

Court Diversion Program Evaluation

Overview Report

Final Report

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November 2004

This report was prepared by

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in collaboration with

HEALTH OUTCOMES INTERNATIONAL PTY LTD

Court Diversion Program Evaluation

Volume One:
An Overview Report

ACKNOWLEDGEMENTS

We would like to thank all those who participated in the various components of the study including program participants, Department of Justice representatives, program staff and stakeholders. We would also like to thank the members of the Evaluation Steering Committee for the guidance they have provided the team throughout the study.

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1 INTRODUCTION

1.1 Background

The Victorian Department of Justice currently delivers a range of court-based diversionary programs aimed at breaking the cycle of re-offending. These programs provide the Victorian Magistrates' court with a range of sentencing alternatives available at different stages of the criminal justice process. The focus of these programs is on addressing the causes of crime.

The Court Diversion Program Evaluation is an evaluation of three court-based diversionary programs aimed at a spectrum of criminal behaviours. These programs include the:

- Drug Court Pilot;
- Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) program; and
- Criminal Justice Diversion Program (CJDP).

The **Drug Court Pilot** commenced operations in May 2002 in the Dandenong region and is targeted at individuals who are drug or alcohol dependent, whose dependency contributed to their offending and who may have an extensive criminal history. The Drug Court uses the coercive powers of the criminal justice system to achieve the therapeutic goals of reducing drug use and offending behaviour, via a Drug Treatment Order (DTO). The DTO is an alternative to incarceration.

The **Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT)** program provides defendants with drug treatment services as a condition of bail. The program is currently available in the Magistrates' Courts of Melbourne, Geelong, Ringwood, Moe, Dandenong, Sunshine and Heidelberg, Frankston, Ballarat/Bendigo and Broadmeadows.

The **Criminal Justice Diversion Program** is aimed at preventing the entry of first time or low risk defendants into the criminal justice system. The program is available statewide.

1.2 Terms of Reference

Turning Point Alcohol & Drug Centre and Health Outcomes International Pty Ltd (HOI) were engaged to evaluate the three initiatives. The overall objectives of the Court Diversion Program Evaluation strategy were:

- To determine the effectiveness of Court Diversion programs;
- To gather objective evidence to support future decision making by Government; and
- To review the policy and, where appropriate, legislative framework underlying these programs to inform the development of these, and future, diversionary initiatives.

This document provides an overview of the evaluation findings across each component of the evaluation. It is a companion document to the other reports and represents Volume One of the report series which includes:

- Volume One: Court Diversion Program Evaluation – An Overview Report
- Volume Two: Process Evaluation and Policy and Legislative Review

- Volume Three: Health and Wellbeing Study – Victorian Drug Court
- Volume Four: Cost Effectiveness Study – Victorian Drug Court

1.3 Methodology

The evaluation methodology comprised four main components:

- A Process Evaluation that examined the operational aspects of the programs using both quantitative and qualitative data;
- A Legislative and Policy Review that examined the legislative and policy mechanisms established for the three programs and their effectiveness;
- An Outcomes Evaluation (Health and Wellbeing) that examined the effect of the Drug Court program on participants; and
- A Cost-Effectiveness Evaluation of the Drug Court program examining costs and recidivism.

Each component of the evaluation used a specifically designed methodology. Full details of the various methodologies are provided in each report.

Prior to commencing, ethics approval was sought and granted by the Department of Justice Ethics Committee. The study was carried out in accordance with the approved research protocol. Additional ethics approval was sought and granted through Victoria Police relating to access and use of recidivism data.

1.4 Considerations when Interpreting the Results

The study was designed to maximize the capacity to review the components of the three court diversion programs from different perspectives. The study included multiple levels of review, consultation with many individuals and representatives ranging from service users to service providers and program stakeholders and considered data from a number of sources. The information collected was triangulated and reviewed by evaluation team members to facilitate accurate interpretation. Each report was reviewed by an independent reader and the Department of Justice, with oversight provided by an Evaluation Steering Committee. The team comprised individuals with different sets of expertise and knowledge. These factors have contributed a comprehensive review.

Having said this, it is important to contextualise the findings with the following caveats:

- The evaluation team has relied extensively on data provided by others (such as Victoria Police, Court Services and program staff) and we were unable to independently assess the accuracy of it.
- The programs are at various stages in their development, target different populations and have different purposes and operations. This must be kept in mind when making comparisons between them.
- The Health and Wellbeing study was conducted within a limited timeframe which did not allow for the longer term follow-up of participants. Hence, most participants were in Phase I (Stabilisation) of the program. This means that none of the participants included in this study had graduated (given that the program is in a pilot phase, there were no graduations during the study timeframe). Therefore, no comments can be made about individuals post Drug Court intervention. In addition, although 93% of all participants commencing their DTO during the study timeframe were recruited to the study, the sample was a small one (28 people).
- The Drug Court program is in a very early developmental phase. As previously noted, there were no graduates from the program and only one person had reached Phase III (Re-integration) of the program during the study timeframe. This

has considerable bearing on the interpretation of findings. It is particularly important when interpreting outcome findings given that all those participating in the research were actually still in an early stage of their treatment.

- When comparing the results from this evaluation with evaluations from other jurisdictions, it is critical to remember that key indicators such as recidivism, drug use and costs may have been calculated very differently across the studies. This has an impact on the way findings are derived and interpreted.

1.5 This Report

The purpose of this report is to provide an overview of the court diversion evaluation. The report provides a brief summary of the findings relating to the Criminal Justice Diversion Program (CJDP) and Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) program, together with a more extensive discussion on the Drug Court pilot. In so doing, it draws on information provided in the other three volumes, and more information about particular components of the study may be accessed in the companion reports.

2 CRIMINAL JUSTICE DIVERSION PROGRAM (CJDP)

2.1 Background

The Criminal Justice Diversion Program (CJDP) aims to prevent the entry of first-time or low risk defendants¹ into the criminal justice system.

The objectives of the CJDP are to:

- Reduce re-offending;
- Avoid a first criminal conviction;
- Assist an offender's rehabilitation;
- Utilise the community's resources for appropriate counseling or treatment; and
- Ensure that appropriate reparation is made to the victim of the offence.²

CJDP began as a pilot program at the Broadmeadows Magistrates' Court in January 1997, and was based on a similar program that had operated successfully in New Zealand for about a decade. The pilot was reviewed and revised in late 2000. Since this time, the program has gradually expanded and now operates in all Magistrates' Courts in Victoria.

Section 128A of the *Victorian Magistrates' Court Act* 1989 was enacted to provide legislative support to the process underpinning criminal justice diversion. Subsection 2 of Section 128A provides that the court may adjourn the proceeding for a period not exceeding 12 months to enable the defendant to participate in and complete the diversionary program. The legislation provides that this can only occur where the defendant acknowledges their responsibility for the offence to the court, where the prosecution and defendant consent to an adjournment for the purpose of diversion (CJDP), and where the court considers it appropriate.

2.2 Procedures

The program is targeted at low-risk offenders who are unlikely to be imprisoned. For participation in the CJDP to be approved, the offence and the defendant must meet certain criteria, specifically:

- The offence is triable summarily;
- The defendant admits the facts of the offence and shows an intention to plead guilty;
- There is sufficient evidence to gain a conviction; and
- CJDP is appropriate in the circumstances.

A range of other criteria are considered when determining the appropriateness of a defendant's participation in CJDP, along with conditions or circumstances that automatically exclude participation (for example driving while under the influence of alcohol or drugs). The existence of prior convictions is also considered in any determination of appropriateness, as well as such issues as the nature of previous offence(s) and how long ago the prior offence(s) were committed.

¹ Throughout this report, the term "defendant" is used to identify persons appearing before the courts prior to their appointment to the various diversion programs, generally pre-sentence/order. Once they have been approved for participation in the respective program, they are referred to as "participants".

² Acknowledgements to the Criminal Justice Diversion Coordinators' Anna McCasker and Nicole Daly who worked on the Manual which provided much of the background information detailed above.

A request for inclusion in CJDP can be made by several parties including the informant, the sub-officer authorising the brief, the prosecutor, the defendant, the defendant's legal representative or the court, including the Magistrate or the criminal justice diversion coordinator. The referral must be approved by the informant or sub-officer authorising the brief. The defendant (with or without legal representation) must also accept their participation in the program.

