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Drug Courts – An Update

This Research Brief provides an overview of the operation of the Queensland Drug Court pilot program since its inception in June 2000 and of Drug Courts in New South Wales, Victoria, Western Australia and South Australia. Evaluations of these Drug Courts have been carried out and will be considered. Amendments to the Drug Court Act 2000 (Qld), introduced by the recently enacted Drug Legislation Amendment Act 2006 (Qld), will be included in the discussion.

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EXECUTIVE SUMMARY

This Research Brief provides an **overview** of the **operation** of the Queensland Drug Court program since its inception in June 2000 and of Drug Courts in other Australian jurisdictions. It updates previous Queensland Parliamentary Library publications on this issue and discusses **evaluations** of the various Drug Courts: **page 1**.

The premise of a Drug Court program is that many crimes committed by drug dependent offenders are related to their drug dependency and that traditional punishments, such as custodial sanctions, do not address that core problem. The traditional justice system approach has not appeared to have much impact on breaking the cycle of offending, incarceration and re-offending. The Drug Court concept seeks to **break the cycle** by bringing together the criminal justice system – which focuses on protecting the community – and drug treatment and other support mechanisms – which adopt a therapeutic interventionist approach – to devise a rehabilitation program tailored to the individual needs of drug dependent offenders. Breach of the program requirements may result in the offender having to serve a similar prison term to that which would have otherwise been imposed had he or she not entered the program. The first Drug Court was established in Florida in the United States in the 1980s and they have spread to many other countries, including Australia: **pages 1-2**.

Outcome **evaluations** of the effectiveness of the Drug Courts in reducing recidivism and in improving the health and well-being of participants have been undertaken in Queensland and in other jurisdictions in which they operate. However, the short time in which Drug Courts have been operating produces a significant limitation on most evaluation studies. There have also been shortcomings in the study design of some evaluations, particularly when it has not been possible to construct a comparison group against which to measure Drug Court participants. Thus, while some benefits of successful completion of Drug Court programs have been observed, the results of the studies must be viewed with some caution: **pages 2-4**.

The Queensland Drug Court pilot program was set up under the *Drug Rehabilitation (Court Diversion) Act 2000* (Qld) (*DRCD Act*) and commenced operation on 13 June 2000. In November 2002, the Drug Court program was extended to North Queensland and necessary amendments to the *DRCD Act* were made to facilitate this expansion. Following evaluations of the programs by the Australian Institute of Criminology (AIC) and a Report by the first Drug Court magistrate, Mr John Constanzo, the **Drug Legislation Amendment Bill 2005 (Qld)** was introduced into the Queensland Parliament to give permanent status to the Drug Court and to amend the *DRCD Act*. The legislation (containing the 2006 amendments to the *DRCD Act*) was passed on 8 March 2006 and the *DRCD Act* was renamed the ***Drug Court Act 2000***: **pages 4-6**.

An overview of the **Queensland Drug Court program** is set out on **pages 6-7**. Details about the role of the Drug Court magistrate, eligibility criteria for participation in a program, the assessment process, the making of an Intensive

Drug Rehabilitation Order (IDRO), and the operation of, and participation in, the Drug Court are provided on **pages 7-17**. Where relevant, the **2006 amendments** to the *Drug Court Act* are noted.

The Australian Institute of Criminology (AIC) has completed two evaluations of the Drug Court pilot program in Queensland – the *Final Report on the South-East Queensland Drug Court* in July 2003 and the *Final Report on the North Queensland Drug Court* in 2005. Taking into account the limitations of the small sample of graduates and short follow-up period, the *South-East Queensland Drug Court Report* found that 9% of graduates from the Drug Court had re-offended compared with 32% of offenders terminated from the program; 61% of those who refused to participate; and 47% of a prisoner comparison group. The *North Queensland Drug Court Report* did not have a prisoner comparison group but it found that 29% of graduates had re-offended post-program: **pages 17-22**.

This Research Brief then considers the operation of Drug Courts in **other Australian jurisdictions** together with any evaluations carried out on them to date: **page 22**. It must be pointed out that the evaluations and, in some cases, the findings of them are not directly comparable. Numbers of participants and graduates and comparison groups vary between jurisdictions. Study design problems and other limitations present in many studies are noted where relevant. Also, unlike the Queensland evaluations which look at recidivism and other impacts of the Drug Court program while undertaking the program separately from post-program, many of the interstate evaluations consider both periods together, making comparisons with the Queensland program more difficult.

New South Wales was the first jurisdiction to trial a Drug Court which began in February 1999, backed by the *Drug Court Act 1998* (NSW). Unlike the Queensland program, it is aimed at more serious offenders. An evaluation of the Drug Court program carried out by the NSW Bureau of Crime Statistics and Research found lower rates of re-offending among graduates of the program when compared with a comparison group of similar offenders who did not enter the Drug Court program and participants who were terminated from the program: **pages 23-28**. In addition, a Youth Drug and Alcohol Court (YDAC) has been operating in NSW since 2000. The evaluation of the YDAC, commissioned by the NSW Attorney-General's Department, had a number of study data limitations but indicated a mixed picture of re-offending: **pages 28-30**.

The **Victorian** Drug Court commenced as a three year trial in May 2002 and is underpinned by ss 18X-18SZ of the *Sentencing Act 1991* (Vic). While similar in operation to programs elsewhere, it is targeted at alcohol dependent as well as drug dependent offenders: **pages 30-32**. An evaluation of the program carried out for the Department of Justice in 2004 had a number of drawbacks similar to those seen in the other evaluations and, importantly, was only able to study 10 graduates for a total of 2002 days post-program. Of those 10 graduates, 2 had re-offended post-program: **pages 32-34**.

The **Western Australian** Drug Court pilot program began in December 2000 and operates as a pre-sentence measure. In general, the operation of the program is similar to that of Drug Courts in other states. It is also available to minors with the Children's Court operating as a Drug Court one day per week: **pages 34-35**. An independent evaluation of the Drug Court, in May 2003, found that there was no

significant overall difference between the recidivism rates of Drug Court participants and any of the comparison groups. Offenders who had completed a Drug Court Regime (DCR) and Supervised Treatment Intervention Regime (STIR) program had a lower (but not significantly lower) probability of re-arrest (0.75) than the matched drug offender group (0.92): **pages 35-38**.

The **South Australian** Drug Court pilot program commenced in May 2000 but is now funded on an ongoing basis. Like the WA Drug Court, it is a pre-sentence option for offenders. It operates similarly to other Drug Court programs except that all participants are on electronically monitored home detention bail at the beginning of the program: **pages 38-39**. An evaluation of the program carried out in February 2005 was limited by the lack of a suitable comparison group. However, the study found that, of the 43 program graduates, over 65% had either not re-offended or were charged with less serious offences post-program: **pages 39-40**.

1 INTRODUCTION

This Research Brief provides an overview of the operation of the Queensland Drug Court since its inception in June 2000 and of Drug Courts in other Australian jurisdictions. The Drug Court concept is part of a recent ‘therapeutic’ approach to managing offenders. It is premised on the need to break the cycle of drug dependency and dependency-driven crimes, which the traditional criminal justice system has found difficult to do. The Court brings together the criminal justice system and a range of treatment, counselling and support options aimed at rehabilitating drug dependent offenders. A number of evaluations of the effectiveness of the Drug Courts in reducing recidivism and creating improved health outcomes for offenders have now been undertaken and will be discussed in this paper.

This Research Brief updates previous Queensland Parliamentary Library publications concerning the implementation and operation of Drug Courts. A Research Note, [*Drug Courts: Breaking the Link Between Drugs and Crime? \(RN 3/99\)*](#), considered the background to Drug Court trials and programs operating in New South Wales and overseas while a Legislation Note – [*Drug Rehabilitation \(Court Diversion\) Bill 1999 \(LN No 9/99\)*](#) – outlined the legislative proposals for a Drug Court pilot program in Queensland. An update on the operation of the Queensland Drug Court and of Drug Courts in other states was provided in the [*Drug Courts Research Brief 3/01*](#). The Queensland Drug Court was extended to North Queensland in November 2002, as discussed in a further Parliamentary Library paper – [*Drug Rehabilitation \(North Queensland Court Diversion Initiative\) Amendment Bill 2002 \(Qld\) \(RBR 2002/25\)*](#).

2 BACKGROUND

The premise of a Drug Court program is that many crimes committed by drug dependent offenders are related to their dependency and that traditional punishments, such as custodial sanctions, do not address that core problem. Thus, the cycle of offending, incarceration and re-offending is not broken. This impacts not just on the victims, offenders, and their families but also the Government and the general community which bear the economic and social costs of dealing with the offender. The Drug Court concept seeks to break the aforementioned cycle by bringing together the criminal justice system – which focuses on protecting the community – and drug treatment and other support mechanisms – which adopt a therapeutic interventionist approach – to devise a rehabilitation program tailored to the individual needs of drug dependent offenders. The aim is to provide the offender with relevant treatment and skills necessary to enable him or her to change his or her lifestyle and not commit further offences.

Drug Courts are an aspect of 'issues-based' or 'problem-solving' justice initiatives. This is where an attempt is made to deal with problems that may have contributed to an offender's behaviour from both a legal and a social perspective.¹

Under the Drug Court program, the offender is intensively supervised and monitored by a team comprising the judicial officer, health professionals, defence and prosecution lawyers, government and non-government personnel. The typical program involves an initial period of detoxification. An offender is then typically required to attend drug treatment and relevant health and counselling sessions, and undertake educational/vocational/employment courses that assist with life skills and finding a job. It is a core condition of the program that the participant submit to frequent court attendances and drug tests (usually urinalysis), and must regularly report to the case manager. As a reward for adherence to the program, the regularity and frequency of drug tests and court appearances may be reduced but if the participant does not comply with his or her program requirements, sanctions may include increased drug tests and court attendances and more intensive supervision. If the non-compliance is sufficiently bad, the participant may be terminated from the program and must return to court for sentencing.²

The first Drug Court began in Florida in the United States in the 1980s and there are now around 1,000 such Courts in operation or in planning in all 50 states of the USA.³ They have since spread to other countries including Canada, the United Kingdom and Australia.

Outcome evaluations of the effectiveness of the Drug Courts in reducing recidivism and in improving the health and well-being of participants have been undertaken in Queensland and other jurisdictions in which they operate. However, the short time in which Drug Courts have been operating in Australia produces a significant limitation on most evaluation studies. It has taken time for a reasonable sample of successful graduates from the Drug Court to emerge and there has not been a substantial timeframe during which participants can be followed up in order to

¹ A Freiberg, 'Sentencing Review: Drug Courts and Related Sentencing Options', *Discussion Paper*, Department of Justice, Melbourne, August 2001, p 5. Another example of this approach in Queensland is the Court Diversion Program for Illicit Drug Offenders which is targeted at eligible offenders charged with possession of cannabis for personal use and diverts them into assessment and education sessions.

² Department of Justice and Attorney-General, 'The Drug Court', *Factsheet*, <http://www.justice.qld.gov.au/courts/factsht/C10DrugCrt.htm>.

³ S Belenko, 'The challenges of integrating drug treatment into the criminal justice process', *Albany Law Review*, vol 63(3), p 833 cited in M Bull, School of Justice Studies, Queensland University of Technology, 'Just treatment: a review of international programs for the diversion of drug related offenders from the criminal justice system', *Report prepared for the Department of Premier and Cabinet*, June 2003, p 42.

collect data on re-offending and health outcomes. There have also been shortcomings in the study design of some evaluations, particularly when it has not been possible to construct a comparison group against which to measure Drug Court participants.⁴ Studies of the effectiveness of USA Drug Courts on re-offending, cost savings and improved well-being have suffered from design flaws such as the lack of a comparison or control group and insufficient follow-up time.⁵ Due to these difficulties and a lack of direct similarity between overseas and Australian Drug Courts, this Brief does not discuss evaluations from other countries.

