating on a complete abstinence model leaves little room for reduced or moderated drug use as an acceptable measurement of progress, which may not conform to the long-established harm reduction approaches based on a health-first model. Under a health-focused model, the reduction of harmful drug consumption would meet the goal of improving one's health, and continued use would not lead to penalties. This may be especially relevant for some vulnerable groups. For example, for women who self-medicate with illicit substances because they have been sexually abused, who live in poverty and who must deal with medical issues because of their lived trauma, sobriety is just one step in a long series of efforts. Complete abstinence may not be a realistic goal for achieving graduation for this cohort.²³⁵

The issue of abstinence as a criterion for graduation is directly relevant to Queensland, especially with regard to efforts to increase completion rates among vulnerable populations.

Evaluations of drug courts in other jurisdictions

Drug courts have spread beyond the US, Canada, Australia and New Zealand into Europe and the UK as well. Despite the presence of drug courts in some of these jurisdictions for 15 years or more, few have undergone methodologically sound outcome evaluations.

In the absence of robust outcome evaluations for these courts, only a brief overview of each is provided below.

Dedicated Drug Courts in England and Wales

Six pilot Dedicated Drug Courts were introduced in magistrates' courts in England and Wales from 2004, but only one process evaluation has been published.²³⁶

As with the US drug courts, those in England and Wales adopt a multi-agency approach and provide continuity of judicial officers (magistrates or district judges). The courts aim to reduce illicit drug use and offending among offenders who commit low-level crimes to fund their addictions. This is a different cohort than the one targeted in Australian drug courts, which focus on more serious offenders facing a term of imprisonment.

²³⁴ Allard, P., Lyons, T. and Elliott, R. (2011). *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use in Canada*. Toronto: Canadian HIV/AIDS Legal Network; 11.

²³⁵ Allard, P., Lyons, T. and Elliott, R. (2011). *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use in Canada*. Toronto: Canadian HIV/AIDS Legal Network; 13.

²³⁶ While the feasibility of a full impact assessment had been considered, such an assessment has not taken place as it 'would not offer value for money, as it would take several years and would run the risk of not finding any impact': Kerr, J., Tompkins, C., Tomaszewski, W., Dickens, S., Grimshaw, R., Wright, N. and Barnard, M. (2011). *The Dedicated Drug Courts Pilot Evaluation Process Study* Ministry of Justice; 5.

The Dedicated Drug Courts (DDC) are closely intertwined with Drug Rehabilitation Requirements (DRR) that are imposed with community sentences, in which offenders return to the court for regular reviews. Although the DRRs form a major part of the DDC's work, the DDCs have a wider remit, but the evaluation found a level of confusion in separating the DDCs and DRRs on a theoretical and practical level.

In the qualitative analysis of staff and offender views, the continuity of judicial officer was seen as a key element of the model, with the developing relationship providing concrete goals, raising self-esteem and engagement and providing a degree of accountability for offenders about their actions. Although the courts were seen as helpful, staff and offenders nevertheless felt that the ability of the courts alone to reduce reoffending through reducing drug use was limited. Without a robust outcome evaluation, there is no evidence to suggest otherwise.

On the other hand, the London Family Drug and Alcohol Court (FDAC) has been subject to evaluation and has been proven to be effective. While this type of court may be somewhat outside the scope of this report as it sits within a civil jurisdiction, it is included for the lessons it offers to other types of solution-focused courts in the criminal justice system.²³⁷

The FDAC opened in 2008 and supports around 50 families per year, working with substance misusing parents who are at risk of having their children removed by the court. These families are voluntarily diverted away from mainstream court proceedings into the FDAC program. From there, FDAC has three elements that are distinctive from mainstream provision: a problem-solving court process, specialist judges who maintain continuous engagement with each case, and a dedicated multi-disciplinary and specialist treatment and support team. Parents are called in for regular reviews and families are given the chance to stay together where possible.

The court sits one day per week at the Central Family Court.

Two evaluations have been undertaken, in 2011 and 2014. The more recent one compared 90 FDAC cases with a comparison group of 106 cases from mainstream proceedings, concluding that families going through FDAC were more likely to stay together, that parents were more likely to reduce their drug use, and that the children going through FDAC were less likely to experience further neglect and abuse than similar families passing through mainstream family courts. Specifically, the evaluation found:²³⁸

- Reduced drug use: a higher proportion of FDAC parents had ceased misusing by the end of proceedings – 40 per cent of mothers and 25 per cent of fathers, compared with 25 per cent and 5 per cent, respectively, in the comparison group.
- Increased likelihood of cessation of drug use and reunification with 35 per cent of FDAC families achieving both outcomes compared with 19 per cent of the comparison group.

²³⁷ Information on the Family Drug and Alcohol Court has been taken from Whitehead, S. (2014). *Building Better Courts: Lessons from London's Family Drug and Alcohol Court*. London: Centre for Justice Innovation.

²³⁸ Whitehead, S. (2014). *Building Better Courts: Lessons from London's Family Drug and Alcohol Court*. London: Centre for Justice Innovation; 5.

- Lower proportions of families experiencing relapse (25% versus 44%) or further neglect abuse (29% versus 55%) within a year of the end of proceedings.

The evaluation noted that these outcomes were being achieved with a particularly challenging caseload. While both groups were difficult, FDAC families had higher levels of maternal heroin, cocaine, and prescription drug abuse, a higher proportion of children with health difficulties, and a higher proportion of domestic violence than the comparison group.

FDAC has been called one of the most successful examples of problem-oriented court innovation in England and Wales in recent years: it has successfully adapted an American model, tailoring it to fit the London context; it has generated clear evidence of impact via a robust independent evaluation; it has successfully transitioned from being a pilot to a sustainable program; and it has had its value acknowledged leading to its replication in other parts of the country.

A number of key strategies have been identified that contributed to the success of the FDAC:²³⁹

- target a clearly defined and well-evidenced problem, relevant to policymakers and local commissioners;
- bring together a coalition with a diverse range of expertise and authority;
- draw on evidence to identify promising models;
- develop a locally tailored solution;
- build evaluation into the project from the start;
- make new use of existing resources; and
- identify immediate cost savings.

To develop a locally tailored solution, a number of key changes were made the standard US Family Drug Treatment Court model:

- The proposed process was to take place as part of ongoing care proceedings, rather than suspending the proceedings while the parents engaged.
- A greater emphasis was placed on the role of the judge, with the same judge overseeing all hearings in a case.
- The proposed treatment team would be more clinically focused, and would be separate from legal representatives.
- The process was adapted to incorporate the role of the child's guardian and their legal representatives, which do not have an equivalent in the US context.
- The English and Welsh model did not include a supported housing offer, as this was felt to undermine the ability of the court to evaluate the parent's capacity to care for children under normal circumstances.

²³⁹ Whitehead, S. (2014). *Building Better Courts: Lessons from London's Family Drug and Alcohol Court*. London: Centre for Justice Innovation; 7-10.

The FDAC experience shows that, if the effectiveness of solution-focused courts is to be established, they must be sensitively adapted, integrated into existing networks, and be subject to rigorous, independent, and thorough evaluation of their impacts.

These are important lessons for Queensland as it establishes solution-focused responses to drug-related offending.

Drug courts in Scotland

Based closely on the US drug courts, Scotland's first Drug Court was established in Glasgow Sheriff Court in October 2001 and a second pilot Drug Court was introduced in Fife in August 2002.

Both Drug Courts are aimed at offenders aged 21 years or older, for whom there is an established relationship between serious drug misuse and offending. The courts aim to reduce the level of drug-related offending, to reduce or eliminate offenders' dependence on drugs and to examine the viability and usefulness of a Drug Court in Scotland, especially, in the case of Fife, in a non-urban centre. All Orders made by the Drug Court – Probation Orders or Drug Treatment and Testing Orders (DTTOs) – include drug testing and regular review. As in other drug courts, a multidisciplinary team supports each participant through the program.²⁴⁰

The expectation for these courts was that the effectiveness of DTTOs would be improved by extra treatment resources and intensified, and that specialist judicial supervision.

The courts have been evaluated twice, in 2006 and 2010. Both evaluations showed questionable value of the courts in producing positive recidivism outcomes and cost-effectiveness.

The more recent (and more robust) evaluation compared outcomes of DTTOs from the Drug Court with those from a standard Sheriff Court. The evaluation found that, while the courts were certainly appreciated by offenders and staff, their crime impacts were questionable at best. The analysis showed that reconviction rates among Drug Court cases were very similar to those among offenders given DTTOs before the Drug Courts were introduced (82% after two years for the former and 80% for the latter). Reconviction rates at 12 months and 24 months following DTTOs imposed under standard proceedings (71% and 82% respectively) were almost identical to those for offenders given DTTOs in Drug Courts at 12 months and 24 months (70% and 82%). The same pattern is also seen in relation to frequency of reconviction – there is no significant difference between Drug Courts and DTTOs in the standard courts. The costs associated with the Drug Court were also higher than those for the standard court. In 2007-2008 each order made by the Glasgow court averaged £23,742, by the Fife court, £16,386, while a drug treatment and testing order made by other courts cost on average £12,205. This differential carried through to the cost per successfully completed order: around £50,000 in the drug courts and £36,000 in other courts.²⁴¹

The evaluation concludes that the evidence of the impact of the drug courts is inconclusive, but clearly

²⁴⁰McIvor, G., Barnsdale, L., Eley, S., Malloch, M., Yates, R. and Brown, A. (2006). *The Operation and Effectiveness of the Scottish Drug Court Pilots*. Edinburgh: Scottish Executive Social Research; 4.

²⁴¹ Community Justice Services Scottish Government (2010). *Review of the Glasgow & Fife Drug Courts: Report*; 8-10.

the Scottish courts have not achieved their aim of reducing drug-related offending.

Drug courts in Ireland

As with drug courts in Scotland, those in Ireland have failed to show evidence of genuine success.

The Irish Drug Treatment Court began as a trial in 2001 and became permanent in Dublin in 2006. The court is aimed at people with drug addictions who come before the District Court on minor criminal charges, such as shoplifting or public order offences. In this way, the court differs from those in Australia, which target more serious offenders. Offenders must have pleaded guilty or have been convicted of a non-violent offence and can request that the judge remands them to the Drug Treatment Court. If accepted into the program, charges are put on hold.

The Drug Treatment Court consists of a three-phase program – bronze, silver and gold – and a points-based system of sanctions and rewards. If the gold phase is completed, charges will be struck out.

Graduation rates from the court are extremely low – far lower than programs in other jurisdictions. In 2014, only one person graduated, although participants did continue to progress through the phases of the program.²⁴²

A 2002 evaluation – only one year after the court’s initiation – could not provide any evidence of the impact of the court on recidivism outcomes as there had been no graduations to that point. However, the review did note a decline in offending during the course of the program as well as an increase in compliance. The lack of recidivism data, and the absence of a suitable control group, also precluded a cost-benefit analysis. Nonetheless, the evaluation found an indication that the court had not afforded significant cost savings, likely due to the low number of participants and the large amount of custody time that participants had amassed.²⁴³

As with Scotland, the Irish Drug Treatment Court, despite operating for 15 years now, has yet to prove its effectiveness.

Key findings: Drug courts

As drug courts have been most extensively implemented across the US, guidance on the key principles underlying successful courts is most advanced in US research.

The two key sets of principles that provide the best framework for the establishment and successful operation of a Drug Court are those developed by the National Association of Drug Court Professionals (NADCP) in the US: the ten key components of drug treatment courts,²⁴⁴ and the best practice standards for adult drug courts.²⁴⁵ Extensive research has shown that courts that adhere to these

²⁴² McGrath, L. (2015). ‘Despite Unclear Future, the Drug Court Pushes On’. *Dublin Inquirer*, 5 August 2015.

²⁴³ Farrell, M. (2002). *Final Evaluation of the Pilot Drug Court*; 6-7.

²⁴⁴ National Association of Drug Court Professionals (1997). *Defining Drug Courts: The Key Components*. Washington, DC: US Department of Justice. Available at: <http://www.ndci.org/publications/more-publications/ten-key-components>.

²⁴⁵ National Association of Drug Court Professionals (2013). *Adult Drug Courts: Best Practice Standards Vol. I*. Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 97

principles are likely to provide effective (and cost-effective) interventions. While Queensland should be able to adopt most of these principles directly into its own drug court,²⁴⁶ there are several issues that will need to be carefully considered.

Type of model: The review of the literature highlights the variety of models adopted in drug courts. For the most part, drug courts appear to adopt a post-sentence model. This gives the court substantial leverage, in that compliance and successful program completion means that activation of a term of imprisonment is avoided. Those courts that are offered pre-adjudication hold out the reward of a reduced or dismissed charge upon completion. However, the uncertainty of sentencing outcome in pre-sentence programs means that offender motivation may be harder to maintain. In post-sentence drug courts, offenders are afforded certainty about their sentence, allowing them to approach their participation with a ‘clean slate’ and a known outcome if successful.

Broad inclusionary criteria: The model should include broad inclusionary criteria and/or limited exclusionary criteria. While most drug courts automatically exclude violent offences, the evidence on the value of this is inconclusive. Suggestions have therefore been made by evaluators that violent offences should not be excluded automatically, but should be considered on a case-by-case basis. This would provide Queensland courts with a more flexible set of inclusionary criteria and allow courts to consider *on an individual basis* whether the Drug Court program would be beneficial.

Inclusion of alcohol: Most drug courts in Australia exclude alcohol, but the NADCP key components 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. To the contrary, the Geraldton Alternative Sentencing regime has proven the value of including a range of substances in the court’s remit. 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.

Importance of assessment: The evidence shows that assessment of the offender needs to happen as early in the process as possible, especially where multiple interventions are available, to ensure that the appropriate response is provided and a single treatment plan is created. Assessment needs to be based on the proven principle of risk-need-responsivity – ensuring that the court understands the offender’s risk level, criminogenic needs and readiness to engage. For drug courts, the evidence shows that those that deal with high-risk, high-need offenders are the most successful and have the greatest impact in reducing reoffending.

Sanctions and rewards: The most effective drug courts have a clear system of sanctions and rewards that is published, discussed with the offender prior to participation in the program, and referred to time and again as the person progresses through the program. The most effective systems are transparent so

Alexandria: Author; National Association of Drug Court Professionals (2015). *Adult Drug Courts: Best Practice Standards Vol. II*. Alexandria: Author. Available at: <http://www.ndci.org/standards>.

