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**Drug Offences: An Update on
Crime Trends, Diversionary
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by

Rowena Johns

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ISSN 1325-4456

ISBN 0 7313 1762 9

May 2004

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Drug Offences: An Update on Crime Trends, Diversionary Programs and Drug Prisons

by

Rowena Johns

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EXECUTIVE SUMMARY

This briefing paper provides a review of criminal justice strategies towards drug offenders in New South Wales, 5 years after the Drug Summit of May 1999. Statistics and studies are employed to demonstrate recent trends in drug use and drug-related offending. Updates are given on various diversionary drug programs and the medically supervised injecting centre, followed by an outline of the Government's proposal for a drug treatment correctional centre.

General statistics on drug offences (pages 3-20)

Basic terminology relating to drug law is explained and statistics are presented on issues such as drug use rates, conviction rates, penalties imposed, and the geographical distribution of drug offences. Most of the data focuses on New South Wales, although some broad information is supplied on Australian trends in drug use and detection by law enforcement authorities.

Relationship of drug use to crime rates (pages 21-34)

The use of prohibited drugs may be funded by committing crimes, particularly property offences such as theft and burglary. Studies in this chapter explore the links between personal drug use and offending. For example, there is a correlation between the growth in dependent heroin users and the increase of robbery rates in New South Wales since the 1960s. Data gathered during the height of the heroin 'drought' in 2001 illustrates some of the consequences of drug availability for the consumption rates of other drugs and for crime rates.

MERIT program (pages 35-41)

The Magistrates Early Referral Into Treatment (MERIT) program is a Local Court diversionary option that was piloted at Lismore in 2000. By February 2004 it was operating in 50 Local Courts in New South Wales. Eligibility criteria include having an illicit drug problem, being charged with offences that can be prosecuted summarily in the Local Court, and not having outstanding charges for sexual assault or offences of violence. Participants are granted bail by the Magistrate on the condition of undertaking the treatment program for approximately 3 months. The New South Wales and Commonwealth Governments have agreed to maintain funding for MERIT until at least June 2007.

Drug Court (pages 42-47)

The Drug Court is authorised by the *Drug Court Act 1998* and has operated at Parramatta with Local and District Court jurisdiction since 1999. It accepts adults from western Sydney who are dependent on the use of prohibited drugs, have been charged with an offence (not a sexual or violence offence) to which they have indicated an intention to plead guilty, and are highly likely to be sentenced to full-time imprisonment. The Drug Court convicts the offender and suspends execution of the sentence while they undertake the program for at least 12 months. The program includes an individually tailored treatment plan, reporting back to the court, and regular drug

testing. 100 participants had graduated from the program by October 2003.

Youth Drug Court (pages 48-49)

The Youth Drug Court pilot commenced in July 2000, originally serving western Sydney. The program combines intensive judicial supervision, drug treatment and case management. To be eligible, young persons must have a demonstrable drug problem, be charged with an offence that can be dealt with by the Children's Court, have been aged under 18 years at the time of that offence, and be entitled to bail. The Government has approved an extension of the program to young people from central and eastern Sydney, anticipated to commence in the second half of 2004.

Cannabis cautioning scheme (pages 50-51)

The scheme was introduced across New South Wales on 3 April 2000, initially as a one year trial. Under the scheme, police may caution adults who possess up to 15 grams of dried cannabis for personal use and/or equipment for self-administering the drug. As a consequence, the offender does not attend court and no criminal conviction is recorded. To be eligible for a caution, the offender must admit the offence, have no prior convictions for drug or violent offences, and must consent to sign the caution notice, which contains health and treatment information. An offender may receive a maximum of two cannabis cautions.

Medically supervised injecting centre (pages 52-58)

The Sydney Medically Supervised Injecting Centre (MSIC) opened in Kings Cross in May 2001. It provides clean facilities for injecting drug users, as well as advice on safe injecting practices, counselling, and overdose treatment. The MSIC is comparable to a diversionary scheme because it exempts users from criminal liability for possession and self-administering of prohibited drugs, and the centre is intended to provide referrals for rehabilitation. Originally the MSIC was trialled for 18 months but it has been extended to 31 October 2007.

Drug treatment prisons (pages 59-69)

The Government is planning to create a specialist drug treatment facility at Parklea Correctional Centre by the end of 2005, to provide for the compulsory treatment of male recidivist drug offenders. The Compulsory Drug Treatment Correctional Centre Bill was released as a consultation draft before being introduced in the Legislative Council in May 2004. Apart from being convicted of a drug-related offence and having a long-term drug problem, the offender would have to be sentenced to imprisonment with an unexpired non-parole period of at least 18 months but not more than 3 years, and have previous convictions for other offences at least 3 times in the previous 5 years. The Drug Court of New South Wales would be empowered to determine the eligibility of offenders, make compulsory drug treatment orders, and supervise the progress of offenders. The proposal is modelled on drug programs in the Netherlands and the United States of America. Comparisons can also be made with the Bendigo Prison drug program in Victoria.

1. INTRODUCTION

Thousands of drug offences are dealt with every year by the New South Wales legal system, and many other offences are drug-related, being committed under the influence of drugs or to finance a drug habit. Crime statistics give a broad impression of the drug trends in recent years, such as the rising popularity of ‘designer’ or ‘party’ drugs, the fluctuating availability of heroin, and the link between drug use and property crime.

Since the late 1990s there has been a greater emphasis on exploring alternative approaches which may be more effective upon drug-dependent offenders and less costly than conventional criminal procedures. Diversionary drug programs avert or delay certain eligible drug offenders from being processed by the courts, by entering them into drug treatment. These programs to date have concentrated on offenders with personal drug use problems, excluding drug dealers and manufacturers (unless their offences are sufficiently minor to be prosecuted summarily rather than on indictment) and excluding offenders with convictions for violent or sexual offences.

Several drug initiatives, including the Magistrates Early Referral Into Treatment (MERIT) program, the Youth Drug Court, and the Sydney Medically Supervised Injecting Centre, were influenced by the recommendations of the New South Wales Drug Summit held at Parliament House from 17 to 21 May 1999. The injecting centre can arguably be counted as a pre-arrest diversionary scheme because users of the centre are exempt from criminal liability for drug possession, and referrals are available for treatment and rehabilitation.

Diversionary drug programs may occur at various stages of the criminal justice process:¹

- **pre-arrest** – prior to a charge being laid by the police, eg. cannabis cautioning scheme;
- **pre-trial** – before the matter is heard or finalised at court eg. MERIT;
- **pre-sentence** – after conviction but before sentencing, eg. Youth Drug Court;
- **post-sentence** – as part of the sentencing process, which may involve giving an indication of the sentence or suspending the sentence, eg. Drug Court; and
- **pre-release** – prior to release from custody, eg. drug prison.

In February 2004, the Carr Government announced a proposal for an additional drug diversion option in New South Wales, namely, diversion from the mainstream prison system. After releasing a consultation draft, the Compulsory Drug Treatment Correctional Centre Bill was introduced in the Legislative Council in May 2004. It is envisaged that eligible offenders who have been sentenced to imprisonment for a drug-related offence and have a long-term drug dependency would undertake compulsory drug treatment at a specialist correctional facility.

¹ These stages were recently discussed in: Australian Institute of Criminology, ‘Australian approaches to drug-crime diversion’, *AICrime Reduction Matters*, No.123, 6 May 2004, available at <www.aic.gov.au>

This briefing paper focuses on strategies in the criminal justice system towards prohibited drugs. It does not examine the health, psychological, or social impact of drug use, except in connection with the treatment provided under court-imposed programs. The clinical use of cannabis and the prospect of conducting a medicinal cannabis trial in New South Wales will be the subject of a separate, forthcoming briefing paper. Information is presented here without any intention to adopt a position on the drug policies of government or non-government organisations.

This briefing paper incorporates developments up to 12 May 2004.

2. GENERAL STATISTICS ON DRUG OFFENCES

2.1 Explanation of terms

Material from a variety of research organisations is utilised in this briefing paper. Terminology depends on the source of the information and does not necessarily match the language of current New South Wales legislation. Basic concepts will be explained here, with further specific commentary provided as each study is presented. To facilitate interpreting the sentencing statistics, some types of penalties that may not be self-evident are also briefly outlined here.

(i) *Legal issues*

Commonwealth or State drug offences: Importing a prohibited drug is an offence against Commonwealth law, pursuant to the *Customs Act 1901* (Cth). Drug offences other than importation, such as possession, supply, manufacture, and cultivation are governed by State law. In New South Wales this is the *Drug Misuse and Trafficking Act 1985*.

Dealing, trafficking, and supplying: Drug ‘dealing’ and ‘trafficking’ often appear as categories of offences in statistical material, whereas the term ‘supply’ is used in New South Wales law. Although the word ‘trafficking’ features in the title of the *Drug Misuse and Trafficking Act 1985* (NSW), the only form in which it appears in the text is ‘traffickable quantity’, as defined in s 3. Possession of a prohibited drug that weighs the ‘traffickable quantity’ or more is deemed to be drug supply: see s 29 and Schedule 1 of the Act. The effect of the deeming provision is to shift the burden of proof onto the defence to prove on the balance of probabilities that the defendant did not have the drug for the purpose of supply.²

Dismissal of charges and conditional discharge: The court may find a person guilty but not record a conviction, pursuant to s 10 of the *Crimes (Sentencing Procedure) Act 1999*. The court has 3 options in this situation: s 10(1)(a) - outright dismissal of the charges; s 10(1)(b) - discharge the offender on condition of entering into a good behaviour bond for a term not exceeding two years; s 10(1)(c) - discharge the offender on condition of entering a rehabilitation or treatment program. In some sentencing statistics published by the Bureau of Crime Statistics and Research, dismissal of charges is encompassed in the category ***No conviction recorded***.

Rising of the court: To be directed to remain in court until it ‘rises’, that is, until the cessation of judicial business for the day. This penalty is incorporated into the category of ***Nominal sentence***’ in some of the Bureau of Crime Statistics and Research data.

Good behaviour bond: Formerly known as a recognizance, a good behaviour bond is available

² The usual burden of proof in a criminal matter is upon the prosecution to prove beyond a reasonable doubt that the defendant is guilty of the charge.

as a separate penalty under s 9 of the *Crimes (Sentencing Procedure) Act 1999* for a term not exceeding 5 years. The basic condition of the bond is that the person must not commit any offence for the duration of the bond. Other conditions can be attached, but not community service or payment of a fine: s 95. Good behaviour bonds may accompany some other penalties such as a conditional discharge or a suspended sentence.

Suspended sentence: A court that imposes a sentence of imprisonment of not more than two years may make an order suspending the sentence for a period of time (not exceeding the term of the sentence), and direct the offender to be released on a good behaviour bond: s 12 of the *Crimes (Sentencing Procedure) Act 1999*. If the bond is breached, the order may be revoked and the sentence of imprisonment imposed.

Home detention: Available under s 7 of the *Crimes (Sentencing Procedure) Act 1999* when a term of imprisonment of 18 months or less has been imposed. The court must refer an offender for assessment of their suitability for home detention before the court can implement the home detention order. Home detention confines the offender to an approved residence for specific periods, with monitoring and other conditions. This may enable employment or study to continue. The penalty is not available for certain offences listed at s 76, including drug offences involving commercial quantities.³

Periodic detention: Available under s 6 of the *Crimes (Sentencing Procedure) Act 1999* when the court sentences an offender to a term of imprisonment of not more than 3 years. Commonly served on weekends at designated correctional centres.

(ii) Chemical descriptions

Narcotics: The term ‘narcotics’ is not used in the *Drug Misuse and Trafficking Act 1985* (NSW) but sometimes appears as a category in New South Wales statistics, such as those produced by the Bureau of Crime Statistics and Research. It usually pertains to heroin and other opiates. Narcotic-related terms do occur in the Commonwealth *Customs Act 1901* but have a broader scope.⁴

Opiates: The class of drugs known as opiates includes heroin, opium, morphine, methadone, pethidine, and codeine.

Benzodiazepines: This category of tranquillisers features brand names such as Rohypnol,

³ An analysis of home detention was provided in *The Home Detention Bill: Commentary and Background* by Honor Figgis, NSW Parliamentary Library Briefing Paper 20/96.

⁴ The *Customs Act 1901* (Cth) defines ‘narcotic substance’ expansively, to apply to all the drugs covered by the Act, as listed in Schedule VI. The shorter list of ‘prescribed narcotic substances’ at Schedule VIII is: cannabis, cannabis resin, cocaine, heroin, lysergic acid, lysergide, morphine, opium, and tetrahydrocannabinols.

Valium, Mogadon, Serepax and Normison.⁵ They may be legally obtained on prescription.

Methamphetamine: The powdered form of methamphetamine is commonly known as ‘speed’. Other types of methamphetamine include crystals (referred to as ‘ice’), waxy paste (‘base’), and tablets (passed off as ecstasy).

Ecstasy: In some studies ecstasy is identified as MDMA because the composition of ‘real’ ecstasy is 3,4-methylenedioxymethamphetamine. However, the necessary precursors and expertise to make ecstasy are rare in Australia. Therefore, many of the tablets that are locally manufactured and sold as ecstasy actually contain low-dose methamphetamine, sometimes in combination with another drug such as ketamine.⁶

2.2 Patterns of drug offending

A variety of material will be presented here on issues including the usage rates of different drugs, incidents of illegal drug use reported to police, and geographical distribution of drug offences.