A summary of various evaluations of Australian Drug Courts is provided below, with design or methodological problems indicated where they occur. While some benefits of successfully completing Drug Court programs have been identified, the results of the studies must be viewed with some caution.

It has been observed that, whatever may be the outcome of participation in the Drug Court, each such Court in Australia has had some implementation and operational problems. Many teething troubles are common to all but some have been unique to a particular Court. While the unique difficulties will be discussed in the context of the consideration of the relevant Drug Court, the common implementation problems have included difficulty in developing databases for proper management and evaluation, and problems in providing for random urine testing and information sharing. In addition, the intense level of involvement required of case managers (such as home visits with participants and taking participants to meetings) has caused the number of participants in a program at any one time to be kept at a smaller level than would be desirable.⁶

It has been suggested that the Drug Court concept is one of the most complex policies to implement as it involves a whole-of-government approach to a complicated social problem and also requires the judiciary to perform a fairly non-traditional role. Hence, much of a 'trial' or 'pilot' phase of a Drug Court program entails sorting out the practicalities of implementing the broader policy agenda.⁷

⁴ M Bull, p 13.

⁵ B Lind et al, NSW Bureau of Crime Statistics and Research (BOCSAR), *New South Wales Drug Court Evaluation: Cost-Effectiveness*, 2002, pp 2-3.

⁶ D Indermaur & L Roberts, 'Finding alternatives to imprisonment: Drug courts in Australia', *Australian Law Reform Commission Reform Journal*, Issue 86, 2005, pp 28-32, p 30.

⁷ T Makkai & K Veraar, 'Final Report on the South-East Queensland Drug Court', (*South-East Queensland Drug Court Report*), *Technical and Background Paper No 6*, Australian Institute of Criminology (AIC), July 2003, p 9,
<http://www.justice.qld.gov.au/courts/pdfs/AICreport.pdf>.

3 BACKGROUND TO THE QUEENSLAND DRUG COURT

A Drug Court pilot program was set up under the *Drug Rehabilitation (Court Diversion) Act 2000* (Qld) (*DRCD Act*) and commenced operation on 13 June 2000. In November 2002, the Drug Court program was extended to North Queensland and necessary amendments to the *DRCD Act* were made to facilitate this expansion.⁸ The program in North Queensland was divided between Cairns and Townsville.

The aim of a Drug Court program is to provide treatment rather than a prison term for offenders whose law-breaking is often due to their drug dependency. For those offenders who are assessed as suitable to participate in such a program, the Drug Court magistrate makes an Intensive Drug Rehabilitation Order requiring that the offender undertake various treatments to address their drug dependency and any relevant counselling, and educational or employment training. Strict reporting and supervision conditions also apply. The aim is to have the offender abstain from taking drugs while improving their health, family and social life.⁹

During the period between December 2002 and 22 August 2003, referrals of offenders to the Drug Court ceased to enable an evaluation of the program by Dr Toni Makkai of the Australian Institute of Criminology (AIC) which concluded with the [South-East Queensland Drug Court Report](#), published in July 2003, as required by s 45 of the *DRCD Act*. This was followed up with an evaluation of the North Queensland Drug Court pilot program by the AIC in 2005 ([North Queensland Drug Court Report](#)).¹⁰ In addition, in July 2003, the first Drug Court magistrate, John Costanzo, presented a [Final Report on the South-East Queensland Drug Court Pilot](#) (Magistrate Costanzo's Report),¹¹ in which the operation of the *DRCD Act* was reviewed and options for improvement and reform were provided. Some of the matters recommended in that Report are contained in the recent amendments made by the *Drug Legislation Amendment Act 2006* (Qld), discussed below.

⁸ The amendments were effected by the *Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002* (Qld) which was extensively discussed in the Queensland Parliamentary Library's [Research Brief No 2002/25](#).

⁹ J Payne, 'Final Report on the North Queensland Drug Court', *Technical and Background Paper No 17*, Australian Institute of Criminology (AIC), 2005, p 10, <http://www.aic.gov.au/publications/tbp/tbp017/tbp017.pdf>

¹⁰ J Payne, 'Final Report on the North Queensland Drug Court', AIC, 2005.

¹¹ As required pursuant to s 46 of the *DRCD Act*.

Following an internal review of the Drug Court by the Queensland Department of Justice and Attorney-General (DJAG) regarding legislative and procedural issues relating to the program, the Queensland Government accepted DJAG's recommendation that the Drug Court program become permanent and that participation requirements for the program be made consistent between South-East Queensland and North Queensland Drug Courts.¹² The DJAG review considered the AIC's findings and the recommendations that were made by Magistrate Costanzo's Report.

Accordingly, to implement those recommendations and introduce a range of other initiatives, the Drug Legislation Amendment Bill 2005 (Qld) was introduced into the Queensland Parliament on 30 November 2005 by the Hon Linda Lavarch MP, Minister for Justice and Attorney-General. The legislation was passed on 8 March 2006. In a media statement on the same day, the Attorney-General said that the *Drug Legislation Amendment Act 2006* removed the 'pilot' status of the Drug Courts, allowing participation in an intensive drug rehabilitation program to be an alternative to prison. Mrs Lavarch said: "A total of 174 drug-addicted offenders have graduated from pilot Drug Court programs since they began in 2000" and that "nine out of every 10 graduates are not only kicking their addictions – they also are staying out of jail. ... The cycle of crime is being broken by Drug Courts".¹³ The *DRCDA Act* is renamed the *Drug Court Act 2000* and will be referred to as the '*Drug Court Act*' in the remainder of this Brief. The amendments made to the *Drug Court Act* by the *Drug Legislation Amendment Act 2006* will be referred to as the '2006 amendments'.

A number of other Australian jurisdictions have embarked on a Drug Court initiative. These are New South Wales (the first Australian jurisdiction to embark on a Drug Court trial and evaluation), Victoria, Western Australia, and South Australia. As will be seen later in this Brief, there is some degree of variation in the operation, process and legal underpinnings of each of those Drug Courts.

4 QUEENSLAND DRUG COURTS

The *Drug Court Act* seeks, through the Drug Court program, to reduce the level of drug dependency in the community and of eligible persons; and to reduce the level of criminal activity and health risks associated with that dependency. It also aims to reduce the pressure on court and prison systems and to promote the

¹² Drug Legislation Amendment Bill 2005 (Qld), *Explanatory Notes*, p 3.

¹³ Hon Linda Lavarch MP, Minister for Justice and Attorney-General, 'New Queensland Laws Create Permanent Drug Court and Crack Down on Drug Labs', *Media Statement*, 8 March 2006.

rehabilitation of eligible persons and their re-integration into the community: s 3. The 2006 amendments to s 3 ensure that the objects more closely reflect the practices of the Drug Court.¹⁴ The main difference is a greater focus on the participant in the Drug Court program by making the promotion of the participant's rehabilitation and re-integration into the community an objective of the legislation. This amendment accords with a recommendation made by Magistrate Costanzo's Report.¹⁵

The Drug Court program enables people who have pleaded guilty to specified drug-related offences to take part in a drug rehabilitation program under an intensive drug rehabilitation order (IDRO). Under the IDRO, the sentence is suspended while the offender is treated by a team of specialists, undergoes frequent drug testing, and undertakes various vocational, educational or other relevant programs. Importantly, the offender must agree to court supervision and reporting requirements. At the end of the program, the participant offender appears before the court for final sentencing which takes into account the manner in which the offender has participated in the program.¹⁶

The Drug Court program involves a team of specialists all working together to formulate appropriate treatment, along with the Drug Court magistrate.¹⁷

Before embarking on the Drug Court program, the offender must undergo preliminary assessment and the offender is remanded into custody or released on bail while the assessment of his or her suitability to embark on a program is being made and relevant reports are written. The program then has a number of stages. The first phase involves significant court appearances, detoxification and stabilisation of the addiction. To progress to the second phase, the offender must have been drug and offence free for a designated period. The final phase involves decreasing reporting and court appearance requirements.¹⁸

The first defendants appeared before the Drug Court on 26 June 2000 and, during its first year, the Court operated out of three Magistrates Courts – Beenleigh,

¹⁴ Drug Legislation Amendment Bill 2005 (Qld), *Explanatory Notes*, p 13.

¹⁵ *Final Report on the South-East Queensland Drug Court Pilot*, p 110 and Recommendation 66.

¹⁶ Department of Justice and Attorney-General, 'Taking part in the Drug Court', *Factsheet*, http://www.justice.qld.gov.au/courts/factsht/qc_fact4.htm.

¹⁷ Queensland Magistrates Court, *Annual Report 2004-2005*, p 41.

¹⁸ *South-East Queensland Drug Court Report*, pp 22-23.

Southport and Ipswich.¹⁹ The program was subsequently extended to the Magistrates Courts in Townsville and Cairns in November 2002.

4.1 DRUG COURT MAGISTRATES

In those Magistrates Courts declared to be ‘Drug Courts’, the magistrate who is allocated the functions of a Drug Court magistrate has jurisdiction to deal with an offender appearing before the magistrate charged with a relevant offence (defined below). The proceedings are conducted in a way that avoids unnecessary technicalities and strict adherence to the rules of evidence so that the process is fair and practical: s 11.

The role of the Drug Court magistrate is to determine which offenders are suited to participating in an intensive drug rehabilitation program and to supervise an offender’s progress under the program. They also provide assistance to participants undertaking the programs. This task is aided by reports provided by a team of officers. The teams comprise officers from Queensland Health (a clinical nurse consultant); a police prosecutor; a defence solicitor from Legal Aid Queensland; a Department of Corrective Services officer; and the Drug Court Registrar, all working with the Drug Court magistrate. As described earlier, this specialist team monitors and reviews a participant’s progress in undertaking rehabilitation programs; attends hearings involving the participant; and makes recommendations to the Drug Court magistrate. The lead agency for the program is DJAG.²⁰ The Department of Housing, the Department of Communities and non-government bodies help with housing and other accommodation support for offender participants and their families.²¹ Queensland Health offers assistance with access to non-government rehabilitation treatment facilities and other programs.

As of 30 June 2005, there were 11 magistrates who had been trained in the Drug Court processes and allocated the functions of a pilot program magistrate. The Drug Court can manage up to 140 participants in a Drug Court program at any one time.²²

¹⁹ The Governor in Council declares, by Regulation, Magistrates Courts to be Drug Courts and the Chief Magistrate must allocate the functions of a Drug Court magistrate to one or more magistrates: *Drug Court Act*, ss 9-10. See also s 12.

²⁰ ‘Taking part in the Drug Court’, *Factsheet*.

²¹ ‘The Drug Court’, *Factsheet*.

²² Queensland Magistrates Court, *Annual Report 2004-2005*, p 41.

A **new s 36A** of the *Drug Court Act*, inserted by the 2006 amendments, requires Drug Court magistrates to consider the views of the Drug Court team members in making a decision about any of the matters specified in that provision. These include matters such as whether an offender's rehabilitation program should include medical, psychiatric or psychological treatment; where the offender should be placed for that treatment (e.g. a residential rehabilitation facility); and the frequency of reporting by the offender. Drug Court team members will be able to exchange information regarding an offender which will assist in the management of the offender's participation in a Drug Court program: **new s 39A**. In addition, a **new s 39C** restricts access to confidential information, such as medical reports, which the Drug Court obtains to assist it in making determinations.