²⁴⁶ Many of the principles underlying drug courts are applicable to other types of courts as well. For example, there is clear value in using a multi-disciplinary team to address other types of complex issues as well, such as mental illness or homelessness. Indeed, holistic service provision can be undertaken not just via dedicated courts, but in other court-based intervention programs as well. This therefore seems to be a fundamental principle for all sorts of interventions aimed at the complex problem that is criminal behaviour.

that expectations are consistent, including expectations that the sanction will actually be applied. At the same time, some degree of flexibility would be useful in such a system, allowing magistrates to cater for individual offenders. This is especially the case in regional and remote areas, where, for example, tickets to a movie may prove to be of little use as a reward to someone who resides a great distance from a cinema. As the evidence shows that swift and certain sanctions are more effective than uncertain ones, it is important that any guidelines be followed. One of the more difficult issues is presented by the contradictory evidence on the use of imprisonment as a sanction. On the one hand, evidence shows that very short, immediately imposed incarceration is effective at reducing reoffending. On the other hand, the financial costs associated with churning people through prison have left some courts accruing incarceration days to be served in blocks. The evidence appears to support both options to some extent (although courts that use no more than six days of imprisonment are more effective than those using longer terms), such that decisions on this issue may need to be made on considerations other than the evidence, such as practical and logistical concerns. One possibility is to vary sanctions depending on the nature of the goal: breaches of distal goals (such as abstinence) should have lesser sanctions, while breaches of more proximal goals (such as attending treatment) should be more severe. A similar approach may be taken to rewards, with rewards for proximal goals being lower than those for more distal ones. The NADCP material on sanctions and rewards should prove a useful guide for Queensland in developing its own system.

Progression through the program: The majority of drug courts use a phased approach to the program, usually with three phases during which the intensity of monitoring, reporting and testing requirements decreases. There is broad agreement that this is the most effective approach to programming. There is less agreement, however, about criteria for being terminated from the program or graduating from the program. In particular, some programs require complete abstinence in order to progress or graduate while others allow some continued use of lesser drugs (marijuana) even on graduation. While the NADCP 10 Key Components stipulate abstinence, some courts do not have such stringent progression and graduation criteria. As drug addiction is known to include frequent relapse, abstinence places a significant burden on participants. There is no evidence to identify which approach – a zero-tolerance abstinence approach or a more flexible harm minimisation approach – is more effective in reducing recidivism and further drug use. However, a degree of discretion and flexibility would be beneficial in deciding when to progress a person, when to terminate someone or when graduation is allowed. This discretion can consider the nature of non-compliance (minor or major) and the progress so far on the program.

Involvement of victims: There is little evidence of the impact of drug courts on victim perceptions. Indeed, most drug courts appear to neglect providing 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 solution-focused 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. Those 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.

Broader coverage: A particular issue for Queensland is its geographic spread, and providing access to drug courts in regional or remote areas. Given the costs associated with establishing a formal drug court, they have only been established in fairly high-density population centres. The issue for Queensland is how to provide a similar approach to the drug court, without the full model, for its less populated areas. The Geraldton Alternative Sentencing Regime provides a useful example of a way in which this may be achieved. By incorporating the key elements – judicial monitoring, a multi-disciplinary team and a clear system of rewards and sanctions – Geraldton has managed to take the drug court approach beyond the capital city. This can only be successful, however, in areas in which good treatment service provision is already in place; without adequate treatment, interventions will not succeed.

4b. Driving While Intoxicated courts

Driving While Intoxicated (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, and adhering to the 10 Key Components of Drug Courts discussed above, 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.²⁴⁷

Most DWI Courts are post-conviction programs, which means that DWI Courts cannot be used to avoid a record of conviction and/or licence 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.

As DWI Courts are so closely aligned with drug courts, only a brief overview of their effectiveness and principles is provided in the following sections.

Evaluation of DWI courts

As part of its systematic review of the impact of drug courts in reoffending, the Campbell Collaboration also identified 28 evaluations of DWI Courts that were scientifically rigorous, including four randomised controlled trials.²⁴⁸ The majority of the studies (85%) supported the efficacy of DWI Courts in reducing both DWI and general recidivism by an average of more than 12 per cent. The best DWI Courts reduced recidivism by 50 to 60 per cent compared with other sentencing options. Additionally, these benefits have been found to last at least four years, and one evaluation even found that the benefits extend to reductions in drug- or alcohol-related motor vehicle crashes. Studies have also found that the up-front costs of DWI Courts are comparable to or less than those of standard probation, and real dollar savings are reaped as a result of a shortened period required to supervise offenders, reduced reliance on incarceration, lower recidivism and fewer participants returning to the

²⁴⁷ Information on the features of DWI Courts is taken from National Center for DWI Courts website: <http://www.dwicourts.org/learn/about-dwi-court/-guiding-principles>.

²⁴⁸ Mitchell, O., Wilson, D., Eggers, A. and MacKenzie, D. (2012). *Drug Courts' Effects on Criminal Offending for Juveniles and Adults*. Campbell Systematic Reviews 2012:4. Norway: The Campbell Collaboration.

criminal justice system. For example, one evaluation concluded that DWI Courts have produced average net cost savings of \$1,505 per participant and \$5,436 per graduate.²⁴⁹

Key findings: DWI courts

In addition to the 10 Key Components of Drug Courts, DWI Courts have their own founding principles:²⁵⁰

Guiding Principle #1: Determine the Population

This is a complex task given that DWI Courts, in comparison to traditional Drug Court programs, accept only one type of offender: the entrenched impaired driver. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

Guiding Principle #2: Perform a Clinical Assessment

A clinically competent and objective assessment of the impaired-driving offender must address a number of bio-psychosocial domains including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change.

Guiding Principle #3: Develop the Treatment Plan

Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI Courts must carefully select and implement treatment strategies.

Guiding Principle #4: Supervise the Offender

Driving while impaired presents a significant danger to the public. Increased supervision and monitoring by the court, probation department and treatment provider must occur as part of a coordinated strategy.

Guiding Principle #5: Forge Agency, Organisation and Community Partnerships

Partnerships are an essential component of the DWI Court model as they enhance credibility, bolster support and broaden available resources.

Guiding Principle #6: Take a Judicial Leadership Role

²⁴⁹ Harron, A. and Kavanaugh, J. (2015). 'Research Update on DWI Courts'. *The Bottom Line*, January 2015. National Center for DWI Courts.

²⁵⁰ These principles are slightly abbreviated to remove repetition and assist readability of this report.

Judges are a vital part of the DWI Court team. As leader of this team, the judge's role is paramount to the success of the DWI Court program. The selection of the judge to lead the DWI Court team, therefore, is of utmost importance.

Guiding Principle #7: Develop Case Management Strategies

Case management, the series of inter-related functions that provides for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI Court program.

Guiding Principle #8: Address Transportation Issues

Though nearly every state revokes or suspends a person's driving licence upon conviction for an impaired driving offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI Court program. In many cases, the participant solves the transportation problem created by the loss of their driver's license by driving anyway. With this knowledge, the court must caution the participant against taking such chances in the future and to alter their attitude about driving without a license.

Guiding Principle #9: Evaluate the Program

A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioural change, and a commitment from the DWI Court team to rigorously abide by the rules of the evaluation design.

Guiding Principle #10: Ensure a Sustainable Program

Becoming an integral and proven approach to the DWI problem in the community is the ultimate key to sustainability.

4c. 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.

While mental health courts vary in the specifics of their program design, they all share the following four characteristics:²⁵¹

²⁵¹ Brookbanks, W. (2006). 'Making the Case for a Mental Health Court in New Zealand'. Presented to the 3rd International Conference on Therapeutic Jurisprudence, Perth; 4. Calls for a mental health court in New Zealand have continued, as judges, lawyers and mental health advocates attempt to stop the 'recycling' of people through the justice system: Bootham, L. (2015). 'Push to Launch Mental Health Court'. *Radio New Zealand*, 9 December 2015. Available at: <http://www.radionz.co.nz/news/national/291651/push-to-launch-mental-health-court>.

- specialised court docket employing a problem-solving approach to court processing;
- judicially supervised, community-based treatment plans for each defendant participating in the court;
- regular status hearings at which treatment plans are periodically reviewed; and
- criteria defining a participant's completion of the program.

In the US, mental health courts have spread rapidly, with more than 200 in operation across the country.²⁵² They typically include 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. Successful completion of the program is taken into account at the time of sentencing.

Although the courts have varying eligibility criteria and processes, all are encouraged to follow the 10 essential elements of mental health court design and implementation, which were the result of a consensus among practitioners, policymakers and researchers about what a mental health court is and what it should be.²⁵³ Underlying these elements is a key principle of collaboration among the criminal justice, mental health, substance abuse treatment, and related systems.²⁵⁴

Mental health courts are thus clearly closely aligned with the approach adopted by drug courts.

Essential elements of effective mental health courts

Essential Element #1: Planning and administration

A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment and related systems and the community guides the planning and administration of the court.

Essential Element #2: Target population

Eligibility criteria address public safety and consider a community's treatment capacity, in addition to the availability of alternatives to pre-trial detention for defendants with mental illnesses. Eligibility criteria also take into account the relationship between mental illness and a defendant's offences, while allowing the individual circumstances of each case to be considered.

Essential Element #3: Timely participant identification and linkage to services

²⁵² This number fluctuates regularly on the basis of funding or legislative change; Administrative Office of the Courts (2012). *Mental Health Courts: An Overview*. San Francisco: Judicial Council of California; 4.

²⁵³ Administrative Office of the Courts (2012). *Mental Health Courts: An Overview*. San Francisco: Judicial Council of California; 4.

²⁵⁴ Bureau of Justice Assistance (2007). *Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court*. New York: Council of State Governments Justice Center.

Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.

Essential Element #4: Terms of participation

Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualised to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.

Essential Element #5: Informed choice

Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.

Essential Element #6: Treatment supports and services

Mental health courts connect participants to comprehensive and individualised treatment supports and services in the community. They strive to use – and increase the availability of – treatment and services that are evidence-based.

Essential Element #7: Confidentiality

Health and legal information should be shared in a way that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.

Essential Element #8: Court team

A team of criminal justice and mental health staff and service and treatment providers receives special, ongoing training and helps mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

Essential Element #9: Monitoring adherence to court requirements

Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualised graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.

Essential Element #10: Sustainability

Data are collected and analysed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures are modified accordingly), court processes are institutionalised, and support for the court in the community is cultivated and expanded.

These ten essential elements are thought to facilitate the primary objectives of mental health courts, which have been classified as follows:²⁵⁵

1. *Increased public safety for communities*: by reducing criminal activity and lowering the high recidivism rates for people with mental illnesses who become involved in the criminal justice system.
2. *Increased treatment engagement by participants*: by brokering comprehensive services and supports, rewarding adherence to treatment plans, and sanctioning non-adherence.
3. *Improved quality of life for participants*: by ensuring that program participants are connected to needed community-based treatments, housing, and other services that encourage recovery.
4. *More effective use of resources for sponsoring jurisdictions*: by reducing repeated contacts between people with mental illnesses and the criminal justice system and by providing treatment in the community when appropriate, where it is more effective and less costly than in correctional institutions.

While evaluations outside the US are rare, there have been numerous evaluations of mental health courts across the US and some in Canada to identify their impact on outcomes and their cost-effectiveness.²⁵⁶ Although the evidence regarding the success of mental health courts is inconsistent,²⁵⁷ evaluations have shown promising (although not definitive) results in three primary outcomes: increased utilisation of treatment services, reduced recidivism, and cost savings.²⁵⁸

The strongest evidence for positive effects of mental health courts is found in studies of recidivism. For example, a meta-analysis of 15 studies found that mental health courts were ‘moderately effective’ at reducing recidivism rates.²⁵⁹ Another study, with a particularly robust research design, found that the mental health court group was significantly less likely than a matched comparison group to be arrested during the 18 months following entry into the court (49% versus 58%), and had fewer average

²⁵⁵ Council of State Governments Justice Center (2008). *Mental Health Courts: A Primer for Policymakers and Practitioners*. New York: Bureau of Justice Assistance; 8.

²⁵⁶ While there are various interventions available for offenders with a mental illness in the UK, few studies have sought to assess the longer-term outcomes of such intervention and liaison schemes. Most suffer from weaknesses in research design, such as small sample size, limited coverage of outcome measures and absence of a control group for comparison purposes. The only study that included a comparison group in its assessment of outcomes involved a study of hospital diversion to compare outcomes for people admitted to hospital via the court with compulsory admissions from the general population. There is thus no relevant evidence from the UK on the impact of mental health interventions on improved mental health and reduced reoffending that may be applied to the Australian context. See further Sainsbury Centre for Mental Health (2009). *Diversion: A Better Way for Criminal Justice and Mental Health*. London: Author.

²⁵⁷ Most of the published evaluations of mental health courts have methodological problems, such as no comparison group, short follow-up periods, failure to establish an expected base rate of reoffending or small sample sizes. The limited research into program outcomes has made it difficult to develop evidence-based policy in this area. See further Lim, L. and Day, A. (2013). ‘Mental Health Diversion Courts: Some Directions for Further Development’. *Psychiatry, Psychology and Law* 20(1): 36-45.

²⁵⁸ Administrative Office of the Courts (2012). *Mental Health Courts: An Overview*. San Francisco: Judicial Council of California; 5.

²⁵⁹ The overall mean effect size was -0.54: Sarteschi, C., Vaughn, M. and Kim, K. (2011). ‘Assessing the Effectiveness of Mental Health Courts: A Quantitative Review.’ *Journal of Criminal Justice*, 39: 12–20; 18.

days of incarceration (82 days versus 152 days).²⁶⁰ Receiving the ‘full dose’ of the treatment – graduating from the mental health court – has been found to be especially important in achieving successful recidivism outcomes.²⁶¹ Despite these positive findings on recidivism, however, ‘insufficient evidence exists to support the claim that mental health courts improve psychiatric and substance abuse symptoms’.²⁶² This is particularly so in those courts that do not adhere closely to the risk-need-responsivity principle.²⁶³

The Washington State Institute of Public Policy has undertaken a benefit-cost analysis²⁶⁴ of implementing mental health courts in Washington State.²⁶⁵ The analysis calculates the total financial benefits of these courts (at June 2016) as \$19,080 per person, the net program financial costs as \$3,067 per person, with an overall benefit to cost ratio of \$6.22.²⁶⁶ The analysis finds that there is a 99 per cent chance that mental health courts will produce benefits greater than their costs, although benefits start outweighing costs only three years following the initial investment. It is therefore likely that, ‘over time, mental health courts have the potential to save money through reduced recidivism and the associated jail and court costs that are avoided, and also through decreased use of the most expensive treatment options, such as inpatient care’.²⁶⁷

In Australia, the National Justice Chief Executive Officers’ Group and the Victorian Government Department of Justice have developed best practice guidelines for diversion and support of offenders

²⁶⁰ The study involved four mental health courts: two in California, one in Minnesota and one in Indiana and included 447 mental health court participants and 600 people receiving treatment as usual. Propensity score matching was used to account for differences between the non-randomised groups. This is one of the only studies to use multiple sites and a comparison group. Steadman, H., Redlich, A., Callahan, L., Robbins, P. and Vesselinov, R. (2011). ‘Effect of Mental Health Courts on Arrests and Jail Days: A Multisite Study’. *Archives of General Psychiatry*, 68: 167–172.

²⁶¹ Sarteschi, C., Vaughn, M. and Kim, K. (2011). ‘Assessing the Effectiveness of Mental Health Courts: A Quantitative Review.’ *Journal of Criminal Justice*, 39: 12–20; 18.

²⁶² Honegger, L. (2015). ‘Does the Evidence Support the Case for Mental Health Courts? A Review of the Literature.’ *Law and Human Behavior*, 39(5): 478-488; 480.

