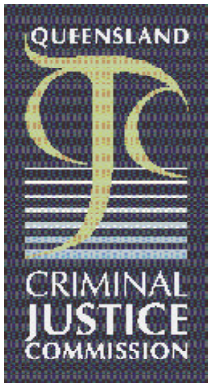


# Diversion of Drug Offenders and Drug Dependent Offenders from the Criminal Justice System

## A Briefing paper

August 1999

**Research and Prevention Division**

# Introduction

In April 1999, the Research and Prevention Division of the Criminal Justice Commission published a Briefing Paper entitled *Police Cautioning of Adults: Drug and other offences*. That paper focused mainly on adult cautioning programs (in particular, ones that target drug offenders), but also made some general comments about diversionary programs. It pointed out that there are a number of different types of diversionary programs currently operating in Australia (including police cautioning) and that offenders may be diverted away from further contact with the criminal justice system at various different stages of the criminal justice/prosecution process (including prior to an arrest).

The police cautioning Briefing Paper also flagged the publication of this Briefing Paper on the *Diversion of Drug Offenders and Drug Dependent Offenders from the Criminal Justice System*.

There are three parts to this paper.

The first part discusses proposals currently being considered in Queensland for the diversion of drug offenders and drug dependent offenders and current possibilities for the diversion of such offenders.

The second part of the paper considers thirteen drug diversion programs that are currently operating (or being trialed or proposed) in various other parts of Australia.

The third part of the paper (which appears as an Appendix) provides a brief update on some of the adult cautioning programs that were reviewed in the police cautioning Briefing Paper. This is the only part of the paper which discusses police cautioning.

The term ‘drug diversion programs’ is used in this paper to mean diversion programs that target offenders who have been charged with a drug offence, as well as diversion programs that target drug dependent offenders (i.e. offenders who have been charged with an offence, that may or may not be a drug offence, and who have ‘a drug problem’).

## Diversion in Queensland

There are currently no formal drug diversion programs in Queensland.

However, the Queensland Government, like various other Australian governments (including Western Australia and South Australia[1]) is currently considering establishing a drug court on a trial basis.[2]

Although a drug court may well be an effective strategy for diverting drug dependent offenders into drug treatment programs, it is only one of a large number of quite diverse drug diversion programs. Most drug courts target drug dependent offenders with a long history of criminal offences. If Queensland is to adopt a comprehensive drug diversion strategy (i.e. one that targets all categories of drug dependent offenders), it will need to also consider adopting some of the other drug diversion programs that are discussed in this paper.

Queensland Judges and Magistrates already have a number of existing powers to divert offenders into drug treatment programs. The Queensland Government would not necessarily need to pass new legislation or set up new courts in order to establish some formal drug diversion programs.

For example, section 11 of the *Bail Act 1980* (Qld)[3] would, as it currently stands, provide sufficient legislative authority for a drug diversion program modelled on either the Victorian Court Referral & Evaluation for Drug Intervention Treatment (CREDIT) program[4] or the Western Australian Court Diversion Service (CDS).[5] Both of these programs involve granting a defendant bail subject to the condition that the defendant attends a drug treatment program. Under section 11(2) of the *Bail Act 1980*, courts can grant a defendant bail subject to 'special conditions'. Although this provision does not define the term 'special condition', it is probable that it would cover the requirement to attend a drug treatment program.[6]

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1 See p. 20 of this paper for information on the position in Western Australia and South Australia.

2 The Honourable PD Beattie MLA (Premier), Queensland Legislative Assembly, Hansard, 4 March 1999, p. 215 and 23 March 1999, pp. 689–690.

3 The relevant parts of s. 11 of the *Bail Act 1980* (Qld) are as follows:

(2) Where a court or a police officer authorised by this Act to grant bail considers that the imposition of special conditions is necessary to secure that a person —

(a) appears in accordance with the person's bail and surrenders into custody;

(b) while released on bail does not —

(i) commit an offence; or

(ii) endanger the safety or welfare of members of the public; or

(iii) interfere with witnesses or otherwise obstruct the course of justice whether in relation to the person or another person;that court or police officer shall impose such conditions as the court or police officer thinks fit for any or all of such purposes.

(2A)Conditions imposed pursuant to subsection (2) shall not be more onerous for the person than those that in the opinion of the court or police officer are necessary having regard to the nature of the offence, the circumstances of the defendant and the public interest.

4 See pp. 5–7 of this paper for information about the Victorian CREDIT program.

5 See pp. 10–11 of this paper for information about the Western Australian CDS.

6 If there was some doubt about the ambit of this provision, it could always be amended to make it clear that a court can grant a defendant bail subject to the condition that the defendant attends a drug treatment program.

Another example can be found in the existing provisions of the *Penalties and Sentences Act 1992* (Qld) that allow a court to make an intensive correction order for an offender sentenced to a term of imprisonment of one year or less. Where an offender is given an intensive correction order, the offender serves his or her sentence of imprisonment in the community and not in a prison.[7] The existing provisions in the *Penalties and Sentences Act 1992* are wide enough to allow a court to order an offender who is given an intensive correction order to participate in a particular drug treatment program. For example, section 114(1) provides that an intensive correction order must contain requirements that the offender:

> must take part in counselling and satisfactorily attend other programs as directed by the court or an authorised corrective services officer during the period of the order
>
> must, during the period of the order, if an authorised corrective services officer directs, reside at community residential facilities for periods (not longer than 7 days at a time) that the officer directs
>
> must comply with every reasonable direction of an authorised corrective services officer[8]

and section 115(1) provides that an intensive correction order may contain requirements that the offender:

> submit to medical, psychiatric or psychological treatment
>
> comply, during the whole or part of the period of the order, with conditions that the court considers are necessary —
>
> (i) to cause the offender to behave in a way that is acceptable to the community; or
>
> (ii) to stop the offender from again committing the same type of offence for which the order was made; or
>
> (iii) to stop the offender from committing other offences.[9]

Some drug diversion programs that are operating (or being trialed) in other parts of Australia are not based on legislation. For example, the pre-trial diversion scheme that currently operates as a pilot program in two Victorian Magistrates' Courts is based on 'the court's discretionary powers to adjourn hearings and the police's powers to withdraw charges'.[10] Queensland courts have a similar discretionary power to adjourn hearings as well as various statutory powers to adjourn hearings.[11]

According to anecdotal evidence, Queensland Judges and Magistrates rarely rely on their existing powers to divert offenders into drug treatment programs. However, an informal practice has emerged whereby some offenders are referring themselves to alcohol and drug agencies whilst on bail and then asking these agencies to prepare a pre-sentence report (assuming the treatment has gone well). Of course, offenders who are not legally represented, or not well advised, are unlikely to be aware of this informal practice. This practice could be formalised by the establishment of a bail diversion program modelled on either the Victorian CREDIT program or the Western Australian CDS.