4.2 ELIGIBILITY AND REFERRAL FOR ASSESSMENT FOR INTENSIVE DRUG REHABILITATION PROGRAM

An offender is eligible to participate in the Drug Court program if –

- he or she has been charged with a '**relevant offence**', defined in **s 8** as a simple offence or an indictable offence that may be dealt with summarily. It can also be a prescribed drug offence (i.e. those set out in Schedule 3 of the *Drugs Misuse Act 1986* (Qld)) or another prescribed offence that is punishable by imprisonment for a term of not more than seven years (i.e. an offence against any of the Schedule 2 provisions of the Criminal Code). Similarly to other jurisdictions, the offence does not have to be a drug offence;
- he or she has not committed a disqualifying offence. A '**disqualifying offence**' is an offence of a sexual nature (apart from prostitution-related offences) or certain offences involving violence against another person. However, the definition will not exclude someone facing charges of common assault, or resisting arrest, or assault with intent to steal from being able to enter the Drug Court program. The 2006 amendments to **s 7** of the *Drug Court Act* ensure that both indictable and summary offences involving violence are 'disqualifying offences', excluding referral to the Drug Court. The new examples included in **s 7** provide help in determining the sort of offences that can be 'offences involving violence'. Some offences do not specifically have violence as an element but do involve considerable violence (e.g. dangerous operation of a motor vehicle, breach of a domestic violence order). The foregoing amendments implement recommendations made by Magistrate Costanzo's Report.²³ The removal of the distinction between summary and indictable offences involving violence enables the Drug Court magistrate to decide

²³ *Final Report on the South-East Queensland Drug Court Pilot*, pp 23-24.

whether the violence involved is such that the offender should be excluded from the program; and

- there is evidence of drug dependence: s 13.

For an offender to be referred for assessment of the offender's suitability for the program, he or she must be an 'eligible offender'. An '**eligible offender**' is an offender charged before a Drug Court who –

- is not a child within the meaning of the *Juvenile Justice Act 1992* (Qld) (i.e. the offender must be aged 17 years or over). In NSW, young offenders can be dealt with in a Youth Drug and Alcohol Court and the Perth Children's Court in WA operates as a Drug Court for one day a week;²⁴ and
- must be drug dependent and that dependency has contributed to the commission of the offence. In the Victorian program and in the NSW Youth Drug and Alcohol Court, an offender can be dependent on drugs or alcohol;²⁵ and
- if convicted, would be imprisoned (as is the requirement in other jurisdictions); and
- is not serving a term of imprisonment (other than a community term of imprisonment: see s 7B); or a charge for a disqualifying offence is not pending; and
- satisfies any other prescribed criteria. The Drug Rehabilitation (Court Diversion) Regulation 2000 (Qld)²⁶ prescribes a list of postcodes in which the offender must reside: s 6.

The *South-East Queensland Drug Court Report* found that the most common reason, at the time of the study, for being deemed ineligible for the Queensland Drug Court program was that the person has been charged with a disqualifying offence (45 instances). The second most likely reason was that the magistrate considered it to be highly unlikely that the offender, if he or she were to go through the normal court processes, would receive a term of imprisonment (38 incidents). A further explanation was that the offender is not sufficiently motivated to undertake the program (24), followed by the reason that the offender was found not

²⁴ The NSW and WA Drug Courts will be considered later in this Research Brief.

²⁵ The Victorian and NSW Drug Courts will be considered later in this Research Brief.

²⁶ It is likely that the Regulation will be renamed in light of the change to the name of the Act.

to be drug dependent (18). An ineligible location was rarely a reason for exclusion (4 occasions).²⁷

A new **Part 3A (ss 12A-12D)** of the *Drug Court Act*, inserted by the 2006 amendments, allows a magistrate to refer an offender for an **indicative assessment of drug dependency** by officers of Queensland Health, prior to the magistrate referring the offender for an assessment of the offender's suitability to participate in an intensive drug rehabilitation program under Part 4. The *Explanatory Notes* (p 15) state that the new provisions formalise actual practice of South-East Queensland Drug Courts of referring an offender to Queensland Health for an assessment of their drug dependency so that there is no waste of resources referring someone for a rehabilitation assessment if they are not drug dependent.

Part 3A will apply only if –

- an offender charged with a relevant offence appears before a magistrate; and
- the offender has or intends to plead guilty to the offence; and
- the magistrate is satisfied the offender may be drug dependent; and
- the offender appears to be an eligible offender.

The magistrate will generally adjourn the proceedings while the offender is undergoing an indicative assessment by a qualified health professional at times and places determined by the chief executive of Queensland Health. At the end of the indicative assessment, a report must be provided to a Drug Court magistrate. Each party's legal representatives may make submissions about whether the proceedings should continue in a Drug Court or the matter should be dealt with by a Magistrates Court.

Following the above indicative assessment, the magistrate may refer the offender for an assessment of their suitability to participate in an intensive drug rehabilitation program: **Part 4**. The magistrate must decide if the offender appears to be an eligible offender and, if so, the magistrate may make the referral if satisfied that –

- the offender has or intends to plead guilty to the offence; and
- is willing to be assessed for suitability for rehabilitation and to appear before the Drug Court magistrate to be dealt with for the offence; and
- the prescribed maximum number of active intensive drug rehabilitation orders has not been exceeded (i.e. 40 such orders for the Magistrates Courts at

²⁷ *South-East Queensland Drug Court Report*, p 14.

Townsville and Cairns and a total of 141 orders for the Magistrates Courts at Beenleigh, Ipswich and Southport): s 15.²⁸

If the magistrate decides to refer the offender for assessment, the magistrate may adjourn the proceeding and remand the offender in custody or release the offender on bail to appear before the Drug Court magistrate while the assessment is occurring: s 16, as modified by the 2006 amendments. If an offender is released on bail, the offender is subject to reporting conditions. The chief executive of the Department of Corrective Services must provide a pre-sentence report which contains an assessment of the offender's suitability for rehabilitation and a proposed rehabilitation program. A qualified health professional from Queensland Health must also assess the offender and submit a report to the Drug Court magistrate.²⁹

By referring an offender for assessment, the magistrate is seeking advice about whether the offender should, and would, be able to participate in an intensive drug rehabilitation program. The assessment by officers from Queensland Health and the Department of Corrective Services considers matters such as the offender's level of drug addiction and how to deal with it and personal issues such as the amount of family support available to the offender. If the offender appears suitable, a rehabilitation program is drawn up.³⁰

Magistrate Costanzo's Report noted the various practices and procedures that Drug Court magistrates and department coordinators had adopted to reduce the time it takes participants to graduate from the Drug Court program. As of July 2003, those measures included Queensland Health and Corrective Services assessors having refined their assessment tools to determine who is and is not suitable for the rehabilitation program. Pre-sentence reports had become better focused and more informative to enable the magistrate to make a decision about an offender's suitability for the program.³¹

4.3 INTENSIVE DRUG REHABILITATION ORDER

If the above process has occurred, the offender will appear before a Drug Court magistrate for sentencing. The Drug Court magistrate may make an '**intensive**

²⁸ See also s 8A of the DRCD Regulation 2000.

²⁹ This is a new requirement (s 16(2A)) introduced by the 2006 amendments: to formalise the present practice of Queensland Health providing health assessment reports.

³⁰ 'Taking part in the Drug Court', *Factsheet*.

³¹ John Costanzo, *Final Report on the South-East Queensland Drug Court Pilot*, p 97.

drug rehabilitation order’ (IDRO) if the magistrate would, apart from the *Drug Court Act*, impose a prison sentence on the offender of not more than three years (if a drug-related offence) or not more than four years (for another offence). The magistrate must also be satisfied that the offender is not suffering from a mental condition that could prevent active participation in a program and there are adequate facilities available to supervise and control the offender’s participation in the program. There must also be reasonable prospects that the offender will satisfactorily comply with an IDRO, having regard to relevant matters such as the pre-sentence report and the assessment report: **s 19**, as altered by the 2006 amendments. Once an IDRO is made, the offender becomes a ‘participant’ in the Drug Court program.

An intensive drug rehabilitation program takes around 12-18 months to complete but this will vary depending upon the rate of progress of each offender. It has been reported that the programs are participant-focused whereby the Drug Court team attempts to motivate participants by encouraging them and attempting to address problems they face along the way. It also enables participants to have some input into and, thereby, greater responsibility for, their rehabilitation.³²

If it is determined that the offender is suitable for an IDRO, the offender is sentenced to a term of imprisonment (which is wholly suspended) and also placed in a rehabilitation program: **s 20**. The 2006 amendments to s 20 provide that the IDRO may sentence the offender to serve a prison term of more than three years only if the prosecution and the offender have consented to the offence being prosecuted summarily on the ground that the offender will be adequately punished on summary conviction. This means that offenders facing a suspended sentence of up to four years can be referred to the Drug Court program if the prosecution and the offender consent.

If the magistrate decides that the offender is not suited to an IDRO, the offender is sentenced in the normal way: **s 29**.

The IDRO has a number of **core conditions** contained in **s 22** which are that the offender –

- must not commit an offence;
- must not leave or remain outside Queensland without permission;
- must notify every change of address or employment within two business days;
- must comply with reasonable directions of an authorised corrective services officer (such as to appear before a program magistrate on a certain day); and

³² Queensland Magistrates Court, *Annual Report 2004-2005*, p 41.

- must attend before a program magistrate at the times and places stated.

The offender may also face **additional requirements** under the IDRO: **s 23**. Those might be to make restitution or pay compensation in relation to the loss or destruction of someone's property or for personal injury that is connected with the commission of the offence; or perform up to 240 hours of community service; or do something else that might assist rehabilitation. Previously, the amount of hours of community service that could be ordered to be performed was 120 hours but this has been increased by the 2006 amendments to a maximum of 240 hours.

The contents of the IDRO, the core conditions and additional requirements, the rehabilitation program, and the consequences of non-compliance with the IDRO must be **explained** to the offender before the offender agrees to the making of, and compliance with, the IDRO. Where a prescribed drug offence is involved, the offender must be told that they would normally be dealt with in the Supreme Court and if the offender does not successfully complete the program, they will be dealt with in the Supreme Court for the offence. The offender must also be informed that, subject to the Act, the IDRO or program may be amended or a program terminated on the magistrate's own initiative or on application by the offender or other specified officers. The offender must **agree** to the making of the IDRO: **ss 25-26**.³³

In undertaking the program under the IDRO the offender must agree to specified requirements of it. These requirements are generally reporting to an authorised corrective service officer (who will usually be the case manager) and reporting for drug testing which seems to involve providing urine or other samples for testing at least twice a week.³⁴ The offender might also, as part of the rehabilitation program, need to agree to attend certain drug treatment programs (such as methadone maintenance or detoxification treatment) or other medical programs and/or attend employment or training courses.

The IDRO must also state that a Drug Court magistrate may, at any time, commit the offender to a prison if it is necessary to facilitate the offender's detoxification or assessment of his or her participation in the program: **s 24**. The 2006 amendments to s 24 remove the previous requirement that the offender could only be committed to prison for up to seven days. The difficulty with that time limit was that the offender had to reappear in Court before detoxification was complete. The **new s 24(5)** consequently provides that the offender is committed to prison until detoxification is complete or for 22 days, whichever event is earlier. The offender can now also apply to the Drug Court magistrate for the committal to end.

³³ See **s 33** regarding amendment of IDROs.

³⁴ 'Taking part in the Drug Court', *Factsheet*.

Under **new s 24(6)** any commitment to prison for assessment of the offender's participation in the program must not exceed 15 days unless it is because the offender has failed to attend on a person or a place, in which case the committal may last for up to 30 days.