Defendants are charged and bailed or served with a summons to appear in court in the usual manner. Prior to the hearing day, a Diversion Notice is filed indicating police consent. A Diversion Brief is prepared which includes a summary of the offence, the defendant's prior history, and a witness cost sheet for restitution and compensation. The Brief is filed at the appropriate court at least 7 days prior to the mention date.

If the defendant is recommended for participation in CJDP, the Diversion Coordinator, on the day of the defendant's first appearance at court, interviews the defendant in order to identify the major issues in the case and formulate a suggested outcome, and explains the program to the defendant. On the same day the matter proceeds before a Magistrate in open court or in chambers, with or without lawyers but with friends and family welcome to provide support to the defendant.

In order to avoid a conviction, a CJDP participant must fulfil a number of court-imposed conditions, set out in a Diversion Order, all of which have to be agreed to by the defendant and their legal representative for the Diversion Order to take effect. These requirements may include:

- Apologising to the victim by way of a letter or in person;
- Compensating the victim;
- Attending counseling or treatment;
- Performing community work;
- Abiding by a curfew;
- Living at home;
- Not associating with certain persons;
- Making a monetary donation to a charitable organisation or local community project; and
- Attending a defensive driving course.

In arriving at an appropriate Diversion Order, all parties to the proceedings including the victim and the defendant are considered. The Diversion Order requirements are communicated to the defendant in writing who must accept these conditions in writing for diversion (i.e. involvement in CJDP) to take place. At this point the matter is adjourned to allow the CJDP participant to comply with the requirements of their Order.

If the CJDP participant complies with the requirements of the Diversion Order, the matter, with the agreement of Victoria Police, is not recorded as part of the person's criminal history. It is, however, recorded in a manner that allows police to monitor whether a CJDP participant who re-offends has previously been involved in the CJDP.

If the participant fails to comply with the requirements of their Diversion Order, the charge is referred back to court and dealt with in the normal manner, which may include the recording of a conviction on the person's record.

2.3 Results of the Process Evaluation

Outlined below is a summary of the key results from the Process Evaluation of the CJDP. Detailed information about both the program and the findings can be found in *Volume Two: Process Evaluation and Policy and Legislative Review*.

Referrals

Referrals to CJDP have increased gradually with the rollout of the program to more Magistrates' Courts. Over 13,500 defendants were referred to the program between November 2000 and September 2003, and over 11,000 have participated in the program. Recent data suggests that about 6% of the incoming criminal case load is being referred to the CJDP. Overall, commencements in the program in the 12 months to September 2003 were 7% below target, although monthly targets for new Diversion Orders were met or exceeded in the last eight months of that period. Stakeholder feedback and data analysis suggest that referral rates to the program vary between geographic locations, and between and within professional groups.

Participant profile

Males aged 17-29 years accounted for 48.8% of referrals between July 2001 and September 2003. Overall, males represented over double the number of females within the database. From a sample of 100 participants it appears that over 90% of participants are first-time defendants (with the remainder having very few, and relatively minor, prior convictions).

Interventions

Diversion Orders most commonly included two or three conditions (73% of cases). Nearly 50% of participants were ordered to make a donation; 36% to make an apology to the victim of the offence; 28% to write a letter of gratitude to the informant; 16% to pay compensation to the victim; 13% to attend counseling; 9% to attend a defensive driving course; and 9% to undertake community work.

Sentencing outcomes

Analysis of all diversion cases from November 2000 to September 2003 shows that 94% of diversions were successfully completed including the avoidance of a criminal conviction. Time spent in the program was highly variable, ranging from less than 30 days to over a year. More than two thirds of diversions took between 91-240 days to complete.

Recidivism

The re-offending rate within this group is low. From a sample of 100 participants it appears that 0 to 7% would be convicted of a subsequent offence in the 12 months following their commencement on the program. However, to assess the effectiveness of the program in reducing re-offending relative to other options for this participant group (and/or relative to the re-offending that might have occurred in the absence of the program), analysis of comparison groups would be required, which was outside the scope of this evaluation.

Stakeholder views on effectiveness

Interviews with a range of stakeholders, and analysis of participant satisfaction questionnaires, suggest the program is highly successful in assisting participants' rehabilitation, with key benefits including the avoidance of a criminal record and the benefits to the participant from undertaking community work. The high completion and low recidivism rates, together with strong satisfaction among participants, those who refer to the program and those involved in its delivery, suggest that diversion plans have been successful. The program has also fostered better linkages to various community supports. While there was general satisfaction with the timeliness of access to appropriate interventions, delays were sometimes experienced in matching participants to appropriate voluntary work.

Benefits to victims from an offender's participation in the CJDP include the increased likelihood of receiving compensation compared to a civil debt which is not attached to the completion of a Diversion Order. Analysis of victim satisfaction questionnaires indicated that the vast majority of victims were satisfied with the program. A minority felt that the reparation/donation ordered was too small for the gravity of the offence.

Overall feedback from stakeholders interviewed in Melbourne, Moe and Ringwood regarding CJDP has been particularly positive. The central strength of the program repeated by numerous stakeholders included the fact that all parties in the process have something to gain or benefit. The participant can avoid a criminal conviction by complying with the Diversion Order, hence a high compliance rate has been achieved across the program. Participants also recognise, acknowledge (by pleading guilty) and take responsibility for their actions. Victims receive recognition and possibly compensation. For Magistrates, it provides flexibility and the application of therapeutic jurisprudence, whilst police are included very centrally in the process. In achieving these outcomes the program benefits from its flexibility, where the Diversion Order can be tailored to suit the offence, the participant and the victim.

Other features of the program which were identified as contributing to its success included the role of CJDP coordinators, who are said to explain the program well to participants and conduct the program in a non-judgmental fashion, along with the benefit to community organisations that receive labour assistance.

The initial lack of supporting legislation behind CJDP was thought by some to have been a major barrier to its adoption by Magistrates, and numerous stakeholders mentioned the improvement in uptake since legislation was introduced. However, this perception is not reflected in the data which show that referrals and entries to the program have remained relatively steady since that time. Leadership from Magistrates in supporting the program was considered vital because it influences other key stakeholders.

Some stakeholders were concerned that defendants who did not qualify for Legal Aid and could not afford representation (or chose not to be represented) were disadvantaged because they were less likely to be made aware of the program and thus ran the risk of missing out on the opportunity to participate.

Other concerns regarding the program related to a lack of consistency in the approval for diversion by police informants, but there was also strong recognition by most stakeholders that the role of the informant was crucial to ensuring police adoption and support for the program. A lack of uniformity in approaches within various courts was also a concern to some

stakeholders with diversion occurring through a hearing in chambers in some courts, but in other courts taking place in open court.

Some stakeholders were reportedly confused by the range of diversionary programs (particularly the Police Cautioning program and CJDP), with two stakeholders attributing some of this confusion to the similar terminology of CJDP and diversionary programs. In this regard, a deliberate change in terminology was suggested by several stakeholders. Certainty of future funding was considered important to assist the operation of the program and ensure the retention of staff. Finally, some stakeholders felt that the existence, benefits and successes of the program were not as well marketed or promoted as they could be. These comments related to both the marketing of the program to relevant parties, such as defendants, police and solicitors, as well as promoting the successes of this program to the wider community.

3 COURT REFERRAL AND EVALUATION FOR DRUG INTERVENTION AND TREATMENT (CREDIT)

3.1 Background

CREDIT seeks to minimise drug use and drug-related offending by enabling the provision of drug treatment services as a condition of bail. The objectives of the program include reducing the likelihood of a sentence involving incarceration, delaying or reducing further offending behaviours, enabling access to treatment services at an early point of contact with the criminal justice system, reducing costs to the health system, helping defendants to become more productive members of the community, reducing direct costs to the justice system, and improving the quality of life for participants.

The program seeks to meet its objectives by:

- Bringing forward court referred treatment services to be available immediately after arrest and before being brought to court (these services would otherwise only be available after sentencing);
- Encouraging drug users to seek treatment;
- Developing a commitment on the part of drug users to treatment by making it a condition of bail; and
- Taking into account the defendant's commitment, progress and success in drug treatment at the time of sentencing.