²⁶³ Campbell, M., Canales, D., Wei, R., Totten, A., Macaulay, W. and Wershler, J. (2015). ‘Multidimensional Evaluation of a Mental Health Court: Adherence to the Risk-Need-Responsivity Model’. *Law and Human Behavior* 39(5): 489-502. The authors note that the risk-need-responsivity model may be an effective case management approach in mental health courts to assist with decision-making regarding admission, supervision intensity, and intervention targets, and that interventions in this context should address both criminogenic and mental health needs.

²⁶⁴ For this analysis, eight separate effects of mental health courts were examined in the meta-analysis, reported in seven different studies: six crime effects and two based on psychiatric outcomes. The total number of individuals or units in the treatment groups in the studies was 1,636. For more information, see Washington State Institute for Public Policy (2016). *Benefit-cost Technical Documentation*. Olympia, WA: Author.

²⁶⁵ WSIPP has drawn the per-participant cost estimate from Ridgely, M.S., Engberg, J., Greenberg, M.D., Turner, S., DeMartini, C., & Dembosky, J.W. (2007). *Justice, treatment, and cost: An evaluation of the fiscal impact of Allegheny County Mental Health Court*. Santa Monica, CA: RAND. Dollar values from 2006 are adjusted to 2015 value.

²⁶⁶ These figures are life cycle benefits and costs. Dollars are expressed in US dollars for the base year of 2015.

²⁶⁷ Almquist, L. and Dodd, E. (2009). *Mental Health Courts: A Guide to Research-Informed Policy and Practice*. New York: Council of State Governments Justice Center; vi.

with a mental illness. According to this report, Australian courts should adopt their own principles to underpin best practice in this area:²⁶⁸

Best Practice Guideline #1: Collaboration, communication and coordination are essential

Complex programs involving multiple stakeholders should seek to deliver a ‘single system’ experience wherever possible, requiring program goals and activities to be coordinated, process duplication to be minimised, and timely and appropriate information sharing.

Best Practice Guideline #2: Community safety is not compromised

Research indicates that well-designed diversion and support programs do not increase risk to the community. Addressing mental health and related problems that are linked to offending is more likely to reduce recidivism than usual criminal justice sanctions.

Best Practice Guideline #3: Accountability for criminal behaviour is retained

Mental illness may sometimes reduce moral culpability but not legal responsibility. Participation in diversion from mainstream criminal justice processes is commonly linked to alternatives to imprisonment that meet community expectations for accountability. The rights and interests of victims must be acknowledged.

Best Practice Guideline #4: Human and legal rights are protected

Diversion and support programs should seek to enhance and support the exercise of the human rights of people with mental illness. They should also ensure that legal rights are not infringed by the diversion and support process.

Best Practice Guideline #5: Consumer and family or carer participation ensures policy and service development are better targeted, more effective and sustainable

People with mental illness (consumers) and family and friends who care for them (carers) provide vital insights into policy and program design that cannot be provided by other stakeholders.

Best Practice Guideline #6: Mental illness and associated issues are identified, assessed and treated as early as possible

Screening and assessment should seek to identify mental illness and associated problems (especially substance use) as early as possible. Early identification, assessment and treatment increases prospects for recovery and prevention of escalating problem behaviours.

²⁶⁸ Thomas J. (2010). *Diversion and Support of Offenders with a Mental Illness: Guidelines for Best Practice*. Melbourne: Justice Health, Department of Justice (Vic) and the National Justice Chief Executive Officers’ Group; i.

Best Practice Guideline #7: Programs deliver culturally safe, holistic services tailored to individuals

Mental illness is experienced differently by different people, and is often associated with many complex and interacting problems. Programs should be needs-based, and provide or broker well-coordinated, integrated and culturally safe services. This often means working with individuals within the context of their family and community.

Best Practice Guideline #8: Quality and integrity of health interventions are maintained

The quality of services and supports provided to people through diversion programs should be equivalent to services available in the general community. Health interventions should be provided and managed by health services and retain a focus on achieving health and wellbeing related outcomes for individuals and families.

Best Practice Guideline #9: A recovery orientation is essential

Recovery is a personal process of changing one's attitudes, values, feelings, goals, skills and roles. It involves the development of new meaning and purpose and a satisfying, hopeful and contributing life beyond the effects of mental illness. The model is consistent with the 'good lives' model of offender rehabilitation.

Best Practice Guideline #10: Programs balance fidelity to the evidence base with environmental constraints and innovation

The evidence for diversion and support programs is growing, but incomplete. Fidelity to the existing evidence base should be balanced by the desirability of local flexibility, innovation and evaluation. Resource limitations, including workforce, infrastructure, funding and other constraints also necessitate innovation.

These principles are similar to those identified as underpinning mental health courts in the US.

In Australia the first mental health court was established in 1999 in the Magistrates Court of South Australia. Since then, three additional courts have arisen as specialist lists within mainstream Magistrates Courts: in Victoria (the Assessment and Referral Court List), Western Australia (the START Court) and Tasmania (the Mental Health Diversion List). A Special Circumstances Court previously existed in Queensland, but was abolished in 2012.²⁶⁹

Each of the existing mental health courts in Australia has been formally evaluated, and each has been shown to be effective in reducing reoffending.²⁷⁰ None of the courts, however, has been subject to a

²⁶⁹ Although a mental health court has been recommended for NSW (the Court Referral for Integrated Service Provision List, or 'CRISP'), it has yet to be established: New South Wales Law Reform Commission (2012). *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Diversion, Report 135*. Sydney: New South Wales Law Reform Commission.

²⁷⁰ Each of the evaluations of these courts used a relatively weak methodology, with no comparison group. Instead, the studies compared outcomes before and after participation in the court. While this is not a strong research design, there are no other evaluations available of the Australian mental health courts.

rigorous benefit-cost analysis. The cost-effectiveness of Australian mental health courts thus remains unknown.

Evaluation of the South Australian Magistrates Court Diversion Program

The Magistrates Court Diversion Program (MCDP) has been evaluated twice. In 2004, the South Australian Office of Crime Statistics and Research compared the number of charges and offences for court participants 12 months prior to the program and 12 months after the program. For the 157 people who completed the MCDP, the number of charges fell from 348 to 116, and 66.2 per cent of participants did not offend at all during the post-program period (compared with only 7% before the program). More than three-quarters (76.4%) of participants either committed no offences at all after the MCDP or were charged with fewer offences. Reoffending was most likely among those participants with five or more previous convictions, current substance abuse disorder/dependency problems, physical health issues, dual mental impairment diagnoses, and housing or accommodation difficulties.²⁷¹

A more recent evaluation of the Magistrates Court Diversion Program examined recidivism outcomes in the two years after completing the program. More than half of the 219 participants (55.7%) did not reoffend in the two-year period. For those who did reoffend, there were significant reductions in the severity of offending after the program. Failing to complete the program was the factor most likely to increase the risk of reoffending, although gender, the presence of a co-morbid substance abuse disorder and a longer offending history also significantly predicted reoffending.²⁷²

Notably, the first year of operation of the MCDP saw the participation of only seven people (3.5%) of Aboriginal or Torres Strait Islander origin. As South Australia has a dedicated court for people of Aboriginal or Torres Strait Islander background (the Nunga Court), it is possible that this was seen as a preferred pathway. Alternatively, there may be a reluctance among this cohort to acknowledge mental illness and access appropriate services. This situation is similar to that seen in drug courts around the world. This has led some researchers to suggest that ‘whether separate culturally specific programs are needed, or ensuring that diversion programs are culturally sensitive, is an issue that courts and governments need to assess in administering current or developing future diversion programs in order to better engage Indigenous offenders’.²⁷³ This is an issue of particular import for Queensland.

The following section provides information on the key features of the MCDP in South Australia.²⁷⁴

²⁷¹ Skrzypiec, G., Wundersitz, J., and McRostie, H. (2004). *Magistrates Court Diversion Program: An Analysis of Post-program Offending*. South Australia: Office of Crime Statistics.

²⁷² Lim, L. and Day, A. (2014). ‘Mental Health Diversion Courts: A Two Year Recidivism Study of a South Australian Health Court Program’. *Behavioral Sciences and the Law* 32: 539-551; 539.

²⁷³ Richardson, E. and McSherry, B. (2010). ‘Diversion Down Under – Programs for Offenders with Mental Illnesses in Australia’. *International Journal of Law and Psychiatry* 33: 249-257;256.

²⁷⁴ Information on the key features of the MCDP has been taken from the Courts Administration Authority of South Australia website: <http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Magistrates-Court-Diversion-Program.aspx>.

Key features

The Magistrates Court Diversion Program (MCDP) began in 1999. It was initially called the Mental Impairment Court but over time became known as the Magistrates Court Diversion Program. It operates in five regional courts only.

The MCDP provides an opportunity for eligible individuals to address their mental health and/or disability needs and offending behaviours, while legal proceedings are adjourned for approximately six months.

Aims

The MCDP aims to achieve the following outcomes for people with a mental impairment:

- to prevent further offending behaviour by providing access to early assessment and interventions that address mental health or disability needs of defendants and their offending behaviour;
- to provide assistance to the court in the identification and management of people with a mental impairment in the court system; and
- to provide a diversion option in the Magistrates' Court, for people who may otherwise plead a mental impairment defence.

Target population

The program targets adults who have been charged with a summary or minor indictable offence and who have impaired intellectual or mental functioning arising from mental illness, intellectual disability, a personality disorder, acquired brain injury, or a neurological disorder including dementia. There must be a connection between the mental impairment and the offending behaviour such that a link can be reasonably drawn; if there is no causal link between the two, the intervention will have no impact on future offending. The participant must be prepared to plead guilty to the most serious offences.

Operation

MCDP staff assist in the operation of the program by linking people to relevant services in the community and monitoring their progress, which is then reported back to the court to inform further handling of the case.

Program participants are reviewed by the magistrate every two months, providing an opportunity to reinforce and reward compliance or to take alternative action if there is non-compliance or if interventions are not working. Engagement in the treatment plan and no further offending on the program are usually considered to be indicators of a successful completion.

At the final hearing, the magistrate takes into account the participant's involvement in the program before passing sentence, possibly dismissing the matter or convicting without penalty. However, failing to make satisfactory progress in the program is not relevant to the sentencing process.

Evaluation of the Victorian Assessment and Referral Court (ARC) List

The ARC List began operations in 2010. It was established to address the underlying causes of offending for people with a mental illness or cognitive impairment and was modelled on similar programs in South Australia and Tasmania. It is a pre-sentence intervention, deferring sentence until after the program has been completed.²⁷⁵

Chesser and Smith's evaluation of the ARC List compared 95 people's recidivism over two years following participation in the intervention with their own offending history for the two years prior to the intervention.²⁷⁶ The aim of the study was to determine the degree to which participation in the ARC List had a statistically significant effect on reoffending rates.

The sample for the evaluation was divided into those who completed the program and those who did not. Overall, 57.9 per cent of participants reoffended within two years following completion of the intervention. Analyses showed that participants who had completed the program had a median reoffence time of 21.9 months, compared with 4.9 months for people who did not complete the program. People who did not complete the intervention had more than five times the odds of reoffending than program completers, and those whose offending prior to the intervention was more serious were almost nine times more likely to reoffend.²⁷⁷

For those who reoffended, the severity of their post-intervention offending was significantly lower than their pre-intervention offending. However, the post-intervention offending was more serious than that during the course of the intervention, perhaps, according to the authors, indicating the importance of judicial monitoring and contact with program staff.²⁷⁸

The authors conclude that, while the ARC List does have an impact on reducing reoffending rates of participants who completed the intervention, the results suggest the need for post-intervention follow up and care for successful program completers.

Given that the ARC List has been found to be effective in reducing both recidivism rates and severity of offending, there is value in understanding the details of the intervention more closely.

The following section provides information on the key features of the Victorian ARC List.²⁷⁹

²⁷⁵ Chesser, B. and Smith, K. (2016). 'The Assessment and Referral Court List Program in the Magistrates' Court of Victoria: An Australian Study of Recidivism.' *International Journal of Law, Crime and Justice*, 45: 141-151; 143.

²⁷⁶ Recidivism was defined as the date a proven offence was recorded by the Magistrates' Court: Chesser, B. and Smith, K. (2016). 'The Assessment and Referral Court List Program in the Magistrates' Court of Victoria: An Australian Study of Recidivism.' *International Journal of Law, Crime and Justice*, 45: 141-151; 145.

²⁷⁷ Chesser, B. and Smith, K. (2016). 'The Assessment and Referral Court List Program in the Magistrates' Court of Victoria: An Australian Study of Recidivism.' *International Journal of Law, Crime and Justice*, 45: 141-151; 146-149.

²⁷⁸ Chesser, B. and Smith, K. (2016). 'The Assessment and Referral Court List Program in the Magistrates' Court of Victoria: An Australian Study of Recidivism.' *International Journal of Law, Crime and Justice*, 45: 141-151; 149.

²⁷⁹ Information on the key features of the ARC List has been taken from the Magistrates' Court of Victoria website: Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 111

Key features

The List has legislative underpinning, established by the *Magistrates' Court Amendment (Assessment and Referral Court List) Act 2010* (Vic). It is noteworthy that the Victorian approach makes use of a legislative foundation, as many of the Australian solution-focused interventions do not.²⁸⁰

Aims

The aims of the Victorian ARC List are:

- to reduce the risk of harm to the community by addressing the underlying factors that contribute to offending behaviour;
- to improve the health and wellbeing of accused persons with a mental impairment by facilitating access to appropriate treatment and other support services;
- to increase public confidence in the criminal justice system by improving court processes and increasing options available to courts in responding to accused persons with a mental impairment; and
- to reduce the number of offenders with a mental impairment received into the prison system.

Target population

The ARC List magistrates, informed by the information and recommendations of the ARC List Team, make all decisions about acceptance to, and participation in, the ARC List.

Eligibility criteria include:

- The accused person is charged with a criminal offence listed at Melbourne Magistrates' Court.
- The accused person has not been charged with an excluded criminal offence that involves serious violence or serious sexual assault.
- The accused person has (or is likely to have) a mental illness, intellectual disability, acquired brain injury, autism spectrum disorder and/or a neurological impairment, including dementia.
- The disorder/s cause/s a substantially reduced capacity in at least one of the areas of self-care, self-management, social interaction or communication.
- The accused person would derive benefit from receiving co-ordinated services in accordance with an individual support plan. These may include psychological assessment; welfare, health, mental health, and/or disability services; drug and alcohol treatment; or housing and support services; and/or would benefit from participation in a problem solving court process.
- The accused person consents to participate in the List, including attending court regularly and meeting with ARC staff.

<https://www.magistratescourt.vic.gov.au/court-support-services/assessment-and-referral-court-list-arc>.

²⁸⁰ While legislative footing provides greater protection against political maneuvering and closing of interventions, the absence of legislation is said to provide greater flexibility to judicial officers in the ways in which the intervention is applied.

The ARC List notably excludes people charged with a serious violent or sexual offence. It has been suggested that such an exclusion is, essentially, a political decision: there is no empirical basis for excluding violent offenders from solution-focused programs.²⁸¹ Indeed, Australia's National Justice Chief Executive Officers' Group supports careful expansion of eligibility criteria to make solution-focused programs available to more serious offenders, including violent offenders, provided that program models do not detract from public safety.²⁸²

It is also notable that, unlike criteria typically seen in drug courts that causally link drug use and offending, there is no requirement that the mental impairment be a direct cause of the offending behaviour.