Most offenders access various treatment options (residential, non-residential, and methadone maintenance). The type of programs, apart from treatment programs, accessed by those issued an IDRO up to December 2002 were, in descending order of uptake: cognitive skills, relapse prevention, life skills, supported accommodation, detoxification, anger management, and other forms of counselling.³⁵

It has been reported that urine testing is an important part of the program. A Regulation can, as a consequence of the 2006 amendments to s 43, prescribe the minimum frequency of drug tests to be undertaken. It has been found that as offenders progress through the phases of the program, they are increasingly less likely to test positive, indicating compliance with the Drug Court program's objective for participants to become drug free. The *South-East Queensland Drug Court Report* found that the number of positive tests was 14% in phase 1, falling to 4% in phase 3.³⁶

If an offender is participating well in a program, a Drug Court magistrate can give a number of different types of **rewards** such as fewer reports to court; or less frequent drug testing; or a decrease in the level of supervision. Other kinds of rewards are set out in **s 31**. The most common reward is to progress to the next phase in the program.³⁷

On the other hand, if an offender is not complying with the IDRO or the program, various **sanctions** listed under **s 32** can be imposed. Examples of a breach would be if the offender uses illegal drugs or refuses to give a sample for drug testing; fails to attend court; fails to comply with the rehabilitation program; or fails to attend a course the offender was told to attend.

Sanctions include more frequent attendance at courses or treatment or they might be less traditional punishments, such as writing an essay. An offender might also be imprisoned for up to 15 days for each non-compliance/breach but not for more than 22 days at any one hearing. Prior to the 2006 amendments, the court could order up to 14 days imprisonment per breach and this could be made cumulative. Given that custodial sanctions need only be proved on the balance of probabilities

³⁵ *South-East Queensland Drug Court Report*, p 27.

³⁶ *South-East Queensland Drug Court Report*, pp 25-27.

³⁷ *South-East Queensland Drug Court Report*, p 24.

and the ‘sentence’ does not count as time served by the offender against their initial sentence, it was considered that s 32 should be amended to place time limits on the term of the imprisonment sanction option.³⁸

Another sanction option is for the magistrate to increase the amount of community service to be performed but not more than 40 hours community service for each failure to comply, and not so as to increase the total number of hours to more than 240 hours. The foregoing provisions are contained in **new s 32(5)(h)** which are intended to provide Drug Court magistrates with the option of ordering more community service for breaches rather than a prison term.³⁹ As of December 2002, a prison term was the most common sanction.⁴⁰

4.4 PROGRAM GRADUATION AND TERMINATION

If an offender successfully completes a rehabilitation program, the Drug Court magistrate will reconsider the initial sentence that was imposed, vacate the IDRO, and impose a final sentence: **s 36**. In reconsidering the initial sentence, the magistrate must consider the extent to which the offender has participated in the rehabilitation program and matters such as any rewards or sanctions. The final sentence that is imposed may be any sentence that could have been imposed for the original offence. If the original offence was a prescribed drug offence, the final sentence may be any sentence that could be imposed for an offence against the *Drugs Misuse Act 1986* on proceedings that may be dealt with summarily. If an offender is sentenced to a prison term, it will not be greater than the initial term imposed. In addition, the 2006 amendments to s 36 ensure that time spent in custody under the *Drug Court Act*, apart from being imposed as a sanction for a breach of the IDRO, is counted as imprisonment already served.

It may be that the magistrate will not impose a prison sentence. It has been reported that in the first four years of operation of the Drug Courts, no offender who successfully completed the rehabilitation program was sentenced to prison but, instead, received community-based sentencing options such as probation.⁴¹

Other measures, noted by Magistrate Constanzo in his Report, that have improved the rate of graduation from the program include case managers gaining more experience in detecting and anticipating problems and addressing them through

³⁸ Drug Legislation Amendment Bill 2005 (Qld), *Explanatory Notes*, p 5.

³⁹ Drug Legislation Amendment Bill 2005 (Qld), *Explanatory Notes*, p 16.

⁴⁰ *South-East Queensland Drug Court Report*, p 24.

⁴¹ ‘Taking part in the Drug Court’, *Factsheet*.

using their power to issue reasonable directions; a policy of having a participant reassessed if they do not graduate to the next phase of the program within four months; and less tolerance of non-conforming conduct so that terminations occur more quickly than previously. In addition, regular inter-agency meetings occur in order to identify issues of concern and to improve interfacing between government and non-government organisations. It has also been noted that drug testing procedures have improved to make it almost impossible for participants to ‘cheat’ in providing urine samples.⁴²

An offender may want to stop the rehabilitation program before completion. If so, the offender can ask the Drug Court magistrate to terminate the program and the magistrate has a discretion whether to do so or not. On the other hand, the Drug Court magistrate can, on his or her own initiative, end the program if the magistrate proposes to amend the IDRO and the offender does not agree to this or to comply with the amended order. The magistrate may also terminate the program if the offender fails to attend court as required under the IDRO, or has otherwise failed to comply with the IDRO, or if the magistrate is satisfied, on the balance of probabilities, that the offender is not likely to comply with the IDRO. If the magistrate terminates the program, the offender is committed to the Supreme Court for sentencing: **s 34**.⁴³ In certain circumstances, an IDRO can be amended to include a new rehabilitation program: **s 35A**.

If the Drug Court magistrate reasonably suspects that an offender has failed to comply with the program or the magistrate terminates the program, the magistrate can issue a warrant for the offender’s arrest: **s 40**. The magistrate may remand the offender (for an initial period of not more than 30 days) for assessment regarding whether the offender should continue with the IDRO or whether the IDRO should be terminated.

There is no right of appeal against the initial sentence imposed for the offence, other than on certain questions of law;⁴⁴ the making or amending or terminating the IDRO; orders to appear before the court; or punishments or rewards: **s 42**.

⁴² *Final Report on the South-East Queensland Drug Court Pilot*, p 97.

⁴³ Note that an authorised corrective services officer, or a prosecuting authority can also apply to amend an IDRO or to terminate a rehabilitation program: **s 35**.

⁴⁴ See s 188 of the *Penalties and Sentences Act 1992* (Qld).

5 ASSESSMENT OF QUEENSLAND DRUG COURTS

As of 30 June 2005, 151 people had graduated from the Queensland Drug Court program – comprising 116 people in South-East Queensland since its commencement in June 2000 and 35 from the North Queensland program which commenced in November 2002.⁴⁵

Of the 1,141 persons referred to the Drug Court for assessment from the commencement of the pilot program up to 30 June 2005, it was found that –⁴⁶

- 475 persons were deemed ineligible for the program and were remitted to the Magistrates Court or sentenced in the Drug Court;
- 39 were awaiting a decision on eligibility or for residential facilities to become available;
- 32 had outstanding arrest warrants, having absconded before receiving a IDRO;
- 595 had an IDRO issued and had embarked on a Drug Court program. Of these, there were 102 active participants and 151 graduates. 319 participants were removed, including some at their own request and four who had died; and 23 had failed to appear and had outstanding arrest warrants;
- of the 102 active participants in the program, 38 were on inpatient programs, and 64 on outpatient programs.

The South-East Queensland Drug Court pilot program was subject to an evaluation by the Australian Institute of Criminology (AIC) which published the *Final Report on the South-East Queensland Drug Court (South-East Queensland Drug Court Report)* in July 2003.⁴⁷

The *South-East Queensland Drug Court Report* represents the final report of the operational period of the pilot program and seeks to provide an indication of recidivism of Drug Court participants. It noted that there had, at the time of reporting (December 2002), been insufficient time since graduation (an average of 228 days) to have a ‘robust’ test of recidivism. It was pointed out there ideally

⁴⁵ Queensland Magistrates Court, *Annual Report 2004-2005*, p 16.

⁴⁶ Queensland Magistrates Court. *Annual Report 2004-2005*, pp 42-43.

⁴⁷ T Makkai & K Veraar, *Final Report on the South-East Queensland Drug Court*, AIC, July 2003, <http://www.justice.qld.gov.au/courts/pdfs/AICreport.pdf>.

needs to be a 24 month period elapsing after the graduation of 100 persons to conduct a rigorous follow-up of this type.⁴⁸

The *South-East Queensland Drug Court Report* provides some figures regarding the participation status and graduation of persons referred to the Drug Court up until 31 December 2002. During 2001 and 2002, there was an increase in the flow of participants to the Drug Court brought on by interest in the initiative but numbers decreased after the middle of 2002 due to uncertainty about the future of the pilot program. Delays in admission to the program were brought about by a number of issues such as hold-ups in the assessment process (most being due to insufficient predicted levels of need by participants for residential treatment accommodation and other support facilities); and complex processes of coordination and consultation. It was also the case that many referred offenders chose to wait for a vacancy to become available in the program rather than be sentenced in the normal way. The response was to cease referrals for a short period.⁴⁹

The *South-East Queensland Drug Court Report* found that those persons referred to the Drug Court are more likely to be male, in their late twenties, tend to be married or in a de-facto relationship, and to be Australian born. Some points noted about offenders' criminal history were that many of those referred to the Court had already served a term of imprisonment and the mean number of offences among those so referred was 40. The vast majority had committed property offences. The Drug Court program targets offenders who tend to be high-volume property offenders. It was found that those persons issued with an IDRO were more likely to have had already served time in prison longer than six months, have more total prior offences on average and more prior property offences on average.⁵⁰ Further, it was found that of those offenders issued with an IDRO, 75% were found to be drug dependent and many had already had some form of treatment.⁵¹

Overall, it was found that that IDROs tend to be issued to people with more serious criminal histories (prior imprisonment and frequency of offending) and who are more likely to be assessed as drug dependent and have poorer health than those who refuse to participate in the Drug Court program or are ineligible to do so. This would appear to suggest that the intention of the *Drug Court Act* is being fulfilled

⁴⁸ *South-East Queensland Drug Court Report*, p 9.

⁴⁹ *South-East Queensland Drug Court Report*, p 12.

⁵⁰ *South-East Queensland Drug Court Report*, pp 15-18. Participants issued with an IDRO were measured against offenders deemed ineligible for the program; offenders who refused to participate and offenders with an outstanding warrant.

⁵¹ *South-East Queensland Drug Court Report*, p 20.

in that the Drug Court program is targeting the offenders for whom it was designed.⁵²

The *South-East Queensland Drug Court Report* also considered whether participation in the Drug Court program reduced recidivism.⁵³ Data was obtained from the Queensland Police Service criminal history records for persons referred to the Drug Court. In doing so, a number of limitations on the consultants' ability to measure recidivism through offence data obtained were noted. Accuracy of the measures can be affected by under-reporting of offences and the lack of a randomised control group to prevent bias between the comparison groups. However, for this study, three groups were selected in an attempt to provide some comparisons between Drug Court participants and offenders in the usual criminal justice process. The groups compared were: a 'refused to participate group' (refusals); 'prisoner group' (sentenced to less than three years, had been released two or more years ago, had not committed a 'disqualifying offence', and similar in most ways to the Drug Court participants); and the Drug Court participants ('IDRO group'). There were no significant differences between the groups in terms of age and sex but persons in the IDRO groups had committed significantly more offences and were more likely to have been imprisoned.

Two follow-up periods were considered – the time from when offenders entered the Drug Court (to assess re-offending while in the program); and the time from when the offenders graduated or were terminated (post-program recidivism). Re-offending was calculated against a function of time because re-offending can only occur on days when offenders are free and able to commit an offence ('free days') rather than incarcerated with no opportunity to offend.

For the in-the-program period, it was found (with allowances made for sampling errors and various statistical techniques employed to compare the groups properly⁵⁴) that the time to re-offending was slightly shorter for the IDRO group but there were no significant differences between the groups.⁵⁵ It was found that most re-offending among the IDRO group occurred in the first few months of the

⁵² *South-East Queensland Drug Court Report*, pp 20-21.

⁵³ *South-East Queensland Drug Court Report*, pp 28ff.

⁵⁴ In particular, a statistical technique called 'survival analysis'. This models risk of re-offending from any time point as experienced by a randomly selected offender should they have not previously re-offended thus allowing one to account for variable and unknown factors: *North Queensland Drug Court Report*, p 86.