The program commenced as a pilot in the Melbourne Magistrates' Court in late 1998. The pilot was developed via collaboration between the Melbourne Magistrates' Court, the Departments of Justice and Human Services, and Victoria Police. The initial pilot period was extended in Melbourne Magistrates' Court before other Magistrates' Courts were progressively introduced to the program from late 2000.

The CREDIT program is supported by funding from the Commonwealth and Victorian Governments. The program is currently available in the Magistrates' courts of Melbourne, Geelong, Ringwood, Moe, Dandenong, Sunshine and Heidelberg, Frankston, Ballarat/Bendigo and Broadmeadows.

The CREDIT program is not supported by specific legislation, but is encompassed within the overall policy of the Department of Justice and the Magistrates' Court of Victoria to ensure that a range of diversionary programs and sentencing options are available to Magistrates.

3.2 Procedures

A defendant is eligible for the CREDIT program provided they fulfil the following criteria:

- They are charged with a non-violent offence;
- They have a drug problem (this requires an illicit drug problem rather than alcohol for example);
- They are on bail;
- They are not on a court order with a drug treatment component; and
- They have been charged by an officer from a police station that participates in the CREDIT program (i.e. would normally bail the defendant to attend at a court where the program is operating).

Anyone can refer a person to the CREDIT program, however this is most commonly undertaken by the legal representatives, Magistrates, police (the informant), the defendant or other services.

The CREDIT clinician assesses the person to determine his/her eligibility for the program and makes a recommendation to the Magistrate. As part of the assessment process, the clinician discusses the available treatment options with the defendant in order to make recommendations about the most suitable approach.

If the court accepts the CREDIT clinician's recommendation, the CREDIT clinician arranges drug treatment at an accredited drug treatment agency. Under CREDIT, people brought before a Magistrate may be released on bail for periods of up to four months. A variety of treatment options are available, brokered by ACSO-COATS (an agency engaged by the Department of Human Services to arrange the provision of drug and alcohol services to registered clients by accredited agencies), with supervision provided through clinicians attached to the Magistrates' Court. While participation in the CREDIT program is a condition of bail, the person must consent to treatment. There is a range of different treatment options available depending on the needs of the individual. At least one interim review in court of the participant's progress is generally held prior to their attendance at court for sentencing. The review monitors progress in both treatment and lifestyle factors, provides encouragement and praise (where appropriate), allows for participant input and provides for any necessary variations to be made.

At each hearing, the Magistrate is provided with a progress report (in case of interim court review) or a pre-sentence report (in the case of a matter being finalised) from the CREDIT clinician. Due to the voluntary nature of participation in CREDIT, failure by a participant to satisfactorily participate in treatment cannot be used to penalise them further in sentencing for the offence charged. However, satisfactory participation can be a mitigating factor for consideration when the Magistrate sentences the participant.

3.3 Results of the Process Evaluation

Outlined below is a summary of the key results of the evaluation. Detailed information about both the program and the findings can be found in *Volume Two: Process Evaluation and Policy and Legislative Review*.

Referrals

The number of referrals to CREDIT has been lower than was generally expected. Monthly referrals to the program have gradually increased over the past two financial years, from a low of approximately 20-30 per month during July-November 2001, to a peak of approximately 140 in May 2003. During the 2002/03 financial year, there were 963 referrals to CREDIT, 53% below the target of 2,068. The source of referral was initially limited to police and Magistrates, but this was subsequently altered to allow referrals to come from anywhere. It was originally envisaged that police would be the main referrers but this has not transpired. Over three quarters of referrals have come from legal practitioners and Magistrates. Stakeholder feedback and analysis of the available data indicate that referrals to the program have been uneven between geographic areas, and between and within professional groups.

The number of new commencements has increased markedly since the start of 2002 with the rollout of the program to more Magistrates' Courts. During 2002 and the first half of 2003, the number of participants newly registered on the program varied generally from 60 to 80 per month. The total number of concurrent participants has gradually increased over time, and there has been a cumulative effect of more participants entering than exiting the program.

Participant profile

The most common demographic of CREDIT participants has been males aged 20-29 years, accounting for 45.2% of all participants. Overall, there have been more than three times as many males as females in the program. In general, people who receive CREDIT bail have significant offending histories. Analysis of a sample of 100 CREDIT participants found that 96% had prior criminal convictions, for an average of 21.9 prior convictions per participant. The main substance reported to be used by participants was heroin, with over 76% of participants using heroin. Other significant main substances reported were cannabis (11.5%) and amphetamines (5.6%). Participants most commonly described their drug use as dependence (84%) rather than abuse (11%) or recreational (5%).

Treatment

A wide range of treatments were accessed by CREDIT participants. Individual Counseling, Consultancy and Continuing Care was recorded as having been accessed in over 65% of treatment episodes although this is not surprising as this is an element common to most treatment episodes. Drug Withdrawal Residential accounted for 15% of episodes, while Residential Rehabilitation and Youth Outreach each accounted for just under 6%. Other, less commonly accessed treatments included Supported Accommodation (2.7% of episodes), Home Based Drug Withdrawal (1.7%), and Outpatient Drug Withdrawal (0.7%). With regard to the number of treatment episodes undertaken, 68% of participants were involved in one episode and just over 20% were involved in two episodes.

The time spent by participants in the program has a wide range. Overall, 64% of participants spent 90 days or less in the program, whilst 36% of participants spent longer than 90 days in the program. 19% of all participants were on the program for more than 120 days and 9% participated for over 160 days. Thus, the bail period was extended, resulting in long Episodes of Care. The reasons behind this extended duration of treatment are unclear, although it has been suggested that some Magistrates and clinicians have sought to retain participants in treatment for as long as possible in order to maximise the benefit of the program to them. Although CREDIT was intended to provide a point of entry to treatment services, the data suggests that it has been used as a vehicle for providing longer term treatment for some participants. Whilst retention in treatment has been shown to be associated with improved outcomes, the extent to which continued treatment should be provided under a mandated arrangement (such as CREDIT) as opposed to voluntary participation is problematic. Further research is required in this area so that a more informed decision can be made on what is the optimum duration of their participation in the program.

Compliance and completion

Participants in the CREDIT program are usually repeat offenders whose offending is related to their illicit drug use. As such, compliance rates can be low, however were considered by treatment providers to be particularly encouraging given the complexities of the client group.

Across all participants entered on the database who had completed CREDIT by 30 September 2003, 80% were recorded as having successfully completed the program (defined as “Attended treatment and engaged well in treatment throughout the entire period of bail. Made significant positive progress. Attended scheduled reviews with clinician. Attended all court hearings”). According to data provided by the CREDIT Coordinator, for the 12 months from 1 October 2002 to 30 September 2003, 61% of episodes during this period were successfully completed, and a further 10% were recorded as ‘partially completed’.

Sentencing outcomes

The most common sentencing outcomes were non-custodial, accounting for 92% of all sentences imposed under CREDIT, with 8% of CREDIT participants receiving a custodial sentence. Custodial sentences were imposed on 30% of those who did not successfully complete CREDIT, and 2.5% of those who did successfully complete the program. Only 3% of all CREDIT participants received a custodial sentence of six months or longer. Although these statistics do not necessarily prove that CREDIT provides a strong incentive for participants to commit to treatment, they suggest that it reduces the likelihood of a sentence involving incarceration, and that Magistrates take participants’ progress into account at the time of sentencing.

Stakeholder views on effectiveness

Stakeholder feedback on the effectiveness of the program reinforces this interpretation of the data. Stakeholders praised the effectiveness of treatment provided by treatment agencies and the brokerage role played by ACSO-COATS. The availability of treatment services was generally described as excellent, with most participants being seen within 24 hours of being referred. All treatment providers interviewed reported excellent results with CREDIT participants, and stated that their success rates with such participants generally exceeded those where treatment was not mandated. Treatment providers felt that the CREDIT participants were more successful due to the duration of treatment, regular review in court and the motivation and incentives to comply with the requirements of the program.

Recidivism

From a sample of 100 participants it appears that around 38% would be convicted of a subsequent offence in the 12 months following commencement on the program, at an average rate of 263 offences per 100 participants. However, to assess the effectiveness of the program in reducing re-offending relative to other options for this group (and/or relative to the re-offending that might have occurred in the absence of the program), analysis of comparison groups would be required. This was outside the scope of the current study.