(i) Overview of Australian drug trends in 2001-2003

The Australian Crime Commission, and its predecessor the Australian Bureau of Criminal Intelligence, produced an annual *Australian Illicit Drug Report*, which provided a statistical analysis and strategic review of illicit drugs in Australia from a law enforcement perspective, including information on drug arrests, detection and seizures, purity levels and prices. The last edition covered the financial year 2001-2002.⁷ A replacement publication, the *Illicit Drug Data Report*, has recently been released. The first edition spans the 2002-2003 financial year.⁸ Drug trends can be identified from both these reports:

- **Heroin**: As a result of reduced availability of heroin in 2001-2002, the street-level purity of heroin remained low, prices remained high, and there was a decline in heroin seized domestically within Australia. The shortage of heroin coincided with more users taking illicitly obtained pharmaceuticals, cannabis and other drugs. In 2002-2003, there was a slight

⁵ Justin Healey (ed), ‘Illicit Drugs’, *Issues in Society*, Volume 194, 2004, Spinney Press, p 1.

⁶ Bethany White, Courtney Breen, and Louise Degenhardt, *NSW Party Drugs Trends 2002: Findings From the Illicit Drug Reporting System (IDRS) Party Drugs Module*, Technical Report No. 162, 2003. Accessed from the website of the National Drug & Alcohol Research Centre at <<http://ndarc.med.unsw.edu.au/ndarc.nsf/website/IDRS>> under ‘Publications’.

⁷ Australian Crime Commission, *Australian Illicit Drug Report 2001-02*, March 2003. Most information was extracted from ‘Key points’ and ‘Illicit Drugs in Australia’ on pp 12-18. The report is available on the ACC website at <www.crimecommission.gov.au> under ‘Publications’.

⁸ Australian Crime Commission, *Illicit Drug Data Report 2002-03*, April 2004, especially the ‘Snapshot’ entries for each drug on pp 8-19. Accessed at <www.crimecommission.gov.au>

increase in the purity of heroin seized.

- **Cannabis:** In 2001-2002, cannabis offences represented 72% of all drug-related offences in Australia, a trend expected to continue and possibly to increase. There was an ongoing national trend towards hydroponic production of cannabis, boosting the hydroponic equipment industry. The growing involvement of organised crime in the cross-jurisdictional trading of cannabis in exchange for other illicit drugs has major resource implications for law enforcement agencies. In 2002-2003, Australian law enforcement authorities seized a total of 6145 kgs of cannabis, a decrease from 9801 kgs in 2001-2002.
- **Cocaine:** There has been a relative downward trend in the purity of cocaine seized since 1997-1998. Although the number of cocaine seizures increased from 593 in 2001-2002 to 624 in 2002-2003, the weight of the seizures decreased significantly.
- **Synthetic drugs:** The popularity of synthetic or party drugs continued to rise. Illicit production of amphetamine-type stimulants saw over 19% more clandestine laboratories detected across Australia in 2001-2002 than during the previous year, with most located in south-east Queensland. The upward trend in seizures of clandestine laboratories persisted in 2002-2003. The total weight of seizures of amphetamine-type stimulants in 2002-2003 also increased from 2001-2002.
- **Arrest rates:** Arrest rates for heroin offences fell in 2001-2002: 3239 persons were arrested compared to 7396 in 2000-2001, a reduction of over 56%. Arrests for cocaine, amphetamine-type stimulants and other drugs also fell slightly. In 2002-2003, the number of arrests for heroin offences increased to 3824. There was a slight increase in arrests for amphetamine-type stimulants, but a significant decrease in the number of cocaine arrests.
- **Imported detections:** There were a number of record seizures of imported drugs in 2001-2002. A record quantity of 428.3 kgs of amphetamine-type stimulants was located on a boat in Queensland in July 2001. During the same month, 938 kgs of cocaine was seized in Western Australia, a new Australian record. The second largest detection of heroin at the time in Australia, weighing 378.3 kgs, was found concealed in imported sea cargo at Brisbane. The largest detection of cannabis for 2001-2002 weighed 2923 kgs and was found in Melbourne in August 2001, concealed in the floors of sea cargo containers shipped from Afghanistan. Although Customs detected 699 attempted imports and exports of cannabis during 2002-2003, the total weight was only 22 kgs.

In 2002-2003, the seizure of 22 kgs of ephedrine powder in a cargo container at Darwin demonstrated that precursors to making amphetamines were increasingly being sourced from outside Australia, in response to the tightening of domestic regulatory controls. The number and weight of MDMA (ecstasy) border detections has been increasing since the mid-1990s, consistent with the expansion of ecstasy use in Australia. During the 2002-2003 financial year, Customs made 3 of its 4 largest detections of MDMA to date at Australian borders: 170.9 kgs in Sydney, 157 kgs in Sydney, and 135.5 kgs in Brisbane.

- **Organised crime:** There were increasing signs in 2001-2002 of collaboration between various criminal groups, and across once traditional ethnic divides in relation to drugs such as cocaine, heroin, and ecstasy. The trend for transnational crime syndicates to handle multiple illicit drugs continued, though routes and methods for importing drugs may alter depending on pressure from the authorities.

(ii) *Reported drug use rates in New South Wales*

Criminal incidents across NSW – reports of drug offences, 2000-2002⁹

Type of drug offence	2000 Total	2000 Rate per 100,000 population	2001 Total	2001 Rate	2002 Total	2002 Rate
Possess/use cocaine	208	3.2	469	7.2	210	3.2
Possess/use narcotics	2483	38.4	1102	16.9	931	14.3
Possess/use cannabis	11069	171.3	14486	221.8	11424	174.9
Possess/use other drugs	2587	40.0	3115	47.7	2503	38.3
Deal in cocaine	100	1.5	255	3.9	114	1.7
Deal in narcotics	860	13.3	467	7.1	505	7.7
Deal in cannabis	881	13.6	1031	15.8	715	10.9
Deal in other drugs	766	11.9	1096	16.8	978	15.0
Cultivate cannabis	1662	25.7	1583	24.2	1502	23.0
Import drugs	27	0.4	24	0.4	37	0.6
Other drug offences	2788	43.1	3164	48.4	3100	47.5

The figures for 2001 show a fall in reported incidents of narcotics possession and dealing, and a rise in cocaine possession and dealing. This may reflect the shortage of heroin at the time. In 2002, the rate of cocaine possession and dealing fell back to 2000 levels. Newly available 2003 figures reveal cocaine rates decreasing further:

Criminal incidents across NSW – reports of drug offences, 2001-2003¹⁰

Type of drug offence	2001 Total	2001 Rate per 100,000 population	2002 Total	2002 Rate	2003 Total	2003 Rate
Possess/use cocaine	469	7.1	211	3.2	116	1.7

⁹ Peter Doak, Jackie Fitzgerald and Mark Ramsay, *New South Wales Recorded Crime Statistics 2002*, NSW Bureau of Crime Statistics and Research, 2003. Adapted from 'Drug offences' entries in Tables 1.1, 1.2 and 1.3, pp 20-31. A criminal incident is an activity that is reported to the police. The statistics were based on data from NSW Police's Computerised Operational Policing System (COPS).

¹⁰ Steve Moffatt, Derek Goh and Jacqueline Fitzgerald, *New South Wales Recorded Crime Statistics 2003*, NSW Bureau of Crime Statistics and Research, 2004. Adapted from 'Drug offences' entries in Tables 1.1, 1.2 and 1.3, pp 22-30.

Possess/use narcotics	1102	16.8	948	14.3	890	13.4
Possess/use cannabis	14486	220.3	11565	174.2	11214	168.9
Possess/use other drugs	3115	47.4	2569	38.7	2900	43.7
Deal in cocaine	255	3.9	115	1.7	40	0.6
Deal in narcotics	467	7.1	524	7.9	503	7.6
Deal in cannabis	1031	15.7	734	11.1	648	9.8
Deal in other drugs	1096	16.7	1014	15.3	906	13.6
Cultivate cannabis	1583	24.1	1521	22.9	1531	23.1
Import drugs	24	0.4	38	0.6	46	0.7
Other drug offences	3164	48.1	3148	47.4	3091	46.5

Reported incidents of narcotics possession decreased further in 2002 and 2003, but reports of narcotics dealing increased in 2002, before declining slightly in 2003. Reported incidents of cannabis use and dealing appear to have been declining throughout 2001, 2002 and 2003, although reports of cultivation remained constant.

(iii) Drug activity in NSW by geographical location

The following table, adapted from data compiled by the Bureau of Crime Statistics and Research, highlights the geographical patterns of drug use and supply in New South Wales:

Recorded criminal incidents in 2003 – drug offences by statistical division¹¹
Rate per 100,000 of population

Statistical division	Possess cocaine	Possess narcotics	Possess cannabis	Deal in cocaine	Deal in narcotics	Deal in cannabis	Cultivate cannabis
SYDNEY:							
Sydney total	2.4	17.5	138.3	0.9	10.2	7.7	10.7
Inner Sydney	15.4	63.8	417.2	3.7	35.4	32.1	9.4
Eastern Suburbs	6.6	4.5	108.4	3.3	2.9	7.9	4.5
St George-Sutherland	0.5	7.1	85.1	0.2	5.0	6.7	7.6
Canterbury-Bankstown	1.9	20.0	94.8	0.0	10.6	5.8	9.7
Fairfield-Liverpool	3.1	86.3	105.0	2.6	63.6	5.1	10.5
Outer South Western Sydney	0.0	3.4	133.5	0.0	1.7	7.2	15.2
Inner Western Sydney	1.2	7.3	149.8	0.6	3.7	4.9	3.0
Central Western Sydney	2.3	12.4	179.6	0.0	3.4	5.0	9.0

¹¹

Steve Moffatt, Derek Goh and Jacqueline Fitzgerald, *New South Wales Recorded Crime Statistics 2003*, NSW Bureau of Crime Statistics and Research, 2004. Adapted from 2003 figures in Tables 4.18-4.24 on pp 59-65.

Outer Western Sydney	0.3	3.4	139.1	0.0	0.9	6.0	18.5
Blacktown	0.4	5.9	178.1	0.0	0.0	9.6	20.0
Lower Northern Sydney	1.4	3.0	63.3	1.4	0.0	2.7	2.7
Central North'n Sydney	0.5	1.9	96.0	0.2	0.0	2.4	3.9
Northern Beaches	1.3	3.4	77.4	0.9	0.0	3.9	5.6
Gosford-Wyong	0.3	7.0	145.1	0.0	3.7	9.3	30.0
REGIONAL:							
Hunter	0.3	7.1	158.1	0.2	4.5	6.4	30.1
Illawarra	0.5	4.9	114.6	0.0	3.5	6.4	24.4
Richmond-Tweed	1.4	12.8	412.3	0.5	7.3	19.6	79.9
Mid-North Coast	0.4	6.7	274.5	0.0	3.5	16.5	81.5
Northern	0.0	1.7	203.9	0.0	0.0	8.3	68.7
North Western	0.0	5.9	168.0	0.0	0.8	13.4	28.4
Central West	0.0	2.8	176.9	0.0	0.6	15.7	31.4
South Eastern	0.5	4.1	212.9	0.0	2.0	15.3	48.5
Murrumbidgee	0.7	2.0	211.7	0.0	0.0	27.4	33.3
Murray	0.0	1.8	258.6	0.0	0.9	17.5	30.7
Far West	0.0	0.0	182.0	0.0	0.0	12.4	12.4
NSW total¹²	1.7	13.4	168.9	0.6	7.6	9.8	23.1

Narcotics incidents confirmed the predominance of the Fairfield-Liverpool statistical division in relation to heroin possession and dealing. The rates for incidents of cocaine use and cocaine dealing in 2003 were lower than cannabis and heroin. The highest cocaine rates were in Inner Sydney, with the Eastern Suburbs ranked second. Cannabis rates revealed that the Richmond-Tweed statistical division (412.3) rivalled Inner Sydney (417.2) in the possession of cannabis. Other regional areas such as the Mid-North Coast (274.5), Murray (258.6), South Eastern (212.9), Murrumbidgee (211.7) and Northern (203.9) statistical divisions rated higher than any Sydney metropolitan statistical divisions excepting Inner Sydney. Cannabis cultivation was dominated by regional areas, with the three highest rates belonging to Mid-North Coast (81.5), Richmond-Tweed (79.9), and Northern (68.7).

Bearing in mind that the statistics for recorded incidents reflect activities reported to, or detected by police, it may be useful to compare these to statistics for actual convictions. Records of convictions in the Local Court for drug offences in 2002 reinforce the prominence of Inner Sydney and Richmond-Tweed in drug activity. The highest overall rate for drug offences was in Richmond-Tweed, while the highest rating metropolitan statistical division was Inner Sydney. The

¹² NSW totals include incidents that occurred in custodial institutions, which are kept separate from the statistical divisions.

lowest overall rate of drug convictions was in the Lower Northern Sydney statistical division.