⁵⁵ For this measurement, it was necessary to ensure that the time to the first offence and frequency of offending measures were for days that the person has been free in the community; *South-East Queensland Drug Court Report*, p 33. The number of days in prison is subtracted from the total number of observable days to give a new follow-up time estimate.

program and declined as the time in the program increased. Of the IDRO group, 52%, had not re-offended since coming onto the program compared to 53% of the prisoner group. The general findings were said to be consistent with those reported in the NSW Drug Court evaluation (which will be considered later). In terms of those who had graduated or had been terminated from the program, it was found that re-offending while on the program was lower for those who eventually graduated. However, at the time of the study, the number of graduates was only 44. The Report concluded that the data indicates that, in general, graduates are the least likely to have re-offended by the end of the follow-up time and this was consistent with drug court evaluations in the USA.⁵⁶

At the time of reporting (31 December 2002), the number of graduates from the Drug Court program was small and the post-program follow-up period quite short. The average number of days post-program was 229 days for graduates, 333 for terminates, 611 for the refusal group, and 575 for the prisoner group. In the post-program period, for any type of offence, 9% of graduates had re-offended compared with 32% of terminates (i.e. participants who were terminated from the program before completion); 61% of refusals; and 47% of prisoners. None of the graduates had drug possession offences and 5% had committed a property offence. It was interesting to note that the findings indicated that terminates have the quickest time to re-offending upon entry to a program (thus leading to their being terminated from it) but post-program, their time to re-offending is lower than the refusal group or prisoner group. This led the Report to suggest that strategies to target the terminate group at an early stage of the program were needed.⁵⁷

The Report concluded that, at the time of reporting, graduates of the Drug Court were less likely to re-offend and took longer to do so when they did re-offend.

In terms of attempting to predict factors that will make it more likely that an offender will graduate from a program, it was observed that gender and age were not significant predictors but those who were employed and had a partner prior to entry were more likely to graduate. It was considered that this may indicate that community ties increase the odds of success. In addition, the number of arrest warrants for absconding was suggested to be a factor affecting the likelihood of completion – the higher the level of absconding, the more likely the offender will fail.⁵⁸ Testing positive to opiates in the first phase was also regarded a significant factor in failure. A further predictor of likelihood of success was an offender

⁵⁶ *South-East Queensland Drug Court Report*, p 35.

⁵⁷ *South-East Queensland Drug Court Report*, p 39.

⁵⁸ *South-East Queensland Drug Court Report*, pp 42-44.

having a previous prison sentence of longer than six months – perhaps providing a bigger incentive to succeed.⁵⁹

The AIC undertook an evaluation of the North Queensland Drug Court pilot program in 2005.⁶⁰ The *North Queensland Drug Court Report* documented the implementation, operation and outcomes of the North Queensland Drug Court pilot program for 26 months from its inception in November 2002. The Report commented that statistical analyses were complicated by small sample sizes but that the results up to 31 December 2004 indicated that the North Queensland program had achieved comparable results to those indicated in the South-East Queensland evaluation.⁶¹

The *North Queensland Drug Court Report* found that there had been a low referral rate, particularly for Indigenous offenders.⁶² Up to 31 December 2004, 243 referrals had been made and of those 120 (49%) were issued with an IDRO while 123 (51%) were not admitted to the program. Of the 120 offenders issued with an IDRO, 24 (20%) had graduated; 45 (38%) had been terminated; and 10 (8%) had absconded.⁶³

In terms of Drug Court outcomes for North Queensland as at 31 December 2004, the *North Queensland Drug Court Report* made similar findings to those observed in the *South-East Queensland Drug Court Report*. However, the evaluation did not have a ‘prisoner’ comparison group. It found that re-offending while on the program was significantly reduced for those participants who eventually graduated successfully from the program (29% of graduates compared with 69% of terminates and 39% of refusals).⁶⁴ However, there was no discernable difference in re-offending between all those who participated in the program (48%) and those who refused to participate (53%). Similarly to the South-East Drug Court evaluation, it was found that all Drug Court participants had reductions in offending after admission to the program but terminated participants re-offended

⁵⁹ *South-East Queensland Drug Court Report*, pp 42-44.

⁶⁰ J Payne, ‘Final Report on the North Queensland Drug Court’, *Technical and Background Paper No 17 (North Queensland Drug Court Report)*, AIC, 2005, <http://www.aic.gov.au/publications/tbp/tbp017/tbp017.pdf>.

⁶¹ *North Queensland Drug Court Report*, p 14.

⁶² *North Queensland Drug Court Report*, p 11.

⁶³ *North Queensland Drug Court Report*, p 10.

⁶⁴ *North Queensland Drug Court Report*, p 86, Table 3.2.

sooner than those who successfully graduated (71 days for terminates compared with 634 days for graduates and 91 days for those who refused).⁶⁵

In terms of post-exit re-offending, the estimates for each comparison group showed that 29% of the 24 graduates had re-offended up to 31 December 2004, committing mainly drug offences. Of the terminated participants who had spent at least one free day in the community, 34% had committed a fresh offence episode since terminating (mainly property offences). Overall, re-offending by all IDRO participants (graduates and terminates) was 30% compared with 53% for those who refused to participate. However, as noted above, graduates did better with 29% re-offending and taking longer to do so.⁶⁶

6 OPERATION AND ASSESSMENT OF DRUG COURTS IN OTHER JURISDICTIONS

A brief overview of Drug Courts in other Australian jurisdictions is provided in the following sections together with any evaluations carried out on them to date. Apart from the study design problems and other limitations present in many studies, which are noted where relevant, it must be pointed out that the evaluations and, in some cases, the findings, considered below are not directly comparable. Numbers of participants and graduates vary between jurisdictions. Also, unlike the Queensland evaluations which looked at recidivism and other impacts of the Drug Court program in the program and post-program separately, many of the interstate evaluations cover both periods together, making comparisons with the Queensland program difficult.

6.1 NEW SOUTH WALES

New South Wales was the first Australian jurisdiction to trial the Drug Court concept. The pilot program commenced in February 1999. A Youth Drug and Alcohol Court has also been in place since July 2000.

6.1.1 Adult Drug Court

The New South Wales Drug Court program was the first of its type in Australia and was modelled on Drug Courts in the United States. It commenced as a two-year

⁶⁵ *North Queensland Drug Court Report*, p 90.

⁶⁶ *North Queensland Drug Court Report*, p 93.

pilot in February 1999 and is supported by the *Drug Court Act 1998* (NSW) which has similar objectives (s 3) to that of the Queensland program.⁶⁷

The eligibility criteria for selection to participate in the Drug Court are similar to the Queensland requirements: s 5 of the Act and the *Drug Court Regulation 2005* (NSW). However, unlike the other programs, it is aimed at serious offenders referred from a Local or District Court: s 6 and *Drug Court Regulation 2005*. Similarly to the Queensland program, a person will not be eligible to take part if he or she has been charged with an offence involving violent conduct, a sexual offence or certain drug offences.

Once eligibility for the program is determined, the initial process is much like that in the Queensland Drug Court: ss 7, 8A. However, the NSW Drug Court requires that participants enter custody for detoxification and assessment rather than being released on bail. After the assessment stage, the offender enters a guilty plea before the Drug Court, is given a suspended sentence, and signs a written undertaking to abide by the conditions of the Drug Court program.

Participating in the NSW Drug Court program is quite similar to undertaking the Queensland program. There are three phases – stabilisation, consolidation, and integration – during which participants undertake drug treatment, attend courses to develop living, job and other skills, report regularly to the probation and parole case manager, attend court, and undergo regular tests for drug use (decreasing in frequency as participants move through the phases of their program). As with the Queensland program, the legislation allows the Court to impose sanctions on participants for failing to comply with their program: ss 10, 16. Conversely, rewards can be given for satisfactory compliance: s 16.

If it appears to the Court that, on the balance of probabilities, it is unlikely that any further progress in the program will be made or the participant's further involvement in the program poses an unacceptable risk to the community, the Court can terminate the program. The program can also be terminated by the participant: ss 10, 11. However, if the participant has substantially complied with the program, the Court can terminate it as a reward, meaning that the participant has 'graduated'.

After the program is terminated, the Court imposes a final sentence, taking into account the participant's compliance with the program. In reconsidering the participant's initial sentence, the Court has to take into account any sanctions that have been imposed and any time spent in prison as well as how well the program has been complied with. Generally, if the participant has substantially complied with the program, the Court tends to impose a non-custodial sentence and awards a

⁶⁷ See also 'About the Drug Court of New South Wales', Lawlink NSW, <http://www.lawlink.nsw.gov.au/drugcrt/drugcrt.nsf/pages/drugcrt2>.

graduation certificate. If a sentence is imposed, it cannot be greater than the initial sentence: s 12.

A number of operational issues arose in the early days of NSW Drug Court pilot. It appears that there were more participants with multiple health problems than anticipated so the management of participants with mental health issues was poorly addressed.⁶⁸ Another issue was initial differences of opinion between treatment providers and the Court where the treatment providers believed they were being directed by the Court in areas where they had more expertise while the Court claimed lack of cooperation from the treatment providers. However, relations have apparently improved over time.⁶⁹ Other concerns were that the rigours of the program posed difficulty for some participants, especially those with child care responsibilities, and for case managers in trying to carry out the required frequent home visits and assisting participants with numerous lifestyle issues.⁷⁰

Evaluation of the NSW Adult Drug Court

An evaluation of the cost-effectiveness and the health and well-being outcomes of the NSW Drug Court program was carried out by the NSW Bureau of Crime Statistics and Research (BOCSAR) in 2002.⁷¹

Cost-Effectiveness

The 2002 *New South Wales Drug Court Evaluation: Cost-Effectiveness* study compared 309 participants in the Drug Court program (participants) with a

⁶⁸ M Bell, p 83, citing S Taplin, NSW BOCSAR, *The New South Wales Drug Court Evaluation: A Process Evaluation*, 2002.

⁶⁹ M Bell, p 83.

⁷⁰ M Bell, pp 83-84.

⁷¹ B Lind et al, NSW BOCSAR, *New South Wales Drug Court Evaluation: Cost-Effectiveness*, 2002, [http://www.lawlink.nsw.gov.au/lawlink/bocsar/l1_bocsar.nsf/vwFiles/L15.pdf/\\$file/L15.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/l1_bocsar.nsf/vwFiles/L15.pdf/$file/L15.pdf); K Freeman, NSW BOCSAR, *New South Wales Drug Court Evaluation: Health, Well-Being and Participant Satisfaction*, 2002, [http://www.lawlink.nsw.gov.au/lawlink/bocsar/l1_bocsar.nsf/vwFiles/L14.pdf/\\$file/L14.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/l1_bocsar.nsf/vwFiles/L14.pdf/$file/L14.pdf).

randomised control group⁷² of 191 offenders who were eligible for the program but were sentenced in the usual way, such as imprisonment (prison group). The aim was to assess the effectiveness and cost-effectiveness of the Drug Court in reducing recidivism. The lengths of follow-up were 369 days for the participants and 294 days for the prison group which covered the time from first referral – the earliest being February 1999 – to September 2000.

When considering time spent out of custody (free days when there was opportunity to offend), the participant group was found to take much longer to their first drug offence and also performed better than the prison group in having lower rates of offending for most categories of offences. It was also pointed out, however, that the differences between the two groups were only significant in terms of drug offences as opposed to other offences.