Support for the program

A significant implementation issue identified by several stakeholders concerned a lack of space within some courts to provide appropriate facilities for the CREDIT program. This lack of infrastructure can impede the operation of the program, with facilities in one court visited allowing restricted access to the CREDIT clinician for defendants and solicitors. Some of these issues have led to a sentiment amongst some stakeholders that the CREDIT program is not given the same support by the courts as 'registrar-based programs'. According to stakeholders, further work was being done with court registrars to increase their knowledge of and support for diversion programs.

Stakeholders considered that the level of support that Magistrates show for the program has an important bearing on the overall level of support for the program in the court community. The CREDIT clinician's leadership role is of critical importance as he/she is the 'driver' behind the program at each court, creating links to treatment and advising Magistrates on clinical issues. The range of stakeholders who commented positively on the role and communications of the clinician highlights this pivotal role in the program.

Eligibility

Issues surrounding eligibility criteria were also widely discussed. Almost universally among stakeholders at the service delivery level was the view that alcohol dependant defendants should be included in the program. The eligibility status of violent offences in relation to CREDIT was also important to stakeholders, with many preferring a more flexible approach in this area in the context that many acts of violence are the result of drug use. Many stakeholders considered there should be an avenue for such defendants to be included. The inability to conduct in-custody assessments (as the defendant must be on bail) was a source of concern to some CREDIT clinicians who saw CREDIT bail as a timely intervention where defendants in custody may be ready to respond to treatment.

Factors impacting on successful progression through the program

It was commonly considered that the participants most likely to be successful in the CREDIT program were those who had stable accommodation, support from family and other social supports. Participants stated that the program worked well for people who were committed to it and ready for the challenges it presents.

Many stakeholders emphasised the importance of stable and appropriate housing to participant outcomes. However, the characteristics of many of the participants often posed challenges for available housing resources. Most properties are reportedly designed for families or multiple tenants rather than sole occupants, and there were concerns expressed about co-locating two or more CREDIT participants (as this was seen as potentially detrimental to their treatment) or to house a CREDIT participant with a non-CREDIT client.

Strengths

A range of features seen as contributing to the success of the CREDIT program were outlined by stakeholders. Most commonly mentioned were the quick response to placing participants with a treatment provider, along with links to a range of services, and the all-round flexibility of the program. The program was also seen to "humanise" the court and allow its involvement in the rehabilitation process. One stakeholder summarised this characteristic of the program as "viewing drug problems as a health problem rather than a crime problem".

4 DRUG COURT

This summary draws on findings from three components of the overall study including:

- The Process Evaluation of the Drug Court (Volume Two);
- The Outcomes Evaluation (Health and Wellbeing) which looked at outcomes for participants of the Drug Court (Volume Three); and
- The Cost Effectiveness Evaluation of the Drug Court examining costs and recidivism (Volume Four).

A summary of the findings from each of those reviews is presented below.

4.1 Process Evaluation of the Drug Court Pilot

The study period for the Process Evaluation was 20 May 2002 (commencement of the Drug Court pilot in Dandenong) to 30 June 2003.

4.1.1 BACKGROUND

The Victorian Drug Court Pilot is responsible for sentencing and supervising the treatment of offenders with drug problems. The Drug Court represents a fundamental shift in the way in which courts address the issue of drug-related offending. The aim of the Drug Court is to protect the community by focusing on the rehabilitation of the participant's drug or alcohol dependence with the objective of reducing the risk of further offending by stabilising their lifestyle and reintegrating them into society.

The *Sentencing (Amendment) Act* 2002 is the primary piece of legislation supporting and guiding the Drug Court in its policy, legislation and operations. The Act amends the *Sentencing Act* 1991 to provide for a Drug Treatment Order (DTO) as a new sentencing Order; amends the *Magistrates' Court Act* 1989 to establish a Drug Court Division of the Magistrates' Court; and amends the *Corrections Act* 1986 with respect to the custody of a person subject to a DTO.

The model has adopted the following key features:

- Judicial supervision;
- Multi-disciplinary team approach;
- Timely intervention;
- Consent to participate;
- Good access to broader services; and
- Underpinning of harm minimisation

4.1.2 THE ENTRY PROCEDURE

To be eligible for a Drug Treatment Order, a defendant must meet each of the following criteria:

- The defendant must not be subject to a Parole Order, Combined Custody and Treatment Order, Intensive Corrections Order, Community Based Order or a Sentencing Order of the County or Supreme Court;
- The defendant's usual place of residence is within a postcode area as specified in the Government Gazette;
- The offence must be within the jurisdiction of the Magistrates' Court and punishable upon conviction by imprisonment;

- The offence must not be a sexual offence or an offence involving the infliction of actual bodily harm;
- On the balance of probabilities the Drug Court must be satisfied that the defendant is dependent on drugs or alcohol and the offender's dependency contributed to the commission of the offence;
- Upon conviction the Drug Court considers that a sentence of imprisonment is appropriate;
- The Drug Court considers that it would not have ordered that the sentence be served by way of intensive corrections in the community nor would it have suspended the sentence; and
- The defendant must be willing to consent, in writing, to the DTO.

The *Magistrates' Court Act* 1989 initially allowed referrals to be made by Magistrates from the Dandenong Magistrates' Court only. In February 2003, Section 17ZR of the Sentencing Act allowed referrals to come from any court. A Magistrate refers a defendant before he/she has made a formal plea, where it appears that the defendant is eligible according to the stated eligibility criteria. In most cases legal representatives or police prosecutors suggest the potential for Drug Court intervention to the Magistrate.

Prior to the case being referred and adjourned to the Drug Court, the Deputy Registrar conducts a brief screening by telephone to ascertain that the basic criteria are met. Where the defendant is deemed eligible for participation, a date is set for the first Drug Court mention hearing. The first mention hearing involves representations from the defendant's legal representative (who is often the Drug Court duty lawyer) and the Police Prosecutor. The Drug Court Magistrate must be satisfied that the defendant meets the eligibility criteria, including that the appropriate penalty is a term of imprisonment.

Should the defendant be considered an appropriate Drug Court participant, a screening request is asked of the rostered Drug Court Case Manager, who completes the screening "on the spot". Where the Case Manager considers the defendant suitable for the Drug Court program, the matter is adjourned for 21 days to allow the defendant to have a more detailed assessment by the Senior Case Manager and the Drug Court Clinical Advisor. This assessment involves both a clinical focus and an environmental focus.

At the second mention hearing the defendant's legal representative makes submissions regarding the defendant's suitability for a DTO. The Magistrate, based upon these submissions, the assessment report and other relevant matters, makes a determination of whether the defendant is suitable for a DTO. At this point the defendant makes his/her plea. Should this plea be not guilty, the defendant is not eligible for the Drug Court and the Magistrate adjourns it for hearing by the referring Magistrates' Court.

4.1.3 PROGRAM OPERATIONS

The DTO comprises three phases: Stabilisation (Phase I), Consolidation (Phase II), and Re-Integration (Phase III). The progression of participants through each of these phases and ultimately the successful completion of the program is the objective for each participant in the program. The table below outlines more information about each phase.

Table 1: The three phases of a Drug Treatment Order

| PHASE 1 STABILISATION | PHASE 2 CONSOLIDATION | PHASE 3 RE-INTEGRATION |
|---|---|---|
| Principal Goals | Principal Goals | Principal Goals |
| <ul style="list-style-type: none"> • Stabilise accommodation arrangements. • Stabilise income arrangements. • Stabilise physical, dental and mental health. • Reduce drug use. • Cease criminal activity. | <ul style="list-style-type: none"> • Strive to be drug free. • Remain crime free. • Consolidate social and domestic environment. • Develop life skills including job skills. • Identify major life issues and identify strategies to address. • Improve general health and wellbeing. | <ul style="list-style-type: none"> • To be relatively drug free and accept a drug free lifestyle. • Remain crime free and accept a crime free lifestyle. • Maintain sustainable social and domestic environment. • Maintain general health and wellbeing. • Address major life issues. • Gain employment or return to study. • Be fiscally responsible |
| (Anticipated) Average Duration | (Anticipated) Average Duration | (Anticipated) Average Duration |
| 12 Weeks | 12 Weeks | 26 Weeks |
| Principal Means of achieving goals | Principal Means of achieving goals | Principal Means of achieving goals |
| <ul style="list-style-type: none"> • Commence and actively participate in drug treatment. • Assigned to CCS Drug Court Case Manager. • Development of detailed case management plan. • Terminate criminal associations. • Commence and actively participate in case management program. • Attend court weekly. • Submit random urine tests. • Participate in home visits by CCS Drug Court Case Manager. • Have stable accommodation/income. | <ul style="list-style-type: none"> • Continue to actively participate in updated drug treatment program plan. • Commence and actively participate in 'life skills' programs which may include financial/ budget, vocational/ educational, cognitive skills training, parenting/ relationships, life skills, counseling etc. • Attend court fortnightly. • Submit random urine tests. • Participate in home visits by CCS Drug Court Case Manager. • Develop new leisure activities. | <ul style="list-style-type: none"> • Continue/complete all requirements of drug treatment program plan. • Continue/complete 'life skills' program plan. • Attend court monthly (minimum). • Submit random urine tests. • Participate in home visits by CCS Drug Court Case Manager. • Seek/gain employment or commence educational/ vocational training program. • Pay or make arrangements to pay all outstanding debts. • Develop Termination of Order Transition Plan. |