Judges and Magistrates will, of course, be unlikely to make drug diversion orders unless they can be assured that an offender will be able to access a drug treatment program. The fact that Queensland has so few drug treatment facilities (particularly in remote areas of the State), compared to other parts of

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7 See s. 113 of the *Penalties and Sentences Act 1992* (Qld).

8 See s. 114(1)(d), (f) and (i) of the *Penalties and Sentences Act 1992* (Qld).

9 See s. 115(1)(a) and (b) of the *Penalties and Sentences Act 1992* (Qld).

10 For information about this drug diversion program, see pp. 7–8 of this paper.

11 See, for example, s. 592 of the *Criminal Code* (Qld) and s. 88 of the *Justices Act 1886* (Qld).

Australia,[12] may well be the major reason why Queensland Judges and Magistrates rarely rely on their existing powers to divert offenders into drug treatment programs. It is also possible that a general lack of awareness of the benefits of diverting drug dependent offenders into drug treatment programs, at all stages of the criminal justice system (including the judiciary), could be another reason why Queensland Judges and Magistrates rarely rely on their existing diversion powers.

## Diversion programs in other Australian jurisdictions

Drug diversion programs are currently operating (or being trialed) in four States (Victoria, New South Wales, Western Australia and South Australia) as well as the Australian Capital Territory. Some of these programs have been in existence for a decade or more.[13]

All of the drug diversion programs currently operating (or being trialed) in Australia have a similar objective, that is, to divert people who are using illicit drugs from the criminal justice system (particularly prison) into the health system. Importantly, these programs recognise that illicit drug use or abuse is a health issue as well as a legal and law enforcement issue.

Various types of drug diversion programs have been developed to divert offenders at various different stages of the criminal justice/prosecution process. This paper looks at the following three types of drug diversion programs:

- *Programs that divert offenders at the post-charge and pre-trial stage*

  These programs include:

  – the Victorian Court Referral & Evaluation for Drug Intervention Treatment (CREDIT) program (see pages 5–7 of this paper)

  – the Victorian Magistrates' Court pre-trial diversion scheme (see pages 7–8 of this paper)

  – the South Australian Drug Assessment and Aid Panels (see pages 8–10 of this paper)

  – the Western Australian Court Diversion Service (CDS) (see pages 10–11 of this paper)

- *Programs that divert offenders at the sentencing stage*

  These programs include:

  – the Victorian First Offender Court Intervention Service (FOCIS) program (see pages 11–12 of this paper)

  – Victorian combined custody and treatment orders (see pages 12–13 of this paper)

  – deferred sentencing orders made by Victorian Magistrates (see page 13 of this paper)

  – treatment orders made pursuant to the Australian Capital Territory *Drugs of Dependence Act 1989* (see pages 14–15 of this paper)

  – the New South Wales Drug and Alcohol Intervention Program (DAIP) (see pages 15–16 of this paper)

[12] According to the Alcohol and other Drugs Council of Australia, in the 1997–98 financial year, the Queensland Government spent less (per capita) than any other State or Territory in Australia on drug and alcohol prevention and treatment programs. The Queensland figure was $5.79 compared to $13.12 for Western Australia, $10.50 for Victoria and $7.47 for South Australia: see Alcohol and other Drugs Council of Australia, Media Release, 2 August 1999, *Most Governments Still Failing the Drugs Test!* (which refers to a soon to be released fifth annual report by the Alcohol and other Drugs Council of Australia entitled *Drugs Money and Governments*).

[13] For example, the Western Australian CDS has been operating since 1988, the first South Australian Drug Assessment and Aid Panel was established in 1984 and the first Australian Capital Territory Treatment Assessment Panel was established in1989.

- *Drug court programs*

  These programs include:

  – the New South Wales Drug Court for adult offenders (see pages 17–19 of this paper)

  – the proposed New South Wales Youth Drug Court (see page 19 of this paper)

  – the proposed South Australian Drug Court (see page 20 of this paper)

  – the proposed Western Australian Drug Court (see page 20 of this paper).

# Post-charge and pre-trial diversion programs

## The Victorian Court Referral & Evaluation for Drug Intervention Treatment (CREDIT) program

The Court Referral & Evaluation for Drug Intervention Treatment (CREDIT) program is currently being run as a nine month pilot program out of the Melbourne Magistrates' Court.[14] The program will be independently evaluated once the pilot concludes in August 1999.

The CREDIT program provides alleged offenders (defendants) with the opportunity to access drug rehabilitation treatment within days of being arrested. Defendants who are accepted into the CREDIT program are released from custody subject to special CREDIT bail conditions. Defendants are not required to enter a plea in order to be accepted into the program but following treatment, must enter a plea. If the defendant's plea is guilty or he or she is found guilty, the defendant will be sentenced in light of the treatment received during the program.

The aims of the CREDIT program are to:[15]

- provide drug treatment for defendants who are perceived to have a 'drug problem' as soon after arrest as is possible, instead of having to wait until the time of sentencing
- encourage drug users to undergo treatment
- divert offenders who have a drug problem from further involvement in the criminal justice system
- prevent defendants from reoffending (in order to pay for drugs) during the time they are on bail
- develop a model drug treatment diversion program.

The CREDIT program is made up of a number of stages. The major stages are as follows:

- as soon as the defendant is arrested, the arresting police officer determines whether the defendant is eligible to participate in the program
- to be eligible for the CREDIT program, a defendant must:
  – be charged (by a police officer from a particular locality[16]) with a non-violent, indictable offence (for example, burglary or theft)
  – have a drug problem

[14] According to the two drug clinicians who are attached to the CREDIT program, it is anticipated that the pilot is going to be extended for another two years. During this period, it is envisaged that the CREDIT program will be available in an additional two Magistrates' Courts.

[15] Mackinnon I, McLachlan S and Popovic J 1999, p. 1.

[16] The defendant must be charged by an officer from the Regional Support Group, Division 1, Region 1, Force Response Unit or Melbourne City Police. The reason for this restriction is that the CREDIT program is currently only operating out of the Melbourne Magistrates' Court.

  - be eligible and suitable for release on bail
  - not already be subject to a community based court order that includes a drug treatment component
- the defendant is bailed to appear at the next sitting of the Melbourne Magistrates' Court for an assessment with a CREDIT drug clinician
- a drug clinician (aided by a number of other professionals[17] who all work in the Melbourne Magistrates' Court building) assesses the defendant and reports to a Magistrate on whether the defendant should be accepted into the CREDIT program
- a Magistrate decides (in the absence of the defendant) whether the defendant should be given CREDIT bail (that is, accepted into the CREDIT program and bailed with CREDIT conditions)
- once the defendant is accepted into the CREDIT program the Victorian Offenders Support Agency arranges for the defendant to undergo drug treatment[18] with an approved alcohol and drug treatment service
- the defendant attends his or her first drug treatment session within a maximum of three working days of being given CREDIT bail
- the drug clinician keeps in contact with the defendant whilst the defendant is undergoing drug treatment
- when the defendant has reached the half-way stage of his or her drug treatment, the defendant has to attend a 'progress hearing' before the same Magistrate who gave the defendant CREDIT bail
- when the defendant has completed all of his or her drug treatment, the defendant returns to the Melbourne Magistrates' Court to enter a plea; where the defendant pleads guilty (and this has happened with almost all CREDIT defendants to date[19]), the defendant is sentenced by the same Magistrate who gave the defendant CREDIT bail
- the drug clinician prepares a pre-sentence report for the Magistrate which contains information about the defendant's participation in drug treatment and any further treatment recommendations
- defendants who are sentenced to community based dispositions are able to continue receiving drug treatment from the same provider who treated them whilst they were on the CREDIT program.