In comparing the participants who had their program terminated and those retained on it and the prison group, it was found that those participants who actually graduated took 427 free days to re-offend, performing better than those who had their program terminated (216 free days to re-offend) and those in the prison group (299 free days to re-offend).⁷³ The mean offending frequencies per 365 free days for theft or drug offences were 1.04 offences for non-terminated participants; 5.98 for those who were terminated; and 4.66 for the prison group. The figures indicated that, on both counts, the Drug Court participants remaining on the program had the best results.⁷⁴

The estimated cost per day per participant was around \$143, slightly less than the \$151 per day for offenders sanctioned by conventional means. It was found that there was not much difference in cost-effectiveness between the Drug Court and other sanctions in increasing the time to the first offence but there was a larger difference in terms of reducing the rate of offending.⁷⁵

It has been suggested that early identification of offenders who are likely to have difficulty complying with the Drug Court program's requirements would enable the Drug Court to determine which offenders may need extra support and supervision

⁷² Randomised controlled trials, where persons are randomly allocated to 'participant' and 'control' groups, are regarded as the 'gold standard' for outcome evaluations as they give more assurance of control over extraneous factors that might otherwise bias the evaluation. Thus, offenders could be recruited to either group: *New South Wales Drug Court Evaluation: Cost-Effectiveness*, Preface.

⁷³ *New South Wales Drug Court Evaluation: Cost-Effectiveness*, pp 45-47.

⁷⁴ *New South Wales Drug Court Evaluation: Cost-Effectiveness*, pp 51-52.

⁷⁵ *New South Wales Drug Court Evaluation: Cost-Effectiveness*, pp 55ff, 66.

and to ‘weed out’ high-risk offenders from the program early on so that costs are reduced.⁷⁶

Health and Well-Being

The *New South Wales Drug Court Evaluation: Health, Well-Being and Participant Satisfaction* assessed the impact of the Drug Court on health and well-being of participants to identify factors that may enhance retention in the program and to gauge the level of satisfaction with the program. The study involved interviews with a sample of 202 participants prior to commencement in the program. Three follow-up interviews were then conducted at four-monthly intervals with continuing participants. Fifty one participants completed all three follow-up interviews.

The study found⁷⁷ that, upon entry to the program, participants were in poor health compared with the general population, particularly those with heavy heroin use. Those interviewed showed strong support for improvements in their health, social functioning and drug use after 12 months on the program which were sustained over the 12 month follow-up period. It was also reported that drug use decreased over the duration of the program. High levels of participant satisfaction were found. The study concluded that the Drug Court appears to effectively reduce illicit drug use and to improve health and social functioning of persons remaining on the program. However, despite the apparent effectiveness of the program in reducing illicit drug use and improving health and social functioning of participants while they are on the program, the high rate of termination (over 60% had their program terminated prior to being on it for 12 months) suggests that the overall effectiveness could be improved to increase retention.⁷⁸

Predictors of ‘Success’

A further study of Drug Court participants sought to identify variables measuring program compliance and drug use during the first three months of the program that

⁷⁶ K Freeman & N Donnelly, ‘Early-phase predictors of subsequent program compliance and offending among NSW Adult Drug Court participants’, No 88, *Crime and Justice Bulletin*, NSW BOCSAR, October 2005, p 1.

⁷⁷ The findings in this paragraph are taken from the *New South Wales Drug Court Evaluation: Health, Well-Being and Participant Satisfaction* Executive Summary and pp 11-33, 39-40.

⁷⁸ *New South Wales Drug Court Evaluation: Health, Well-Being and Participant Satisfaction*, pp viii, 11-33, 39-40.

were predictive of compliance later in the program.⁷⁹ The findings were regarded as having implications for the management of the Drug Court program because, without reliable indicators of who will comply with the requirements of the program and who will not, poorly performing participants remain on it for considerable time before being terminated. This raises the costs of the program and reduces cost-effectiveness. Being able to identify factors predicting failure to comply may assist in removing those not likely to succeed, making more places available to those offenders who might be more suited to it. It was suggested that the information on predictors of success could be combined with other information gathered by the Court relevant to managing each participant. This would allow the individual circumstances of each participant to be considered in determining whether to keep them on the program or not.⁸⁰

In this study, of the 217 participants considered, 79% were still on the program at 6 months. The indicators of compliance during the first three months predicting retention at 6 months were that participants with fewer custody episodes and suspended sanctions and bench warrants issued during the first three months were more likely to have stayed on the program by 6 months rather than being terminated prematurely.⁸¹ Another factor making retention less likely included having tested positive to stimulants and opiates. Excluding those participants who provided only a small number of urine tests, it was found that rates of retention were higher for those who had tested negative to opiates and stimulants and those with fewer positive results overall. Another compliance failure indicator was found to be missed program appointments.⁸²

6.1.2 Youth Drug and Alcohol Court

The NSW Youth Drug and Alcohol Court (YDAC) pilot program seeks to reduce drug use and offending among young people. Arising out of the 1999 NSW Drug Summit, the YDAC commenced in July 2000 and operates under the existing

⁷⁹ K Freeman & N Donnelly, pp 4-5. Limitations on the study were acknowledged on p 10 and include the fact that it relied upon existing databases and file records and that the sample size was modest. It was also not possible to construct reliable measures of change in drug use frequency.

⁸⁰ K Freeman & N Donnelly, pp 10-11.

⁸¹ K Freeman & N Donnelly, pp 9-10.

⁸² K Freeman & N Donnelly, pp 5-6.

Children's Court framework and the *Children's (Criminal Proceedings) Act 1987* (NSW). It is the first of its type in Australia.⁸³

The YDAC program offers young offenders the chance to participate in an intensive six month rehabilitation and detoxification program before being sentenced. A young person appearing before the Children's Court can be referred to the YDAC on similar eligibility criteria to that of adult participants in the Drug Court program. However, it caters for alcohol as well as drug addiction. A young person may be found ineligible because a caution or Youth Justice Conference might be more appropriate or their offence is of such a nature that they may face a control order sentence even if the program is completed.

The program seeks to also provide support for dealing with other issues, such as poor education levels and family breakdown, that can cause young people to use drugs and commit offences. That support may include help with health, housing and education needs. During this time, the participants are closely monitored by the Court and have strict reporting requirements. They must also submit to drug testing. They must agree to supervision by a case manager as well as to take part in various counselling, health, educational and other programs. The participants meet regularly with a Court Team comprising the Children's magistrate, the police prosecutor, a lawyer, the YDAC Registrar, and a representative of the Joint Assessment and Review team (comprising representatives from a range of Government agencies such as the Department of Health). If the young person re-offends or keeps using drugs and alcohol, they can be terminated from the program. At the end of the program, the young person is sentenced but their participation in the YDAC program is taken into consideration.

Evaluation of the NSW Youth Drug and Alcohol Court

The NSW Attorney-General's Department commissioned a consortium from the University of New South Wales, led by the Social Policy Research Centre, to evaluate the YDAC pilot program over two years to the end of July 2002.⁸⁴ In terms of the YDAC program outcomes, it was found that of the 164 referrals of young people facing possible custodial sentences for serious offences, 75 were found to be eligible and suitable for the program. Out of these 75 participants, 29 (39%) went on to graduate from the program. The Report noted that data problems made it difficult to accurately determine the levels of offending by participants

⁸³ 'Youth Drug and Alcohol Court – About Us', http://www.lawlink.nsw.gov.au/lawlink/drug_court/ll_drugcourt.nsf/pages/ydrgcrt_aboutus.

⁸⁴ Eardley et al, Social Policy Research Centre, 'Evaluation of the New South Wales Youth Drug Court Pilot Program', *Final Report*, March 2004.

while on the program but best estimates⁸⁵ suggested that approximately 60% of the 75 participants committed fresh offences during their participation in the program.⁸⁶

Around 35% of the 75 participants (including around 40% of graduates) were not recorded to have committed offences since leaving or graduating from the program but it was noted that post-program offending data was incomplete and only available for a short time after the end of the pilot.⁸⁷ The data (supplied from BOCSAR) covered the period from referral to the YDAC program to the end of 2002. It did not, however, reflect the seriousness of the offences committed and was also limited by the fact that individuals had different periods of post-program opportunity to offend, including some who would have had little opportunity because they were sent to prison after a brief involvement with the program.⁸⁸ It was found that graduates appeared much less likely to re-offend than those who did not complete the program and, if they did re-offend, the offences were fewer. Thus, at least in the short term, successful participation in the program had benefits in lessening criminal behaviour.⁸⁹ It was noted, however, that up to the end of 2002, the BOCSAR data shows that 39% of participants went on to receive detention in some form for either the original offence that brought them before the YDAC in the first place, or later offences. This indicates that for a substantial number of participants, diversion from incarceration may only be temporary.⁹⁰

The Report concludes that the picture on re-offending is mixed: *while some participants have managed to get through a period following their program involvement without major re-offending, many others, including some program graduates, have fallen back into patterns of criminal behaviour. However, in the absence of complete information about offending and longer time span since program completion it is difficult to determine*

⁸⁵ From results derived from the YDAC Registry; a data set supplied by the Department of Juvenile Justice, and an extract of information from a data set of offences compiled by the NSW Bureau of Crime Statistics and Research (BOCSAR): 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 60.

⁸⁶ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', pp iii, 59-61. Limitation on the data was also posed by a lack of true control or comparison groups.

⁸⁷ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', pp 61-62.

⁸⁸ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 62.

⁸⁹ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 62.

⁹⁰ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 63. However, only 1 graduate of the program appears to have received a full-time custodial sentence for a subsequent offence.

*how far offending behaviour has been reduced overall compared to that prior to entering the program.*⁹¹

The data methodology limitations noted above also affected the ability to evaluate the impact of the program on participants' health. The evaluation was carried out by conducting interviews with 43 of the participants at the beginning of the program and 18 of those participants nine to 12 months later. It was found that, of the 18 participants in the second interview round, 94% rated their health as excellent, very good or good while 6% (i.e. 1 person) considered their health to be poor to fair. There was a decrease in the number reporting good health between the first and second interviews, but not a remarkable difference.⁹² However, the Report suggested that this difference might indicate that the good health of those reporting such might not be maintained post-program, on average.⁹³ Improvements in mental health over the longer term were also noted.⁹⁴

The cost data supplied by relevant government agencies had some limitations but suggested that a reasonable measure of cost per young person per day on the program was around \$359-\$452, which compared favourably with the approximately \$500 per day per person in custody. However, the costs increased if measured on the basis of only those who graduated successfully from the program – about \$539-\$760 per graduate.⁹⁵

6.2 VICTORIA

The Victorian Drug Court is underpinned by sections 18X-18ZS of the *Sentencing Act 1991* (Vic) which enables the Drug Court – a division of the Magistrates Court – to make drug treatment orders (DTOs). The Drug Court commenced as a three year trial in May 2002 at the Dandenong Magistrates Court.

Under a DTO, an offender receives a suspended custodial sentence (of not more than two years) to enable him or her to undergo treatment and supervision. The DTO establishes the conditions for treatment and supervision which remain in place for two years: s 18ZC. Similarly to Drug Courts in other places, the

⁹¹ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 106.

⁹² 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 85.

⁹³ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 86.

⁹⁴ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 90.

⁹⁵ 'Evaluation of the New South Wales Youth Drug Court Pilot Program', p 169.

participant is managed by a Drug Court Team which assists the Drug Court magistrate.

To be eligible for the program, the offender must plead guilty to an offence within the Magistrates Court's jurisdiction and which is punishable by imprisonment. However, the offence must not be a sexual offence or one involving the infliction of actual bodily harm. The offender cannot be subject to a parole order, a combined custody and treatment order, or a sentencing order of the County or Supreme Court. The Drug Court must also be satisfied that the offender is dependent on drugs or alcohol which contributed to the commission of the offence. Unlike many other Drug Courts, the Victorian Drug Court caters for alcohol dependent as well as drug dependent offenders. The Court must also consider that it would not have ordered that the sentence be served by an intensive community corrections order or that the sentence be suspended. Once the offender is found to be eligible for the program, the Court then requests an assessment report on the offender: s 18Z. The contents of the assessment reports are set out in s 18ZQ.