Referrals to the ARC List are made by the accused, significant others, community service organisations, magistrates, police, prosecutors, legal representatives and other court-based support services.

Operation

The ARC List works collaboratively with the Court Integrated Services Program (CISP), which provides case management to participants, including psychological assessment and referral to services, such as welfare, health, mental health, disability, housing services and/or drug and alcohol treatment.

Once a referral is made, the following process applies:

- CISP staff conduct an initial assessment and commence addressing support needs at this stage.
- Liaison occurs with the List staff to determine the next available court date.
- A List clinical advisor undertakes a comprehensive clinical assessment.
- At the next available List sitting, the List magistrate will decide whether to accept the participant in the List.
- If the referral is accepted, the List clinical advisor will develop a draft individual support plan (ISP) in collaboration with the participant and the CISP staff for approval of the magistrate.
- Participants appear before the same magistrate on a regular basis to discuss progress.
- Participants who plead guilty at the end of the intervention are sentenced within the List.
- Participants who plead not guilty at the end of their participation are returned to the mainstream court for a contested hearing.
- Participants are usually involved with the List for between three and 12 months, with most being discharged from the List within six months.
- If the referral is not accepted, the accused person's charges will be referred back to the mainstream court lists. Where appropriate, the CISP program continues to provide necessary support or, where connected with services, the person is referred back to those services.

²⁸¹ Edgely, M. (2013). 'Solution-Focused Court Programs for Mentally Impaired Offenders: What Works?' *Journal of Judicial Administration*, 22: 208-225; 224.

²⁸² Thomas J. (2010). *Diversion and Support of Offenders with a Mental Illness: Guidelines for Best Practice*. Melbourne: Justice Health, Department of Justice (Vic) and the National Justice Chief Executive Officers' Group; 50.

Evaluation of the Western Australia START Court

The pilot START Court (Specialist Treatment and Referral Team) for adults is part of the Western Australia Mental Health Court Diversion and Support Program, with the other part being a specialist mental health service for youth at Perth's Children's Court. The program was established in 2013 with initial funding of \$6.7 million for 20 months. Pilot funding was extended through the 2014-15 and 2015-16 State Budgets, bringing total investment to \$16 million.

The program has been evaluated twice: once in 2014 and again in 2015.

The purpose of the 2014 evaluation was to assess whether the program was meeting its objectives to improve participants' mental health and wellbeing and to facilitate engagement with treatment. To do so, a qualitative approach was adopted, interviewing participants, their families and other stakeholders. The review found that the START Court was aligned with good practice, with a multi-agency, multidisciplinary team ensuring that participants received a single system experience. The cost analysis compared the cost of the program with the cost of alternatives such as imprisonment and community corrections supervision, and found that the START Court was substantially cheaper per day than imprisonment, but more expensive than mainstream community corrections supervision. Additionally, the cost per day of undertaking the START Court was found to be slightly less than the cost of the Western Australian Drug Court.²⁸³

A supplementary evaluation conducted in 2015 sought to examine outcomes of the program, with specific focus on improvements to health and wellbeing, diversion of mentally ill offenders away from prison and improvements to community safety in terms of reduced recidivism.

The evaluation found that:²⁸⁴

- 92 per cent of participants were assessed as demonstrating clinical improvement;
- 67 per cent of participants were assessed as being at lower risk of self-harm or suicide;
- 53 per cent of participants reduced or ceased problematic use of alcohol or other drugs; and
- 73 per cent of participants experienced overall improvement in physical health, relationships and accommodation status.

In addition, 80 per cent of participants who completed the START Court program either ceased offending or committed less serious offences after program completion, while 58 per cent were assessed as posing a lower risk of violence after completion. Comparing recidivism rates, the evaluation found that 62 per cent of people who were assessed for, but did not enter, the START Court program reoffended, compared with 49 per cent of participants who completed the program. Participation in the program led, in some cases, to charges being dismissed, successful engagement

²⁸³ Mental Health Commission of Western Australia. *Mental Health Court Diversion and Support Program – Summary of 2014 Evaluation*. Available at: http://mentalhealth.wa.gov.au/Libraries/Audio/Summary_of_2014_Court_Diversion_evaluation.sflb.ashx.

²⁸⁴ Mental Health Commission of Western Australia (2016). *Mental Health Court Diversion Program – Summary of 2015 Evaluation*. Available at: http://mentalhealth.wa.gov.au/mentalhealth_changes/Mental_Health_Court_Diversion.aspx.

being treated as a mitigating factor at sentence or as an alternative to imprisonment, or a participant being granted bail rather than being remanded in custody.²⁸⁵ As the available publication is a very brief summary only, the methodological rigour of the evaluation is unclear.

While the two evaluations of the Western Australian START Court do not provide strong evidence of its value due to both methodological limitations and the recent implementation of the program, it is nonetheless of value to compare its key features with those of other Australian mental health court interventions.

The following section provides information on the key features of the Western Australian START Court.²⁸⁶

Key features

Aims

The START Court is focused on providing more options for people with mental illness, and more capacity for the Magistrates Court to respond in ways that both support people and also address their offending behaviour. The START Court aims to:

- increase an individual's connection with treatment support services and re-engage individuals with the most appropriate services to help manage their mental illness;
- find a therapeutic solution to address offending behaviour in a manner which helps an individual manage their mental health issues and make positive changes to their life to help reduce the likelihood of future contact with the criminal justice system; and
- increase public safety and ensure those with mental health issues who need help receive it.

Target population

The main cohort for the START Court is people who appear before the Magistrates Court who have mental health issues. To be eligible to participate, people must have a mental health condition, accept that they committed the offence(s) that led to the court appearance and be eligible for bail. Participation is strictly voluntary.

The 2014 evaluation found that START Court participants tended to have more complex mental health needs and were charged with more serious offences than participants of similar programs in other jurisdictions.

²⁸⁵ Mental Health Commission of Western Australia (2016). *Mental Health Court Diversion Program – Summary of 2015 Evaluation*. Available at: http://mentalhealth.wa.gov.au/mentalhealth_changes/Mental_Health_Court_Diversion.aspx.

²⁸⁶ Information on the key features of the START Court has been taken from the Magistrates Court of Western Australia website: http://www.magistratescourt.wa.gov.au/S/start_court.aspx.

Operation

The START Court is Australia's only full-time mental health court, operated by a dedicated team comprising a magistrate, court staff, forensic psychiatrist, specialist mental health clinicians, community corrections officer, police prosecutor, defence lawyer and community support coordinators.

The court operates five days a week and has dedicated resources to assist people with a mental illness. Potential participants are referred for screening, usually by magistrates in general court lists and often at the suggestion of a defence lawyer, family member or the defendant him- or herself. The program usually takes six months to complete, and successful participation in the START Court may be taken into account during sentencing.

Participants in the START Court undergo a program of intensive judicial supervision and case management designed to reduce their criminogenic risk factors, engaging in treatment and support programs to improve their mental health, reduce alcohol or other drug use and address their psychosocial needs.

The START Court includes a dedicated magistrate, mental health clinicians, community support coordinators and dedicated police, legal aid and community corrections personnel. It is overseen by Operational and Steering Committees that include representatives from participating agencies as well as consumer and family representatives, ensuring close collaboration among the relevant agencies.

Evaluation of the Tasmanian Mental Health Diversion List

The Mental Health Diversion List (the List) is very similar to the South Australian Magistrates Court Diversion Program, and was established as a pilot program at the Hobart Magistrates Court in 2007 to deal with defendants who have pleaded guilty to offences arising out of their mental illness. It represented the first solution-focused court in Tasmania but is not a separate or distinct court and operates within existing resources. Unlike Victoria's ARC List, the Tasmanian version has no specific legislative basis. Instead, it relies on the broad powers conveyed by the *Bail Act 1994* (Tas) and the *Sentencing Act 1997* (Tas) to divert offenders with a mental illness away from the regular criminal justice system and into treatment.

Although limited due to small numbers and a short time frame, a 2009 evaluation of the Mental Health Diversion List provides preliminary evidence of its effectiveness. The evaluation compared reoffending outcomes of 52 participants for the six months prior to participation in the list with reoffending rates for the same participants during the six months after participation. Analysis showed that 82.7 per cent had offended in the six months prior to their participation, compared with 7.7 per cent offending after participation. Of those who had reoffended, 78.8 per cent offended less frequently after the intervention. Only 5.8 per cent increased the number of offences committed following their participation. Examining a small sample of 16 people who had been removed from the program and returned to the general list, the evaluation found that 50 per cent had reoffended in the six months after their removal. Due to small numbers, the analysis could not calculate if these differences were statistically significant.²⁸⁷

²⁸⁷ Newitt, E. and Stojcevski, V. (2009). *Mental Health Diversion List: Evaluation Report*. Hobart: Magistrates Court of Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 116

As well as apparently reducing recidivism rates of participants, the evaluation found several other positive outcomes for participants and stakeholders, including engaging mentally ill defendants in appropriate treatment, addressing their other criminogenic needs (such as finding stable accommodation or improving family relationships), and decreasing the workload of many stakeholders, particularly with regards to questions of fitness to stand trial.²⁸⁸

The following section provides information on the key features of the Tasmanian Mental Health Diversion List.²⁸⁹

Key features

Aims

One of the main objectives of the Mental Health Diversion List is to address the mental health issues and needs of defendants and, in turn, reduce their offending behaviour.

Target population

The Mental Health Diversion List deals with defendants whose offending is linked to their mental illness. The *Mental Health Act 1996* (Tas), s 4, defines ‘mental illness’ a mental condition that results in: (a) serious distortion of perception or thought; or (b) serious impairment or disturbance of the capacity for rational thought; or (c) serious mood disorder; or (d) involuntary behaviour or serious impairment of the capacity to control behaviour. The Act is clear that a diagnosis of mental illness may not be based solely on: (a) antisocial behaviour; or (b) intellectual or behavioural nonconformity; or (c) intellectual disability; or (d) intoxication by reason of alcohol or a drug.²⁹⁰

Unlike other jurisdictions, Tasmania requires that participants with an intellectual disability or an acquired brain injury also have a concurrent diagnosis of mental illness before they become eligible for the Mental Health Diversion List.

Applications for referral are usually made at first or subsequent mention to any magistrate in general court lists and may be made by defendants, police, solicitors, case managers, other service providers, or anyone with a genuine interest in the welfare of the defendant.

Tasmania; 72-77.

²⁸⁸ Newitt, E. and Stojcevski, V. (2009). *Mental Health Diversion List: Evaluation Report*. Hobart: Magistrates Court of Tasmania; 78-80.

²⁸⁹ Information on the key features of the Mental Health Diversion List has been taken from the Magistrates Court of Tasmania website:
http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/mental_health_diversion/Mental_Health_Diversion_List.

²⁹⁰ King, M. (2009). ‘Hobart Magistrates Court’s Mental Health Diversion List.’ *Journal of Judicial Administration*, 18: 178-185; 179.

Operation

The Mental Health Diversion List is presided over by one of two dedicated magistrates twice each month. As with similar interventions in other jurisdictions, the Mental Health Diversion List adopts a multi-disciplinary strategy that can include a range of activities relating to offender behaviour, health (medication), housing and employment. Court supervision of offenders takes place approximately once per month.

Special procedures include:²⁹¹

- referral for initial assessment by forensic mental health psychiatric nurses;
- development of a more detailed Treatment Plan for the offender involving therapy in the community; and
- regular supervision of the offender by the court whilst undertaking further assessment and treatment in the mental health or cognitive disability sectors.

Defendants on the list plead guilty and are bailed to be able to complete an individualised treatment plan that has been devised by the defendant, Mental Health Services and the court liaison staff.

Notably, victims in Tasmania are briefed by prosecutors about the intended course of the charges.

Key findings: Mental health courts

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 fundamental principles should form the basis of Queensland's response to offenders with a mental illness and can be applied in either dedicated lists or in mainstream processes.

Early assessment and treatment: Participants should be identified and referred to a mental health court, and linked to community service providers, as early as possible. As part of this assessment process, clear eligibility criteria should be developed and different pathways should be identified for people with different levels of need.

Collaboration among criminal justice, mental health, substance abuse and other agencies: Program goals and activities should be coordinated, duplication of process should be minimised and information should be shared as mentally ill offenders move through the system. A case management approach facilitates this model of holistic care.

Training of mental health court personnel: To ensure proper understanding of the issues faced by offenders with a mental illness, and to facilitate collaboration, ongoing training should be provided to magistrates, court staff, legal practitioners and others involved in the system.

²⁹¹ Magistrates Court of Tasmania (2014). Diversion List – Key Features. Available at: http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/mental_health_diversion/Mental_Health_Diversion_List.

Treatment support and services: The ability of the courts to help effect positive outcomes for offenders with a mental illness is predicated on the availability of quality, evidence-based services in the community.

Monitoring of compliance: A clear set of expectations should be developed, along with guidelines for graduated incentives and sanctions for rewarding compliance or addressing non-compliance.

4d. 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’.²⁹² Family violence courts therefore do not enjoy the relative consistency of approach that is seen amongst drug courts around the world.

The Center for Court Innovation has identified four key models of domestic violence courts.²⁹³ 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.

Family violence courts 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.²⁹⁴ However, there are several ways in which family violence courts are unique, including:²⁹⁵

- a focus on victims and their safety;
- an emphasis on offender accountability;

²⁹² Mills, A., Thom, K., Meehan, C. and Chetty, M. (2013). *Family Violence Courts: A Review of the Literature*. Auckland: Centre for Mental Health Research; 6.

²⁹³ Center for Court Innovation (2007). *Domestic Violence Court Toolkit*. New York: Center for Court Innovation; 14-15.

²⁹⁴ Mills, A., Thom, K., Meehan, C. and Chetty, M. (2013). *Family Violence Courts: A Review of the Literature*. Auckland: Centre for Mental Health Research; 5.

²⁹⁵ Australian Law Reform Commission and NSW Law Reform Commission (2010). *Family Violence – A National Legal Response*. Sydney: ALRC/NSWLRC; 1489.

- specialised personnel, including judicial officers, lawyers, victim support workers and community corrections officers;
- specialised procedures, including dedicated court days for hearing family violence matters, case coordination mechanisms and specialised intake procedures;
- an emphasis on specialised support services to assist family violence victims in navigating the court process, including counselling and legal services;
- special arrangements for victim safety, sometimes including separate entrances to ensure victim safety and designated areas or rooms, as well as video facilities to allow vulnerable witnesses to give evidence remotely; and
- offender programs in those courts in which the judicial officer has the capacity to refer offenders to family violence-specific programs.

Family violence courts have been extensively implemented across the US, as well as in Canada and the United Kingdom, with several operating in New Zealand.²⁹⁶ They have also been developed in Australia, with specialist approaches currently in place in Victoria (two Family Violence Court Divisions and dedicated family violence lists within a number of mainstream Magistrates' Courts) and South Australia (a special family violence list in two Magistrates' Courts). Western Australia previously operated a Family Violence Court, although this has now been replaced by Family Violence Support Lists in six metropolitan Magistrates' Courts and one regional court. All of these approaches aim to provide specialist advice and support to people in family violence matters.