The CREDIT program has a number of features common to drug courts including: the level of interaction and co-operation between a range of government and non-government agencies; the focus on treatment; and the ongoing contact with, and supervision of, participants. However, according to the Magistrate who is in charge of the CREDIT program:

> [the] program differs significantly from 'Drug Court' type programs currently in existence. It is not based on a plea of guilty or findings of guilt, there is no necessity for a period of imprisonment to be imposed before offenders can avail themselves of assistance, it is not an option of last resort but rather an option of early intervention with the aim of reducing the potential for further offending.[20]

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17 These professionals — a disabilities officer, a psychiatric nurse, a juvenile justice liaison officer and a community corrections officer — are also available to assist Magistrates.

18 A defendant can be required to attend a number of different types of drug treatment. Some drug treatment 'packages' only require a defendant to attend 8 weekly sessions; other packages run for a minimum of 14 weeks and require the defendant to move into a residential treatment centre. Most defendants attend 8–10 weeks of drug treatment.

19 Some of the information set out above has come from informal discussions that the CJC has had with the two drug clinicians that are attached to the CREDIT program.

20 Mackinnon I, McLachlan S and Popovic J 1999, p. 6.

Although the success of the CREDIT pilot is yet to be evaluated, the Magistrate with primary responsibility for the pilot and the two drug clinicians attached to the program have been able to comment on some emerging trends:[21]

- the rate of reoffending whilst defendants involved in the program are on bail has dramatically decreased in relation to those defendants who are assiduously adhering to their program conditions
- success on the program is not dependent on whether a defendant is an early offender and early drug user; some defendants with a long history of criminal offences and a long history of attempting to address their drug dependency are doing well on the program
- several previously unemployed defendants have addressed their drug dependency to the point where they are able to find employment and remain employed
- a large proportion of defendants, whose previous experience with the criminal justice system has been negative, have provided feedback to the effect that their involvement in the CREDIT program has been a positive experience
- an unexpected trend is that many cases are being finalised within six to eight weeks of the date of arrest, which is quicker than most cases involving drug dependent offenders (not on the program) usually take to finalise.

## The Victorian Magistrates' Court pre-trial diversion scheme

A pre-trial diversion scheme was established as a pilot program at the Broadmeadows Magistrates' Court in January 1997 and extended to the Mildura Magistrates' Court in mid-1998.[22]

The objectives of this diversion scheme are to 'ensure appropriate consideration of victims and reparation of their losses while at the same time diverting first-time offenders from the criminal justice system and assisting their rehabilitation by allowing them to maintain a 'clean slate'. The program is also designed to make better use of the community's resources in responding to first-time offenders.'[23]

To be eligible to participate in the scheme, an offender must:

- be an adult
- not have any prior offences
- have committed a minor offence such as possession of a small amount of cannabis, shop stealing, a street offence involving drunkenness, a minor driving offence or a graffiti-related offence
- be willing to participate in the scheme.

If a police officer decides that an offender is eligible to participate in the scheme, the offender will be bailed to appear before a Magistrate. This hearing takes place in an informal setting (rather than in a courtroom). An offender is not required to enter a plea of guilty. Where a Magistrate decides that an offender should be accepted into the pre-trial diversion program:

- the Magistrate will require the offender to comply with a number of conditions (for example, undertaking counselling or education on drug use; performing unpaid community work; complying with a curfew; making reparation for any goods which were taken or property which was damaged; apologising to a victim)

[21] Mackinnon I, McLachlan S and Popovic J 1999, pp. 6–7.

[22] The Chief Magistrate has indicated that he intends to expand the scheme to all regions in Victoria: see Magistrates' Court of Victoria 1998, p. 42.

[23] Unpublished and untitled document provided to the CJC by the Victorian Department of Justice.

- subject to successful completion of the undertakings made to the court, the offender's police record (on the Victoria Police LEAP database) is expunged and a conviction is not recorded against the offender's name.

Minor drug offenders who are accepted into the pre-trial diversion program are commonly required to participate in the approved drug education program known as the FOCIS (First Offender Court Intervention Service) program.[24]

During the 1997/98 financial year, 90 per cent of offenders who were accepted into the Broadmeadows Magistrates' Court pre-trial diversion program successfully completed the program.[25] Offenders who do not complete the program are prosecuted for their original offence.

The scheme is not supported by any legislation but 'is an extension of the court's existing discretionary powers to adjourn hearings and the police's powers to withdraw charges.'[26]

## The South Australian Drug Assessment and Aid Panels

In 1979 the South Australian Royal Commission into the Non-Medical Use of Drugs recommended:

> South Australia should establish drug assessment and aid panels ... to which all persons charged with simple possession offences involving drugs must be referred before a prosecution may proceed.[27]

This recommendation was implemented by the establishment of the first South Australian Drug Assessment and Aid Panel (panel) under the *Controlled Substances Act 1984* (SA).

The panel is a full diversion scheme in the sense that all persons charged with a simple possession offence (i.e. one that involves personal use of illicit drugs other than cannabis or cannabis resin,[28] and including use or possession of implements for the use of an illicit drug) must be referred to the panel. This is an absolute requirement and does not involve the discretion of the court or prosecutors.[29]

Although the *Controlled Substances Act 1984* originally created only one panel, there are now several panels, including an evening panel which caters for offenders who cannot attend during the day. Each panel is constituted by a lawyer and two other people with extensive knowledge of the physical, psychological and social problems connected with the misuse of illicit drugs and/or the treatment of those problems (for example, social workers, psychologists, nurses).[30] Proceedings before the panel are informal and in private and anything done or said before the panel is not admissible in any subsequent court proceedings.[31]

A panel cannot deal with a simple possession offence unless:

- the offender admits the offence
- the offender consents to the panel dealing with his or her matter.

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[24] See pp. 11–12 of this paper for more information about the FOCIS program.

[25] Magistrates' Court of Victoria 1998, p. 43.

[26] Unpublished and untitled document provided to the CJC by the Victorian Department of Justice.

[27] Royal Commission into the Non-Medical Use of Drugs (South Australia) 1979, recommendation 34, pp. 265 and 372.

[28] The reason why cannabis is excluded from this scheme is that simple cannabis offences in South Australia are dealt with by way of an expiation notice (i.e. a fine): see s. 45A of the *Controlled Substances Act 1984* (SA).