The core conditions of the DTO are specified in s 18ZF and are similar to the program requirements of Drug Courts in other jurisdictions. The Drug Court must attach at least one additional condition to the DTO listed in s 18ZG. Those include submission to drug or alcohol testing; attendance at vocational, educational and similar courses; and submission to detoxification. The DTO can be varied by the magistrate based on an assessment of the participant's progress: s 18ZH. Case conferences are convened for this purpose: s 18ZI. As with Drug Court programs in other places, rewards and sanctions apply: ss 18ZJ-18ZL. Under s 18ZK, the DTO can be cancelled as a reward.

The program can be terminated if the participant commits an offence punishable by a term of imprisonment of over 12 months and this will activate the custodial part of the DTO: s 18ZN. Termination can also occur in a range of other circumstances listed in s 18ZP, such as the participant's unwillingness to comply with the program conditions or he or she is otherwise unable to comply with a condition of the DTO because of a change in circumstances.

During 2003-2004, the Drug Court received 61 referrals (down from 148 in the preceding year which reflected the Court's decision to decline acceptance of further offenders due to overload at the time).⁹⁶ It refused 15 of these at the initial screening compared with 66 in the previous year, and refused a further 5 referrals after assessment compared with 24 in the previous year. The Court made 37 DTOs (59 in the previous year) and cancelled 21 DTOs (17 in the previous year). The number of graduates was 4.⁹⁷

⁹⁶ Magistrates Court of Victoria, *Annual Report 2003-2004*, (latest available on website), p 33.

⁹⁷ Magistrates Court of Victoria, *Annual Report 2003-2004*, p 32.

6.2.1 Evaluations of the Victorian Drug Court

Victorian Drug Court – Cost-Effectiveness Study

An evaluation of the Drug Court was conducted by Health Outcomes International Pty Ltd.⁹⁸ The ‘Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2004’, *Final Report* compared the costs and effectiveness of the Drug Court program with the costs and effectiveness of incarceration. The measure of effectiveness was recidivism. The study adopted the same approach used in the NSW Drug Court evaluation.

The study compared 91 Drug Court participants (participant group) subject to a DTO with a group of 89 persons randomly selected from offenders appearing in a Magistrates Court during the same period on similar charges who were imprisoned (prison group) over a period between May 2002 and December 2004. The study, while covering a period of over two years, still did not provide for longer term effects on offending rates. Ideally, recidivism needs to be evaluated after sufficient time has passed for more graduations to occur and conducted a reasonable time after graduation in order to provide a more accurate figure of sustained offending rates.⁹⁹ Here, the only 10 graduates from the program were followed for a total of 2002 graduate days¹⁰⁰ and it was found 3 offences were committed by 2 of the graduates. Theft and drug offences among the graduates were also reduced. While this is seen as positive, a longer term study of a larger sample of graduates would give a more robust indication of the longer-term benefits, or otherwise, of the Drug Court in terms of recidivism.¹⁰¹

It was found that during the time spent out of custody, members of the prison group committed offences at a substantially higher rate (5.80 offences per 365 free days) than the participant group (4.49 offences per 365 free days). Within the participant group, the rate of offending was lower during the DTO period. Thus, it appears

⁹⁸ Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre Inc., ‘Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2004’, *Final Report*, Department of Justice, 2004, [http://www.justice.vic.gov.au/CA256902000FE154/Lookup/Drug_Court/\\$file/Cost_Effectiveness_Study_May_2002_to_December_2004_Final_Report_850KB.pdf](http://www.justice.vic.gov.au/CA256902000FE154/Lookup/Drug_Court/$file/Cost_Effectiveness_Study_May_2002_to_December_2004_Final_Report_850KB.pdf).

⁹⁹ ‘Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002’, p 2.

¹⁰⁰ Meaning that the 10 graduates were tracked for an average of 200 days each post-program. See ‘Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002’, p 11.

¹⁰¹ ‘Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002’, pp 2, 16.

that the Drug Court is effective in reducing offending.¹⁰² However, for those participants whose DTO was cancelled for non-compliance, rates of offending were higher than those participants remaining on the program (5.37 offences for non-continuing participants compared with 2.17 offences for those who remained on the program), suggesting that the Drug Court had little effect on the offending behaviour of those who had their program terminated.¹⁰³ The Report states that these results were broadly consistent with those of the cost-effectiveness evaluation of the NSW Drug Court.¹⁰⁴

In terms of cost-effectiveness, it was found that the cost of the Drug Court was \$184 per participant day and the cost associated with the prison group was \$168 per day but the higher costs of the Drug Court were associated with the initial 'start-up' period when participant numbers were low.¹⁰⁵ It was observed that the results suggested that, if the Court operated consistently at 95% capacity, it would be less costly and more effective than incarceration but at 90% capacity, it would be cost-neutral.¹⁰⁶

As with the NSW study, the comment was made that the cost-effectiveness of the Drug Court could be further enhanced if the eligibility criteria and process for selecting participants and/or the management of participants could be improved so that participants could be removed earlier rather than later due to non-compliance.¹⁰⁷

Benefit and Cost Analysis of the Drug Court Program

A January 2005 *Benefit and Cost Analysis of the Drug Court Program* Report by Acumen Alliance, commissioned by the Department of Justice, suggested that reducing re-offending is not the only measure of the benefits of the Drug Court. Other benefits noted included decreased drug and alcohol dependency and improved health, well-being and social functioning.¹⁰⁸ The study found that, after

¹⁰² 'Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002', p 15.

¹⁰³ 'Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002', pp 15-16.

¹⁰⁴ 'Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002', p 15

¹⁰⁵ 'Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002', p 16.

¹⁰⁶ 'Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002', pp 15-16.

¹⁰⁷ 'Victorian Drug Court – Cost-Effectiveness Study: May 2002 to December 2002', p 20.

¹⁰⁸ Acumen Alliance, 'Benefit and Cost Analysis of the Drug Court Program', *Final Report*, Department of Justice January 2005,

an initial graduation rate of 15%, it appeared that the rate was trending upwards towards 28%.¹⁰⁹ The cost per participant week was found to be \$882 with the total ongoing investment by the Government of \$2.87 million per annum. However, it was suggested that current and projected case flow patterns indicated benefits to the Government and community. Those benefits included reintegration into the community of graduates who are no longer reliant on a drug and crime based lifestyle; and fewer offences being committed each year leading to reduced pressure on the criminal justice system.¹¹⁰

6.3 WESTERN AUSTRALIA

The Perth Drug Court pilot began in December 2000 as a two year pilot project within the framework of the Court of Petty Sessions, which has now become the Perth Magistrates Court. The District Court also operates as a Drug Court but offenders are managed by the Magistrates Courts on behalf of the District Court. Unlike Drug Courts in most other jurisdictions, it is not supported by legislation. However, the *Sentencing Act 1995* enables the Court to make pre-sentence orders, upon a finding of guilt, that defer the custodial sentence on condition that the offender enter into a program to address their behaviour. If the offender does not comply with the treatment program, the process is terminated and he or she will be sentenced in the usual way.

Eligibility is premised on a plea of guilty and is also available to minors with the Children's Court operating as a Drug Court for one day per week.

There are three levels of intervention depending upon the severity of the substance use and of the offending behaviour. The treatment appropriate for each offender is based on a report from the Court Assessment and Treatment Service and submissions from the prosecution and defence team.

The first level – Brief Intervention Regime – is for second and subsequent cannabis offenders only and it comprises a three-session drug education program. The second tier of intervention is the Supervised Treatment Intervention Regime for offenders with substance abuse issues who could face a prison term. Under this regime, the offender is remanded to appear at a later date after fulfilling a requirement to undergo treatment and supervision by the Court Assessment and Treatment Service. The third tier is the Drug Court Regime which is a pre-

[http://www.justice.vic.gov.au/CA256902000FE154/Lookup/Drug_Court/\\$file/Benefit_and_Cost_Analysis_of_the_Drug_Court_Program_Final_Report_1401KB.pdf](http://www.justice.vic.gov.au/CA256902000FE154/Lookup/Drug_Court/$file/Benefit_and_Cost_Analysis_of_the_Drug_Court_Program_Final_Report_1401KB.pdf).

¹⁰⁹ 'Benefit and Cost Analysis of the Drug Court Program', p 8.

¹¹⁰ 'Benefit and Cost Analysis of the Drug Court Program', p 5 and see also p 37ff.

sentence option for more serious drug users and offenders requiring a greater level of intervention and supervision. The offender is placed under the supervision of the Drug Court judicial officer who is supported by the Court Assessment and Treatment Service, the defence counsel and prosecution counsel. The Court Assessment and Treatment Service undertakes the initial assessment of the offender and, thereafter, liaises with relevant treatment agencies so that the treatment is appropriate to the offender's needs. The Service closely supervises offenders' participation in the treatment.

The Drug Court Regime operates quite similarly to the Drug Court programs in other jurisdictions. Participants are subject to various requirements and ongoing supervision. They have to agree to frequent court appearances and drug tests but these may be decreased during the program as a reward for compliance. As well as rewards for doing well, sanctions may be given if a participant is not complying with the program. These may include reprimands, more frequent drug testing, increased supervision, or as the ultimate sanction for failing to comply, termination from the program and possible imprisonment. On the other hand, successful compliance and completion may be rewarded by the use of a spent conviction or non-custodial sentence approach.¹¹¹

In 2004-2005, around 87 offenders were referred to the Drug Court, compared to 99 in 2003-2004.¹¹²

6.3.1 Evaluation of the Western Australian Drug Court

In 2003, an independent evaluation of the Perth Drug Court was undertaken by the Crime Research Centre at the University of Western Australia.¹¹³

The evaluation considered that a number of improvements to the Drug Court were needed, the main criticisms being that Court operated without any supporting legislation and that there was no real management and direction regarding quality assurance and team management. The first criticism may be somewhat addressed by s 24 of the *Magistrates Court Act 2004* (passed after the publication of the evaluation) which allows magistrates to establish various divisions of the Court to

¹¹¹ Western Australia Department of Attorney-General, 'Drug Courts – The Positive Choice', <http://www.justice.wa.gov.au/portal/server.pt> (follow 'Drug Court' button).

¹¹² WA Department of Justice, *Annual Report 2004-2005*, p 61.

¹¹³ Crime Research Centre, University of Western Australia, 'Evaluation of the Perth Drug Court Pilot Program', *Final Report*, Department of Justice, May 2003, http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS_0_2_323_201_0_43/http%3B/justicecontent.extranet.justice.wa.gov.au/files/Drug_Court_Rep.pdf

deal with special classes of cases. It is envisaged that this provision will enable the Chief Magistrate to establish a Drug Court.¹¹⁴

Another concern was that many offenders did not meet the eligibility criteria – with almost half of the referrals to the Drug Court not being accepted – and that very few Indigenous and juvenile offenders were participating in the Drug Court program. Indeed, the eligibility criteria are not stated in any legislation and it is not clear, for example, what types of offences are excluded. In total, less than one in three referred offenders complete a program and the more intensive the program, the lower the chances of completion.¹¹⁵ It was recommended that WA develop a sentenced based order similar to Victoria's DTO rather than the current pre-sentence options.¹¹⁶

Chapter 6 of the Evaluation Report considered recidivism and drug use. There was no suitable comparison group against which to compare the recidivism of the 513 Drug Court participants who entered the program before 1 May 2002, so a number of comparison groups were developed. The main groups were 'matched offenders' (matched on sex, Indigenous status, number of prior arrests, age, offence type and location), and 'matched drug offenders' who had an additional criterion of having committed a drug offence. While this approach had some limitations, it was found to collectively provide a best available estimate of the impact of the Drug Court program.¹¹⁷ The study period was over 2 years, considering time not spent in custody, so being 'free' to offend. The study period also covers time on the program.