Persons found guilty in the Local Court in 2002 by area – drug offences¹³

Statistical division of residence	Rate per 100,000 of population	Numerical order from 1 (highest) to 25 (lowest)
Inner Sydney	162.3	2
Eastern Suburbs	50.5	21
St George-Sutherland	49.5	22
Canterbury-Bankstown	76.4	16
Fairfield-Liverpool	120.3	4
Outer South Western Sydney	91.8	10
Inner Western Sydney	73.7	18
Central Western Sydney	81.4	13
Outer Western Sydney	74.3	17
Blacktown	95.9	8
Lower Northern Sydney	29.1	25 (lowest)
Central Northern Sydney	34.6	24
Northern Beaches	47.3	23
Gosford-Wyong	72.2	20
Hunter	78.3	15
Illawarra	73.1	19
Richmond-Tweed	186.7	1 (highest)
Mid-North Coast	142.0	3
Northern	108.1	5
North Western	88.6	11
Central West	93.0	9
South Eastern	79.1	14
Murrumbidgee	96.1	7
Murray	87.7	12
Far West	99.3	6
NSW Total	84.1	

2.3 Sentences for drug offences

This section presents sentencing statistics for drug offences in New South Wales from two sources: the Bureau of Crime Statistics and Research and the Judicial Commission. Both organisations categorise data according to sentences imposed in the Local Court and sentences imposed in the 'higher courts', meaning the District Court and the Supreme Court. Although there

¹³

Where the principal offence was a drug offence: *New South Wales Criminal Courts Statistics 2002*, NSW Bureau of Crime Statistics and Research, 2003, adapted from Table 1.16, p 52. The rankings have been added by the author of this briefing paper for ease of reference.

is provision for certain drug offences involving large commercial quantities to be prosecuted in the Supreme Court, the overwhelming majority of drug offences prosecuted on indictment are dealt with in the District Court.¹⁴

Definitions of various sentencing options are provided at '2.1 Explanation of terms' on p 3 of this briefing paper.

(i) Local Court data – Bureau of Crime Statistics and Research

Penalties for drug offences in the Local Court in 2002¹⁵

Penalty	Import/ export	Deal/ traffic	Manufact/ cultivate	Possess/ use	Other drug offences	Total
Full-time prison	-	176	12	128	17	333
Home detention	-	7	1	1	-	9
Periodic detention	-	26	7	10	-	43
Suspended sentence	-	123	32	36	5	196
Community service	-	84	41	34	3	162
Bond with supervision	2	63	72	193	9	339
Bond w/out supervision	-	62	139	223	11	435
Bond w/out conviction	-	10	61	316	10	397
Fine	4	64	361	2927	76	3432
Nominal sentence	-	-	3	89	2	94
No conviction recorded	1	2	64	363	25	455
Total	7	617	793	4320	158	5895

The most common penalties for drug offences in the Local Court in 2002 were fines (3432), no conviction recorded (455), and bonds of various types. Full-time sentences of imprisonment accounted for 333 of the 5895 penalties. Drug dealing (ie. supply) was the only category of drug offence for which a full-time prison sentence was the most frequent penalty. Dealing offences also attracted the highest number of suspended sentences of imprisonment.

¹⁴ Indictments may be presented in the Supreme Court where the maximum penalty available for the offence is life imprisonment: Supreme Court of New South Wales, *Practice Note No. 122*, issued by the Chief Justice on 28 August 2001. See s 33(3) of the *Drug Misuse and Trafficking Act 1985* for drug offences involving a large commercial quantity which may attract a sentence of life imprisonment.

¹⁵ *New South Wales Criminal Courts Statistics 2002*, NSW Bureau of Crime Statistics and Research (Statistical Services Unit), 2003. Adapted from Table 1.7, 'Illicit drug offences' entry on p 27. The penalties shown were imposed for the principal offence for which the person was found guilty in the Local Court in 2002, where that offence was a drug offence.

Average length of penalties for drug offences in the Local Court in 2002¹⁶

Penalty	Import or export	Deal or traffic	Manufacture or cultivate	Possess or use	Other drug offences
Full-time prison (months)	-	7.2	7.2	3.0	5.3
Home detention (months)	-	6.1	6.0	3.0	-
Periodic detention (months)	-	7.7	5.4	5.6	-
Suspended sentence (months)	-	9.5	11.5	8.0	9.2
Community service (hours)	-	193.7	166.3	107.6	116.7
Bond (months)	18.0	19.6	16.5	13.5	15.2
Fine (dollars)	988	898	483	304	272

The sentences of full-time imprisonment are relatively low in the Local Court compared to the higher courts because the maximum prison sentence that can be imposed in the Local Court for any one offence is two years. The length of sentence shown is the actual period to be served in custody – this will be the non-parole period where one is specified by the sentencing court. However, for sentences of imprisonment of six months or less, the court does not set a non-parole period.

Penalties by type of drug, for drug offences in Local Court in 2002¹⁷

Penalty	Opiates	Cannabis	Amphetamines	Cocaine	Ecstasy
Full-time prison	96	149	37	14	3
Home detention	2	4	1	-	1
Periodic detention	6	28	4	1	-
Suspended sentence	30	122	18	10	5
Community service	13	103	14	11	8
Bond with supervision	51	203	50	7	10
Bond without supervision	42	299	55	5	9
Bond without conviction	26	234	57	13	51
Fine	279	2487	363	80	79
Nominal sentence	13	63	8	3	1
No conviction recorded	26	282	63	13	38
Total	584	3974	670	157	205

¹⁶ Ibid, adapted from Table 1.9, entry on 'Illicit drug offences', p 35.

¹⁷ Ibid, adapted from Table 1.7a, p 28. Only a selection of drugs from the table is presented here.

Cannabis was the drug most frequently before the Local Court for sentencing. A fine was the most common penalty imposed in the Local Court for drug offences involving cannabis, opiates, amphetamines, cocaine or ecstasy. Only 4 out of the 205 ecstasy offences in 2002 attracted a custodial penalty, ie. imprisonment, home detention or periodic detention.

(ii) Local Court data – Judicial Commission

Sentencing statistics compiled by the Judicial Commission of New South Wales are a component of its Judicial Information Research System.¹⁸ Drug statistics are organised according to the section number of the offence under the *Drug Misuse and Trafficking Act 1985*, the type of prohibited drug, and the quantity.

Possession of a prohibited drug is an offence against s 10 of the *Drug Misuse and Trafficking Act 1985*. Drug possession charges are generally prosecuted in the Local Court.¹⁹

**Possess prohibited drug – Local Court
Heroin, cannabis, cocaine – sentences from October 1999 to September 2003**

Penalty	Cannabis percent	Cannabis number	Heroin percent	Heroin number	Cocaine percent	Cocaine number
s.10 dismissal	8%	1051	5%	126	7%	28
s.10 bond	6%	699	6%	132	9%	40
Rising of court	2%	190	2%	54	2%	10
Fine	73%	9127	68%	1621	63%	267
s.9 bond	4%	471	6%	133	5%	22
s.9 with supervision	4%	453	7%	164	5%	19
Other bond	0%	1	0%	0	0%	0
Community service	1%	105	1%	15	1%	3
s.12 suspended sentence	0%	44	1%	12	1%	6
s.12 with supervision	0%	43	1%	14	1%	3
Periodic detention	0%	21	0%	5	0%	0
Home detention	0%	1	0%	1	0%	1
Imprisonment	2%	256	4%	98	5%	23
Total cases		12,462		2375		422

¹⁸ This is an online service, available to the judiciary, the legal profession, educational institutions and libraries on a subscription basis.

¹⁹ See Part 2, Division 1 of the *Drug Misuse and Trafficking Act 1985*. Section 9 confirms 'An offence under this Division shall be prosecuted summarily before a Local Court.'

Possess prohibited drug – Local Court
Amphetamine, ecstasy – sentences from October 2001 to September 2003

Penalty	Amphetamine percent	Amphetamine number	Ecstasy percent	Ecstasy number
s.10 dismissal	9%	107	19%	69
s.10 bond	10%	125	25%	93
Rising of court	1%	13	0%	1
Fine	61%	735	46%	171
s.9 bond	6%	78	5%	18
s.9 with supervision	7%	81	3%	11
Community service	1%	13	1%	3
s.12 suspended sentence	1%	17	0%	0
s.12 with supervision	0%	5	0%	1
Periodic detention	0%	5	0%	0
Home detention	0%	1	0%	0
Imprisonment	2%	30	1%	3
Total cases		1210		370

These statistics confirm that the vast majority of prosecutions for drug possession in the Local Court were for cannabis. Fines were the most frequent penalties for cannabis (73%), heroin (68%), cocaine (63%) and amphetamines (61%). The penalties for ecstasy possession were arguably more lenient, with 46% receiving a fine and 44% found guilty but with no conviction recorded, pursuant to s 10 of the *Crimes (Sentencing Procedure) Act 1999* (19% of those were dismissed and 25% discharged on condition of entering a bond).

Many drug supply offences are prosecuted summarily in the Local Court, depending on the quantity of drug involved.²⁰

Supply prohibited drug – Local Court
Cannabis, heroin, cocaine – sentences from October 1999 to September 2003

Penalty	Cannabis percent	Cannabis number	Heroin percent	Heroin number	Cocaine percent	Cocaine number
s.10 dismissal	0%	3	0%	0	1%	1
s.10 bond	2%	24	1%	6	2%	2
Rising of court	0%	3	0%	2	0%	0
Fine	14%	169	4%	27	6%	6
s.9 bond	12%	149	8%	50	9%	9

²⁰

See Schedule 1 of the *Criminal Procedure Act 1986*, specifically Table 1 (Part 6 – Offences Under Drug Misuse and Trafficking Act 1985) and Table 2 (Part 8 – Offences Relating to Drugs).

s.9 with supervision	10%	121	10%	64	16%	16
Community service	19%	228	8%	50	14%	14
s.12 suspended sentence	8%	95	6%	35	6%	6
s.12 with supervision	9%	103	10%	62	10%	10
Periodic detention	5%	61	4%	27	4%	4
Home detention	1%	13	1%	6	1%	1
Imprisonment	20%	241	46%	281	30%	29
Total cases		1210		610		98

Supply prohibited drug – Local Court
Amphetamine, ecstasy – sentences from October 2001 to September 2003

Penalty	Amphetamine percent	Amphetamine number	Ecstasy percent	Ecstasy number
s.10 dismissal	0%	0	3%	1
s.10 bond	0%	0	6%	2
Rising of court	1%	1	0%	0
Fine	10%	15	19%	6
s.9 bond	10%	16	3%	1
s.9 with supervision	8%	13	3%	1
Community service order	15%	23	25%	8
s.12 suspended sentence	11%	17	9%	3
s.12 with supervision	7%	10	16%	5
Periodic detention	3%	4	0%	0
Home detention	1%	2	3%	1
Imprisonment	34%	52	13%	4
Total cases		153		32

Cannabis dominated the number of sentences for drug supply in the Local Court, with twice the number of cases than heroin. Penalties were relatively broadly distributed for cannabis supply, with 14% of offenders receiving a fine, 22% placed on a section 9 good behaviour bond, 19% given community service, and 20% sent to prison. Higher percentages of imprisonment were imposed for the supply of heroin (46%), amphetamines (34%), and cocaine (30%). Ecstasy supply attracted the highest percentages of community service orders (25%) and fines (19%).

*(iii) Higher courts – Bureau of Crime Statistics and Research***Penalties for drug offences in the higher courts in 2002²¹**

Penalty	Import/ export	Deal/ traffic in	Manufacture or cultivate	Possess or use	Total
Full-time prison	44	247	27	22	340
Home detention	-	2	1	-	3
Periodic detention	-	46	3	1	50
Suspended sentence with supervision	-	53	3	1	57
Suspended sentence	-	26	5	1	32
Community service	-	23	1	-	24
Bond with supervision	-	20	6	1	27
Bond without supervision	-	11	3	3	17
Bond without conviction	-	3	-	-	3
Fine	-	1	-	2	3
Rising of the court	-	-	-	1	1
Total	44	432	49	32	557

Average length of penalties for drug offences in the higher courts in 2002²²

	Import or export	Deal or traffic in	Manufacture or cultivate	Possess or use
Full-time prison (months)	69.7	22.1	31.7	62.7
Home detention (months)	-	11.0	9.0	-
Periodic detention (months)	-	14.3	17.7	16.0
Suspended sentence (months)	-	18.9	18.8	15.0
Community service (hours)	-	313	300	-
Bond (months)	-	27.1	28.0	24.0
Fine (dollars)	-	10,000	-	400

All drug importation offences received sentences of full-time imprisonment, averaging 69.7 months (5.8 years) in length.²³ It is difficult to comment on the relative lengths of prison sentences for drug

²¹ *New South Wales Criminal Courts Statistics 2002*, NSW Bureau of Crime Statistics and Research (Statistical Services Unit), 2003. Adapted from Table 3.7, 'Illicit drug offences' entry, p 87.

²² *Ibid*, adapted from Table 3.8, entry on 'Illicit drug offences', p 91.

²³ The duration of imprisonment is the mean length of time that the prisoner is actually sentenced to spend in custody. This will be the non-parole period when the sentence is divided into a non-parole period and eligibility for parole. Where a non-parole period is not specified, the duration in custody is the total term of the sentence.

dealing, possession and manufacturing offences; it may seem surprising that the prison sentences for dealing are shorter than for possession, but the results depend on the drugs, quantities and circumstances involved. The average length of community service orders was much higher than in the Local Court, as would be expected.