[29] Gray Y, Reynolds C and Rumbold M 1992, p. 129.

[30] See s. 34 of the *Controlled Substances Act 1984* (SA).

[31] See ss. 38 and 40 of the *Controlled Substances Act 1984* (SA).

Where a panel decides to divert an offender, the offender must undertake to attend certain drug treatment and/or counselling programs. The undertaking is in writing and is effective for a period of up to six months. It is common for an undertaking to also require an offender to attend other programs which address issues such as alcohol dependency, domestic violence or unemployment. An offender must attend follow-up sessions with the panel on a six-weekly basis. If an offender fails to comply with an undertaking, the offender can be prosecuted for his or her original drug offence.[32]

As at 1992, the panel was diverting approximately 55–60 per cent of offenders away from the court system.[33] The remaining offenders were returned to the traditional court system for any one of the following reasons:

- they failed to attend their initial appointment with the panel
- they were not willing to undertake the panel's initial assessment
- they were not willing to attend any counselling or treatment programs.

At the end of the six month period, the panel instructs the court and police to withdraw the charge against the offender. No record is kept of the offender's drug offence.

According to a 1992 study of a random sample of 250 offenders referred to a panel, the average offender:

- is a 26 year old male, who left school at grade 10, and is unlikely to be employed
- has a significant and diverse criminal history
- has a significant and prolonged poly-drug use involving both legal and illegal drugs
- is not dependent on the illicit drug that the offender was caught with — which is likely to be amphetamines
- has a one in two chance of not having received any previous drug treatment.[34]

Only 142 of the 250 offenders were prepared to give a written undertaking to the panel to attend drug treatment and/or counselling programs. Of these 142, 112 successfully completed the conditions attached to their undertaking. Of these 112 successful offenders, 8 subsequently appeared before a panel for another simple possession offence.[35]

The South Australian Premier recently announced that he intends to expand 'the existing drug assessment and aid panel' program.[36]

## The Western Australian Court Diversion Service (CDS)

The *Bail Act 1982* (WA) specifically authorises a court to grant bail to an alleged offender (the defendant) on condition that the defendant attend a drug treatment program. Clause 2(4) of Part D of Schedule 1 reads:

> [w]here a judicial officer is of the opinion that a defendant is suffering from alcohol or drug abuse and is in need of care or treatment either on that account, or to enable him to be prepared for his trial, the judicial officer may ... impose any condition which he considers desirable for the purpose of ensuring that the defendant receives such care or treatment, including that he lives in, or from time to time attends at, a specified institution or place in order to receive such care or treatment.[37]

[32] See s. 39(2)(f) of the *Controlled Substances Act 1984* (SA).

[33] Gray Y, Reynolds C and Rumbold M 1992, p. 129.

[34] Gray Y, Reynolds C and Rumbold M 1992, pp. 130–132.

[35] Gray Y, Reynolds C and Rumbold M 1992, p. 133.

[36] The Honourable John Olsen (Premier of South Australia), Media Release, 24 May 1999, *Drug Courts to be trialed in South Australia — Olsen*.

[37] See also s. 17 of the *Bail Act 1982* (WA).

In 1988, the Western Australian Government established a new agency which is responsible for supervising defendants who are given bail subject to the condition that they attend a drug treatment program. That agency, initially established as a pilot program, is known as the Western Australian Court Diversion Service (CDS).

If a court believes that a defendant is suitable to be released on bail for the purpose of undertaking drug treatment, the court will normally grant the defendant bail subject to the following two conditions:

- the defendant is referred to the CDS for the purpose of undertaking drug treatment
- the defendant must obey all lawful instructions of the CDS during the bail period.

Sometimes, a court may grant a defendant bail subject to the additional condition that the CDS act as a surety and provide security of a nominal $1. This condition is typically imposed when a defendant is still in custody at the time he or she applies for bail. One reason why this condition is imposed is that the *Bail Act 1982* used to require a defendant charged with an indictable offence to provide a surety as a condition of being granted bail. Although the *Bail Act 1982* has since been amended to remove this requirement, some courts continue to grant bail subject to the condition that CDS act as a surety. According to the CDS co-ordinator, the condition does have its advantages because, if a defendant has continually failed to stay in touch with the CDS, the CDS can apply to withdraw as surety which then enables a warrant of apprehension to issue more quickly than if bail had been granted without a surety.[38]

Defendants are not eligible to be referred to the CDS if they have:

- been charged with a serious trafficking offence
- a previous conviction involving violence
- a drug problem involving alcohol or cannabis only
- been referred to the CDS within the last twelve months and 'failed'.

Defendants do not need to plead guilty in order to be referred to the CDS.

The CDS has the following major functions:

- CDS staff interview all defendants who wish to apply for bail subject to a CDS referral and then advise the court as to their suitability to be referred to the CDS. Defendants must have a 'genuine drug problem' and the motivation to address that problem. Defendants with psychiatric problems or tendencies toward aggressive behaviour are generally considered unsuitable.[39] Most assessments are made at a courthouse by CDS staff who work at the courthouse on a permanent basis. Sometimes, a defendant will still be remanded in custody at the time he or she applies for bail. In this case, CDS staff will visit and assess the defendant in jail.
- Once the court grants a defendant bail on the condition that the defendant is referred to the CDS, the CDS is then responsible for brokering a drug treatment program for the defendant with an external treatment provider. If the defendant is refused bail, the CDS has no further contact with the defendant. If the court is confident of a defendant's suitability, he or she is usually bailed and referred to the CDS for a period of six to eight weeks. If the court is less confident, the period may only be one to three weeks.
- The CDS is responsible for supervising and monitoring the performance of all defendants who are referred to the CDS. Defendants who fail to comply with conditions imposed by the CDS can have their bail and referral to the CDS revoked.
- The CDS must provide the court with interim progress reports as well as a final pre-sentence report. These reports assist the sentencing court to decide whether a defendant is suitable to be sentenced to a community based treatment program (as opposed to a term of imprisonment).

[38] This information was provided during a telephone conversation with Lynton Piggot, the co-ordinator of the CDS.

[39] Rigg J and Indermaur D 1996, p. 249.

# Sentencing diversion programs

## The Victorian First Offender Court Intervention Service (FOCIS) program

Since late 1997, Victorian Magistrates have been able to release first time offenders found guilty of possessing a small quantity of a drug, other than cannabis, on the undertaking that they agree to participate in an approved drug education program known as the FOCIS (First Offender Court Intervention Service) program. Offenders who are released on their undertaking to attend the FOCIS program do not have a conviction recorded against their name.[40]

This sentencing option is only available to offenders who can establish, on the balance of probabilities, that their possession was not for trafficking purposes.[41]

The FOCIS program, which is administered by Moreland Hall (a Uniting Church agency), consists of a two-and-a-half hour, one-off, education session. Participants are given information about the harmful effects of drug use, including consequences such as an overdose, unemployment and a prison sentence. Information about safe drug use practices is also provided. According to representatives from Moreland Hall:

> [the] primary focus [of the program] is to keep people out of the prison system and to avoid the stain of a criminal record for as long as possible in the knowledge that most people mature out of drug related behaviour. The idea is to get in early, give them useful information so that they do not end up as just another [prison] statistic.[42]

The FOCIS program is currently being evaluated by an independent agency. One of the issues that the evaluators have been considering is the fact that there are presently no sanctions imposed on offenders who fail to attend the FOCIS program.