It was found that there was no significant overall difference between the recidivism rates of Drug Court participants and any of the comparison groups. Offenders who had completed the Drug Court Regime (DCR) and the Supervised Treatment Intervention Regime (STIR)¹¹⁸ had a lower (but not significantly lower) probability of re-arrest (0.75) than the matched drug offender group (0.92). This may have been due to the small sample sizes and short period of study time available.¹¹⁹

¹¹⁴ Mr J A McGinty MLA, Attorney-General, Magistrates Court Bill 2003 (WA), Second Reading Speech, *WA Legislative Assembly Hansard*, 4 December 2003, pp 41275-41277.

¹¹⁵ 'Evaluation of the Perth Drug Court Pilot Program, pp v, 105.

¹¹⁶ 'Evaluation of the Perth Drug Court Pilot Program,' p viii.

¹¹⁷ 'Evaluation of the Perth Drug Court Pilot Program,' pp 65-69.

¹¹⁸ Due to the small numbers, those offenders in STIR or DCR were grouped together.

¹¹⁹ 'Evaluation of the Perth Drug Court Pilot Program,' p 126.

The study found that 62.4% of the 513 Drug Court participants had re-offended during the two year study period. While it was found that the rate of recidivism of participants who had completed the DCR or STIR was lower (53%) than those not accepted (71.2%) or terminated (81.4%) from those programs, the authors pointed out that these graduates had a lower risk of re-arrest before they even entered the program. It was also found that those who completed DCR or STIR had a lower probability of re-arrest (0.75) and took longer to re-offend (0.6 years) than those not accepted into the program (0.87 and 0.2 years) or who were terminated (0.90, 0.2 years).¹²⁰ The Evaluation concluded that the results of the recidivism analysis were inconclusive. There were no statistically significant differences observed in recidivism between Drug Court offenders and their comparison groups. However, there are indications that offenders who completed DCR/STIR had lower recidivism rates and a longer time to re-arrest than offenders who were not placed on a program or who were terminated from DCR/STIR.¹²¹ It was suggested that a clearer picture may emerge with the passage of more time and a bigger sample size upon which to base a further study.¹²²

Ultimately, it was said that due to the limitations on the evaluation (particularly that the comparison groups may have differed in some variables that affect re-offending) and presence of positive indicators, it could not be concluded that the Drug Court pilot has had any real impact on offending. However, further study of recidivism was required, and was expected to occur, in the near future.¹²³

It was estimated that the costs of the pilot program to the Government were around \$3 million, roughly equivalent to traditional sentencing regimes.¹²⁴

6.4 SOUTH AUSTRALIA

The South Australian Drug Court operates in the Adelaide Magistrates Court and began in May 2000 as a two year pilot program. It has continued beyond the two year pilot, receives ongoing funding, and appears to have an administrative rather than a legislative basis. The SA Drug Court is similar in operation to other

¹²⁰ 'Evaluation of the Perth Drug Court Pilot Program,' pp 115-117; p 129.

¹²¹ 'Evaluation of the Perth Drug Court Pilot Program,' pp 128-129.

¹²² 'Evaluation of the Perth Drug Court Pilot Program,' p 120.

¹²³ 'Evaluation of the Perth Drug Court Pilot Program,' pp v, 129.

¹²⁴ 'Evaluation of the Perth Drug Court Pilot Program,' p 160.

Australian Drug Courts although, like the WA Drug Court, it is a pre-sentence rather than a post-sentence option. It is generally a 12 month program.

Eligibility depends upon a similar range of factors seen in other Drug Courts. The offender must have committed an offence as an adult; live within a certain geographical range; the commission of the offence must be related to their drug use (even if not a drug offence) for which they are likely to be imprisoned; have either a current or previous dependency on illicit drugs; and be willing to participate in the Drug Court program. The offender must plead guilty to both the most serious offence and the majority of offences for which they have been charged. An offender will not be eligible if they are charged with a major indictable offence, or charged with an offence of violence, or have a history of violent offences.¹²⁵

Offenders accepted into the Drug Court program have a case management plan specifically formulated for their needs and are supervised and managed during the program by a team of professionals experienced in dealing with drug use and related issues. Case managers from the Department of Community Corrections supervise participants, monitor participants' progress and report to the Drug Court magistrate. Participants have access to a number of different support and treatment options, including links to community services, that aim to address their needs and enable them to change their lifestyle. The range offered is similar to that seen for other Drug Court programs described earlier.

Unlike most Drug Court programs, at the beginning of the program, all participants must be on electronically monitored home detention bail. Conditions of the bail include random drug testing and strict supervision. A breach of bail conditions, re-offending or further drug use can result in sanctions (similar to those imposed in Drug Court programs elsewhere such as more frequent drug tests and reporting), termination from the program and, possibly, imprisonment. On the other hand, successful completion, usually taking about 12 months, will be considered when the offender faces their final sentencing.

The percentage of participants completing the program has remained constant over the past two years with the average success rate since 2002 being 27%.¹²⁶

6.4.1 Evaluation of the South Australian Drug Court

An evaluation of the Drug Court program was carried out by the SA Office of Crime Statistics and Research to study its effectiveness in terms of recidivism.¹²⁷

¹²⁵ Court Administration Authority, South Australia: Magistrates Court – Drug Court, http://www.courts.sa.gov.au/courts/drug_court/index.html.

¹²⁶ Court Administration Authority, South Australia, *Annual Report 2004-2005*, p 27.

The evaluation focused on 43 participants who had completed the program by 31 March 2004 and who had at least six months of ‘free time’ in which they had the opportunity to offend post-program. It then compares the frequency and severity to recorded offending before and after the program.

Limitations of the study were noted and are similar to those found in other evaluations considered earlier. Those include the small number of subjects (only 43 offenders had completed the program and had at least six months free time by March 2004 in which to re-offend). However, an additional problem, not present in the WA, Queensland and NSW evaluations, was the lack of a suitable control/match group. Thus, the study had to focus on looking at offending amongst Drug Court participants before and after involvement with the program, meaning that the conclusions drawn are limited. Despite these problems, the evaluation indicated that the program was having a positive influence in reducing the incidence and seriousness of offending among Drug Court graduates.¹²⁸ It was observed, however, that the evidence of reduction of re-offending may not be related to participation in the Drug Court and it could be that other factors, such as contact with the court system or a change in personal circumstances provided a catalyst for change.¹²⁹

Specifically, it was found that for the 43 graduates of the program (graduates), 23.3% (10) were not charged with any offence in the free time following graduation and 79.1% were either not apprehended or were apprehended for fewer offences.¹³⁰ Of the graduates, 33 continued to offend post-program. The total number of criminal events charged against graduates dropped from 420 pre-program to 183 post-program with a significant decrease noted in property offences and drug offences.¹³¹ It was also noted that the 43 graduates had previously had considerable contact with the criminal justice system and 39 of the 43 graduates had committed serious offences. However, post-program, over half had either not been charged with fresh offences (10) or had been charged with a minor offence

¹²⁷ E Corlett et al, SA Office of Crime Statistics and Research, *Offending Profiles of SA Drug Court Pilot Program ‘Completers’*, February 2005, http://www.ocsar.sa.gov.au/docs/evaluation_reports/DrugCourt1.pdf.

¹²⁸ *Offending Profiles of SA Drug Court Pilot Program ‘Completers’*, p 2.

¹²⁹ *Offending Profiles of SA Drug Court Pilot Program ‘Completers’*, p 8.

¹³⁰ *Offending Profiles of SA Drug Court Pilot Program ‘Completers’*, p 2.

¹³¹ *Offending Profiles of SA Drug Court Pilot Program ‘Completers’*, p 2.

only (15). Thus, 65.1% of the 43 graduates had either not offended or were charged with less serious offences post-program.¹³²

Of the 43 graduates, 33 continued to offend post-program. 15 of the graduate group fell into the serious category post-program (including 1 instance where the post-program charges were more serious than pre-program charges). However, most of those who continued to offend (24) were charged with fewer offences.¹³³

The evaluation concluded that it could not prove that the Drug Court program was achieving its aim of reducing offending amongst drug dependent individuals but the fact that 10 of the 43 graduates were not apprehended during the post-program free time interval and that most were charged with fewer and/or less serious offences indicated that there is a positive effect from the program. It was observed that these findings reflect those of other Australian and overseas evaluations.¹³⁴

¹³² *Offending Profiles of SA Drug Court Pilot Program 'Completers'*, p 2-3.

¹³³ *Offending Profiles of SA Drug Court Pilot Program 'Completers'*, pp 3-4.

¹³⁴ *Offending Profiles of SA Drug Court Pilot Program 'Completers'*, p 4.

APPENDIX A – MINISTERIAL MEDIA STATEMENT

Hon. Linda Lavarch, MP, Minister for Justice and Attorney-General

8 March , 2006

New Queensland Laws Create Permanent Drug Courts And Crack Down On Drug Labs

Drug Courts will become a permanent weapon in Queensland’s fight against crime under new legislation passed in State Parliament today.

Attorney-General Linda Lavarch also said the Beattie Government had today passed laws to clamp down on illicit drug labs.

The new drug lab powers include a maximum of 25 years’ jail for people caught with items needed to produce methamphetamine, or “speed”.

Drug Courts

Mrs Lavarch said the Beattie Government had decided to make Drug Courts permanent after pilot programs in Beenleigh, Ipswich, Southport, Townsville and Cairns had been shown to prevent crime.

“A total of 174 drug-addicted offenders have graduated from pilot Drug Court programs since they began in 2000,” Mrs Lavarch said.

“Nine out of every 10 graduates are not only kicking their addictions – they also are staying out of jail.

“Every successful rehabilitation means there are fewer homes being broken into, fewer cars being stolen and a reduction in other crimes by drug addicts to support their habit.

“The cycle of crime is being broken by Drug Courts.”

Drug Courts place carefully selected drug offenders on intensive drug rehabilitation orders instead of sending them to prison.

However, offenders who fail to complete the program must return to court and be re-sentenced on the original offences.

Drug Courts have been made permanent under amendments to the *Drug Rehabilitation (Court Diversion) Act 2000*. Amendments include:

- Reaffirming that violent offenders cannot be referred to Drug Courts and giving courts greater scope to determine whether an offence is violent;

- Setting minimum regulations for the frequency of drug testing of offenders taking part in the program; and
- changing eligibility criteria to allow offenders facing suspended sentences of up to four years to be referred to drug courts (the current maximum is three years).

Drug Labs

Mrs Lavarch said a number of important amendments also were made today to the *Drugs Misuse Act 1986*.

“These changes will create new offences to address the illicit production of methylamphetamine, or speed,” she said. Changes include:

- People found in possession of prescribed substances or items for the production of an illicit drug will face up to 15 years’ jail.
- Those caught in possession of a prescribed combination of items for the production of a dangerous drug will face up to 25 years’ jail.
- The amount of forensic testing required before a criminal prosecution can proceed also has been reduced.

“The illegal production of speed is a growing national and international problem and Queensland is unfortunately not immune from this,” Mrs Lavarch said.

“As police uncover increasing numbers of clandestine laboratories, pressure has mounted on government testing laboratories and this has led to delays in matters being heard in court,” she said.

“This legislation will streamline testing procedures and help reduce processing delays.”

Media inquiries: Paul Childs, Linda Lavarch’s office, on 0407 131 654.

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LN 9/99 *Drug Rehabilitation (Court Diversion) Bill 1999* (QPL, December 1999)

RBR 3/01 *Drug Courts* (QPL, March 2001)

RBR 2002/25 *Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Bill 2002 (Qld)* (QPL, August 2002)