A trial domestic and family violence court is currently underway in Queensland. It appears that the NSW Domestic Violence Intervention Court is no longer operating.

Evaluations of family violence courts

The majority of the evaluations of family violence courts have been undertaken in the US, where single-site evaluations have been most common. However, there is one methodologically strong study involving a state-wide impact evaluation of New York's Domestic Violence Courts.²⁹⁷

Effectiveness of New York's domestic violence courts

The evaluation authors acknowledge that 'the diversity embodied in today's domestic violence courts presents a particular challenge for research, with previous single-site evaluations unable to provide a definitive answer to whether domestic violence courts, on the whole, produce better outcomes'.²⁹⁸ The study adopts a rigorous quasi-experimental design to examine 24 domestic violence courts throughout

²⁹⁶ The ALRC/NSWLRC report (2010: 1491-1493) noted that, as of 2010, there were more than 200 family violence courts in the US, over 50 courts in Canada and 141 in the UK.

²⁹⁷ Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York's Domestic Violence Courts*. New York: Center for Court Innovation.

²⁹⁸ Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York's Domestic Violence Courts*. New York: Center for Court Innovation; iv.

New York state,²⁹⁹ comparing defendants in these courts with a matched sample³⁰⁰ of defendants in conventional courts in the same jurisdictions prior to the opening of the domestic violence court. The intervention sample involved cases processed within the first two years of the domestic violence court's operations, while the comparison sample involved cases processed in the two years prior to that.

The review found that, although court policies vary widely across the various locations, all 24 courts had a dedicated judicial officer who had received special training and 22 had additional specialised staff in the form of dedicated victim advocates. Three-quarters of the courts (18) accepted only less serious offences, five accepted only more serious offences and one accepted all kinds of offences. All courts accepted intimate partner violence cases while just over half accepted some forms of non-intimate partner violence, such as elder abuse or child abuse.³⁰¹

In terms of impact on re-arrest within three years, the review found that the domestic violence courts did not reduce re-arrests overall. Among convicted offenders only, domestic violence courts did tend to reduce re-arrest on any charge (although the difference was non-significant) and they showed small but significant reductions in re-arrest for domestic violence offences (29% versus 32%). The courts also significantly reduced the total number of re-arrests but did not make any difference in time to first arrest. Multivariate analysis of predictors of re-arrest showed no effect of domestic violence court status. Instead, traditional criminological factors predicted re-arrest, with younger defendants, males, those with a more extensive criminal history and those with a history of non-compliance with court orders being more likely to be re-arrested.³⁰² Court locations that had policies focused on offender rehabilitation, deterring reoffending, holding defendants accountable for non-compliance with court orders, and providing victims with safety and service assistance were also more likely to reduce general reoffending.³⁰³

There was also a significant impact of domestic violence courts on case processing times, with significantly faster processing (197 days to disposition compared with 260 days). Finally, domestic violence courts also had a small but not significant impact on offender accountability overall, with increases in the conviction rate (65% compared with 61%) and the proportion of sentences involving incarceration (32% compared with 28%).³⁰⁴ This overall non-significant result masks the fact that the

²⁹⁹ New York's courts are similarly diverse in their implementation to those across the US, and the state houses 64 of the country's 208 domestic violence courts (31%). This makes New York an excellent state for detailed evaluation: Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York's Domestic Violence Courts*. New York: Center for Court Innovation; iv.

³⁰⁰ Propensity score matching techniques were used to minimise differences between the samples in characteristics that might potentially influence the outcomes of interest.

³⁰¹ Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York's Domestic Violence Courts*. New York: Center for Court Innovation; 28.

³⁰² Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York's Domestic Violence Courts*. New York: Center for Court Innovation; 38.

³⁰³ Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York's Domestic Violence Courts*. New York: Center for Court Innovation; 40.

³⁰⁴ Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York's Domestic Violence Courts*. New York: Center for Court Innovation; 40.

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impact for male defendants was, in fact, statistically significant, with higher conviction rates and incarceration rates among males but not females.³⁰⁵

Examining a broader range of courts across the US, the Center for Court Innovation conducted a review of two decades of specialist domestic violence courts to consider the impact of commonly employed strategies in achieving the goals of domestic violence courts, which include efficient case processing, offender accountability, reduced recidivism and enhanced victim safety. The review concludes that ‘the research reveals that they are successful in promoting expedited case processing and tend to be associated with increased victim satisfaction and access to services. These courts also appear to increase the use of mechanisms that promote offender accountability such as program mandates, probation monitoring, and judicial monitoring’.³⁰⁶ The review also concludes, however, that the impact of domestic violence courts on future recidivism are ‘equivocal’.³⁰⁷ This conclusion was based on 10 sites that were evaluated using quasi-experimental methods, with three producing small to significant reductions in re-arrests, five producing no reductions or even increases, one producing small but not statistically significant reductions in reoffending and one reducing the one-year re-arrest rate by virtue of offenders being re-incarcerated on probation revocation.³⁰⁸

Results are also inconclusive with regard to the ability of domestic violence courts to reduce recidivism through more effective monitoring and accountability mechanisms, with ‘barely any’ studies examining their effectiveness with rigorous methodologies. A quasi-experiment in the Bronx found no significant difference between offenders who were subject to judicial monitoring and those who were not, but with only monthly court appearances, the researchers suggested that a more intensive form of supervision may be able to reduce recidivism.³⁰⁹

The US research has shown that, while domestic violence courts may be able to achieve successful outcomes in areas such as efficient case processing, offender accountability and enhanced victim safety and access to services, they are less successful at reducing reoffending. Given that one of the primary goals of these courts is to ensure victim safety and support, the importance of their success in achieving this outcome should not be understated.

York: Center for Court Innovation; 43-44.

³⁰⁵ Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York’s Domestic Violence Courts*. New York: Center for Court Innovation; 45.

³⁰⁶ Moore, S. (2009). *Two Decades of Specialized Domestic Violence Courts: A Review of the Literature*. New York: Center for Court Innovation; 10.

³⁰⁷ Moore, S. (2009). *Two Decades of Specialized Domestic Violence Courts: A Review of the Literature*. New York: Center for Court Innovation; 10.

³⁰⁸ Moore, S. (2009). *Two Decades of Specialized Domestic Violence Courts: A Review of the Literature*. New York: Center for Court Innovation; 7.

³⁰⁹ Moore, S. (2009). *Two Decades of Specialized Domestic Violence Courts: A Review of the Literature*. New York: Center for Court Innovation; 8.

The following section provides information on the key features of New York's domestic violence courts.³¹⁰

Key features

Aims

The New York domestic violence courts operate on their own court calendar with cases presided over by one judge who is specially assigned to the court. The use of a single judge facilitates the development of specialised knowledge and expertise in unique aspects related to domestic violence cases, ultimately promoting more consistent and informed decisions over time.³¹¹ The goals of these courts include holding offenders accountable for illegal behaviour and reducing their recidivism, protecting the safety of domestic violence victims and increasing the consistency of case dispositions and sentences.

The courts work to provide swift, certain, and consistent responses to domestic violence. They have a focus on victim safety and ready access to case information, social services, housing and counseling. They rely on intensive monitoring to ensure compliance with orders via judicial supervision throughout the case. An important component of the courts is the provision of judicial education on domestic violence issues.

Target population

Eligibility for New York's domestic violence courts is determined on a case-by-case basis and includes domestic violence-related cases only. Integrated domestic violence courts are similar, but involve a single judge hearing criminal, family, and matrimonial cases involving the same family. By streamlining and centralising court processes, integrated courts eliminate contradictory orders and reduce the burden on victims, who must otherwise proceed in multiple jurisdictions.³¹² They also hold offenders to a higher level of accountability by concentrating responsibility for defendant oversight in the hands of a single judge. In addition, victims gain a greater voice in their cases and are better able

³¹⁰ Information on the key features of the New York Domestic Violence Court has been taken from the National Institute of Justice website: <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=434> and the New York State Division of Criminal Justice website: <http://www.criminaljustice.ny.gov/ofpa/domviolcrtfactsheet.htm>.

³¹¹ The importance of having experienced, knowledgeable and specialised judicial officers in family violence courts was highlighted by Victorian magistrates in recent research for the Royal Commission into Family Violence. See further Gelb, K. (2016). *Understanding Family Violence Court Proceedings: The Impact of Family Violence on the Magistrates' Court of Victoria*. Melbourne: Royal Commission into Family Violence.

³¹² One of the major problems identified by magistrates and practitioners in family violence courts in Victoria was the difficulty in gathering all relevant information about a family's various matters across multiple jurisdictions – the civil, criminal and family courts. Many civil intervention order matters have to be adjourned to allow prosecutors time to determine whether the respondent is facing any criminal charges and when those charges might be heard, or whether any custody orders are in place. This delay is due purely to a lack of information sharing across the various jurisdictions. A unified approach such as the one used in the New York Integrated Domestic Violence Court removes this source of delay and allows for a more fully informed and considered judicial decision. See further Gelb, K. (2016). *Understanding Family Violence Court Proceedings: The Impact of Family Violence on the Magistrates' Court of Victoria*. Melbourne: Royal Commission into Family Violence.

to address critical family issues, such as economic dependence, that impede their ability to prosecute their abusers and, ultimately, to achieve independence.

To be eligible for the criminal domestic violence court in New York, a family must have had at least one criminal domestic violence offence, most often in the form of intimate partner violence. Some of New York's domestic violence courts accept elder abuse cases, child abuse cases, cases involving violence between other family members (such as siblings), and cases of violence between non-intimate partners who live together. Some courts focus on misdemeanour offences, while others accept only more serious felony offenders, with only a few accepting both.

Operation

In order to achieve its goals, the New York court model involves several key personnel in each court. A dedicated judge presides over cases from start to finish and monitors offender compliance. A resource coordinator prepares offender and victim information for the judge, holds agencies accountable for accurate and prompt reporting, identifies any problems that challenge court components, screens and refers offenders to court-mandated programs, and coordinates information with the police, defense counsel, prosecutors and others. An on-site victim advocate serves as primary contact to victims, creates safety plans, and coordinates housing counselling, as well as other social services. The advocate also provides victims with information about criminal proceedings and special conditions within their orders of protection.³¹³

The following program elements are part of the New York criminal domestic violence court model:³¹⁴

Special sentencing conditions: Typically, the New York courts include a protective order as part of the final sentence. Some courts require convicted offenders to attend batterer intervention or other commonly mandated programs, such as alcohol or substance abuse treatment, mental health treatment, parenting classes, and anger management.

Offender assessment: Some courts include formal offender assessments that cover a range of issues such as drug use, mental health issues, socio-demographic background, service needs, risk for repeat violence and/or lethality, or a history of victimisation.

Supervision and compliance: Sometimes offenders are mandated to probation. Judicial supervision is common, and includes regular status hearings before a judge who is able to implement various sanctions and incentives in order to monitor compliance.

Dedicated staffing: Criminal domestic violence courts in New York have at least one judge dedicated to the caseload. The judge acts similarly to a case manager and meets regularly with clients to ensure compliance with conditions of probation and the court program. Additionally, the judge engages with

³¹³ This role appears to be similar to the Applicant Support Worker role in each of Victoria's Family Violence Court locations. Having a dedicated victim support person is a critical component of family violence courts: Gelb, K. (2016). *Understanding Family Violence Court Proceedings: The Impact of Family Violence on the Magistrates' Court of Victoria*. Melbourne: Royal Commission into Family Violence.

³¹⁴ National Institute of Justice (2015): <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=434>.

clients to help them better understand the requirements of the court, including incentives, sanctions and restrictions regarding victim interaction.

Victim safety and services: Typically, there is at least one victim advocate dedicated to the domestic violence caseload. Victim advocates serve as the primary contact to victims and act as a liaison between victims and the court.

Effectiveness of the NSW Domestic Violence Intervention Court

Evidence for the success of family violence courts varies considerably, depending on the nature of the outcome measured. For many of these courts, desired outcomes include an increase in the proportion of guilty pleas, more expedient processing of matters and an increase in victim perceptions of safety and support. These outcomes have been examined in some evaluations.

In Australia, only the NSW Domestic Violence Intervention Court has been subject to (published) evaluation.³¹⁵ The evaluation of the court model, previously operating at Campbelltown and Wagga Wagga Local Courts, found that there was no increase in the proportion of matters finalised by guilty plea in the first location, while the proportion actually decreased at Wagga Wagga. In addition, the duration of matters improved at Campbelltown but remained stable at Wagga Wagga. Nonetheless, victims reported that they were satisfied with the support that they received at both courts, and most key stakeholders believed that the pilot program was successful. In a subsequent study that extended the follow-up period for a further three years (to four years for court outcomes), there was little evidence that the Domestic Violence Intervention Court Model increased the proportion of domestic violence matters finalised on a plea of guilty or changed sentence outcomes, although the courts did appear to reduce court delay.³¹⁶ As no measures of reoffending were included in these evaluations, it is not possible to assess how effective the court was in reducing reoffending. But for family violence courts, one of the primary outcomes sought is a greater perception of safety among victims. While the NSW Domestic Violence Intervention Court appeared unable to effect change in plea patterns or sentence outcomes, it nonetheless appears to have been successful in achieving satisfaction among victims. Despite this, it appears that the NSW court is no longer operating.

Effectiveness of New Zealand's family violence courts

An evaluation of New Zealand's family violence courts found similarly mixed results. While the courts had higher rates of guilty pleas than other courts, they were shown to be unable to minimise delays, primarily due to high case numbers, adjournments requested by lawyers and numerous monitoring appearances for those involved in programs. The large lists also meant that victims had substantial waits before being able to see support workers, at times leaving court prior to their case being heard.³¹⁷

³¹⁵ Rodwell, L. and Smith, N. (2008). *An Evaluation of the NSW Domestic Violence Intervention Court Model*. Sydney: NSW Bureau of Crime Statistics and Research.

³¹⁶ Birdsey, E. and Smith, N. (2012). 'The Domestic Violence Intervention Court Model: A Follow-up Study'. *Crime and Justice Bulletin* No. 155. Sydney: NSW Bureau of Crime Statistics and Research; 13.

³¹⁷ The system-wide problems caused by the sheer number of matters to be heard on overly large lists have been detailed in Gelb (2016), part of the Royal Commission into Family Violence 2016 report: Gelb, K. (2016). *Understanding Family Violence Court Proceedings: The Impact of Family Violence on the Magistrates' Court of Victoria*. Melbourne: Royal Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 125

With regards to reducing reoffending, the evaluation showed that one-year reconviction rates for family violence offences in Waitakere were not significantly different at the family violence courts from those in other sites. The same was found for seriousness of subsequent offending, with no statistically significant difference found for the family violence courts. At Manukau, the introduction of the Family Violence Court was associated with a four percentage point increase in one-year reconvictions for family violence offences, compared with the same site prior to its reconfiguration as a specialist court.³¹⁸

Key findings: Family violence courts

While there is a dearth of rigorous evaluations of family or domestic violence courts, a number of (perhaps tentative) implications may be drawn from the literature:³¹⁹

The literature does suggest that domestic violence courts expedite processing of misdemeanor cases. Findings suggest that victims are more satisfied and more likely to access services if a case is heard in a domestic violence court rather than a traditional court. These courts also appear to make greater use than non-specialized courts of several potential accountability mechanisms: program mandates, judicial monitoring, intensive probation, and penalties for noncompliance with court orders to programs. Yet, only a handful of studies have rigorously examined any of these features of domestic violence courts.