## Victorian combined custody and treatment orders

The combined custody and treatment order is a sentencing option that can only be used for drug (including alcohol) dependent defendants. Section 18Q of the *Sentencing Act 1991* (Vic), inserted into Victoria's sentencing legislation in late 1997, provides that a court may sentence a drug dependent defendant to 12 months imprisonment and order that 6 months (or more) of that sentence be served in custody and that the balance be served in the community.

A combined custody and treatment order can only be made if:

- the court is satisfied that drunkenness or drug addiction contributed to the commission of the offence[43]
- the court is considering sentencing the defendant to a term of imprisonment of not more than 12 months
- the court has received a pre-sentence report[44]
- the defendant agrees to comply with the conditions attached to the combined custody and treatment order.

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40 See s. 76(1) and (1A) of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) and s. 75 of the *Sentencing Act 1991* (Vic).

41 See s. 76(1)(ab) of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic).

42 Weiniger P 1998, p. 14; Moreland Hall 1998.

43 Note that the offence does not have to be a drug offence.

44 Note that the court can also order a separate drug and alcohol assessment report to be prepared: see s. 18Q(2) of the *Sentencing Act 1991* (Vic).

A combined custody and treatment order will typically require a defendant, during the community component of his or her sentence, to:

- report to a specified community corrections centre within two working days after being released from custody
- undergo treatment for alcohol or drug addiction as specified in a drug and alcohol pre-release report
- submit to testing for alcohol or drug use
- report to, and receive visits from, a community corrections officer.[45]

If a defendant breaches any conditions attached to a combined custody and treatment order, he or she will normally be ordered to serve the balance of his or her sentence in custody.[46]

From 1 January 2000, a defendant who is given a combined custody and treatment order will also be required to undergo treatment (and testing) for alcohol or drug addiction whilst they are in custody.[47]

## Deferred sentencing orders made by Victorian Magistrates

From 1 January 2000, Victorian Magistrates will be able to defer sentencing offenders aged between 17 and 24 years (inclusive) for a period of up to six months on the basis that the offender undertakes, for example, to seek drug treatment. A Magistrate will only be able to defer sentencing a young adult offender if:

- the Magistrate finds the offender guilty of an offence[48]
- the Magistrate believes that sentencing should, in the interests of the offender, be deferred
- the offender agrees to a deferral of sentencing.[49]

In determining the appropriate sentence for an offender whose sentence has been deferred, a Magistrate must have regard to the offender's behaviour during the period of deferral.[50]

During parliamentary debates on the *Sentencing (Amendment) Bill 1999* (Vic), the Honourable Louise Asher (Minister for Small Business) made the following comments about this new sentencing option:

> [o]nce an offender is found guilty of a crime, their sentencing may be deferred for up to six months, on the understanding that the offender is to return to court at a later date having made good on a promise to, for instance ... undertake counselling or drug treatment. When the offender returns to court for sentencing, the court can take their behaviour during the deferral period into account in determining whether a lesser penalty is warranted, or whether treatment or other conditions should be attached to a sentence to provide ongoing management of the offender's specific needs.
>
> The government has extended deferred sentencing from children to young adult offenders in recognition that offenders who are most likely to benefit from early intervention and rehabilitation, and who are willing to take responsibility for changing their behaviour, should be given the opportunity to have their commitment to change considered by the court in sentencing.[51]

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45 See ss. 18R and 18S of the *Sentencing Act 1991* (Vic).

46 See s. 18W of the *Sentencing Act 1991* (Vic).

47 See s. 5 of the *Sentencing (Amendment) Act 1999* (Vic) which will commence on 1 January 2000.

48 Note that the offence does not have to be a drug offence.

49 See s. 83A of the *Sentencing Act 1991* (Vic) (as amended by s. 9 of the *Sentencing (Amendment) Act 1999* (Vic)).

50 See s. 83A(3) of the *Sentencing Act 1991* (Vic).

51 Victorian Legislative Council, Hansard, 5 May 1999, p. 425 (second reading speech).

## Treatment orders made pursuant to the *Australian Capital Territory Drugs of Dependence Act 1989*

In 1989, the Australian Capital Territory Government passed legislation which specifically authorises Judges and Magistrates to order drug dependent offenders to undergo an assessment for drug treatment. These assessments are carried out by Treatment Assessment Panels that are established and regulated by the *Drugs of Dependence Act 1989* (ACT).

A court can only make an assessment order:

- if the offender has pleaded guilty or been found guilty of a drug offence or some other offence
- with the offender's consent
- before convicting and/or sentencing the offender.[52]

In deciding whether to make an assessment order, a court must have regard to the following two factors:

- whether the offender may have been under the influence of an illicit drug when he or she committed the offence
- whether the offender may have been motivated to commit the offence by a desire to obtain and/or consume an illicit drug.[53]

If a Treatment Assessment Panel recommends that an offender undergo drug treatment, a court may order the offender to participate in a drug treatment program (for a period of up to two years) as an alternative to being convicted and/or sentenced.[54] A treatment order can only be made with the consent of an offender.

There are currently three Treatment Assessment Panels. Each panel is constituted by a lawyer and two other people with extensive knowledge of the physical, psychological and social problems connected with the misuse of illicit drugs and/or the treatment and education of people suffering from such problems.[55]

If an offender complies with a treatment order and successfully completes his or her drug treatment program, the offender's original charge will usually be dismissed. If an offender breaches one or more of the conditions of a treatment order, the court can:

- extend the duration of the treatment order or otherwise vary the conditions of the order
- order that any security under a recognisance given by the offender be forfeited
- simply admonish the offender
- revoke the treatment order and proceed to convict and/or sentence the offender.[56]

Whilst an offender is subject to a treatment order, the offender is managed on a day to day basis by a government approved drug treatment centre. A Treatment Assessment Panel also monitors the offender's progress on a monthly basis. If it is necessary, the Treatment Assessment Panel can vary an offender's treatment program without having to notify the court that made the original treatment order.[57]

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[52] See s. 122 of the *Drugs of Dependence Act 1989* (ACT).

[53] See s. 122(1) of the *Drugs of Dependence Act 1989* (ACT).

[54] See s. 123 of the *Drugs of Dependence Act 1989* (ACT).

[55] See s. 130 of the *Drugs of Dependence Act 1989* (ACT).

[56] See s. 124 of the *Drugs of Dependence Act 1989* (ACT).

[57] See s. 142 of the *Drugs of Dependence Act 1989* (ACT).