Penalties by type of drug, for drug offences in higher courts in 2002²⁴

	Opiates	Cannabis	Amphetamines	Cocaine	Ecstasy
Full-time prison	108	24	132	47	26
Home detention	1	-	2	-	-
Periodic detention	6	5	23	7	9
Suspended sentence with supervision	4	13	24	6	10
Suspended sentence	2	7	15	4	4
Community service	1	2	13	-	7
Bond with supervision	1	6	13	4	3
Bond without supervision	1	4	6	2	4
Bond without conviction	-	-	1	-	2
Fine	-	1	1	-	1
Rising of the court	-	-	-	-	1
Total	124	62	230	70	67

Full-time imprisonment was the most common penalty for offences finalised in the higher courts in 2002 involving opiates, cannabis, amphetamines, cocaine and ecstasy. In particular, the vast majority of heroin offences were dealt with by full-time imprisonment (108 out of 124). Fewer cases of cannabis were handled in the higher courts, which reflects the reality that most cannabis cases are prosecuted summarily in the Local Court.

(iv) Higher courts – Judicial Commission

The following table is compiled from Judicial Commission data on the sentences imposed in the higher courts between July 1996 and June 2003 for the most common drug supply offence: supplying less than a commercial quantity of a prohibited drug. Sentences are compared for 3 drugs – heroin, cocaine, and amphetamines. The commercial quantity in the case of these drugs is 250 grams.

²⁴ New South Wales Criminal Courts Statistics 2002, NSW Bureau of Crime Statistics and Research (Statistical Services Unit), 2003. Adapted from Table 3.7a, p 88. Only a selection of drugs from the table is presented here.

**Supply prohibited drug²⁵ – less than commercial quantity
Higher courts – sentences from July 1996 to June 2003**

Penalty	Heroin percent	Heroin number	Cocaine Percent	Cocaine number	Amphet percent	Amphet Number
s.10 dismissal	0%	0	0%	0	0%	0
s.10 bond	0%	0	0%	0	1%	4
Rising of court	0%	0	0%	0	0%	0
Fine	0%	2	1%	1	0%	2
s.9 bond	1%	6	2%	3	3%	22
s.9 with supervision	6%	27	9%	14	12%	77
Community service order	5%	21	8%	12	14%	90
s.12 suspended sentence	1%	6	6%	9	5%	34
s.12 with supervision	4%	18	7%	10	10%	62
Periodic detention	9%	38	18%	27	15%	94
Home detention	1%	6	1%	1	1%	7
Prison	70%	293	48%	72	38%	241
Total cases		417		149		633

Firstly, these statistics show that there were more sentences passed for supplying amphetamines (633) than for heroin (417) and cocaine (149). Full-time imprisonment was the most frequently imposed sentence, as would be expected for supply offences in the higher courts. The greatest percentage of prison sentences was imposed for heroin supply (70%), with a significant drop for cocaine supply (48%), and lower again for amphetamines (38%). This could be interpreted as reflecting the comparative degree of severity attached to these drugs by the court system. However, generalisations are difficult to make as the sentencing process also takes into account the circumstances of each offence, and the presence of aggravating or mitigating factors.

The Judicial Commission conducted a study into common offences and the use of imprisonment in the higher courts in 2002.²⁶ The 20 most common offences sentenced in 2002 included 5 offences relating to the supply and importation of prohibited drugs.

²⁵ Section 25 of the *Drug, Misuse and Trafficking Act 1985*. Supply includes deemed supply: for more information on the concept of deemed supply see '**2.1 Explanation of terms**' on p 3.

²⁶ Jason Keane, Patrizia Poletti, Hugh Donnelly, 'Common Offences and the Use of Imprisonment in the District and Supreme Courts in 2002', *Sentencing Trends & Issues*, No. 30, March 2004, Judicial Commission of NSW. Available on the Judicial Commission website at <www.judcom.nsw.gov.au>

Most common offences sentenced by NSW higher courts in 2002²⁷

Rank	Offence	Legislation	No. cases	% cases
1	Robbery – armed or in company	<i>Crimes Act 1900, s 97(1)</i>	380	13.6
2	Supply drug – less than commercial quantity	<i>Drug Misuse and Trafficking Act 1985, s 25(1)</i>	260	9.3
3	Break, enter and commit serious indictable offence	<i>Crimes Act 1900, s 112(1)</i>	169	6.0
4	Malicious wounding / infliction of GBH	<i>Crimes Act 1900, s 35(1)</i>	121	4.3
5	Robbery or steal from person	<i>Crimes Act 1900, s 94</i>	114	4.1
6	Ongoing supply of prohibited drug	<i>Drug Misuse and Trafficking Act 1985, s 25A</i>	111	4.0
7	Aggravated B/E and commit serious indictable offence	<i>Crimes Act 1900, s 112(2)</i>	105	3.7
8	Assault occasioning ABH	<i>Crimes Act 1900, s 59(1)</i>	76	2.7
9	Aggravated robbery or steal from person	<i>Crimes Act 1900, s 95</i>	58	2.1
10	Use/possess weapon with intent	<i>Crimes Act 1900, s 33B(1)</i>	56	2.0
11	Aggravated robbery – armed or in company	<i>Crimes Act 1900, s 97(2)</i>	52	1.9
12	Aggravated sexual assault	<i>Crimes Act 1900, s 61J</i>	50	1.8
13	Dangerous driving occasioning death	<i>Crimes Act 1900, s 52A(1)</i>	48	1.7
14	Import drug – commercial quantity	<i>Customs Act 1901 (Cth), s 233B</i>	40	1.4
15	Import drug (not cannabis) – traffickable quantity	<i>Customs Act 1901 (Cth), s 233B</i>	39	1.4
16	Murder	<i>Crimes Act 1900, s 19A</i>	38	1.4
17	Dangerous driving occasioning GBH	<i>Crimes Act 1900, s 52A(3)</i>	36	1.3
18	Supply drug – commercial quantity²⁸	<i>Drug Misuse and Trafficking Act 1985, s 25(2)</i>	32	1.1
19	Malicious wounding/inflict GBH with intent	<i>Crimes Act 1900, s 33</i>	31	1.1
20	Defraud the Commonwealth	<i>Crimes Act 1900 (Cth), s 29D</i>	30	1.1
		Total for Top 20 offences	1846	65.9
		All remaining offences	955	34.1

²⁷ Ibid, Table 1, p 5. The analysis was based on offenders sentenced in the NSW District and Supreme Courts in the 2002 calendar year, as recorded by the Judicial Commission's Judicial Information Research System. When an offender was sentenced for multiple offences, only the principal offence (ie. the one attracting the highest penalty) was included in the sample. GBH = grievous bodily harm, ABH = actual bodily harm, B/E = break, enter.

²⁸ Ibid. Does not include large commercial quantity.

	TOTAL	2801	100.0
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The relative severity of sentences was compared by the Judicial Commission across the 20 most common offences. For the drug offences, prison sentences were most likely to be received for importation offences – in 100% of cases of importing a commercial quantity of prohibited drugs, and in 97.4% of cases of importing a traffickable quantity of a drug other than cannabis. Supplying less than the commercial quantity of a prohibited drug ranked the second lowest in prison sentences (42.3%), behind assault occasioning actual bodily harm (38.2%). By contrast, 90.6% of cases of supplying a commercial quantity of a prohibited drug attracted full-time imprisonment.

Most common offences sentenced in NSW higher courts in 2002 by penalty type²⁹

Rank	Offence	s.10	Fine	GBB	CSO	SS	PD	HD	Prison
1	Robbery – armed or in company	–	–	0.8	2.1	8.2	5.5	–	83.4%
2	Supply drug – less than commercial qty	1.2	0.4	8.5	8.1	26.2	13.5	–	42.3%
3	Break, enter, and commit SIO	0.6	–	4.7	1.2	10.7	1.2	–	81.7%
4	Malicious wounding/ inflict GBH	0.8	–	5.8	5.0	16.5	3.3	–	68.6%
5	Robbery or steal from person	–	–	3.5	1.8	14.9	5.3	0.9	73.7%
6	Ongoing supply prohibited drug	–	–	4.5	1.8	9.0	6.3	1.8	76.6%
7	Aggravated break, enter, and commit SIO	–	–	3.8	3.8	12.4	9.5	1.0	69.5%
8	Assault occasioning actual bodily harm	5.2	–	22.4	9.2	19.7	5.3	–	38.2%
9	Aggravated robbery or steal from person	–	–	1.7	–	8.6	5.2	–	84.5%
10	Use/possess weapon with intent	–	–	–	7.1	1.8	12.5	3.6	75.0%
11	Aggravated robbery armed or in company	–	–	–	–	–	1.9	–	98.1%
12	Aggravated sexual assault	–	–	–	2.0	–	4.0	–	94.0%
13	Dangerous driving occasioning death	–	–	2.1	6.3	10.4	12.5	2.1	66.7%
14	Import drug – commercial quant'y	–	–	–	–	–	–	–	100%
15	Import drug (not	–	–	–	–	–	2.6	–	97.4%

²⁹

ibid. Adapted from Table 2, p 14. Section 10 penalties include dismissal of charges under s 10(1)(a) and discharge on condition of entering into a good behaviour bond under s 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999*. These were divided into two separate columns in the original table. GBB = good behaviour bond under s 9, CSO = community service order, SS = suspended sentence, PD = periodic detention, HD = home detention, GBH = grievous bodily harm, SIO = serious indictable offence.

	cannabis) traffic'ble quantity								
16	Murder	-	-	-	-	-	-	-	100%
17	Dangerous driving occasioning GBH	-	-	2.8	-	19.4	22.2	-	55.6%
18	Supply drug - commercial quant'y	-	-	3.1	-	3.1	3.1	-	90.6%
19	Malic wound / inflict GBH with intent	-	-	-	-	-	3.2	-	96.8%
20	Defraud Commonwealth	-	-	3.3	-	26.7	16.7	-	53.3%

3. RELATIONSHIP BETWEEN DRUG USE AND CRIME RATES

This chapter explores the links between drug use and offending. The existence of a close connection between the two is widely accepted, but more difficult to identify is the *extent* to which the use of illicit drugs influences the commission of criminal offences.

3.1 Some preliminary issues

A recent bulletin from the Australian Institute of Criminology highlighted the complex nature of the relationship between drug use and criminal offending:

There is a general belief that the drug-crime link is causal. More importantly, it is assumed that drug use causes crime. The criminological evidence to support this belief is not as strong as some might imagine...

The common view, widely reflected in policy approaches here and overseas, is that at the very least drug use makes criminal involvement worse. Therefore action to reduce drug involvement (either through law enforcement or treatment) will probably reduce offending although it might not reduce the overall number of offenders.

Consequently one single model cannot account for the drug-crime relationship. Rather there are multiple paths that lead to drug use and crime. Research suggests that drug use and crime involvement have common origins. Factors such as poor social support systems, difficulty in school, membership of deviant peer groups, early contact with government services and a lack of access to economic support systems are common in the backgrounds of both drug users and criminals.³⁰

The question of which is more likely to occur first – drug use or offending – has been examined by the Australian Institute of Criminology in the Drug Use Careers of Offenders (DUCO) project.³¹ The focus of the project is the lifetime offending and drug habits of adult male sentenced inmates in four Australian jurisdictions: Queensland, Western Australia, Tasmania and the Northern Territory. Data was collected on the inmates between December 2000 and June 2001. Although New South Wales is not covered in the study, the results demonstrate that there is not a simplistic equation between drug use and crime:

- Criminal careers in most cases tended to begin with minor crime, escalating to regular and more serious forms of offending. For example, offenders with a history of property crimes (76% of the sample) began their criminal career around the age of 13 years with vandalism or shoplifting, graduating to offences such as break and enter and motor vehicle theft, then

³⁰ Australian Institute of Criminology, 'Does drug use cause crime? Understanding the drugs-crime link', *AICrime Reduction Matters*, No. 22, 1 April 2004.

³¹ Toni Makkai and Jason Payne, 'Key Findings from the Drug Use Careers of Offenders (DUCO) Study', *Trends & Issues in Crime and Criminal Justice*, No.267, November 2003, Australian Institute of Criminology. Available at <www.aic.gov.au>

trading in stolen goods.

- Drug use among the sample ‘almost invariably’ commenced by experimenting with cannabis, followed by amphetamines, heroin and cocaine.
- Of the offenders who admitted to illegal drug use, 54% reported offending prior to any use of illegal drugs, 17% reported using illegal drugs prior to committing any offence, and 29% reported that offending and drug use occurred concurrently (within the same year).
- The authors observe, ‘this lends little support to the argument that drugs cause crime. In fact, lifetime progression data indicate that drug use and crime are related primarily to the extent that both behaviours form part of a general deviant lifestyle.’³²
- There was some variation of results depending on the type of offender. Regular multiple offenders, regular property offenders and regular fraud offenders were more likely to report that offending commenced prior to the first use of illegal drugs. Conversely, regular drug sellers, homicide offenders and non-regular offenders were more likely to report drug use prior to or concurrent with their first offence.
- Offenders in the study were asked to provide reasons for committing the most serious offence for which they were in prison at the time of the study. Overall, 41% reported that their most serious offence was in some way related to illegal drugs or alcohol. However, as the majority of offenders did not articulate the nature of the connection, it was difficult to discern where offences were ‘caused’ by illegal drugs.