Despite the inconsistencies in evaluation findings and their tentative nature, a number of core principles have been identified for successful family violence courts. As the vast majority of the research on family violence courts has been conducted in the US, it is from here that the strongest conclusions may be drawn about ‘what works’ for this particular form of solution-focused court.

The most notable example of domestic violence courts – and the one with the most robust evaluation³²⁰ – is the New York model of court, including both Domestic Violence Courts and Integrated Domestic Violence Courts (IDVCs). The Domestic Violence Courts handle criminal matters, while cases involving overlapping civil, criminal or family law claims arising out of a family violence incident are transferred to the IDVCs. In these courts, a single judge hears all related matters, although each remains separate with its own legal standards and burden of proof. The ‘one family– one judge’ approach allows a single judge to oversee criminal cases, protection orders, custody, visitation and divorce matters for one family, avoiding the need to navigate multiple court systems.

Based on the collective experience of the New York courts, a number of core principles have emerged that form the ‘building blocks’ of a successful domestic violence court: victim services, judicial

Commission into Family Violence.

³¹⁸ Knaggs, T., Leahy, F., Soboleva, N. and Ong, S. (2008). *The Waitakere and Manukau Family Violence Courts: An Evaluation Summary*. Wellington: Ministry of Justice; 36.

³¹⁹ Labriola, M., Bradley, S., O’Sullivan, C., Rempel, M. and Moore, S. (2009). *A National Portrait of Domestic Violence Courts*. New York: Center for Court Innovation; 10.

³²⁰ These are the courts examined in Cissner, A., Labriola, M. and Rempel, M. (2013). *Testing the Effects of New York’s Domestic Violence Courts*. New York: Center for Court Innovation.

monitoring, accountability and a coordinated community response.³²¹ Each of these is discussed briefly in turn below.

Core Principle #1: Victim services

Provide victims with immediate access to advocates: Every victim should be given immediate access to an advocate who can provide safety planning and explain court procedures, as well as long-term services such as counselling, job training, immigration services, child services and other programs aimed at improving self-sufficiency.

‘Frontload’ social services: Advocates should make linkages for victims with social service agencies, emergency shelter, food and civil legal services.

Keep victims informed: Advocates should provide victims with up-to-date information on their cases.

Schedule cases promptly: Victim safety is enhanced by scheduling domestic violence cases promptly so that victims can get an order of protection quickly.

Create ‘safe places’ within the courthouse: Design elements can include providing private space to speak with advocates, and separate waiting areas near the victim services office to enhance victim safety and provide security and comfort for victims.

Core Principle #2: Judicial monitoring

Assign a permanent judge: Having a single judge preside from the beginning to the end of a case ensures consistency, facilitates the development of expertise and also helps the judge make more informed decisions.

Supervise defendants continuously: Intensive judicial supervision from arraignment through disposition, and post-sentence, as well for those whose sentences include probation, ensures that the court is in a position to respond quickly should a violation occur.

Explore new methods of judicial monitoring: Courts currently employ curfews, phone check-ins and ankle monitors, but other mechanisms and processes may be equally appropriate.

Dedicate additional staff and resources for monitoring: Case managers can assist the judge by staying in contact with off-site partners and tracking defendants’ compliance with court orders.

Create a separate compliance docket if there is high volume: A separate ‘compliance courtroom’ may be needed in which a judge is assigned to monitor offenders’ compliance following sentence. The compliance judge can quickly identify violations and refer the case back to the sentencing judge as needed.

³²¹ These core principles of successful domestic violence courts are taken from Mazur, R. and Aldrich, L. (2003). ‘What Makes a Domestic Violence Court Work Lessons from New York’. *Judges’ Journal* 42(2): 5-11.

Core Principle #3: Accountability

Build strong relationships with service providers: Strong relationships with treatment providers ensure that when a defendant is noncompliant, the court is notified right away and can respond in a timely manner.

Hold batterers programs accountable: This principle is applicable to intervention programs more broadly, suggesting that the court communicate with local service providers to ensure that programs are reinforcing the court's messages to defendants and so that the providers know what sort of information they need to tell the court and why.

Think creatively: Other departments, such as probation or other community corrections departments, or even local non-profit organisations, can assist the court with specialised domestic violence officers to help supervise offenders. Probation and parole departments can monitor offenders even when they are no longer being monitored directly by the court.

Use technology to enhance access to information: Dedicated domestic violence courts need to use technology to share information among relevant parties in order to help avoid contradictory rulings and to make more informed decisions about sentencing.

Core Principle #4: Coordinated community response

Create strong linkages with a wide range of partners: Domestic violence courts should aspire to expand the range of organisations that are involved in the court's efforts to strengthen the message that domestic violence is not tolerated.

Convene regular meetings with criminal justice and social service partners: Interagency collaboration is crucial to ensuring communication, consistency, and continuing education about the court and domestic violence. The domestic violence judge can provide leadership to the collaboration, inviting all of the court's partners to participate in regular meetings, creating the opportunity to clarify the court's expectation of everyone's roles.

Provide court personnel and partners with domestic violence education and training: Domestic violence courts can continually educate and update staff and partners by scheduling regular court-sponsored trainings, the goals of which are to provide ongoing support and reinforcement on domestic violence issues and to highlight the court's commitment to handling domestic violence cases in an educated and serious manner.

Other jurisdictions have adopted similar principles in their approach to family and domestic violence courts, with evaluations showing that the most successful courts are those that adhere most closely to such core principles.

In England and Wales, the government established a program of 'specialist domestic violence courts' (SDVCs) in 2005 to deal with criminal matters involving domestic violence. The program aimed to 'increase the number and speed of convictions of domestic violence, and to increase victim satisfaction

and their feelings of safety’.³²² In conjunction with the new courts, a National Resource Manual was developed (and has been updated regularly) to identify core components that should be included in the SDVCs. These included: a steering group; multi-agency partnerships, including risk assessment conferences; trained and specialised staff; court listing considerations, including clustered listings or a combination of cluster and fast-track listings; victim and child support services and safety considerations; and a focus on equality and diversity.³²³

A 2008 review of the first 23 SDVCs found that those sites that incorporated all of the components listed in the National Resource Manual were most effective at bringing perpetrators to justice and were more successful in the support and safety of victims. The review concluded that it was ‘clear that omission of any of the core components led to less successful outcomes in one or more of the measures. The combination of the overall components was pivotal in delivering success’.³²⁴

Based on available evidence, the UK Centre for Justice Innovation developed a ‘typology of effective practice features’ for a domestic violence court:³²⁵

³²² Centre for Justice Innovation (2014). *Better Courts: A Snapshot of Domestic Violence Courts in 2013*.

³²³ Crime Reduction Centre Information Services Team (2011). *Specialist Domestic Violence Court Programme Resource Manual*. London: Home Office.

³²⁴ Her Majesty’s Courts Services (UK), Home Office (UK) and Crown Prosecution Service (UK) (2008). *Justice with Safety: Specialist Domestic Violence Courts Review 2007–08*. London; 6.

³²⁵ Centre for Justice Innovation (2014). *Better Courts: A Snapshot of Domestic Violence Courts in 2013*; 8.

Principles	Detail
Speedy access for victims to comprehensive multi-agency support and information services	<ul style="list-style-type: none"> ▪ Speedy referral of victims, especially those assessed as most vulnerable, to specialist support for victims; ▪ Comprehensive services provided to victims, especially those assessed as particularly vulnerable, following arrest of the perpetrator; ▪ Multi-agency information sharing and management of the case.
Prioritised and specialised case processing	<ul style="list-style-type: none"> ▪ Domestic violence cases identified early by the police, following arrest; ▪ Charging decisions made by trained prosecuting staff; ▪ Victims kept informed about, and engaged in, case progress; ▪ Appropriate bail conditions, advocated by professionals who risk assess the victim's safety needs, are set; ▪ Opportunities for victims' views to be heard in court process; ▪ Prompt scheduling of cases on the court calendar.
Dedicated and safe courthouse	<ul style="list-style-type: none"> ▪ Domestic violence cases listed in one dedicated court sitting; ▪ All court players, including judges and court officers, trained in domestic violence; ▪ Physically safe courthouses that use special measures (such as screened witness box, separate entrances for victims and perpetrators, separate waiting rooms, live TV link for witness testimony, etc.).
Interventions available to keep victims safe and reduce offending by the perpetrator	<ul style="list-style-type: none"> ▪ Consideration of victim's needs in placing court controls on perpetrator, pre- and post-sentence, including the use of restraining orders; ▪ Availability of perpetrator intervention programmes; ▪ Supervision of perpetrator and sentence by court.

These 'effective practice features' align with the key components of the National Resource Manual and illustrate the approach to domestic violence courts adopted in the UK.

They are also very similar to those espoused by the recent Victorian Royal Commission into Family Violence (RCFV). In particular, the RCFV recommends that all family violence matters be heard and determined in specialist family violence courts³²⁶ and that these courts also be able to hear related matters that involve the same family (akin to the New York integrated model).³²⁷ In addition, the RCFV recommends specialist personnel, including magistrates, support workers, prosecutors, legal representatives³²⁸ and daily staff coordination meetings before hearings begin in a family violence list

³²⁶ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 61.

³²⁷ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 60.

³²⁸ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 60.

to facilitate streamlined processes and liaison with relevant support and legal representatives.³²⁹ In terms of court processes and facilities, recommendations include list management strategies such as capping lists and increasing the number of days dedicated to listing family violence matters,³³⁰ as well as improved court facilities, such as separate entrances, safe waiting areas and remote witness facilities.³³¹

Although robust evaluations of family violence courts are scarce, and there appears to be no formal benefit-cost analysis of this approach, there is considerable agreement about the principles that underlie effective practice in these courts. These fundamental principles should form the basis upon which Queensland's response to family violence should be built; even in the absence of full family violence courts, the underlying principles can be applied in either dedicated lists or in mainstream processes.

4e. 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, Children's 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.³³²

There is little evaluation information available on the effectiveness of this approach for Aboriginal and Torres Strait Islander offenders, which 'limits the strength of the conclusions that can be made in respect of "what works" for Indigenous defendants, victims and witnesses'.³³³ While a small number

³²⁹ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 64.

³³⁰ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 68.

³³¹ Royal Commission into Family Violence (2016). *Summary and Recommendations*. Melbourne. Recommendation 70.

³³² As of 2009, there were more than 50 adult and children's Indigenous sentencing courts in Australia, operating under varied legislative frameworks and with differing eligibility criteria: Marchetti, E. (2009). 'Indigenous Sentencing Courts'. *Research Brief* No 5. Canberra: Indigenous Justice Clearinghouse; 1.

³³³ Bartels, L. (2015). 'Indigenous-specific Court Initiatives to Support Indigenous Defendants, Victims and Witnesses'. *Research Brief* No 17. Canberra: Indigenous Justice Clearinghouse; 6. The same may be said about diversion programs, for Indigenous women in particular. It has been said that 'very little has been written – and indeed done – on diversion in relation to Indigenous status and women...where such programs exist, there is little evidence of their effectiveness and a lack of comprehensive independent evaluation': Bartels, L. (2010). 'Diversion Programs for Indigenous Women'. *Research in Practice* No 13. Canberra: Australian Institute of Criminology; 2. This is not to say that there are few interventions available for this cohort. A 2010 report found that, in 2006-07, there were 340 Indigenous-specific alcohol and other drug intervention projects being conducted nationally by 224 different organisations (with alcohol being the primary focus for almost three-quarters of these). Around one-third (32%) provided prevention services, 26 per cent focused on harm reduction services, a further quarter (24%) involved non-residential or residential treatment services and the remainder involved support, referral and ongoing care or workforce development. Even with this large number of projects, however, there remained a 'paucity of community and residentially based treatment services for women, families, young people and those suffering from comorbid mental illness': Gray, D., Stearne, A., Wilson, M. and Doyle, M. (2010). *Indigenous-specific Alcohol and Other Drug Interventions: Continuities, Changes and Areas of Greatest* Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 131

of Indigenous sentencing courts in Australia have been subject to evaluation, the methodologies used in these analyses are typically not strong. One of the few approaches to have undergone a robust examination is the circle sentencing court in NSW.

Effectiveness of circle sentencing in NSW

In an evaluation of circle sentencing in NSW, a group of 153 circle sentencing participants was compared with a group of 21,324 Aboriginal and Torres Strait Islander people who were sentenced in a traditional court setting. The analysis showed no statistically significant difference between the two groups in the frequency of offending (with both treatment and control groups showing less offending in the 15 months following their circle), the time to reoffend or the seriousness of the offending.³³⁴

Despite the lack of quantitative evidence that circle sentencing reduces reoffending, it has been suggested that this does not necessarily mean that circle sentencing has no value. Reducing recidivism is just one of several objectives of Indigenous sentencing courts, and there was nothing in the analysis to suggest that circle sentencing was not meeting the other objectives. In particular, ‘if it strengthens the informal social controls that exist in Aboriginal communities, circle sentencing may have a crime prevention value that cannot be quantified through immediate changes in the risk of reoffending for individuals’.³³⁵

Effectiveness of the Victorian Koori Courts

The Victorian Koori Court operates in three separate jurisdictions: the Children’s Court, the Magistrates’ Court and the County Court. Each of these has been evaluated, with attempts made to measure both reoffending outcomes and perceptions of procedural justice.

The Children’s Koori Court, underpinned by the *Children Youth and Families Act 2005* (Vic), began operating in 2005. An evaluation that included interviews with stakeholders, courtroom observations and some quantitative analysis of reoffending³³⁶ found that about 60 per cent of Children’s Koori Court participants had subsequent offences proven in court, although the subsequent offences were less serious than the initial ones for 43 per cent of people who reoffended. In terms of process, magistrates directly engaged with the offenders in hearings that were supportive and caring. However, the cultural dimensions of the court received little attention by magistrates other than in opening remarks. The evaluation suggested that communication training for magistrates and also for Elders and Respected

Need. Canberra: Australian National Council on Drugs.

³³⁴ The result for offence seriousness did approach statistical significance ($p=0.056$): Fitzgerald, J. (2008). ‘Does Circle Sentencing Reduce Aboriginal Reoffending?’ *Crime and Justice Bulletin* No 115. Sydney: Bureau of Crime Statistics and Research; 7.

³³⁵ Fitzgerald, J. (2008). ‘Does Circle Sentencing Reduce Aboriginal Reoffending?’ *Crime and Justice Bulletin* No 115. Sydney: Bureau of Crime Statistics and Research; 7.

³³⁶ As the recidivism analysis involved a methodologically weak design, with a small group of 62 offenders and a single group, post-intervention only approach, its findings should be viewed with caution.