Source: Drug Court Operating Manual, 1.2.1. (See Volume Two for more information)

Throughout the DTO there is a range of core conditions with which the participant must comply, namely:

- Not commit another offence punishable on conviction by imprisonment during the Order;
- Attend court when required to do so;
- Undergo treatment for drug or alcohol dependency according to their Order;
- Not leave Victoria without prior permission;
- Notify changes of address to the Drug Court team;
- Report to Community Corrections Officers (Case Managers) on an agreed basis;
- Submit to drug or alcohol testing as specified in the Order; and
- Comply with any conditions in the Order in general.

Review hearings for participants are held weekly, fortnightly or monthly at the Drug Court depending on which phase of the program the participant is participating. A system of rewards and sanctions is utilised to encourage compliance with the DTO. Compliant behaviour is rewarded by verbal praise, reduced substance testing requirements (i.e. reduced frequency of tests), and a reduction of other attendance requirements at the Drug Court.

It is a core condition of every participant's DTO that they undergo treatment for their drug or alcohol dependency. Drug treatment is brokered through the Community Offenders Advice and Treatment Service (ACSO-COATS - an agency engaged by the Department of Human Services to arrange the provision of drug and alcohol services to registered clients by accredited agencies), and is provided by a range of drug treatment agencies. The following table summarises the drug treatment major objectives for each phase of the Drug Court Program.

Table 2: Drug Treatment Major Objectives for the Drug Court Program

| PHASE 1 STABILISATION | PHASE 2 CONSOLIDATION | PHASE 3 RE-INTEGRATION |
|--|---|--|
| Principal Objectives | Principal Objectives | Principal Objectives |
| <ul style="list-style-type: none"> • Risk Assessment • Set treatment goals • Engage participant in treatment • Examination of reasons for use | <ul style="list-style-type: none"> • Revision of treatment goals • Maintaining engagement in treatment • Maintenance of low risk behaviour • Address problems surfacing in treatment • Involvement of supports to participant (family; significant other, etc) | <ul style="list-style-type: none"> • Revision of treatment goals • Exit planning • Managing lapse/relapse • Linkages to other A&D support services • Reinforcement of gains made and goals achieved |
| Secondary Objectives | Secondary Objectives | Secondary Objectives |
| <ul style="list-style-type: none"> • Harm minimisation – safe using • Options about drug use • Pharmacotherapy • Advice to Clinical Advisor on appropriate linkages to other services • Drug use reduction • Role clarification • Reporting guidelines • Exit planning | <ul style="list-style-type: none"> • Maintain drug use reduction • Managing lapse/relapse • Life skills • Exit planning | <ul style="list-style-type: none"> • Maintenance of stable pharmacotherapy use • Further reduction in all types of drug use and acceptance of a drug free lifestyle • Life skills |

Source: *Drug Court Pilot – Information for Drug Treatment Agencies – Friday 5 April 2002* See Volume Two for more information.

The Victorian Drug Court model addresses the issue of homelessness by accessing transitional housing and specialist homelessness support from existing community-based providers. The inclusion of transitional housing in the Drug Court pilot acknowledges the important role that the provision of stable housing fulfils in reducing drug use and criminal behaviours associated with drug use. This is fully detailed in The Transitional Housing Management-Drug Court Housing Pathways Initiative (THM-DCHPI) which is a collaborative project between the Office of Housing (OOH) of the Department of Human Services under the Victorian Homelessness Strategy, and Court Services, Department of Justice.

4.1.4 FINDINGS

Participant profile

During the evaluation period (20 May 2002 to 30 June 2003) there were 149 referrals to the Drug Court and a total of 59 Drug Treatment Orders made. Of the 59 participants, 50 were male and 9 were female. The predominant demographic was males aged 26-35, which accounted for 47% of participants. Just over half (54%) of participants were identified as being Australian with the next most commonly reported background being Vietnamese (12%). The remaining third identified 16 other cultural backgrounds.

The offending histories of Drug Court participants are extensive. On average, participants had 40 prior convictions, 50% of which were for property-related offences and 19% for drug related offences. In terms of the major offences that led to their sentencing and being placed on a DTO, the major offences were predominantly property-related (68% of cases), with drug-related offences being the major offence in 15% of cases. The median custodial sentence received by participants (which formed part of their DTO) was 10 months (minimum 4, maximum 24, mean 12).

Program throughput, referral and processing times

At 30 June 2003, 30 participants were recorded as being in Phase I (Stabilisation) of their DTO, eleven participants were in Phase II (Consolidation), and one was in Phase III (Re-integration). For the 12 participants who had progressed from Phase I to Phase II, the average time taken was 173 days (range 105-289 days), slightly more than double the anticipated duration of 12 weeks (or 84 days). The one person to progress to Phase III had spent 168 days in Phase II, double the anticipated duration.

DTOs had been cancelled for 17 participants who had significantly breached their DTO. Cancellations were made after an average 183 days (within a wide range of 55-349 days). There had been no graduates from the program at this time. To place these results in context, it should be noted that the Drug Court had been operational for a total of 406 days at this time. The 42 participants who were still on the program at 30 June 2003 had spent an average of 222 days on the program, whereas under the *Sentencing Act* a DTO can operate for up to two years.

The longer than expected durations in Phases I and II have been attributed to several factors. Drug Court team members have had to learn to use their professional judgment in this new area to determine when a participant is 'ready' to progress to the next phase. This has required a period of learning, during which team members have understandably been conservative in their decision-making. Professional opinions have also differed on what is required for a participant to progress to the next phase. The introduction of a more formalised process of decision-making has assisted resolution of these issues. However, from the experience gained in the pilot to date, it is now expected that Phase I will continue to take longer than 12 weeks on average, partly because it includes identifying those who are not making sufficient progress and cancelling their DTOs. It is expected that participants in Phases II and III will progress comparatively more quickly.

Urine drug screens

All Drug Court participants are required to submit to drug or alcohol testing as specified in their DTO, and this was seen as an important component of the program acting as a motivating factor for some participants which contributes to their program compliance. However, the role of Case Managers in interpreting the results, rather than a trained toxicologist, was queried by some stakeholders.

Urinalysis results during the study period showed an attendance rate for drug testing of 78%. Of the 3,586 attendances, 76.3% produced positive tests (i.e. detected drug use), 18.1% were negative (i.e. clean), and 3.7% failed to produce a urine sample. Results were not recorded in 1.9% of cases. Urinalysis results are strongly patterned by participant. Of the 59 participants, 63% had negative (i.e. clean) test results for 10% or less of the urine samples they submitted, 23% were clean in 11-50% of tests, 8% were clean in 51-90% of tests, and 6% were clean in 91% of tests or more.

It is important to contextualise these results:

- First, compared to similar courts in other jurisdictions, the Victorian Drug Court performs testing more frequently (usually three times per week in Phase I compared to two in NSW, for example). This increases the probability of detecting drug use for any given level of use.
- Second, the Victorian urinalysis detects all drug groups and this includes methadone and other prescription medications which may be being used legitimately. However, due to the way in which the results are recorded, it is not feasible to distinguish legitimate from illegitimate drug use (as this would require the corroboration of every test with the prescribing doctor).
- Third, some drugs stay in the body for longer periods of time. This is especially true of substances such as cannabinoids. With drug testing three times per week, it is highly likely that several consecutive positive tests could relate to a single instance of use.
- Fourth, some individuals may have shifted their use away from a substance that has been a problem for them – for example, reducing their heroin use - while their use of another substance (such as cannabis) may have increased. Although the available data identified positive tests by substance, this is insufficient to allow any such changes in drug use to be identified without making significant assumptions.