3.2 Studies on the connections between drug use and offending

Studies presented in this section explore the relationship between the use of prohibited drugs and criminal offences. Property offences including robbery, theft, and break and enter tend to be the most common offences committed to fund drug addictions. New South Wales material has been given priority, although several of the studies have a national scope. The broad issues covered by the studies in this section are:

- **3.2.1 Drug rates of detainees:** Many offenders detained by police are under the influence of drugs when they commit a crime.
- **3.2.2 Heroin and property crimes:** There is some evidence of a connection between heroin consumption rates and robbery trends.
- **3.2.3 Heroin drought:** The heroin shortage of 2001 affected drug use patterns but studies into its impact on crime are equivocal.
- **3.2.4 Methadone treatment:** There is some evidence that methadone maintenance treatment has a beneficial impact on crime prevention.
- **3.2.5 Cabramatta case study:** Cabramatta provides insight into drug-crime issues, due to its

³²

ibid, p 6.

high rates of heroin use and of certain property offences.

3.2.1 Drug usage among people detained by police

(i) DUMA data in 2002

The Drug Use Monitoring in Australia (DUMA) project measures drug use among adults who have been apprehended and detained at a police station. DUMA has been operating since mid-1999 and involves contributions from the Australian Institute of Criminology and State police services.³³

In 2002 there were 7 survey sites across Australia from which data was collected: Brisbane City watchhouse; Adelaide City watchhouse; Elizabeth Police Station cells in South Australia; Southport watchhouse on the Gold Coast in Queensland; East Perth lock-up; and the police stations at Bankstown and Parramatta in Sydney. The people detained at the survey sites were apprehended for various reasons, not necessarily specifically for a drug offence.

Detainees were asked if they had used any drugs, including medications, prior to their arrest by the police. 46% of detainees responded in the affirmative. 43% said they had sold illegal drugs for money at some point in their lives but only 10% conceded they were looking for illegal drugs at the time of their arrest.³⁴

Consistently across all sites, adult male and female detainees tested positive to a range of drugs. Due to the small sample size of the females, a breakdown of data on female detainees by type of charge was not provided. Adult male detainees who tested positive to drugs were most commonly being detained on a property charge or drug charge:

Male detainees who tested positive for drugs, by type of charge³⁵

Tested positive	Violent charge	Property charge	Drug charge	Drink driving	Traffic charge	Disorder charge	Breaches
Amphetamines	23%	36%	42%	15%	26%	19%	31%
Benzodiazepines	19%	29%	21%	9%	11%	18%	25%
Cannabis	54%	64%	67%	40%	60%	57%	60%

³³ Toni Makkai and Kiah McGregor, *Drug Use Monitoring in Australia: 2002 Annual Report on Drug Use Among Police Detainees*, Australian Institute of Criminology, Canberra, 2003. Available on the Australian Institute of Criminology website at <www.aic.gov.au/research/duma>

³⁴ Ibid, p 19.

³⁵ Ibid; the table has been created from the information on adult male detainees on pp 20-22. Where multiple charges were laid, the most serious charge was selected for the statistics. Figures add to more than 100% when detainees tested positive to more than one drug.

Opiates	16%	26%	17%	8%	12%	8%	15%
Any drug	67%	81%	84%	50%	71%	69%	78%
Any drug except cannabis	40%	60%	54%	27%	38%	35%	51%

Some of the other general results of the 2002 DUMA report were:

- 56% of detainees had a prior arrest in the past 12 months, excluding the current arrest.
- Of those, 47% tested positive to either opiates (eg. heroin), amphetamines or cocaine.
- 22% of detainees had been in prison in the past 12 months.
- Of those, 60% tested positive to opiates, amphetamines or cocaine.

Results with regard to individual drugs included:

- **Amphetamines:** in 2002 an average of 12% of male detainees tested positive to amphetamines in Bankstown and 19% in Parramatta. Across the 7 sites, an average of 28% of male detainees and 39% of female detainees tested positive.
- **Benzodiazepines:** an average of 12% of male detainees tested positive to benzodiazepines in Bankstown and 23% in Parramatta, compared to an average across the sites of 21% of males and 33% of females.
- **Cannabis:** use of cannabis was common at all the sites, none of which reported less than 39% of male detainees testing positive. The average across the sites was 59% of males and 55% of females.
- **Cocaine:** during 2002, 9% of detainees at Bankstown and 3% at Parramatta tested positive to cocaine, a significant fall from 2001 when 18% in Bankstown and 12% in Parramatta tested positive. The other sites detected even fewer detainees with recent cocaine use.
- **Opiates:** the Sydney sites had traditionally been higher than the other sites for the use of opiates, but during 2001 a steep decline in the percentage testing positive to opiates occurred in the Sydney sites and continued during 2002. In Parramatta 19% and in Bankstown 28% of all adult detainees tested positive to opiates. This compared to an average across the sites of 17% of males and 27% of females in 2002.

(ii) BOCSAR study using DUMA data

The NSW Bureau of Crime Statistics and Research in 2002 conducted a study of multiple drug use among persons detained in police custody. The study analysed data gathered in the first two years of the DUMA project from July 1999 to June 2001 at Bankstown and Parramatta Police Stations.³⁶ During this period, urine samples were collected from 1161 persons detained in police custody for a criminal offence at Parramatta (608 persons) or Bankstown (553 persons). Of those 1161 detainees who participated in the urinalysis testing:

³⁶ Jacqueline Fitzgerald and Marilyn Chilvers, 'Multiple drug use among police detainees', *Crime and Justice Bulletin*, Number 65, January 2002, NSW Bureau of Crime Statistics and Research.

- 69% tested positive to at least one type of drug.
- Cannabis was the drug most commonly used, with 45.5% of detainees testing positive to it, followed by opiates (38.2%) and benzodiazepines (22%).
- 21.4% of detainees tested positive to two drugs, while 21.7% tested positive to three or more drugs.
- Almost one third of the cannabis consumers used no other drug, making it the drug most likely to be solely used. Only 18.7% of the opiate consumers used no other drug, while 92% of the benzodiazepine consumers used another drug.

Therefore, the report confirmed that people detained by police have frequently used a number of drugs in combination. Dangerous combinations of drugs such as benzodiazepines and opiates, or benzodiazepines and methadone, were detected. The authors observed that, 'Multiple drug use can increase the risk of overdose, and affect users physically and mentally.'³⁷

3.2.2 Impact of heroin dependence on robbery trends

A study by the Bureau of Crime Statistics and Research, published in October 2003, was designed to estimate the contribution of heroin dependency rates to the increase in robbery in New South Wales between 1966 and 2000:³⁸

- The annual rate of deaths from heroin overdoses (per million males aged 15-44 years), compared with the robbery rate (per 100,000 of the population) for the years 1966-2000 showed a trend upwards for both rates and a strong correlation between the two.
- There was specifically a correlation between an increase in the number of dependent heroin users in New South Wales and an increase in the recorded rate of robbery. The study estimates that, since 1966, each 10% increase in the annual number of dependent heroin users has led to an increase of approximately 6% in the New South Wales robbery rate.³⁹

With regard to the policy implications of these findings for reducing the rate of robbery, the authors conclude:⁴⁰

On the available evidence, then, it would seem prudent for authorities to pursue a

³⁷ Ibid, p 4.

³⁸ Marilyn Chilvers and Don Weatherburn, 'The impact of heroin dependence on long-term robbery trends', *Crime and Justice Bulletin*, Number 79, October 2003, NSW Bureau of Crime Statistics and Research.

³⁹ Depending on the statistical model used, a 10% increase in dependent users resulted in a 5.6% or 6.4% increase in the robbery rate: *ibid*, p 6.

⁴⁰ *Ibid*, p 7. Footnotes within the quote have been added to clarify certain aspects and were not in the original quote.

range of strategies to reduce the incidence of robbery, rather than focusing on any one strategy. Increasing the availability of treatment for heroin-dependent robbers, while at the same time endeavouring to make heroin harder to get and more expensive,⁴¹ should help reduce the number of people motivated to commit robbery to fund their purchases of heroin. Increasing the clear-up rate⁴² for robbery, on the other hand, should help reduce robbery through the more familiar mechanisms of deterrence and incapacitation.

3.2.3 The heroin shortage and its impact on crime

In late 2000, a heroin shortage became apparent in Sydney and other Australian capital cities. Although it is difficult to give a definitive explanation for the shortage, a contributing factor was the severe climactic drought in the opium poppy growing regions of Myanmar (formerly Burma). This affected the market because most of Australia's heroin comes from the 'Golden Triangle' region of Burma, Laos and Thailand in South-east Asia.

Another possible influence could have been policing operations. The amount of heroin seized by authorities rose significantly from the late 1990s onwards. For example, in 1993-1994 around 50 kgs of heroin were seized in Australia, whereas in 1998-1999 more than 500 kgs were seized.⁴³ State and Federal police also arrested a number of significant figures involved in importing and distributing heroin in Australia.

Various studies have endeavoured to assess the impact of the heroin drought on drug use and crime rates. A selection will be considered here.

(i) The Australian Heroin Drought and its Implications for Drug Policy – Bureau of Crime Statistics and Research (2001)

Data for the study was obtained from a variety of sources including: a survey conducted with 165 heroin users around Cabramatta between May and June 2001; Health Department records of syringes dispensed and admissions to methadone treatment; ambulance service records of

⁴¹ The authors cited research by the Bureau of Crime Statistics and Research, showing that a fall in robbery rates was closely associated with the drop in heroin consumption in early 2001, even controlling for other factors that might have influenced the incidence of robbery, such as the rate of unemployment: Don Weatherburn, Neil Donnelly and Marilyn Chilvers, 'The Impact of the Heroin Shortage on Robbery Trends in NSW', Paper presented at the 2003 Australian Society of Criminology Conference, Sydney, 1-3 October 2003.

⁴² A decrease of 10% in the police clear-up rate for robbery caused an increase of over 3% in the robbery rate: Marilyn Chilvers and Don Weatherburn, 'The impact of heroin dependence on long-term robbery trends', *Crime and Justice Bulletin*, Number 79, October 2003, NSW Bureau of Crime Statistics and Research, p 6.

⁴³ Don Weatherburn, Craig Jones, Karen Freeman and Toni Makkai, 'The Australian Heroin Drought and its Implications for Drug Policy', *Crime and Justice Bulletin*, No. 59, October 2001, NSW Bureau of Crime Statistics and Research, p 2.

overdoses; police records of offences and arrests; and urine test results among people detained in police custody, recorded by the Drug Use Monitoring in Australia (DUMA) program.

The study confirmed that a heroin shortage commenced towards the end of 2000:

- The price of heroin increased – for example, the average cost of half a gram of heroin rose from \$138 before Christmas 2000 to \$186 after Christmas, while the average cost of a gram rose from \$218 to \$381.
- The majority of respondents (71%) regarded heroin as harder to get after Christmas 2000 than before.
- The amount of needles and syringes dispensed in Cabramatta was 59% lower in the first half of 2001 than in the last half of 2000, indicating a significant drop in heroin use.
- A sharp fall in heroin overdoses in Cabramatta was also apparent between the last half of 2000 and the first half of 2001, because of reduced use or reduced purity or both.
- Admissions to methadone treatment increased after December 2000.
- Among heroin users who said they were using other drugs to make up for the difficulty or expense of getting heroin, the predominant tendency was to use more cocaine. Notable proportions of heroin users also increased their consumption of cannabis, speed, or benzodiazepines.

The consequences for crime rates were more difficult to substantiate:

- 49% of survey respondents said they usually committed crime to fund their heroin purchases. 42% of those said they were committing more crime after Christmas 2000.
- Police records for retail theft and car theft in the Fairfield Local Government Area (containing Cabramatta), and for the State as a whole (as crime may be committed outside the area of heroin purchase), did not provide any evidence of an upward trend after Christmas 2000. Records for robbery offences and break, enter and steal from a dwelling did show an increase in the first few months of 2001 but had returned to former levels by June.

The authors conclude that, ‘The expectation that increased heroin prices would immediately lead to higher property crime rates...has not so far been borne out.’⁴⁴

⁴⁴ *ibid*, p 14.

(ii) NSW Recorded Crime Statistics 2001 – Bureau of Crime Statistics and Research (2002)

In April 2002, the Director of the Bureau of Crime Statistics and Research, Dr Don Weatherburn, releasing the *New South Wales Recorded Crime Statistics 2001*, acknowledged that the heroin drought may have contributed to the 34% rise in robbery offences using a firearm between January 2000 and December 2001.⁴⁵

The ‘statistically significant’ increase in robbery with a firearm centred on 4 areas of the State, all in the Sydney metropolitan area: Blacktown, Canterbury-Bankstown, St George-Sutherland and Central Western Sydney. According to Dr Weatherburn, ‘Heroin users who wanted to maintain their level of heroin use... may have been tempted to commit more robberies to purchase their supplies of heroin. That may be why the increases in robbery are restricted to just a few areas.’⁴⁶

(iii) DUMA Program Annual Report 2002

As stated above [see ‘3.2.1 Drug usage among people detained by police’ on p 23] the Drug Use Monitoring in Australia (DUMA) program examines drug use patterns among persons detained by the police at 7 sites across Australia, including Bankstown and Parramatta Police Stations. Analysis of trends in drug use indicated that the impact of the heroin drought on drug use rates was nationwide.⁴⁷

- Opiate use declined in all sites around the time of the heroin shortage.
- The decline in the percentage of detainees testing positive to opiates occurred in Bankstown in mid-2000 and Parramatta in the first quarter of 2001. The heroin shortage seemed to take another three months to impact on the results in East Perth and Southport (Gold Coast). The report deduced, ‘This would indicate that while the opiate markets differ across sites, all sites were in some way affected by the heroin shortage and are also showing signs that heroin is returning to the street-level markets.’⁴⁸
- During 2002 there was an increase in the percentage testing positive to opiates but it did not return to the levels detected in 2000.