The provisions in the *Drugs of Dependence Act 1989* that authorise the making of assessment and treatment orders etc, have recently been reviewed.[58] Some of the findings of that review are as follows:

- during the period 1989 to 1995, a total of 215 assessment orders were issued
- only 46 per cent of offenders who were issued with an assessment order were subsequently issued with a treatment order
- 65 per cent of those offenders who were issued with a treatment order complied with the order and successfully completed their drug treatment program
- 35 per cent of those offenders who successfully completed their drug treatment program did not reoffend during the period 1989 to 1995
- the duration of treatment orders ranged from two months to twenty-four months with twelve months being the most common
- treatment orders issued for shorter periods of time (i.e. less than twelve months) were more likely to be complied with.

## The New South Wales Drug and Alcohol Intervention Program (DAIP)

During the last twenty years, the New South Wales Government has established a number of diversionary schemes for offenders with a substance abuse problem. The current scheme, which was established in late 1995, is known as the Drug and Alcohol Intervention Program (DAIP).[59]

DAIP is run by the New South Wales Probation and Parole Service[60] in conjunction with the Centre for Education and Information on Drugs and Alcohol (CEIDA).

The majority of DAIP participants are offenders who have been specifically ordered to participate in the program.[61] When a court orders an offender to participate in DAIP, the court will usually:

- defer sentencing the offender
- order the offender to be released upon the offender entering into a recognizance, with or without sureties, to be of good behaviour for a specified period (of at least six months)
- order the offender to accept the supervision of the New South Wales Probation and Parole Service
- order the offender to attend and participate in DAIP
- order the offender to report to the New South Wales Probation and Parole Service within seven days.[62]

Before an offender is ordered to participate in DAIP, he or she will usually be assessed (for suitability) by a court-based Probation and Parole Service officer.

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58 Alcohol and Drug Service, Australian Capital Territory Department of Health and Community Care 1996.

59 For information on two previous schemes (namely, the Drug Diversionary Program and the Drug and Alcohol Court Assessment Program) see: New South Wales Parliamentary Library Research Service 1999, pp. 11–13.

60 The New South Wales Probation and Parole Service is a unit within the New South Wales Department of Corrective Services.W).

51 Victorian Legislative Council, Hansard, 5 May 1999, p. 425 (second reading speech).

61 DAIP is also available to other New South Wales Probation and Parole Service clients, for example, offenders sentenced to community supervision but who are not ordered to also attend DAIP, and offenders on parole.

62 Most of these recognizance orders are made pursuant to s. 558 of the *Crimes Act 1900* (NSW).

DAIP is designed as an early intervention program which aims to educate offenders in minimising harm from alcohol and other drugs and to offer strategies for dealing with drug and/or alcohol related problems.[63] It specifically targets adult offenders who do not have a lengthy criminal history and who are not experimental or compulsive alcohol and/or other drug users. Offenders must also be willing and able to attend and participate in the entire program and must sign a consent form agreeing to do so.[64]

DAIP is a short-term intensive program consisting of an eighteen hour, skills-based group work component followed by an intensive short period of one to one supervision. Most offenders complete the entire program within a period of six months.[65]

DAIP is currently available in nine locations throughout New South Wales. In the 1997/98 financial year, approximately 420 offenders participated in the program. The program is currently being evaluated to assess changes in the attitudes and behaviour of offenders both on completion of the program and after a 12–18 month period.[66]

## Drug court diversion programs

Specialist drug courts have been established in some United States jurisdictions for up to 10 years.[67]

All drug courts differ.[68] Some hear cases at the pre-trial/pre-plea stage while others do not hear cases until after an offender has been convicted. Some drug courts require offenders to participate in very lengthy drug treatment programs (up to 16 months) while others require participants to attend much shorter programs. Different courts impose different sanctions and eligibility criteria often vary. For example, some courts only take first-time offenders while others will take offenders with up to two non-violent felony convictions.

A number of key components of successful United States drug courts have been identified, including:

- treatment is integrated into the criminal justice system
- prosecution and defence lawyers work together as part of a drug court team
- eligible participants are identified early
- participants have access to a continuum of quality treatment and rehabilitation services which meet their health needs
- participants are frequently monitored for drug use
- any non-compliance by a participant results in a swift and certain sanction by the court
- ongoing judicial supervision and regular judicial interaction with each participant
- evaluation of the rehabilitation outcomes achieved through the drug court
- the drug court team and others associated with the court receive ongoing interdisciplinary education
- networks are forged with other drug courts, public bodies, treatment providers and the community.[69]

63 New South Wales Parliamentary Library Research Service 1999, p. 13.

64 New South Wales Probation and Parole Service 1996.

65 New South Wales Parliamentary Library Research Service 1999, p. 13.

66 New South Wales Department of Corrective Services 1998, p. 33.

67 According to the senior New South Wales Drug Court Judge, there are currently more than 400 drug courts operating across the United States: see Murrell G (Judge) 1999, p. 9.

68 Makkai T 1998, p. 2.

69 Murrell G (Judge) 1999, p. 10. Note that these ten key components were first identified by the United States National Association of Drug Court Professionals Drug Court Standards Committee in 1997: see Makkai T 1998, p. 3.

## The New South Wales Drug Court for adult offenders

The New South Wales Drug Court, modelled on the various United States drug courts, is the first (and currently only) drug court to be established in Australia.

According to a recent article by the senior New South Wales Drug Court Judge, the New South Wales Drug Court will be implementing the ten key components of successful United States drug courts referred to above.[70]

The New South Wales Drug Court, which sits on a daily basis at the Parramatta District Court, has been operating since February 1999. For the first two years, the Drug Court will operate as a pilot project. During this period, the New South Wales Bureau of Crime Statistics and Research will produce quarterly monitoring reports (for the benefit of various Drug Court stakeholders) and will also publish a cost-effectiveness evaluation.

The New South Wales Drug Court is established and regulated by the *Drug Court Act 1998* (NSW). The object of the *Drug Court Act 1998* is, according to section 3 of the Act, to:

> reduce the level of criminal activity that results from drug dependency.

The Act aims to achieve that objective by establishing a scheme under which non-violent drug dependent offenders who would otherwise be imprisoned are diverted into drug treatment programs designed to eliminate their dependency on drugs.

The New South Wales Drug Court accepts referrals from District and Local Courts in greater western Sydney (Auburn to Campbelltown and Windsor).[71] When an offender first appears before a District or Local Court, it is the duty of that court to ascertain whether the offender appears to be an 'eligible person' and whether the offender is willing to have his or her offence dealt with by the Drug Court. The District or Local Court must refer an offender to the Drug Court if the offender appears to be eligible and is willing to be referred.[72]

An offender is eligible to be referred to the New South Wales Drug Court if the offender:

- is an adult
- is charged with an offence other than:
  - a drug offence that must be dealt with on indictment
  - an offence that involves violent conduct
  - an offence that involves a sexual assault

  (for example, break and enter; possession and use of prohibited drugs; stealing where there is no physical harm involved; and supplying quantities of prohibited drugs below the indictable limit)
- normally resides in the greater western Sydney area
- has pleaded guilty or indicated that he or she intends to plead guilty
- is likely to be sentenced to imprisonment for the offence (which means in practice that an offender will usually need to have a number of prior convictions)

[70] Murrell G (Judge) 1999, p. 10.