Although the analysis could not control for these four factors, changes in drug use are explored more fully as part of the Health and Wellbeing Study.

Furthermore, the Drug Court, by virtue of its role in the overall suite of diversion programs, targets individuals whose problems are the most complex and whose behaviour is the most entrenched. It takes considerable time to effect behavioural changes in these individuals. In addition, the data to 30 June 2003 shows the majority of participants were in Phase I of their DTOs. This is the Stabilisation Phase and is not expected to result in long periods of abstinence. In order to assess the effectiveness of the Drug Court in reducing overall drug use, data is required for a representative group of participants showing their patterns of drug use (including type and level) before commencement, during Phases I, II and III, and after graduation.

Reward and sanction system

As noted previously, a system of rewards and sanctions is utilised by the Drug Court to encourage compliance with the DTO. Compliant behaviour is rewarded by verbal praise,

reduced substance testing requirements, and a reduction of other attendance requirements at the court, *inter alia*. Sanctions include verbal reprimands, increased requirements to submit to substance testing, other increases in attendance requirements at the court, the imposition of unpaid community work, or activation of short periods of the custodial part of the DTO. Days are accumulated toward the custodial component and are generally served as 7 or 14 day blocks once sufficient days have been accumulated. Conversely, the removal of accumulated imprisonment sanctions previously imposed is often used as a reward.

Between 20 May 2002 and 30 June 2003, a total of 1,272 days of potential custodial sanctions were imposed on participants for failing to comply with their DTO conditions; 382 days were deducted from the sanctions imposed on participants (as a reward); 324 days were served in prison (by 13 participants) by way of sanctions for non-compliance with the DTO; and 81 days (648 hours) of community work were ordered. Although other rewards and sanctions were said to have been commonly used, these were not included within the records provided to the evaluators.

Re-offending records

Projections of re-offending patterns within the participant group (based on data to 24 November 2003) indicate that approximately 72% of participants would be convicted of a subsequent offence within 12 months after commencement of their DTOs, for a total of 365 offences per 100 participants in that period. Analysis of recidivism against a comparison group is included in the cost-effectiveness component of the evaluation (see *Volume Four: Cost-Effectiveness Study – Victorian Drug Court*).

Although a number of issues were raised by stakeholders concerning the implementation of the Drug Court, many of these issues, particularly those relating to roles, responsibilities and professional tensions, are consistent with the findings from the Process Evaluations of other Drug Courts in Australia (e.g. NSW and SA) and may be considered as being normal issues encountered during the implementation phase of a new and complex pilot program of this nature.

Stakeholder views

Leadership: A common theme throughout consultations with Drug Court team members was the importance of a dynamic and strong leader to act as both an authority and facilitator of role compatibility in order to 'pull the team together'. This challenging position is seen as vital to the harmonious and efficient progress of the Drug Court. Should the pilot be rolled out to other areas, consideration will need to be given to the leadership structure and skill mix required to fulfil the Drug Court team leadership role and the relationship between the Drug Court Program Registrar and the Magistrate.

Accountability: Another matter raised consistently by many stakeholders related to confusion over lines of reporting. Most members of the team have a line manager in their respective departments, but are also responsible to the Drug Court Program Manager. Whilst this provided challenges, and indeed may have benefits, it can also cause confusion and potential conflict with competing or inconsistent demands. The Drug Court Reference Group was, in part, established to help address these tensions. Conversely, one member of the Drug Court team, the Clinical Advisor, does not have a direct line manager beyond the

Program Manager, which has the potential to contribute to feelings of professional isolation and a lack of support for the position. This potential has been recognised and efforts were made by the Department of Justice to offer appropriate support to the position.

Eligibility: Stakeholders expressed general satisfaction with the current eligibility criteria and with the referral, screening and admission processes. However, whilst there was a strong belief that the right individuals were being included and excluded from the program, some dissatisfaction was expressed (principally from a user-friendliness perspective) with the assessment tool used by the Clinical Advisor and Senior Case Manager to assess participants' suitability for a DTO.

Interventions: There was general praise for the timeliness and effectiveness of the drug treatment services being provided to participants. The response by treatment agencies in accommodating the program despite lengthy Episodes of Care was seen as "outstanding and professional". Treatment agencies have seen DTO participants as an integral part of their treatment responsibilities and were praised for their open and flexible approach. The role of ACSO-COATS and the brokerage model were also cited as important elements of the drug treatment component, providing an accessible pathway for the criminal justice system to access a wide range of Victorian drug treatment services. This was seen as a distinct advantage of the approach taken in Victoria compared to some other states. Participants' access to stable accommodation was also seen as a critical success factor and the important role of Housing Support Workers and Tenancy Administration Workers in this regard was recognised.

Health and wellbeing: According to members of the Drug Court team, the vast majority of participants have shown considerable improvements in welfare and social functioning (these outcomes are addressed in the *Health and Wellbeing Study*). With stable housing and support provided, tenancies have been maintained with few complaints from neighbours to these Transitional Housing Management properties. Stakeholders believe that participants feel empowered by the process and have shown excellent management and compliance with appointments, beyond that usually experienced with similar clientele. Several stakeholders referred to the program's ability to build participants' skills and strengths to draw upon during their participation in the current program, or on later occasions should they not succeed on this occasion.

Limitations: Whilst throughout the consultations various criticisms and concerns were expressed about the processes by which the Drug Court was established, there was an acknowledgement that this is to be expected with a pilot program of such magnitude. As such there has already been some adaptation and moulding of the program in practical terms, and stakeholders were keen for the continuation of the program. In general, stakeholders identified a shortfall in funding as a difficulty facing the program.

The Drug Court pilot is about halfway through its three-year duration and continues to evolve. Current participants as at 30 June 2003 had spent an average 8.6 months on the program, and the longest current DTO had been active for just over 12 months. Many of the benefits for participants are expected to emerge over a longer time frame. Notwithstanding, support for the continuation of the Drug Court has been strong from all those consulted and much of this support relates to a belief that the program is producing positive outcomes for participants. Contributing to this has been the skilled and multidisciplinary team approach, goodwill on the

part of many agencies, and features of the program itself including the provision of stable housing and the flexibility shown for the participant group. The inclusion of the participant and the respect afforded to them throughout the process has empowered them and motivated their progression.

4.2 Outcomes (Health and Wellbeing) Study Findings

The study period for the outcome evaluation was an eight month time frame from October 2002 to May 2003. The study was undertaken by a research team from Turning Point Alcohol and Drug Centre.

4.2.1 METHOD

The *Health and Well-being Study: Victorian Drug Court* was designed as a prospective, single group study of participants of the Dandenong Drug Court pilot. This study aimed to examine the impact of the Drug Court on the well-being of participants. Baseline and follow-up data were collected at three and six months post-commencement of participants' Drug Treatment Order (DTO). A range of variables was examined including drug use, criminality, social functioning, mental and physical health, and participant satisfaction with the Drug Court. Standardised research tools were utilised. Twenty-eight of a possible 30 Drug Court participants were recruited to the study. During the period of the research, no participants graduated from the Drug Court program. As a result, all findings are based upon participants who are still subject to the program and are distinct from studies of program completers/graduates reported elsewhere in Drug Court literature.

To be eligible to participate in the study, individuals needed to be participants on a Drug Treatment Order at the Dandenong Drug Court, over 18 years of age, and be able to provide informed consent.

4.2.2 CONTEXT OF THIS STUDY

This evaluation was conducted within a specified timeframe which did not facilitate the long-term follow-up of participants. Most participants were in Phase I (Stabilisation) of the Drug Court process, with only four of 28 moving on to Phase II (Consolidation) of the program³.

None of the participants included in this study had graduated from the Drug Court program. Therefore, no comment can be made about the outcomes of Drug Court participation beyond the six month follow-up period of this study, which is not post-intervention. This limitation should be carefully considered when assessing the 'impact' of the Drug Court on individuals, and when making any comparisons between this study group and others where the focus is on graduates⁴.