⁴⁵ Jacqui Allen, Marilyn Chilvers, Peter Doak, Derek Goh, Tracy Painting and Mark Ramsay, *New South Wales Recorded Crime Statistics 2001*, NSW Bureau of Crime Statistics and Research, 2002, pp 4, 8.

⁴⁶ NSW Bureau of Crime Statistics and Research, *Media release*, ‘2001 – NSW Recorded Crime Statistics’, 3 April 2002.

⁴⁷ Toni Makkai and Kiah McGregor, *Drug Use Monitoring in Australia: 2002 Annual Report on Drug Use Among Police Detainees*, Australian Institute of Criminology, Canberra, 2003, pp 17-19. Available at <www.aic.gov.au/research/duma>

⁴⁸ *Ibid*, p 18.

The DUMA report also examined whether heroin was being substituted with other drugs during the shortage:

- Cocaine use increased in the Sydney sites around the time of the heroin shortage, with the percentage testing positive to cocaine decreasing as heroin became somewhat more available throughout 2002. However, the authors believed that the increase in the use of methamphetamine and cocaine in the Sydney sites around the time of the heroin shortage was mainly caused by those heroin users still left in the market supplementing their heroin use with other drugs, rather than ‘switching’ to other drugs.⁴⁹
- Among the sites in general there was little evidence of users switching from heroin to methamphetamine and cocaine. That is, the decline in heroin in 2001 was not met by the same level of average increase in methamphetamine and cocaine use.

(iv) Australian Illicit Drug Report 2001-2002

Produced by the Australian Crime Commission with the endorsement of the Australasian Police Ministers’ Council, the *Australian Illicit Drug Report* for the 2001-2002 financial year showed the impact of the heroin drought on arrest rates.⁵⁰ Like the DUMA program’s *Annual Report 2002*, it also found evidence of heroin being supplemented with other drugs, rather than substituted:

- There was a continuing decline in arrests for heroin-related offences, which dropped to well below 1996 levels. Domestic heroin seizures continued to fall.
- The arrest data for the 2001-2002 reporting period did not provide evidence of traditional heroin users consuming alternative drugs to substitute for the lack of heroin. Total arrests of ‘consumers’ (those who possess drugs for their own consumption) and ‘providers’ (those who deal drugs to others) for potential substitution drugs like cocaine and amphetamine-type stimulants also fell slightly.
- The line between drug of choice and drug of availability became increasingly indistinct. The heroin shortage was accompanied by an increasing number of users supplementing heroin with pharmaceutical opiates and benzodiazepines.

⁴⁹ Across the DUMA sites, those persons still using heroin through the shortage became more likely to use other drugs as well: in 2000, 26% of those who tested positive to heroin also tested positive to cocaine and/or methamphetamine, increasing to 49% during the heroin shortage in 2001, and decreasing again to 29% in 2002.

⁵⁰ *Australian Illicit Drug Report 2001-2002*, Australian Crime Commission, released in March 2003. Accessed on the Commission’s website at <<http://www.crimecommission.gov.au>> under ‘Publications’. The sources of the data include State and Territory police services, the Australian Federal Police, the Australian Customs Service, and the National Crime Authority.

(v) *Heroin levels since 2002*

There were various indications that the availability and purity of heroin were increasing throughout 2002, for example:

- In early 2002, the Director of the Alcohol and Drug Service at St Vincent's Hospital, Dr Alex Wodak, attributed a rise in heroin overdoses presented at the hospital's emergency department, and in ambulance call-outs to heroin overdoses, to an easing of the heroin drought.⁵¹
- The National Drug and Alcohol Research Centre's analysis in November 2002 of the medically supervised injecting centre at Kings Cross found that heroin use had increased from 50% of all drugs administered at the centre in May 2002, to 82% in October 2002.⁵²
- The *Australian Illicit Drug Report 2001-2002* found that: more heroin became available in 2002 in Sydney, Melbourne and Canberra, although not reaching pre-drought levels; the number of incidents of heroin detection by NSW Police rose in 2002; and Sydney prices had somewhat decreased – a 350 gram block was worth \$50,000-\$65,500, compared to \$150,000 at the height of the drought in February 2001.⁵³

3.2.4 *Impact of methadone treatment on crime rates*

In March 2004, the Bureau of Crime Statistics and Research released the results of a study into the effectiveness of methadone maintenance treatment in preventing crime.⁵⁴ The study was based on the court appearance records of 11,126 people who were enrolled in the public methadone program in New South Wales between 1 January 1999 and 31 December 2000.

The recorded offending rates of the methadone users were examined to see whether they were lower during periods when they were on the methadone program than off the program. A reduction of officially recorded offending rates was found for all age groups in both men and women when they were on the methadone program.

⁵¹ Linda Morris, 'Fears heroin drought may have ended', *The Sydney Morning Herald*, 16 February 2002, p 6.

⁵² Daniel Hoare, 'Heroin drought breaks for injecting room users', *The Australian*, 25 November 2002, p 5.

⁵³ Australian Crime Commission, *Australian Illicit Drug Report 2001-2002*, March 2003, pp 37-38.

⁵⁴ Bronwyn Lind, Shuling Chen, Don Weatherburn and Richard Mattick, 'The Effectiveness of Methadone Maintenance Treatment in Controlling Crime: An Aggregate-Level Analysis', *Crime and Justice Statistics Bureau Brief*, Issue Paper No. 24, March 2004, NSW Bureau of Crime Statistics and Research.

Main findings of the study included:⁵⁵

- For every 100 males under the age of 30 years on the methadone program for one year, there was a reduction of 10 charges of any type and 8 theft charges;
- For every 100 males aged 30 years and over on the methadone program for one year, there was a reduction of 20 charges of any type and 11 theft charges;
- For every 100 females under the age of 30 on the methadone program for one year, there was a reduction of 44 charges of any type and 23 theft charges;
- For every 100 females aged 30 years and over on the methadone program for one year, there was a reduction of 27 charges of any type and 20 theft charges.

The authors also made further calculations to allow for offences that were not reported or did not result in the prosecution of an offender. The authors estimate that, for every 100 persons in methadone treatment for one year in New South Wales, there are 12 fewer robberies, 57 fewer break and enters and 56 fewer motor vehicle thefts.⁵⁶

3.2.5 Cabramatta case study

The south-western Sydney suburb of Cabramatta illustrates that ‘many drug dependent people resort to property crime to fund their drug use.’⁵⁷ Statistics from the late 1990s and early 2000s showed that Cabramatta Local Area Command (LAC) had higher rates of recorded incidents for drug offences and higher rates of certain property offences than the New South Wales average. For example, in 2000, Cabramatta LAC accounted for 26.4% of possession of narcotics offences and 18.6% of narcotics dealing/trafficking offences but less than 0.9% of the population of New South Wales. In 2000, police at Cabramatta LAC detected drug offences at 5 times the rate of New South Wales as a whole and narcotics offences at 20-30 times the rate of New South Wales.⁵⁸

With regard to property offences from January 1998 to December 2000, the annual rates per 100,000 of the resident population for offences of break and enter dwelling, possess housebreaking implements, motor vehicle theft, and steal from person, were consistently higher in Cabramatta LAC than the corresponding rates for New South Wales.⁵⁹ The figures for 2001

⁵⁵ Ibid, p 7.

⁵⁶ Ibid, p 8.

⁵⁷ Peter Doak, ‘Drug and Theft Offences in Cabramatta Local Area Command: 1998 to 2000’, *Crime and Justice Statistics Bureau Brief*, May 2001, NSW Bureau of Crime Statistics and Research, p 2. The term ‘narcotics’ in data from the Bureau of Crime Statistics and Research refers chiefly to heroin. For further information on narcotics see ‘2.1 Explanation of terms’ on p 3 of this briefing paper.

⁵⁸ Ibid, p 4.

⁵⁹ Ibid, p 2.

show that Cabramatta was relatively higher than New South Wales in most drug offences and numerous property offences:

Crime rates per 100,000 population in Cabramatta and NSW for 2001⁶⁰

Offence categories	Cabramatta rate	NSW rate
Property offences:		
Robbery without weapon	356.1	122.3
Robbery with firearm	48.0	13.5
Robbery with weapon (not firearm)	239.9	65.7
Break and enter dwelling	1363.5	1221.6
Break and enter non-dwelling	564.6	796.9
Motor vehicle theft	893.0	822.5
Steal from motor vehicle	878.3	1384.9
Steal from retail store	138.4	316.1
Steal from dwelling	234.3	481.5
Steal from person	387.5	253.7
Malicious damage to property	819.2	1471.8
Drug offences:		
Possess and/or use cocaine	169.8	7.0
Possess and/or use narcotics	435.4	16.7
Possess and/or use cannabis	234.3	219.3
Possess and/or use amphetamines	29.5	32.4
Dealing, trafficking in cocaine	81.2	3.8
Dealing, trafficking in narcotics	293.4	7.1
Dealing, trafficking in cannabis	14.8	15.1
Dealing, trafficking in amphetamines	20.3	11.9

However, there was not necessarily a simple corresponding pattern between rates of drug offences and rates of total theft offences. In 1998-2000 there was a general increase in the number of recorded theft offences (excluding receiving stolen goods offences), while there was a decline in the number of drug offences detected by the police.⁶¹

Trends in crime in Cabramatta between January 2000 and December 2001 for drug offences varied depending on the type of drug and the type of activity. For example, incidents of cocaine possession and dealing increased, while there was a significant downward trend in the incidence of

⁶⁰ Adapted from: Marilyn Chilvers, Victor Korabelnikoff and Mark Ramsay, 'Recent trends in recorded crime and police activity in Cabramatta', *Crime and Justice Bulletin*, Number 70, May 2002, NSW Bureau of Crime Statistics and Research, Table 1, p 2.

⁶¹ Peter Doak, 'Drug and Theft Offences in Cabramatta Local Area Command: 1998 to 2000', *Crime and Justice Statistics Bureau Brief*, May 2001, NSW Bureau of Crime Statistics and Research, p 4.

narcotics possession. These trends may have been a consequence of the heroin drought: see '3.2.3 *The heroin shortage and its impact on crime*' on p 26 for further details. However, while the number of recorded incidents of possessing and dealing/trafficking in narcotics decreased across New South Wales, the incidence of dealing/trafficking in narcotics remained stable between 2000 and 2001 in Cabramatta.⁶² As for property offences in Cabramatta, there was a significant downward trend between January 2000 and December 2001 in recorded incidents of robbery (without a weapon, and with a non-firearm weapon), motor vehicle thefts, and stealing from motor vehicles. Incidents of robbery with a firearm, break and enter (dwelling and non-dwelling), steal from retail store, steal from dwelling, and steal from person remained stable.⁶³

Controversy in the year 2000 about the level of drug-related crime and deficiencies in policing in Cabramatta led the Legislative Council's General Purpose Standing Committee No.3 to conduct a comprehensive inquiry. The Terms of Reference were to inquire into and report on:

1. the adequacy of police resources in Cabramatta, especially in relation to drug crime;
2. the impact, if any, of the Crimes Index⁶⁴ on Cabramatta policing;
3. the effectiveness of the Police Service in addressing the needs and problems of Cabramatta residents and, in particular, people from non-English speaking backgrounds.

Drug offences, murder, attempted murder, kidnapping and other crimes that community members believed were intensifying in Cabramatta were not measured by the Crimes Index. Police Service management in 1999-2000 pointed to the Crimes Index to assert that crime had improved in the Cabramatta area, but Cabramatta was the highest ranked Local Area Command for drug offences.⁶⁵

The Committee's report entitled *Cabramatta Policing* was published in July 2001. The Government had already responded to problems highlighted in the inquiry by announcing, on 27 March 2001, the Cabramatta Anti-Drug Strategy. The 4 main components of the Cabramatta

⁶² Marilyn Chilvers, Victor Korabelnikoff and Mark Ramsay, 'Recent trends in recorded crime and police activity in Cabramatta', *Crime and Justice Bulletin*, Number 70, May 2002, NSW Bureau of Crime Statistics and Research, Table 1, and p 3.

⁶³ Ibid, Table 1, and p 5.

⁶⁴ This performance indicator was used by the NSW Police Service to compare progress in reducing crime in different Local Area Commands in 5 types of reported crime: (i) motor vehicle theft, (ii) assault, (iii) stealing, (iv) robbery, and (v) break, enter and steal. These offences were considered high frequency nuisance crimes that impacted on the majority of the population: Parliament of New South Wales, Legislative Council, General Purpose Standing Committee No.3, *Cabramatta Policing*, July 2001, Parliamentary Paper 864, paragraphs 4.9-4.13.

⁶⁵ Ibid, Chapter 4, especially paragraphs 4.13-4.15. See also Chapter 5 on the relations between police and the community.