[71] Murrell G (Judge) 1999, p. 9; New South Wales Drug Court 1999.

[72] See s. 6 of the *Drug Court Act 1998* (NSW).

- appears to be dependent on a prohibited drug
- does not appear to be suffering from any mental condition that would prevent or restrict his or her active participation in a Drug Court program.[73]

Initial referral by a District or Local Court is by telephone. If the Drug Court team[74] agrees that an offender appears to be eligible and can be accommodated overnight in a remand centre (if necessary),[75] the offender's matter is listed before the Drug Court on the following day. Immediately after an offender appears before the Drug Court for the first time, the offender (assuming there is sufficient accommodation[76]) is remanded in custody for a period of up to one week. During this period, the offender undergoes detoxification and is comprehensively assessed.

After an offender has undergone detoxification and a comprehensive assessment, the offender is then convicted and sentenced (to a term of imprisonment) by the Drug Court. On sentencing the offender, the Drug Court must:

- order the offender to participate in a drug treatment program
- suspend the offender's sentence for the duration of the offender's drug treatment program.[77]

An offender is usually required to participate in a twelve month drug treatment program. Each program consists of three phases. During phase one, an offender is required to appear before the Drug Court once a week and to provide twice weekly urine samples. By phase three, the frequency of court attendances decreases to once a month and the frequency of urine testing decreases to once a fortnight. Different offenders may be required to undergo different types of treatment. Some of the available treatment options include: intensive residential treatment, a methadone program, the administration of naltrexone and an outpatient, abstinence-based program.

The Drug Court may impose sanctions on an offender who fails to comply with his or her program (for example, provides a 'dirty' urine sample, fails to attend a progress hearing before the Drug Court or commits another offence). Sanctions which may be imposed include: a reprimand from a Drug Court Judge, more intensive supervision, a fine, a short term of imprisonment and termination of an offender's program.[78] The Drug Court may also reward an offender who complies with his or her program. Rewards which may be given include: a gift or privilege, graduation to the next phase of the program or the removal of an existing sanction.[79]

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[73] See s. 5 of the *Drug Court Act 1998* (NSW).

[74] The Drug Court team includes the Registrar of the Drug Court, a senior solicitor from the Office of the Director of Public Prosecutions, a senior solicitor from the Legal Aid Commission, a police inspector, a probation and parole co-ordinator, a nurse manager and the senior Drug Court Judge's Associate.

[75] Offenders who are referred with bail refused need to be accommodated overnight. The male remand centre at Silverwater has set aside four overnight beds for male offenders referred to the Drug Court with bail refused. The female correctional centre at Silverwater has only set aside one overnight bed.

[76] The male remand centre at Silverwater has six detoxification/assessment beds and the female correctional centre at Silverwater has one. Offenders who cannot be accommodated (and who thus miss out on being admitted to a Drug Court program) are referred back to their referring court for sentencing.

[77] See s. 7 of the *Drug Court Act 1998* (NSW).

[78] See ss. 10 and 11 of the *Drug Court Act 1998* (NSW).

[79] See s. 16 of the *Drug Court Act 1998* (NSW).

## The proposed New South Wales Youth Drug Court

In late July 1999, the New South Wales Government announced the trial of a Youth Drug Court in western Sydney. According to a news release issued by the New South Wales Premier:

> [the Youth Drug Court will have] the power to sentence young addicts to compulsory rehabilitation instead of gaol.
>
> The Court will deal with young people who are drug dependent, and who have pleaded guilty to non-violent crimes. The trial will run for two years from July 2000 ...
>
> The trial will cost a total of $8.5M and includes the cost of a new 12-bed detoxification centre.
>
> Offenders are sentenced to a gaol term, which can be suspended by the Youth Drug Court if they agree to enter an intensive rehabilitation program ...
>
> The Youth Drug Court will target alcohol abuse along with illicit drugs.[80]

## The proposed South Australian Drug Court

In late May 1999, the South Australian Government announced its intention to trial drug courts in South Australia. According to a press release issued by the South Australian Premier:

> over the next year [the South Australian Government] will begin a detailed feasibility study and development work to begin a two year trial commencing in 2001/2002. This program will also include a component specifically focussed on Aboriginal people.[81]

At this stage, very little information is currently available about the proposed drug court pilot, apart from the fact that the drug court is likely to target more serious drug dependent offenders.[82]

## The proposed Western Australian Drug Court

In 1998, the Minister for Justice and the Western Australian Drug Abuse Strategy Office commissioned a drug court feasibility study. That study, by academics from Edith Cowan University in Perth, has now been completed. The study reviewed the operation of drug courts in other jurisdictions, consulted with people who had an interest in the area, developed a model for a pilot drug court and, following further consultation, made a series of recommendations for the piloting of a drug court in Western Australia.[83]

The Honourable Mr Prince (who at the time was Minister representing the Attorney-General) recently stated that:

> the ministerial council on drug abuse strategies has indicated its support for the establishment of a drug court for more serious offences as proposed by the feasibility study and has requested the preparation of a plan for the implementation of a drug court pilot ... work is currently being undertaken to identify the characteristics of the offender who is most likely to benefit from the drug court program. The Attorney-General and the minister responsible for the drug abuse strategy will be developing the proposal for consideration by the cabinet law and order subcommittee with a view to a submission being made to Cabinet shortly.[84]

No further information is currently available about the proposed drug court pilot.

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[80] The Honourable Bob Carr (Premier of New South Wales), News Release, 25 July 1999, *Premier announces Youth Drug Court trial*.

[81] The Honourable John Olsen (Premier of South Australia), Media Release, 24 May 1999, *Drug Courts to be trialed in South Australia — Olsen*.

[82] This information was provided by policy officers from the Justice Strategy unit of the South Australian Attorney-General's Department.

[83] Mr Prince MLA, Western Australian Legislative Assembly, Hansard, 24 June 1999, p. 9605/4; *The Australian,* 21 December 1998, p. 8.

[84] Western Australian Legislative Assembly, Hansard, 24 June 1999, p. 9605/4.

# Conclusion

There are significant financial costs involved in continuing to process drug dependent offenders through the criminal justice system. One of those major costs is, of course, the cost of imprisonment. The steep rise in Queensland's prisoner numbers since 1993[85] is an added incentive for Queensland to establish drug diversion programs aimed at breaking the link between illicit drug use and criminal activity.[86] Another incentive should be the desire to improve the health and wellbeing of young Queenslanders.

There are a number of different types of drug diversion programs in existence throughout Australia. Some of these programs divert offenders at the post-charge/pre-trial stage while others are intended to be used as an alternative to a more traditional sentence.