Persons would be beneficial.³³⁷

The Magistrates' Koori Court was created under the *Magistrates' Court Act 1989* (Vic). During the court hearing, Koori Elders or Respected Persons, the Koori Court Officer and Koori defendants and their families can contribute to the sentencing conversation. This helps to reduce perceptions of cultural alienation and to ensure sentencing orders are appropriate to the cultural needs of Koori offenders. There are currently Koori Courts in seven locations around Victoria.³³⁸

An early evaluation of the court found that the Shepparton Koori Court had a recidivism rate of approximately 12.5 per cent for the two years of the pilot program, while the Broadmeadows Koori Court's reoffending rate was 15.5 per cent.³³⁹ Both these figures were reported to be significantly less than the general level of recidivism for Magistrates' Courts (29.4%). The courts also achieved significant reductions in breach rates for community corrections orders and rates of failing to appear for court dates. Finally, interviews with defendants found that the court provided a mechanism for the integration of cultural matters, reinforcing the authority and status of the Elders and Respected Persons and strengthening the Koori community. Overall, the evaluation found that the two pilot Koori Courts had met their specified goals and recommended that the Koori Court model be expanded.³⁴⁰

The County Koori Court was established as a Division of the County Court by the *County Court Amendment (Koori Court) Act 2008* (Vic). The court's model was based on the successful implementation of the Koori Court model in both the Magistrates' Court and the Children's Court. The County Koori Court is the first sentencing court for Aboriginal and Torres Strait Islander offenders in a higher jurisdiction in Australia, and sits in two locations. Its primary objective is to ensure greater participation of the Aboriginal and Torres Strait Islander community in the sentencing process of the County Court through the role played by the Elders or Respected Persons and others such as the Koori Court Officer.³⁴¹

A series of three evaluations of the County Koori Court was unable to determine clearly if the court had an impact on reoffending. Of the 31 people included in the analysis of reoffending data only one was found to have reoffended for the low level offence of 'being drunk in a public place'. In addition, there was only one breach of a court order, and one failure to appear in court.³⁴² However, the court appeared to have been successful in achieving perceptions of procedural justice. The evaluation found that the experience of Koori people in the justice system was vastly improved by the availability of the

³³⁷ Borowski, A. (2009). *Courtroom 7: An Evaluation of the Children's Koori Court of Victoria*. Melbourne: La Trobe University.

³³⁸ Magistrates' Court of Victoria (2015). *Koori Court*. <https://www.magistratescourt.vic.gov.au/koori-court>.

³³⁹ As no control group was included in the evaluation, and the follow-up period was short, the results of the reoffending analysis should be treated with caution.

³⁴⁰ Harris, M. (2006). *A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program, October 2002-October 2004*. Melbourne: Courts and Programs Development Unit, Department of Justice.

³⁴¹ County Court of Victoria (nd). *County Koori Court*. <https://www.countycourt.vic.gov.au/county-koori-court>.

³⁴² Again, the absence of a comparison group and small numbers of court participants means that the reoffending analysis should be viewed with some caution.

County Koori Court, with interviews showing that the process was more engaging, inclusive and less intimidating than the mainstream court. Indeed, offenders reported that they valued the opportunity to speak in court about their personal histories and the circumstances relating to their offending behaviour.

The evaluation concludes that there is strong evidence that the County Koori Court pilot program was achieving its desired outcome of providing fair, culturally relevant and appropriate justice, although it was unable to determine definitively whether the Court would have a long-term impact on reoffending.³⁴³

It has been suggested that the success of the Victorian Koori Courts in achieving a measure of therapeutic jurisprudence is due to ‘the presence of Aboriginal people in the courtroom...the Koori Court breaks down the institutionalisation and depersonalisation of the usual court appearance. Importantly there is also a conversation based upon mutual respect and the acknowledgement of the importance of Koori culture and community’. These factors have been seen as fundamental to the functioning of the Koori Court.³⁴⁴

More broadly, the inclusion of Elders in Indigenous courts has been seen as foundational to ‘Indigenous therapeutic jurisprudence +’, in which the ‘plus’ represents the critical roles of Elders and spirituality in court proceedings. The value of having Indigenous Elders in the courtroom has been highlighted in some of Canada’s various First Nations Courts,³⁴⁵ in which there is acknowledgement that ‘Elders are the embodiment of Indigenous law...meaningful conversations and decisions about justice for Indigenous peoples in Canada cannot begin until Elders are integral participants at justice tables’.³⁴⁶ A similar principle exists in Australia, where various incarnations of Indigenous-specific courts include a member of the Aboriginal and Torres Strait Islander community.

While the Victorian Koori Courts appear to be the most successful in terms of enhancing the experience of Aboriginal and Torres Strait Islander in the justice system, all of the Indigenous sentencing courts share a number of common features.³⁴⁷

³⁴³ Dawkins, Z., Brookes, M., Middlin, K. and Crossley, P. (2011). *County Koori Court: Final Evaluation Report*. Melbourne: County Court of Victoria and the Victorian Department of Justice.

³⁴⁴ Harris, M. (2007) ‘The Koori Court and the Promise of Therapeutic Jurisprudence’. *e-Law Journal: Murdoch University Electronic Journal of Law* 1: 129-140; 140.

³⁴⁵ The term ‘First Nations Courts’ includes the different models of court that exist in Canada, such as: Aboriginal Courts; Gladue Courts; Peacekeeping, Healing and Tribal Courts; or specific Nation Courts such as Nunavut, Kahnawá:ke, Teslin-Tlingit, Cree, or Cree Circuit Courts: Johnson, S. (2014). ‘Developing First Nations Courts in Canada: Elders as Foundational to Indigenous Therapeutic Jurisprudence +’. *Journal of Indigenous Social Development* 3(2): 1-14; 1.

³⁴⁶ Johnson, S. (2014). ‘Developing First Nations Courts in Canada: Elders as Foundational to Indigenous Therapeutic Jurisprudence +’. *Journal of Indigenous Social Development* 3(2): 1-14; 1.

³⁴⁷ Marchetti, E. (2009). ‘Indigenous Sentencing Courts’. *Research Brief No 5*. Canberra: Indigenous Justice Clearinghouse.

Key features

Aims

The broad purposes of Indigenous sentencing courts are to address the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system and to increase their ownership of the justice system. They aim to encourage defendants to appear in court, reduce breaches and reoffending, and explore sentencing alternatives other than imprisonment.

While Indigenous sentencing courts can typically impose any sentence that is available in a mainstream court, they aim to use options that are culturally appropriate and that can reduce the likelihood of reoffending.

Target population

To be sentenced in an Indigenous court, offenders must plead guilty or have been found guilty and must consent to the matter being heard in that court. The charge must fall within the jurisdiction of the mainstream court of the equivalent level. In some jurisdictions there are criteria that exclude certain offences from being heard. For example, all levels of the Victorian Koori Court exclude offenders who have been proven guilty of a family violence offence or a sexual offence, while some exclude people who are addicted to illicit drugs or have committed certain drug offences.

Most of the courts target more serious offenders who may be sentenced to prison.

Operation

While practices vary across jurisdictions, the power to sentence offenders always remains with the magistrate. The court tends to be more informal than a mainstream court, with the magistrate typically sitting in a circle or at an oval table with all other participants in the case, rather than at the bench. Defendants are usually allowed to have family or other support people joining them at the table to participate in the ‘sentencing conversation’.

Indigenous courts include a specific Aboriginal or Torres Strait Islander liaison officer or court worker to assist and support the defendant, and to provide referrals to access support services. In addition, there are Elders or Respected Persons who speak directly and frankly to the defendant on behalf of the local Indigenous community.

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 show any great impact on reoffending. Indeed, ‘consideration should perhaps be given to combining circle sentencing with other programs (e.g. cognitive behavioural therapy, drug and alcohol treatment, remedial education) that have been shown to alter the risk factors

for further offending’.³⁴⁸

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’.³⁴⁹ 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.

4f. 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.³⁵⁰

The first community court opened in the US in 1993. Since the Midtown Community Court was established, the development of these centres has gained momentum, with numerous centres operating or planned in countries including the US (with more than 30), the UK,³⁵¹ Canada, Singapore and South

³⁴⁸ Fitzgerald, J. (2008). ‘Does Circle Sentencing Reduce Aboriginal Reoffending?’ *Crime and Justice Bulletin* No 115. Sydney: Bureau of Crime Statistics and Research; 7.

³⁴⁹ Marchetti, E. (2009). ‘Indigenous Sentencing Courts’. *Research Brief* No 5. Canberra: Indigenous Justice Clearinghouse; 3.

³⁵⁰ Center for Court Innovation. *Community Court: Overview*. <http://www.courtinnovation.org/topic/community-court>.

³⁵¹ The first Community Justice Centre in England and Wales was established in North Liverpool in September 2005, and a further dozen have followed (although these have typically adopted different models). The center adhered closely to the Red Hook model, with a solution-focused approach, multi-agency teams, a critical and central role for the judge, co-location of agencies, community engagement, pre-court meetings and close working with victims and witnesses. A 2011 evaluation concluded that ‘we are confident from our interviews that these had a significant impact upon criminal justice in North Liverpool’. The evaluation also noted, however, that ‘it is unfortunate that there are few sources of data to provide more quantitative evidence’. While the evaluation concludes that community justice could have ‘a potentially transformative effect’ on criminal justice, it warns that, without secure funding and a long-term research strategy, ‘the Drug and Specialist Courts Review – Appendix C Solution-focused interventions for drug-related offending Page 136

Africa. While the specific models vary, they share a general concern of addressing crime and safety locally, by developing effective relationships and links with the local community.³⁵² Dealing with crime under this approach involves extending the role of the justice system to help build community resilience in relation to the problems that make crime possible or more likely.³⁵³

Evaluations of the impact of community justice centres on recidivism have been mixed. For example, the first evaluation of the Midtown Community Court failed to find any impact, and another of the community court in Liverpool, England also found no impact on reconviction. On the other hand, evaluations of the Neighbourhood Justice Centre in Melbourne showed a statistically significant reduction in recidivism. While few studies of cost savings have been undertaken, those courts that have been examined have shown substantial savings, based mainly on a reduction in incarceration.³⁵⁴

The most well-known community court is the Redhook Community Justice Center in Brooklyn, New York. It has served as a model for other such courts around the world.

Centre will eventually be seen as an emperor with no clothes': Mair, G. and Milligs, M. (2011). *Doing Justice Locally: The North Liverpool Community Justice Centre*. London: Centre for Crime and Justice Studies; 96-101. A more rigorous and methodologically strong evaluation was published in 2012. Comparing matched samples of offenders who had been through the North Liverpool Community Justice Centre with those who had been sentenced in a mainstream court, the evaluation found no evidence of a statistically significant difference in reoffending rates or in frequency of reoffending. There was no evidence of an impact on reoffending for any particular type of offender, according to age, gender, disposal or index offence. There was evidence, however, that offenders from the justice centre were more likely to breach conditions of their orders, although the researchers suggest that this may have been due to closer involvement of the police in the work of the court such that non-compliant offenders were more likely to be apprehended: Booth, L., Altoft, A., Dubourg, R., Goncalves, M. and Mirrlees-Black, C. (2012). *North Liverpool Community Justice Centre: Analysis of Re-offending Rates and Efficiency of Court Processes*. London: Ministry of Justice. In October 2013 the Ministry of Justice announced the closure of the facility.

³⁵² While not technically a community justice centre, New Zealand's New Beginnings Court adopts a similar approach. The Te Kooti o Timatanga Hou Court was established in Auckland in 2010 and is aimed at defendants who have committed ongoing, low-level crimes, are homeless, are affected by mental health issues and/or intellectual disability and have chronic alcohol or other drug abuse issues. The court operates for a half-day each month and involves a multi-disciplinary team that develops and implements a treatment plan across all the required areas. A restorative justice approach means that the plan includes addressing any victim-related issues, if applicable. A case manager, funded by the service providers, undertakes liaison and coordination. A system of rewards and sanctions is used, with credits for good behaviour including cancellation of outstanding fines. As with some other types of solution-focused courts, the courtroom environment is less formal, with close interaction between the judge and the defendant, minimal use of legal or medical language, and strong peer support to provide a positive environment: Thom, K., Mills, A., Meehan, C. and McKenna, B. (2013). *Evaluating Problem-Solving Courts in New Zealand: A Synopsis Report*. Auckland: Centre for Mental Health Research. There do not appear to be any evaluations of the New Beginnings Court.

³⁵³ Australian Policy Online (2015). <http://apo.org.au/resource/evaluating-neighbourhood-justice-measuring-and-attributing-outcomes-community-justice>.

³⁵⁴ For example, cost-benefit analysis of the Midtown Community Court showed annual savings of around \$1.3 million, and an analysis of the Neighbourhood Justice Centre showed a return of \$1.09 to \$1.23 on every dollar invested: Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 13.

Evaluation of the Redhook Community Justice Center

The Redhook Community Justice Center (RCJC) began operating in April 2000 in a community characterised as a ‘hotbed of drug-related violence’.³⁵⁵ It aimed to help transform the neighbourhood by cleaning up low-level offending and offering defendants treatment for the drug addictions and other social dislocations believed to fuel their criminal behaviour.

A 2013 evaluation is one of the most comprehensive ever undertaken of a criminal justice program. It consists of four major components: a process evaluation to determine whether the program was implemented in accordance with its design; an ethnographic analysis to examine community and offender perceptions of RCJC; an impact evaluation to analyse its impact on sentencing, recidivism and arrest rates; and a cost-efficiency analysis.³⁵⁶

The evaluation found that the RCJC was implemented in close accordance with its original plan. In addition, offenders perceived a high level of procedural justice in the RCJC’s decision-making processes. When asked to describe their experiences, the most common word used was ‘respectful’, with offenders often commenting that the judge and other staff seemed genuinely interested in helping them. These perceptions were confirmed by ethnographic observations of the courts, with substantial interactions with the judge and many opportunities for offenders to speak for themselves.

Analysis of re-arrest data showed significant differences after two years, as RCJC defendants were less likely than the comparison group to be re-arrested (36% versus 40%) and averaging significantly fewer re-arrests (0.95 versus 1.16). These differences were found both for overall offending and for minor, violent felony, violent misdemeanor and property offending.³⁵⁷ Interestingly, when comparing a sub-sample of people who received drug treatment at the RCJC with a sub-sample of drug offenders processed without receiving treatment at the comparison court, analyses showed no statistically significant difference between the samples, with slightly higher re-arrest rates among the RCJC group.³⁵⁸

The evaluation concluded that the RCJC ‘appears to bring about a robust and sustained decreased in

³⁵⁵ Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 1.

³⁵⁶ This evaluation adopts a methodologically strong outcome evaluation design, using propensity score matching with a large sample for a comparison group. The design involved comparing 1,576 people from the RCJC with a matched sample of 1,671 people processed in the nearby mainstream court. Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 14-19.

³⁵⁷ The difference between the courts after one year was significant at the $p < .10$ level but not at the $p < .05$ level: Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 123.

³⁵⁸ Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 125.

recidivism among adult misdemeanor offenders’ and that ‘procedural justice appears to be a key mechanism’ through which it reduces recidivism.³⁵⁹

The RCJC’s impact 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.

These findings suggest that judicial training in the principles and practices of procedural justice may produce similar benefits for traditional courts.