Anti-Drug Strategy were.⁶⁶

- *Criminal justice plan* – with new legislation to target drug houses, illegal firearms and other problems.
- *Compulsory drug treatment* – through the MERIT program in the Local Court [see **Chapter 4** of this briefing paper] and the police drug bail scheme, which enables police to grant bail on the condition that the defendant attend drug assessment and treatment. Extra drug treatment places and crisis accommodation places were pledged.
- *Local crime prevention plan* – to build partnerships with the community. For instance, the City Watch program aimed, through regular meetings, to bring local police, business and the community together to develop solutions to local crime.
- *Prevention and early intervention plan* – to assist families and young people at risk of drug addiction, for example, through street outreach and school programs.

The General Purpose Standing Committee No.3 produced a further *Review of Inquiry into Cabramatta Policing*, published on 26 September 2002, to assess the Government's implementation of the recommendations of the report on Cabramatta policing. The review asked 3 main questions:

1. Were the resources that were promised actually delivered to Cabramatta?
2. Has drug-related crime in Cabramatta been reduced over the last 12 months?
3. Has the relationship between local police and the community improved since the problems identified in the main inquiry?

The Committee found that the Government had implemented most of the initiatives it announced for Cabramatta in March 2001, and that drug-related crime declined in Cabramatta between March 2001 and March 2002, although significant problems remained. On the subject of police and community relations, the Committee found that further progress needed to be made, especially in the Police Service's approach to multicultural policing.

⁶⁶

NSW Government, *Cabramatta: A Report on Progress*, April 2002, especially Part 1.

4. MERIT PROGRAM UPDATE

4.1 Brief overview

(i) Establishment

The creation of the Magistrates Early Referral Into Treatment program (MERIT) was influenced by the support for diversionary initiatives at the New South Wales Drug Summit held at Parliament House in May 1999, and the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) program in Victoria.⁶⁷ The MERIT program was piloted at Lismore in 2000, extended to Illawarra and south-west Sydney in 2001, and subsequently spread to other locations. The basic objective is to divert less serious offenders who have drug problems from the Local Court into a range of treatment and rehabilitation services.

(ii) Jurisdiction

MERIT is available in many Local Courts across New South Wales. Consequently, the offence with which the defendant has been charged must be able to be prosecuted summarily before the Local Court. Although MERIT is not authorised by specific legislation, a Local Court Practice Note issued by the Chief Magistrate on 20 August 2002 outlines the guiding principles. The delivery of the program requires interagency co-operation, including between the Legal Aid Commission, Police Prosecutors, the Department of Health, and the Probation and Parole Service.

(iii) Pre-plea aspect of program

A distinctive feature of MERIT is that it targets defendants at the pre-plea stage. In other words, before the defendant has entered a plea to the charge, the Magistrate can grant bail on the condition that the defendant complies with the treatment regime. This allows defendants to focus on drug treatment without deciding on a plea. By contrast, the adult Drug Court deals with more serious offenders, who are highly likely to receive a prison sentence. They plead guilty and have their sentence suspended to participate in the program.

(iv) Eligibility

To be considered for entry to the MERIT program, a defendant is required to:

⁶⁷ General information on MERIT was obtained from: Bruce Flaherty and Joanne Jousif (NSW Attorney General's Department), 'MERIT: Magistrates Early Referral into Treatment', Paper presented at the Crime Prevention Conference, Sydney, 12-13 September 2002; and MERIT: Magistrates Early Referral Into Treatment, *Annual Report 2002*, Crime Prevention Division, NSW Attorney General's Department, December 2003. The CREDIT program has operated in the Magistrates' Court of Victoria since 1998. For further information visit the website at <www.magistratescourt.vic.gov.au> and select 'Parallel and Support Services'.

- be eligible and suitable for release on bail;
- be charged with offences that can be prosecuted summarily in the Local Court;
- not have outstanding offences for violence or sexual assault;
- have an illicit drug use problem;
- have suitable treatment programs available to him or her.

(v) Referral and assessment

Potential clients may be referred by police, Legal Aid Commission lawyers, private legal practitioners and Magistrates, or may refer themselves. A team of health workers employed by the local Area Health Service assesses the referred defendants.⁶⁸ The assessment covers drug use problems, family and social situation, medical problems, mental health, and potential to engage in treatment. The MERIT team provides a written report to the Magistrate recommending whether or not the defendant should enter the MERIT program.

(vi) Treatment and supervision

Those accepted into the program undergo approximately 3 months of supervised drug treatment, tailored to their individual needs. Specialised drug treatment available in the MERIT program includes detoxification, residential drug rehabilitation, methadone therapy, and counselling. Another aspect of the program is increased judicial supervision, usually in the form of additional court mentions to monitor the defendant's progress.

(vii) Breach or completion

The Magistrate may withdraw a defendant from the program for committing further offences, failing to appear in court, or not complying with other bail conditions. Upon the defendant's completion of the program, the Magistrate receives a written report on the defendant's participation. This is taken into account at the final hearing and sentencing of the defendant.

4.2 MERIT Annual Report 2002

The *MERIT Annual Report 2002*, published in December 2003, gives a statewide update of the MERIT program for the period January to December 2002.⁶⁹

⁶⁸ There is one MERIT Team for each Area Health Service, often servicing multiple courts. The members of each MERIT Team have a range of professional backgrounds such as drug and alcohol counselling, psychology and nursing: *MERIT: Magistrates Early Referral Into Treatment, Annual Report 2002*, Crime Prevention Division, NSW Attorney General's Department, December 2003.

⁶⁹ *MERIT: Magistrates Early Referral Into Treatment, Annual Report 2002*, Crime Prevention Division, NSW Attorney General's Department, December 2003. Information is reproduced from the Executive Summary on pp 4-6 and Chapter 15 on pp 48-50.

Distribution of program: At the beginning of 2002, MERIT was operational at 11 Local Courts in 3 Health Areas.⁷⁰ By the end of the period, coverage had expanded to 30 courts in 14 Health Areas.

Referral and acceptance rate: The growth in the number of referrals in the period increased on a monthly basis from 60 in January 2002 to 165 in October 2002, before experiencing a seasonal fall. In total, there were 1072 referrals in 2002, of which 610 (57%) were accepted into the MERIT program. Of the acceptances, 305 (50%) completed the program.

Participant profile: The mean age of a referred person was 27.3 years and 62% of all referrals were aged under 30 years. This age pattern was broadly similar for males and females. Overall, participants had lower levels of education and a lower level of employment than the Australian population. They were overwhelmingly male and Australian-born, with English as their first language and a substantial criminal history. Females showed little difference from males in their demographic profiles. Theft and related offences were the most common charges against those accepted into the program. These accounted for 36% of charges recorded against those entering the program. 24% of charges related to illicit drugs and 13% to road and traffic offences.

Drug profile: Heroin was the principal drug of concern for 45% of program participants, followed by cannabis (25%) and amphetamines (24%). A significant number were assessed as having problems with multiple drugs. Nearly two thirds of program acceptances reported having injected in the last 3 months.

Treatment: A high proportion of those accepted onto the program (71%) reported having received previous treatment for drug problems, whereas 26% were being exposed to drug treatment for the first time. Many participants experienced several treatment options. There was insufficient data to ascertain if program success could be attributed to any particular type of treatment.

Completion rates:

- The principal drug used by program participants appeared to be related to completion rates. Those whose principal drug was amphetamines had the lowest completion rate at 36%, while heroin rated 49%. Those participants who principally used cannabis were more likely to complete the program (63%).
- Program completion also had a statistically significant relationship to accommodation. Those living in privately owned rather than rented or other accommodation were more likely to complete the program. A large proportion of this group lived with their parents, which may represent a more stable and supportive arrangement.
- Women accepted onto the program had a comparable completion rate to men.
- Aboriginal people's rate of acceptance into the program was similar to non-Aboriginal

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'Health Area' means the geographical area covered by an Area Health Service of the NSW Department of Health.

people. However the Aboriginal completion rate was lower.

- The incidence of previous criminal convictions and prison sentences appeared similar for people who completed and did not complete the program.
- Recent drug injectors (63% of those accepted onto MERIT) had a lower completion rate.
- Available data on sentence outcomes indicated that those completing the program were less likely to receive custodial sentences.

4.3 Evaluation of the Lismore MERIT Pilot in 2003

The pilot of the MERIT program began at Lismore Local Court in July 2000. The Attorney General's Department commissioned the former Southern Cross Institute of Health Research⁷¹ to conduct an evaluation of the Lismore pilot. The report of the evaluation was completed in October 2003.⁷²

Referrals: The Lismore MERIT Pilot Program (LMPP) was designed as an early intervention program, with the expectation that many participants would be referred by the police shortly after arrest. However, the evaluation found that only 11% of participants were referred by police, with the majority (64%) referred by the Magistrate. As there could be up to 4 weeks between a person being charged and their first court appearance, this created delays in assessment and treatment.

Acceptance onto program: The target participants of the LMPP were adult defendants at Lismore and surrounding Local Courts, who had a demonstrable drug problem, were eligible for bail, and who were motivated to engage in treatment. During the first two years of operation the LMPP recruited 238 participants for 266 program encounters, with the majority (72%) of those referred accepted onto the program. There was no evidence that Aboriginal people were less likely to be accepted, if referred and assessed.

Participant profiles: The participants were predominantly male, unemployed, and users of multiple classes of illicit drugs. Heroin (54%) was the most common principal drug of concern, with amphetamines (18%) and cannabis (23%) also common. The median age was 29 years, and 16% of participants were Aboriginal. Most participants had a long history of drug abuse, with only 14% having never injected. Recidivism was common, with 85% having at least one prior conviction and 61% having previously been imprisoned. Many had multiple charges current on referral to the LMPP, with 55% being charged with theft offences, 46% with drug offences, and

⁷¹ The Southern Cross Institute of Health Research has been incorporated into the Northern Rivers University Department of Rural Health, which is a joint venture of the University of Sydney and Southern Cross University.

⁷² Megan Passey (ed), *Evaluation of the Lismore MERIT Pilot Program – Final Report*, Northern Rivers University Department of Rural Health, October 2003. Accessed from the website of the Crime Prevention Division of the NSW Attorney General's Department at <www.lawlink.nsw.gov.au/cpd> Choose 'Resources'. The findings are reproduced from the Executive Summary on pp ix-xii and Chapter 10, 'Final Discussion and Conclusions'.

22% with driving offences.

Completion of program: Half of the participants who started the program completed it. Although some participants were able to do so within the 3 months initially planned, some needed longer, with an average time on the program of 116 days (3.75 months) for completers. The program allows some flexibility in the time allowed for completion, at the discretion of the Magistrate. The analysis of characteristics associated with program completion in the Lismore evaluation echoed those of the statewide *Annual Report 2002*: see above at 4.2 on p 36. Those participants whose principal drug was heroin or amphetamines were less likely to complete the program. Those living in privately owned accommodation were more likely to be successful. There were no differences in completion between those who had previously been imprisoned, and those who had not. Aboriginal participants had a lower completion rate than non-Aboriginal. Reasons suggested by the Lismore evaluation report for the latter finding were: low literacy among the Aboriginal participants and the use of written handouts in the program; isolation of Aboriginal participants who were often the only Aboriginal in the group; and poor liaison with Aboriginal legal agencies.⁷³

Sentences received: Less severe sentences were imposed on participants who completed the program than on non-completers. Only one completer received a custodial sentence, whereas 38% of those who breached or were removed from the program received a custodial penalty. Similarly, the comparison of the actual sentences passed and the 'indicative' sentences provided by the Magistrate revealed that the actual sentences were lighter.

Re-offending rates: Using police charges as the indicator of re-offending showed that those who completed the program were significantly less likely to re-offend, and took longer to re-offend than those who did not complete the program. At any point in time, the non-completers were twice as likely to have re-offended as the completers.

Health and social functioning: Health and social functioning on entry to the program were generally very poor. Program completers achieved significant progress, with greater impact on psychological health than physical health. Participants reported a reduction in, or complete abstinence from drug use; improved life skills; better relationships with their family, especially children; more positive attitudes and greater self-esteem. Alcohol and drug workers and police who were interviewed supported these claims. The number of classes of drugs used by program completers also showed a significant reduction between the entry and exit interviews, and this result was maintained at the follow-up interview.

Economic assessment: The assessment of the costs and benefits of the LMPP for the financial year 2000-2001 indicated considerable savings. A 'conservative estimate' was made of an annual net benefit of \$914,214 for a yearly average of 55 program completers, or \$16,622 per completer. Furthermore, it was noted that a value could not be determined for a number of indirect and intangible benefits that may result from the program.

⁷³ Ibid, p 97.

Further improvement: The report found that although the LMPP had been successful overall there was still scope for:

- improving partnerships and communication, for example, through formalised memoranda of understanding, sharing of information and joint case planning;
- encouraging police referrals at the time of arrest;
- providing post-program support to completers – concern was expressed both by staff and participants that there was inadequate support after completion of the program, in part due to insufficient community-based drug and alcohol services;
- implementing strategies to better meet the needs of Aboriginal participants, for example, through employing an Aboriginal caseworker, and liaising more closely with Aboriginal agencies and communities;
- training staff in managing participants with mental health problems.