Some drug diversion programs target quite minor drug offenders who may, or may not, already have a drug dependency while others target more serious drug dependent offenders with a long history of criminal offences and a long history of attempting to address their drug dependency.

The Queensland Government is currently considering establishing a drug court on a trial basis. Although this may be an effective strategy for diverting some serious drug dependent offenders into drug treatment programs, it does not address the needs of other drug offenders and drug dependent offenders, nor the costs to the community associated with failure to attend to these needs. A range of programs needs to be considered as part of an overall drug diversion strategy that targets all categories of drug offenders and drug dependent offenders.

Drug diversion programs will not succeed in diverting people who are using illicit drugs from the criminal justice system into the health system unless the health system is properly resourced (i.e. more drug treatment facilities are established with recurrent funding) and unless people working within each stage of the criminal justice system are made aware of the existence and benefits of the programs.

Whatever drug diversion programs are established in Queensland, it is important that they be properly evaluated (from the beginning) to determine whether they are achieving their objectives.

[85] The CJC is currently working on a report which identifies the factors underpinning this steep rise in prisoner numbers.

[86] For a recent report which discusses this link, see: Makkai T 1999.

# Appendix

# Update on police cautioning programs

## Victoria Police drug diversion pilot program

The police cautioning Briefing Paper referred to the Victoria Police drug diversion pilot program which is targeted at first time drug offenders caught with a small amount of any illicit drug other than cannabis.[87] The pilot began on 1 September 1998 and officially came to an end on 1 May 1999. An independent interim evaluation report was released (for limited distribution) by the Victorian Department of Human Services in early July 1999.

During the eight month pilot period, only 60 people received a police caution. The low figure has been attributed to the fact that most people detected by the police are not considered first time drug offenders; that is, they already have a prior drug charge or conviction.

Half of those cautioned were aged 21 or under at the time of offending and 47 were males. Ninety-five per cent of participants were caught using or possessing heroin and many of these were found to be early heroin users. Twenty-two per cent of those cautioned failed to comply with the terms of their caution by either failing to turn up for an assessment or failing to turn up for an initial treatment session: these offenders were subsequently charged with their original drug offence.

The final evaluation report of this Victorian cautioning pilot is due to be published in late September 1999.

## Western Australia Police Service cannabis cautioning trial

The police cautioning Briefing Paper also referred to the twelve month cannabis cautioning trial being run by the Western Australia Police Service.[88] An independent review of the first six months of the trial was released (for limited distribution) by the Western Australia Police Service in May 1999.

During this six month period, 43 people received a police caution. Thirty-seven per cent of those cautioned were aged under 20 and the majority (44%) were aged 21 to 25. Thirty-seven of the participants were male. Six of the 43 participants failed to attend the compulsory education session and were subsequently charged with their original drug offence.

The final evaluation report of the Western Australia Police Service cannabis cautioning trial is due to be published in December 1999.

## Commonwealth funding for police drug diversion programs

The police cautioning Briefing Paper stated that 'there is presently no adult cautioning program in Queensland'.[89] However, subsequent to the Briefing Paper being published, the Council of Australian Governments (COAG) met on 9 April 1999 and agreed to make some changes to the National Illicit Drug Strategy which was initiated by COAG in November 1997. Under one of these changes, the Commonwealth, States and Territories agreed to:

> work together to put in place a new nationally consistent approach to drugs in the community involving diversion of drug offenders by police to compulsory assessment.[90]

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87 Criminal Justice Commission 1999, p. 6

88 Criminal Justice Commission 1999, p. 7.

89 Criminal Justice Commission 1999, p. 4.

90 For a copy of the agreement reached by COAG on 9 April 1999, see: http://www.dpmc.gov.au/briefing/doc/finalcomm.html.

This new agreement requires the State and Territory governments to 'provide the law enforcement basis for diverting drug users into treatment programs' and requires the Commonwealth Government to 'provide funding for significantly expanded early intervention treatment and rehabilitation places linked to police and court diversion'.[91]

It is understood that the Queensland Government is currently developing a proposal, to be approved and partially funded by the Commonwealth Government, that will involve Queensland police officers diverting minor drug offenders (including adult offenders) into drug assessment and/or treatment programs.

[91] It is possible that, pursuant to this agreement, the Commonwealth Government may be prepared to fund a number of different types of drug diversion programs (i.e. apart from police cautioning programs).

# References

Alcohol and Drug Service 1996, *Report on the review of the Treatment Referral Program: Part IX - Treatment Provisions — Drugs of Dependence Act 1989*, Australian Capital Territory Department of Health and Community Care, Canberra.

Criminal Justice Commission 1999, *Police Cautioning of Adults: Drug and other offences — A briefing paper*, CJC, Brisbane.

Gray, Y., Reynolds, C. & Rumbold, M. 1992, 'The South Australian Drug Assessment and Aid Panels: an Alternative to the Criminal Law for Illicit Drug Users' in *Drug Problems in Society Dimensions and Perspectives*, Drug and Alcohol Services Council, Parkside.

Mackinnon, I., McLachlan, S. & Popovic, J. 1999, *Court Referral & Evaluation for Drug Intervention Treatment (CREDIT)*, Melbourne.

Magistrates' Court of Victoria 1998, *Annual Report 1997–98*, Melbourne.

Makkai, T. 1999, 'Linking Drugs & Criminal Activity: Developing an Integrated Monitoring System', Trends and Issues in Crime and Criminal Justice, No. 109, Australian Institute of Criminology, Canberra.

Makkai, T. 1998, 'Drug Courts: Issues and Prospects', Trends and Issues in Crime and Criminal Justice, No. 95, Australian Institute of Criminology, Canberra.

Moreland Hall 1998, *First Offender Court Intervention Service — A Drug Education Program for First Offenders: Operating Protocols*, Moreland.

Murrell, G. (Judge) 1999, 'The Drug Court of New South Wales', *Judicial Officers' Bulletin*, 11(2) , p. 9.

New South Wales Department of Corrective Services 1998, *1997–98 Annual Report*, Sydney.

New South Wales Drug Court 1999, *The New South Wales Drug Court Program*, http://www.attgendept.nsw.gov.au/drugcrt.nsf/pages/drugcrt3 [cited 3 June 1999].

New South Wales Parliamentary Library Research Service 1999, *The illicit drug problem: drug courts and other alternative approaches*, Briefing Paper No. 4/99, Sydney.

New South Wales Probation and Parole Service (New South Wales Department of Corrective Services) 1996, *Drug and Alcohol Intervention Program Information Booklet*, Sydney.

Rigg, J. & Indermaur, D. 1996, 'Issues in Drug Offender Diversion: A Review of the Court Diversion Service in Western Australia', *Australian and New Zealand Journal of Criminology*, 29, p. 247.

Royal Commission into the Non-Medical Use of Drugs (South Australia) 1979, *Final Report*, Adelaide.

Weiniger, P. 1998, 'Fresh FOCIS on drug offences', *Law Institute Journal*, 72(7), p. 14.