Another limitation of the study is the small sample size. The study's recruitment processes were highly successful, recruiting 93% of all participants that were placed on a DTO during the recruitment phase. However, the sample size remains small (N=28) and as a result, the level of statistical analysis has necessarily been limited.

³ For a detailed description of the Drug Court stages, refer to *Volume Two: Process Evaluation and Legislative Review*.

⁴ This distinction is not within the scope of this study.

4.2.3 RESULTS

For a more detailed account of the results, including a breakdown of the results at each time period, refer to the full report (Volume Three).

Participant characteristics

At baseline interview, Drug Court participants had multiple and complex needs, including unemployment, homelessness, drug use, mental health issues and criminal histories.

Employment: There was positive stabilisation in employment status reported across the three assessment points. The unemployment rate amongst study participants decreased from 86% at baseline to 54% at six months. In addition, the full-time employment rate increased from 11% at baseline to 25% at six months. The proportion of people on a pension also increased, from 4% at baseline to 14% at six months.

Accommodation: Some changes occurred in accommodation status across the three assessment points. At the six-month follow-up, a greater proportion of people lived alone or with a partner or spouse, and fewer reported living with parents and friends. The proportion of participants living alone with children remained relatively stable.

There was an increase in the proportion of people living in WAYSS housing from less than half the sample at baseline (46%) to 64% at six months. The proportion of those renting property increased slightly from baseline to six months whilst the number in owned accommodation fell⁵.

Treatment: The proportion of Drug Court participants in treatment programs was lowest at baseline interview (50%) and highest at the three month follow-up point (79%). This may reflect the intensive treatment focus of the DTO upon commencement, resulting in high rates of participation at the three-month follow-up. While the 68% participation rate at the six month interview indicates a high level of treatment involvement, the 11% reduction in treatment participation between the three and six month follow-up may result from some DTO participants rejecting treatment or a stabilisation of treatment attendance. The latter can only be verified by ongoing monitoring beyond the scope of this study.

Of those in treatment across the three interview points, the maintenance treatments of methadone and buprenorphine were the most common. The length of time in treatment increased from a mean of 10 weeks at baseline to 18 weeks at six months. These data indicate a good level of engagement and retention in treatment.

By the six-month follow-up, participants self-reported improvements in employment and housing status and increased engagement in alcohol and drug treatment programs. Self-reported drug use decreased over time, with a statistically significant reduction in heroin use, and decreases in alcohol and tranquilliser consumption. Interestingly, cannabis use doubled over the same period. There are a number of reasons why cannabis use may have increased. These include participant focus on reducing other drug use with a simultaneous substitution of cannabis, increased cannabis use due to the pressure of sustaining life change, a perception of cannabis as a less harmful and more socially acceptable drug, and a

⁵ It should be noted that participants interpreted this in different ways e.g. some people who reported living with parents also reported that the home was owned.

perception that cannabis use incurs less serious sanctions by the Drug Court. This is a feature warranting further investigation.

Criminal activity: Data pertaining to criminal activity among the Drug Court group from different sources were contradictory. Participants' self-reports of crime committed was low at baseline and extremely low at six months. This contrasted with data obtained from the Drug Court (reported in the Cost-Effectiveness report) which indicated that 79% of the group was charged for further offences during a similar period. Issues regarding the reliability of self-report of criminal offences were examined. By the six-month follow-up, just under half (46%) of the study participants had spent time in prison, for an average of 15 days as part of DTO sanctions. Additional data on offending, both during a DTO and subsequent to their participation, is required to draw definitive conclusions about the Drug Court's impact on re-offending.

Drug use: Data from the OTI indicate a decrease in the self-reported use of heroin, alcohol, tranquilisers and cigarettes between baseline and the six-month follow-up. They also highlight an increase in the reported use of cannabis from approximately twice daily at baseline to four times daily at the six-month follow-up. Stable use was reported between baseline and six months for other opiates and amphetamines. Tobacco use decreased slightly from 16 to 13 cigarettes per day.

Urine drug screen results, supplied by Drug Court Administration, were also considered when considering drug use. Between 60% and 70% of urine drug screens tested positively. Between 10% and 20% of all urine drug screens were negative. A high number of positive results were anticipated given the significant proportion of participants on prescribed medication and controlling for prescribed drug use was not possible. The results presented from the urinalysis are therefore likely to be substantially inflated and are considered to be an inaccurate indicator of actual illicit drug use.

Social functioning: Social functioning data were recorded via the OTI and SF-36. The group reported poorer mental health than a non-drug using population, with only minor improvements by the six month interview. Physical health of the group was on a par with a non-drug using population and also improved slightly over time.

Participant satisfaction: Drug Court participant satisfaction with various components of the program was also examined. Feedback from participants was generally positive with reports that the Drug Court was "just and fair" and the Drug Court team were "supportive and committed". The experience had facilitated participants' reflection on their behaviour in a safe environment and changed their life in a positive way. Minor improvements in mental health status were associated with greater satisfaction with treatment. Some negative aspects of the program were also identified, pertaining to the perceived intensive and intrusive nature of the Drug Treatment Order.

4.2.4 CONCLUDING COMMENTS

This study sought to explore the impact of the Drug Court on the lives of participants. Study participants were adamant that this intervention had made a significant difference to their lives. Quite apart from changes in behaviour, they spoke of feeling valued by the Magistrate, the team and the broader law enforcement environment. Whilst the Victorian Drug Court pilot

does not explicitly set out to challenge people's perception of law enforcement, participants have had the experience that they are valued and worthy of the commitment given to them by the court and program staff. This is a very important experience and a positive outcome of the program.

Participants also spoke of having greater control over their own lives. More people had found work, were living independently and were engaged in a form of treatment which they valued. These improvements in protective factors against offending behaviour are also positive outcomes of the program.

Self-reported heroin use decreased, as did use of other drugs including alcohol, tranquillisers and cigarettes. Thus, at this point in time, one of the core aims of the Drug Court has been successfully met. The increased use of cannabis should be further explored, with a view to better understanding the function it plays in people's lives, and examining why cannabis use increased when most other drug use decreased.

Whilst Drug Court records indicate that most of the study sample engaged in some form of criminal activity over the course of the DTO, the frequency of self-reported offending decreased between baseline and six months. To expect the Drug Court program to eradicate recidivism in this high-end offender population, within a six-month timeframe, would be unrealistic. Given that subtle changes in criminal activity in this group are of importance, future research should further explore patterns of offending among Drug Court participants. Determining the precise nature of pre-, during- and post-intervention offending is critical to developing a better understanding of the impact of the Drug Court on this key outcome measure.

Given this study was only able to comment on behaviour changes that had occurred during (and not post) the Drug Court intervention, it would be of value to develop an ongoing monitoring and review system. Comprehensive follow-up of Drug Court participants would assist in ascertaining the post-graduation and/or long-term impact of the program on important participant behaviours.

4.3 Cost-Effectiveness Findings

Cost-effectiveness analysis is an approach to measuring value for money in an intervention or program. It examines both the costs and the consequences (effectiveness) of alternative courses of action. Worldwide there have been few cost-effectiveness evaluations of Drug Courts, with the *New South Wales Drug Court Evaluation: Cost Effectiveness* (Lind et al 2002) being regarded as the Australian landmark in this field. The cost-effectiveness evaluation of the Victorian Drug Court pilot was undertaken by researchers from Health Outcomes International.

4.3.1 METHOD

This study compares the costs and effectiveness of the Victorian Drug Court pilot with the costs and effectiveness of incarceration, and as required in the Terms of Reference for the study, has been based on the approach used in the NSW Drug Court evaluation. Costs are defined as costs borne by the Victorian Government which are directly attributable to the Drug Court or to incarceration, with the unit of cost comparison being the cost per individual

per day. The measure of effectiveness is recidivism (frequency of offending per unit of time within a defined study period, with only offences dealt with in court and resulting in a conviction being included).

The treatment group consisted of the 59 Drug Court participants whose Drug Treatment Order (DTO) commenced between 20 May 2002 and 30 June 2003. A comparison group of 50 people was randomly selected from a population of offenders who appeared in the Sunshine Magistrates' Court during the same period, on equivalent charges to those for which Drug Court participants were convicted, who were not subject to an alternative court order, and who received a sentence of imprisonment.