Considering costs and benefits of the court, the evaluation found that the estimated costs of the RCJC and its community partners amounted to almost \$7.5 million during 2010, while the benefits were estimated at more than \$14 million, primarily in averted jail time and crime victimisation. The benefit-cost was thus 1.92.³⁶⁰

The following section provides information on the key features of the RCJC.³⁶¹

Key features

Aims

The primary goals of the RCJC are to reduce crime and improve quality of life in the Red Hook neighbourhood. It aims to achieve these goals by combining a broken-windows focus on deterring minor crime with intensive community involvement and a drug-court-style program of judicially supervised drug treatment. The model thus aims to reduce crime through three separate but interrelated mechanisms: deterrence, intervention and enhanced legitimacy of the justice system. This is achieved via a certainty of punishment (including follow-up sanctions for non-compliance), judicial supervision of community-based treatment for juveniles and a small proportion of adult defendants, and procedural justice in judicial decision-making.

Target population

A single judge hears neighbourhood cases from three police precincts (covering approximately 200,000 people) that under ordinary circumstances would go to three different courts – Civil, Family,

³⁵⁹ Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 153-154.

³⁶⁰ Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 171.

³⁶¹ Information on the key features of the Red Hook Community Justice Center has been taken from its website: <http://www.courtinnovation.org/project/red-hook-community-justice-center>.

and Criminal. The target population for the RCJC is adult and juvenile low-level offenders who have committed misdemeanour (and some felony) offences, as well as selected Family Court and Civil Court matters.

Operation

The RCJC judge has an array of sanctions and services at his disposal. These include community restitution projects, short-term psycho-educational groups, and long-term treatment (such as drug treatment, mental health treatment and trauma-focused psychotherapy). The court features an on-site clinic staffed by social service professionals who use evidence-informed approaches to assess and connect individuals to appropriate services. It also works to connect court-involved youth to strengths-based programming, including art projects and peer education programs.

The role of the RCJC extends beyond the courtroom. The courthouse is the hub for an array of unconventional programs that contribute to reducing fear and improving public trust in government. These include mediation, community service and a youth court where teenagers are trained to resolve actual cases involving their peers. The courthouse also has a housing resource centre, which provides support and information to residents with cases in housing court.

The court mandates offenders to make restitution to the community, making justice more visible. Restitution projects include painting over graffiti, sweeping the streets and cleaning the courthouse itself. It also links people to drug treatment and provides on-site services, aiming to strengthen families and prevent further involvement with the courts. Services are not limited to court users – they are available to anyone in the community.

To ensure accountability, compliance with sanctions is monitored by the judge, who requires participants to return to court frequently, both to report on progress and to submit to drug testing.

The centre also operates prevention programs, including community mediation and a youth court that offers intensive leadership training to local teens.

These features of the Red Hook Community Justice Center provided the foundational model for Victoria's Neighbourhood Justice Centre.

Evaluation of the Neighbourhood Justice Centre

The Neighbourhood Justice Centre (NJC) has been evaluated a number of times. While an early evaluation of 100 cases from a single year (2007-08) showed no statistically significant reduction in recidivism outcomes, later analyses involved larger samples and a longer follow-up and found more positive results.

An evaluation in 2010 found that, for the period 2007-2009, the NJC had been effective in reducing crime, increasing community safety and creating savings through fewer cases in the system. Successful completion of Community Based Orders was 10 per cent higher than the statewide average (75.4% versus 65.2%). Offenders at the NJC completed an average of 105 hours of unpaid work for the local community, compared with a statewide average of 68 hours. Comparing a sample of 100 offenders who had been sentenced by the NJC and received some form of intervention with a sample of 200 offenders sentenced at other courts, the 18-month reoffending rates for the NJC group were lower:

one-third (34%) of the NJC group was convicted of a further offence during this period, compared with 41 per cent of the comparison group.³⁶²

A subsequent evaluation examined cases dealt with between May 2009 and March 2011 in which the defendant had received either a therapeutic intervention or a referral. Each case was matched with a case heard at another Magistrates' Court where no therapeutic programs were available. Each of the 187 people in each group was followed for two years. Initial analysis showed a statistically significant difference between the two groups in recidivism rates: 61 of the 187 (33%) people in the NJC group had a new proven offence in the two year follow-up period, compared with 83 of the 187 (44%) in the comparison group. Subsequent Cox regression analysis also showed statistically significant differences, with the NJC group 30 per cent less likely to reoffend than the comparison group.³⁶³

The following section provides information on the key features of the Neighbourhood Justice Centre.³⁶⁴

Key features

The NJC was established in 2007 and is Australia's only community justice centre. It is located in Collingwood, Melbourne and serves the City of Yarra. The *Neighbourhood Justice Centre Act 2006* (Vic) legislated the NJC Court to act in a therapeutic and restorative manner with little formality.

The NJC comprises 20 independent but interdisciplinary treatment agencies that work hand-in-hand with the multi-jurisdictional Magistrates' Court³⁶⁵ 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.

A unique facet of the NJC's community justice model is its bringing together a range of locally based service providers who are integral to its operation. These on-site services help individuals in the City of Yarra to solve justice problems at an early stage and include:

- victims' support;
- mediation;
- specialised mental health, drug and alcohol treatment;
- counselling;
- housing support;

³⁶² Neighbourhood Justice Centre (nd). *Evaluating the Neighbourhood Justice Centre in Yarra: 2007-2009*. Melbourne: Author.

³⁶³ Ross, S. (2015). 'Evaluating Neighbourhood Justice: Measuring and Attributing Outcomes for a Community Justice Program'. *Trends & Issues in Crime and Criminal Justice* No 499. Canberra: Australian Institute of Criminology; 5-6.

³⁶⁴ Information on the key features of the court has been taken from the Neighbourhood Justice Centre's website: <http://www.neighbourhoodjustice.vic.gov.au/home/>.

³⁶⁵ The NJC sits as a Magistrate's Court, a Children's Court (Criminal Division), a Victims of Crime Assistance Tribunal, and a Victorian Civil and Administrative Tribunal. As a result, the services are broader and the network of partnerships more effective than sole jurisdictions.

- employment and training support;
- Aboriginal and Torres Strait Islander support services; and
- legal advice.

The NJC works with and in the community, providing services and supporting community programs that address disadvantage, prevent crime, improve safety and increase confidence in and access to the justice system. There is an extensive community justice education program to increase people's understanding of the justice system, crime prevention partnerships, community building programs to build connections and increase civic participation, and a range of services provided free from within the NJC.

Aims

The Centre is committed to resolving disputes by addressing the underlying causes of harmful behaviour and tackling social disadvantage. It has the following goals:

- prevent and reduce criminal and other harmful behaviour in the Yarra community;
- increase confidence in, and access to the justice system for the Yarra communities; and
- strengthen the Neighbourhood Justice Centre Community justice model and facilitate the transfer of its practices to other courts and communities.

The NJC court seeks to help improve the safety of the community by focusing on the rehabilitation of offenders and by aiming to develop increased stability for offenders, as well as providing assistance in reintegrating them into the community. At the NJC court, the magistrate hears a variety of civil and criminal cases, all of which are resolved in the one courtroom.

Target population

The target population for the NJC is anyone living within the City of Yarra, including both offenders and general community members. The Magistrates' Court within the NJC is subject to the same jurisdictional limit as any Magistrates' Court, which constrains the type of offences that can be heard to those that are less serious in nature. There is no specific exclusion of any type of case or offence, other than the residency restriction.

Operation

The NJC has a sole magistrate who hears all matters before the court and tribunals. Consequently, the Magistrate has an in-depth understanding of the variety of justice issues facing the City of Yarra. This consistency allows a relationship to develop between the magistrate and the people attending court.

The court adopts a problem-solving process to assist clients in addressing difficulties regarding their matters. A Neighbourhood Justice Officer will set up an out of court meeting for the defendant, their legal representatives and support people to tackle problems. This process is about acknowledging that crime is not a contest to be won, but a series of problems to be solved.

The NJC refers parties for civil cases directly to mediation, which is available on the spot and involves a single mediator rather than the usual two.

Unusually, the NJC offers an integrated ‘inreach’ service model for the broader Yarra community. Service staff are contracted from local agencies and work on site offering holistic case management and a ‘one stop shop’ where multiple services are accessed at the one venue. For example, the Centre employs two alcohol and drug counsellors onsite who provide ongoing case management and organise a range of drug treatment options like detox, counselling, outreach, supported accommodation and residential rehabilitation. People are able to access these free services if they reside in the City of Yarra or are an Aboriginal or Torres Strait Islander with a strong connection to the area. This service is also open to homeless people temporarily residing in the City of Yarra. In addition, the NJC facility has been designed to ensure that there are clear community spaces in the building, with two large rooms and several small rooms available free of charge for the community to use.

The services available at the NJC are:

- Aboriginal and Torres Strait Islander support services, including two Koori Justice Workers³⁶⁶
- Alcohol and other drug assessment and support
- Assistance for newly arrived refugees and migrants
- Chaplain
- Court support
- Employment and training support
- Financial counselling
- General counselling
- Housing support
- Legal assistance, with four lawyers from Victoria Legal Aid and Fitzroy Legal Service
- Mediation
- Mental health assessment and support
- Women’s family violence support, including assistance with the intervention order process and help finding refuge accommodation
- Victims’ support
- Youth support

It has been suggested that Indigenous communities may find the approaches used in community justice centres particularly appropriate: this approach could have ‘considerable potential for improving the life of Indigenous communities’.³⁶⁷ With the inclusion of specialist support workers and a dedicated list day, the NJC provides a potential model for bringing community justice to Aboriginal and Torres Strait Islander communities.

The court at the NJC, while having largely the same sentencing options as any other court, can adopt a different approach to the sentencing of offenders. This includes:

³⁶⁶ In addition, the court holds a monthly Aboriginal Hearing Day on which all cases involving Aboriginal and Torres Strait Islander defendants are heard. The list was developed to provide better support for this cohort and to increase court attendance.

³⁶⁷ Courts and Tribunals Unit, Department of Justice Victoria (2009). *Victoria’s Neighbourhood Justice Centre*. Sydney: Indigenous Justice Clearinghouse; 1.

- seeking of reports (either written or oral) from service providers within the NJC or sometimes from services external to the NJC;
- adjourning for the purpose of a problem-solving meeting; and
- adjourning for the purposes of the defendant demonstrating to the court a commitment to rehabilitation and addressing the underlying causes of the offending and, on occasions, hearing directly from the victim.

Key findings: Community justice centres

While a number of researchers have attempted to define the underlying principles common to all community justice centres, this has proven elusive: ‘community courts are perhaps the least amenable to a standardised definition’.³⁶⁸ The most basic premise of the model is that the court should be both an integral part of the community and an agent of transformation in it. The 2013 evaluation of the RCJC identified the following as the distinguishing features of a community court:³⁶⁹

1. *Individualised Justice*: Judicial decision-making characterised by access to a wide range of information about defendants and by a focus on achieving individualised rather than standardised treatment of offenders.
2. *Expanded Sentencing Options*: Availability of an enhanced range of sentencing and diversion options that draw heavily on locally-based government and non-profit providers, with a corresponding reduction in the use of jail time and fines as options.
3. *Varying Mandate Length*: Development of a system in which a (typically small) proportion of defendants may receive medium-term treatment for drug addiction or other problems under court supervision, while the majority of defendants receive short-term social service or community service sanctions, typically five days or less in length.
4. *Offender Accountability*: An emphasis on immediacy in the commencement of non-custodial sanctions as well as the strict enforcement of these sanctions.
5. *Community Engagement*: Establishment of processes through which community input can be factored into decision-making by community court leaders.
6. *Community Impacts*: Definitions of success in which community outcomes, such as reductions in crime or community restitution through community service, are among the measured evaluation criteria.

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.

³⁶⁸ Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 2.

³⁶⁹ Lee, C., Cheesman, F., Rottman, D., Swaner, R., Lambson, S., Rempel, M. and Curtis, R. (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg VA: National Center for State Courts; 3-4.

Chapter 5: Conclusion

A report on drug interventions in Australia summarised the key features of the current response as follows:³⁷⁰

- Interventions are predominantly used for therapeutic purposes – to divert drug and drug-related offenders *into* drug education and treatment, rather than *out* of the criminal justice system.
- Interventions are increasingly systematic with jurisdictions providing a range of programs for different types of drug users and offenders.
- Jurisdictions have used eligibility criteria and program requirements to target the level and type of intervention according to the type of drug users (cannabis versus other drug users) and severity of drug use/drug-related offending.

While this systematic approach may increase Australia's potential to address the causes of drug use and offending, to provide a more equitable response and to maximise the cost-effectiveness of interventions, there is also the potential danger of assuming that these interventions are all working well to address drug-related offending. The current report on solution-focused interventions has highlighted the research evidence to identify those types of programs that have actually been proven to have some positive impact, removing the need to make assumptions about what works in criminal justice responses to drug-related offending.

The following features appear time and again in the literature as critical to an effective criminal justice response to drug-related offending:

- **Accurate and early assessment of offenders:** Robust assessment tools are needed to provide accurate assessments of offenders' risks of reoffending, criminogenic needs and readiness to change. This will then facilitate directing the person into the most appropriate pathway of interventions.
- **A variety of interventions:** As individuals vary in their risk, needs and responsivity profiles, a variety of interventions is needed. That is, there needs to be a streamed approach so that individuals with differing risk and need levels are directed to different interventions, with less intensive interventions being used for offenders with lower-level risks and needs. This principle of a streamed approach to interventions applies at all stages of the criminal justice system. Relatedly, eligibility criteria for interventions need to be sufficiently broad to allow some flexibility in their admission practices to suit local conditions.
- **A holistic approach:** As offenders often present with multiple and complex needs, wrap-around support needs to be available (whether within the court or via linkages to community services). To achieve this, treatment services must be integrated with criminal justice processes and a case management approach used to provide the social support needed to complete interventions successfully. Part of this is close collaboration among criminal justice, substance abuse, mental health and other agencies to minimise process duplication, coordinate program goals and activities and share information.

³⁷⁰ Hughes, C. and Ritter, A. (2008). 'A Summary of Diversion Programs for Drug and Drug-Related Offenders in Australia'. *Drug Policy Modelling Program Monograph Series* No 16. Sydney: National Drug and Alcohol Research Centre; 2.

- **Monitoring of compliance:** Regardless of the type or intensity of intervention, some form of monitoring is needed to ensure compliance. In association with monitoring, a well-defined system of incentives for compliance and sanctions for non-compliance should be developed. Sanctions and rewards should be swift, certain and consistent.
- **Ongoing judicial interaction:** Given the critical role played by judicial officers in the more intensive interventions, it is preferable to maintain a small cadre of judicial officers in dedicated courts to whom offenders report throughout their intervention program. While it may not always be possible to ensure that the exact same magistrate monitors the participant every time, there must at least be a consistent level of understanding of, and commitment to, the underlying principles of the intervention.
- **Appropriate training for people working in solution-focused interventions:** The magistrate in particular has been shown to be critical in effective solution-focused court-based interventions. Given the importance of the interaction between the magistrate and the offender, appropriate training should be used to ensure that magistrates (and indeed all court staff, lawyers, police and others) are fully aware of, and supportive of, the underlying principles of any intervention. This can be facilitated via the use of practice guidelines, operational policy documents and the like to ensure a consistent approach that adheres to proven good practice.

These features are based on the evidence to date about what works for drug-related offending. While the evidence should be used to guide development of interventions in this area, a degree of flexibility and innovation is needed to cater for local conditions.

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