Offending patterns and costs were analysed for a study period that commenced with each participant's DTO commencement date (treatment group) and sentencing date (comparison group) and ended on 24 November 2003. This provided an average window of approximately 14 months in which to evaluate rates of offending.

4.3.2 RESULTS

Offending: During the study period, the treatment and comparison groups committed offences at a similar overall rate. However, this represented a period in which members of the treatment group spent 79% of their time in the community while members of the comparison group spent 75% of their time in custody. During that proportion of the study period spent out of custody (i.e. 'free' days), members of the comparison group committed offences at a substantially higher rate than members of the treatment group. The difference is statistically significant.

Within the treatment group, the rate of offending was lower during the study period than in the preceding period. This reduction in offending is statistically significant, suggesting that the Drug Court may be effective in reducing offending among participants, at least while their DTO is active.

Two sub-groups of the treatment group were also compared: participants whose DTO was cancelled due to non-compliance with one or more conditions of the order, and those who remained on the program. Those participants whose DTO was cancelled offended at a much higher rate than those who remained in the program. The difference in offending rates is statistically significant. This finding is consistent with other Drug Court evaluations.

Members of the treatment group committed theft offences and drug offences at a higher rate than members of the comparison group during the study period. This is unsurprising given that the comparison group spent three quarters of the study period in custody and members of the treatment group spent the majority of their time in Phase I of their DTO (the Stabilisation Phase) during this period. When offending rates are calculated per day out of custody (i.e. per 'free' day), rates of theft and drug offending are equivalent between the two groups. However, it is important to note that *all* members of the treatment group were drug dependent whereas the prevalence of drug dependence within the comparison group is unknown.

Cost attribution: During the 554 days from 20 May 2002 to 24 November 2003, the cost of the Drug Court attributed to the 59 participants included in the study was \$4.25-\$4.49 million, an average cost of \$193-\$204 per participant-day. This average cost is heavily influenced by

the fact that the Drug Court was in a 'start-up' phase in regard to participant numbers between May 2002 and March 2003. As a result, the overall participation rate (the ratio of actual participant-days on DTOs to available participant-days on the program) was 71% during the study period. Therefore, the costs are spread among fewer participant-days than would be the case for a Drug Court operating at full capacity.

Steady-state costs were also estimated. These are the ongoing costs that would be incurred during a 12 month period, with establishment costs excluded and the Drug Court operating at or near capacity with regard to participant numbers. The estimated steady state cost is \$3.09-\$3.32 million per year, or \$148-\$160 per participant-day. This would place the potential future costs of the Drug Court within a similar range to the costs of incarceration in Victoria (estimated at \$117-\$167 per day).

During the study period, the 50 members of the comparison group spent 14,956 days in prison at an estimated total cost of \$1.73-\$2.48 million, or \$116-\$166 per participant-day.

4.3.3 CONCLUDING COMMENTS

The study has found that the Drug Court has to date been slightly more costly than the alternative sentencing option of incarceration. However, if the observed (substantial) difference in offending rates per free day is predictive of the relative offending rates between the two groups subsequent to the study period, and the Drug Court consistently operates at or near capacity in the future, then the Drug Court may become cost-effective in reducing offending compared to the alternative sentencing option of incarceration.

Ideally, an evaluation of recidivism should be conducted after sufficient time has passed for there to be a reasonable number of *graduates* from the Drug Court program, who can be compared to a similar group of offenders *following their release from prison*. Moreover, such an evaluation should be conducted a reasonable length of time after graduation/release in order to obtain a more stable measure of their offending rates.

Potential sources of bias in the selection of the comparison group should be noted. Importantly, whilst all members of the treatment group were drug or alcohol dependent, the prevalence of substance dependency within the comparison group is unknown. In addition, although broadly similar to the treatment group in terms of age and gender, custodial sentences handed down, and overall offending histories, the difference between the two groups in offending rates in the period preceding the study period (of 0.5 offences per person per year) was statistically significant, suggesting a pre-existing difference in the propensity to offend between the groups.

For these reasons we recommend that a retrospective evaluation of steady state costs and post-graduation recidivism of Drug Court participants be undertaken after sufficient time has passed to enable longer-term impacts to be properly assessed.

5 POLICY AND LEGISLATION REVIEW

Our analysis of overarching policy and legislative issues suggests that CJDP, CREDIT and Drug Court generally provide a coordinated systemic response without significant gaps or overlaps in coverage either between the three programs or with other diversion programs in Victoria. In general, the boundaries between the programs seem to be well-defined.

Although the programs may be seen to form a continuum that is consistent with conceptual frameworks of diversion options, the relationship between the programs is not obvious, nor is it underpinned by any articulated policy framework or statement describing the relationship between the programs and thereby providing support for them as an integrated suite of options. For example, the roles of the programs, although defined on an individual basis, are not clearly delineated in an overarching way. Program uptake is variable, between locations and between and within professional groups, and in general has been below target (although there is some discussion about what the relevant target rates for the Drug Court were). Ambivalence and resistance towards the programs by some stakeholders has been identified as a key contributing factor to this.

Our analysis of overarching policy and legislative issues suggests that:

- CJDP, CREDIT and Drug Court generally provide a well-coordinated system response without significant gaps or overlaps in coverage either between the three programs or with other diversion programs in Victoria.
- Current legislation seems sufficient except in relation to CREDIT where further consideration and discussion seems warranted regarding the desirability of specific legislation.
- Although these programs lie along a continuum, the relationship is not obvious, nor is it underpinned by any form of articulated policy framework or statement describing the relationship between the programs and providing support for the programs as part of a suite of options.
- Program uptake is variable, between locations and between and within professional groups, and in general has been below target. Ambivalence and resistance toward the programs by some stakeholders has been identified as a key contributing factor.

Given the range and extent of diversion programs now in place, and the issues identified in the course of this review, it is our view that some form of unifying program framework may now be appropriate, together with a range of other targeted strategies to improve program uptake. It is our contention that the appropriate range of strategies extends beyond the policy and legislative domains.

Potential elements of the response should be considered within a multi-level framework that comprises not only the potential roles of policy and legislation, but also considers those of structural and funding arrangements, and managerial and operational processes.

We consider that a strategy which considers the roles of each of these elements acting in concert in embedding Court Diversion Programs within the Victorian criminal justice system, and coordinates each of these elements, is more likely to succeed than a strategy that considers the role of policy and legislation in isolation. We have identified a range of options from radical to incremental for introducing such a framework.

6 RECOMMENDATIONS

CJDP

- a) Further analysis and consultation be conducted regarding a potential duplication between Police Cautioning and CJDP and, if necessary, options for addressing any duplication be developed.
- b) Consideration be given to whether current measures to make stakeholders aware of CJDP are sufficient to ensure access for defendants without Legal Aid representation.

CREDIT

- c) A comprehensive communication strategy be implemented to promote the availability of the CREDIT program among those potentially referring eligible defendants to the program, and among Magistrates.
- d) The eligibility criteria relating to the CREDIT program, particularly those relating to previous violent offences, be reviewed to ascertain their impact on excluding defendants who may benefit from participating in the program.
- e) Further investigation be undertaken into the characteristics of participants and CREDIT program attributes (particularly duration of participation) to determine their impact on the achievement of successful outcomes.
- f) Further analysis be undertaken into the impact of longer duration of participation in the CREDIT program on the costs of services and the funding provided for services under the CREDIT program.

DRUG COURT

- g) Enhanced data collection and recording measures be considered in order to control for prescription drug use in urinalysis results
- h) Consideration be given to potential unmet service needs identified by stakeholders and whether addressing these would improve the effectiveness of the Drug Court – including a detoxification facility, weekend services (e.g. methadone), improved access to dual diagnosis practitioners, psychologist or psychiatrist, counselor support, recreational services, and/or a day program.

POLICY AND LEGISLATIVE ISSUES

- i) Consideration be given to the potential role of a consolidated policy statement or overarching policy framework for Court Diversion Programs in Victoria, providing support for these programs as a suite of options, setting out conceptual underpinnings, articulating the relationships between the programs and defining the broad parameters for their operation.
- j) Consideration be given to the potential roles of changed structural, funding, leadership and/or operational arrangements (including a planned and coordinated program of change management) to support the introduction of a consolidated policy statement.
- k) Discussions be held with the Magistrates' Court as to the desirability of introducing legislation to support the CREDIT program.