4.4 Survey of Magistrates by the Judicial Commission

A survey by the Judicial Commission of New South Wales, released in April 2004, examined the views of the magistracy on the operation of the MERIT program.⁷⁴ Most of the Magistrates surveyed rated the MERIT program highly in terms of their overall satisfaction.⁷⁵

Findings on specific issues included:

- **Length of program:** 56.1% of respondents believed that the 12 weeks duration of the treatment plan was generally an appropriate length. 24.4% disagreed, with most of these respondents suggesting that the program should be longer.
- **Pre-plea or unrestricted:** 55.6% of respondents disagreed that MERIT should operate only as a pre-plea diversionary option. Comments in this regard pointed out the importance of flexibility. For example, it may not be until examining the facts of the case or the offender's antecedents that drug dependency is highlighted as an issue and the Magistrate suggests MERIT as an option. Of those Magistrates who had been involved with MERIT, 69.8% said they had used the program post-plea, ie. after the defendant had entered a plea.
- **Condition of bail:** 87.5% of respondents thought that attendance on the MERIT program ought to be a specific condition of bail rather than a voluntary undertaking. Some of the reasons given for this view were that participants would have a greater incentive to comply with the program, and that the court would have greater ability to impose sanctions for breach

⁷⁴ Lynne Barnes and Patrizia Poletti, *MERIT Magistrates Early Referral into Treatment Program: A Survey of Magistrates*, Judicial Commission of New South Wales, March 2004. Data was based on responses from 59 Magistrates to a survey circulated in August 2003.

⁷⁵ On a scale from 1 to 5, where 1 represented 'not at all satisfied' and 5 meant 'very satisfied', 48.6% gave the program a score of 5 and 40.5% chose a score of 4: *ibid*, p 50.

of bail.

- **Limit on attempts:** 51.3% of respondents felt there should be a limit on the number of times a defendant may be permitted to participate in MERIT.
- **Impact on sentence:** A large majority of respondents considered that the successful completion of MERIT had a beneficial impact on the sentence imposed. For example, 70% described the weight given to this factor at sentence as 'significant', 'great' or 'considerable'.
- **Impact on re-offending:** 44.1% of respondents said they could not yet be sure whether there had been any reduction in drug-related crime as a result of MERIT. However, a number of Magistrates indicated that they had noticed the absence of some 'usual offenders' or 'regular clients' from their court lists after undertaking the program.
- **Extension of program to alcohol:** 69% of respondents believed that MERIT should be extended to include defendants with a 'primary alcohol problem'. Supporters of extending the program regarded alcohol as an even greater cause of offending behaviour than illicit drugs. 7.7% said the program should not be extended, while 23.1% were unsure. The latter considered that a separate program might be needed, for example, because the treatment and approach to alcohol-dependent offenders may be different.

4.5 The future of MERIT

The Attorney General, Hon Bob Debus MP, observed in February 2004 that the MERIT program was available in 50 Local Courts in New South Wales and that a total of 2735 defendants had been accepted statewide onto the program. 1349 of those had successfully completed the requirements, with another 368 engaged in the program. The New South Wales and Commonwealth Governments have agreed to maintain funding for MERIT until at least June 2007. The Attorney General predicted this will allow consolidation and some expansion in the program over the next 3 years and that about 3000 offenders would enter the program in 2005.⁷⁶

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Hon Bob Debus MP, Questions Without Notice, 'Magistrates Early Referral Into Treatment Program', 17 February 2004, *NSWPD*, pp 6169-6170.

5. DRUG COURT UPDATE

5.1 General overview of the Drug Court

In February 2004, the Drug Court marked its fifth anniversary since being launched in February 1999.⁷⁷ It was the first Drug Court in Australia.

(i) *Jurisdiction*

The Drug Court has Local Court and District Court jurisdiction and operates from the Parramatta Court complex. The *Drug Court Act 1998* and the *Drug Court Regulation 1999* govern the court's operation.

(ii) *Eligibility*

To be eligible for the Drug Court a person must:

- be highly likely to be sentenced to full-time imprisonment if convicted;
- have indicated that he or she will plead guilty to the offence;
- be dependent on the use of prohibited drugs;
- reside within the catchment area (specified areas of Western Sydney);
- be referred from a court in the catchment area;
- be 18 years of age or over; and
- be willing to participate.

A person is not eligible if he or she:

- is charged with an offence involving violent conduct;
- is charged with an offence involving sexual assault;
- is charged with a drug supply or manufacturing offence (under Part 2, Division 2 of the *Drug Misuse and Trafficking Act 1985*), unless it is capable of being dealt with summarily in the Local Court; or
- is suffering from a mental condition that could prevent or restrict participation in the program.

(iii) *Referral*

Local and District Courts in the defined catchment area refer offenders who appear to meet the eligibility criteria to the Drug Court. Before the offender attends the Drug Court a preliminary eligibility screening is conducted by the Drug Court registry staff, based on the person's age, location of residence and referring court.

⁷⁷ This overview of the Drug Court is adapted from information on the court's website at <www.lawlink.nsw.gov.au/drugcrt>

(iv) Assessment

At the defendant's first appearance before the Drug Court, drug dependency and other eligibility issues are considered. If the Drug Court decides that an applicant is eligible, the person will be refused bail and remanded for detoxification and assessment. This takes place at the Drug Court Unit of the Metropolitan Remand and Reception Centre (at Silverwater Complex), separated from the main inmate population. The initial assessment in custody takes up to two weeks and includes general health and mental health reviews conducted by the Corrections Health Service.

(v) Plea and undertaking

After the assessment stage, the offender appears before the Drug Court where he or she enters a guilty plea, receives a sentence that is suspended, and signs an undertaking to abide by his or her program conditions.

(vi) Content of program

Four fundamental aspects characterise the Drug Court's program:

- (1) evidence-based drug treatment;
- (2) social support and the development of living skills;
- (3) regular reports to the Drug Court about the participant's progress; and
- (4) regular testing for drug use.

Each participant's program comprises 3 phases, with goals to be achieved before moving to the next phase:

- **Phase 1** (approximately 3 months): the initiation phase in which participants are expected to reduce drug use, stabilise their physical health and cease criminal activity. Participants are required to undergo drug testing around 3 times a week and report back to the court once a week.
- **Phase 2** (approximately 3 months): the consolidation phase when participants are expected to remain crime free and drug free, and to develop life skills and job skills. Drug testing is conducted twice a week, with fortnightly reporting to the court.
- **Phase 3** (approximately 26 weeks): the reintegration phase when participants are expected to remain drug and crime free, and seek work or be involved in activities that could lead to employment. Drug testing is conducted twice weekly and reporting back to court occurs monthly.

Within this framework, the participant's program is individually tailored to address his or her specific needs. A treatment plan is devised that may require the participant to enter a residential rehabilitation centre, or allow the participant to live in accommodation found by them and

approved by the court, or in supported accommodation organised by the court. The drug treatment options offered include abstinence, methadone, buprenorphine and naltrexone.

(vii) Completion or termination

The Drug Court program will last for at least 12 months unless it is terminated sooner. An individual's program can be terminated when:

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

If a program is terminated the Drug Court must reconsider the initial sentence. In deciding the final sentence, the court will take into account the nature of the offender's participation in the program, any sanctions that have been imposed and any time spent in custody during the program. The initial sentence can be set aside and another imposed in its place, but it cannot be increased.

When the Drug Court finds that a participant has substantially complied with the program, a non-custodial sentence is the usual order. The court awards certificates of graduation and of achievement to participants who meet or substantially comply with the standards set.

5.2 Evaluation in 2002

The Bureau of Crime Statistics and Research conducted a comprehensive evaluation of the Drug Court, which was published in 2002. The evaluation was divided into 3 studies on: (i) process evaluation, (ii) cost-effectiveness and (iii) health, well-being and participant satisfaction. The findings will be dealt with here briefly, bearing in mind that some changes have occurred in the intervening two years.⁷⁸

Some of the problems and achievements identified in the evaluation studies were:

(i) Process evaluation

- Professional viewpoints of treatment providers did not always accord with the court's directions.
- The obligation for treatment providers to inform the court of participants' breaches could

⁷⁸ Stephanie Taplin, *New South Wales Drug Court Evaluation: A Process Evaluation*, 2002; Bronwyn Lind, Don Weatherburn, Shuling Chen et al, *New South Wales Drug Court Evaluation: Cost-Effectiveness*, 2002; Karen Freeman, *New South Wales Drug Court Evaluation: Health, Well-Being and Participant Satisfaction*, 2002. Accessed from the BOCSAR website at <www.lawlink.nsw.gov.au/bocsar>

adversely affect their counselling relationship with participants.

- Some of the study's respondents asserted that there were participants in the program who should have been ineligible under s 5 of the *Drug Court Act 1998* because they had committed an 'offence involving violent conduct'. The authors considered that further legislative clarification may be needed.
- On the other hand, some respondents felt that Aboriginal offenders were being excluded in disproportionate numbers because of a violent offence in their past or because of their 'antecedents', which are a factor under s 7(2) of the *Drug Court Act*.
- The drug treatment services available to women were thought by some respondents to be in need of improvement. Women also comprised the majority of participants who had primary responsibility for childcare, and this could make it difficult for them to fulfil the requirements of the program.
- The criteria for graduation were considered by some respondents to be too onerous, resulting in a reduced number of graduates.
- Additional or longer aftercare could reduce the prospect of relapses.
- The intensity of supervision was regarded as one of the Drug Court's greatest advantages compared to other programs.
- The interactive approach towards dealing with offenders enabled the reduction of some of the barriers between professionals.
- Flexibility of the program allowed participants to change the type of drug treatment they were receiving.

(ii) *Cost-effectiveness*

- More than half of the total cost of the Drug Court program for the 309 participants who formed part of the cost-effectiveness analysis was expended on individuals who were terminated from the program.
- The cost per day of an individual placed on the Drug Court program (\$143.87) was slightly less than the cost per day for offenders sanctioned by conventional means (\$151.72).
- Re-offending rates for shop stealing and possession of opiates showed that the 'treatment group' of Drug Court participants took longer to re-offend and committed fewer offences than the 'control group'.
- The authors' suggestions for greater cost-effectiveness included terminating those unsuited to the program at an earlier point, improving the match between offenders and treatment programs, and changing the graduation criteria.

However, Judge Gay Murrell SC, the then Senior Drug Court Judge, questioned the assessment of costs:

The BOCSAR report examines the direct financial costs and the direct outcomes achieved by processing offenders through the Drug Court rather than through the traditional criminal justice system. But many costs and outcomes have not been measured.

A drug dependent criminal lifestyle has a devastating psychological, social and

financial impact on the parents, partner and children of the drug dependent offender. Unmeasured community costs include the cost of policing and insurance. Nor has the study measured the social benefits achieved when a person regains and maintains good health and employment.⁷⁹

(iii) *Participant well-being and satisfaction*

- Retention on the program was not high, with over 60% of participants having their program terminated prior to being on the program for 12 months.
- However, the participant satisfaction with the program overall, including treatment services, Legal Aid, and Probation and Parole, was very high.
- The program was effective in reducing illicit drug use and improving the health and social functioning of participants while they remained on the program.

5.3 Drug Court in 2003-2004

Performance statistics from the Drug Court in 2003 reinforced that rapid progress is unrealistic for most people with a long-term drug dependency.⁸⁰

- 49 of the 166 people who entered the program in 2003 completed the first phase;
- 102 out of 910 participants in the last 5 years made it through all 3 phases and graduated;
- 26 people graduated in 2003 – 17 from the class of 2002 and 9 from 2001;
- 212 applications were made to the court in 2003 to consider terminating participants from the program. 96 of the participants were terminated, while 116 were given another chance. An additional 29 people terminated themselves from the program.

In October 2003, the program graduated its 100th participant since its inception. About the same number of non-graduates had been able to demonstrate strong prospects for rehabilitation and received a non-custodial sentence.⁸¹

A ceremonial sitting was held on 5 February 2004 to commemorate the fifth anniversary of the Drug Court. The Acting Senior Judge, Neil Milson, observed:

The pilot program has extended past the evaluation stage, which was completed when the reports of the Bureau of Crime Statistics and Research were published early in 2002. The Court has evolved substantially beyond that which was examined in that evaluation, and it is timely today to state some of the things we have learned

⁷⁹ Judge Gay Murrell SC, Senior Drug Court Judge, *Media Release*, 'Drug Court Evaluation', 28 February 2002.

⁸⁰ Figures are reproduced from: Michael Pelly, 'When treatment is scarier than jail', *The Sydney Morning Herald*, 26 February 2004, p 15.

⁸¹ Attorney General, *Media Release*, 'NSW Youth Drug Court Expanded', 5 February 2004, p 2.

during this process of evolution...⁸²

Some of the points raised by Judge Milson were:

- Initially, the attempts at collaboration between institutions to provide the Drug Court's services were 'met with suspicion, a fear of loss of autonomy, and perhaps some resentment'. Over time, the working relationship between government departments and treatment providers improved. An example is the Memorandum of Understanding that was reached between the Drug Court and the Probation and Parole Service in late 2002.
- The concept of the judge being part of a multi-disciplined team of professionals is unusual in judicial life. All the members of the Drug Court Team contribute to developing policy and planning the court's approach to individual participants.
- The interaction of team members in the rehabilitative process has entailed 'unusual multi-skilling, with lawyers involvement in pharmacotherapy and urine-analysis, with nurses addressing the court, with clerical staff becoming quasi-counsellors...'
- Those personnel associated with the court 'have learned not to be judgmental and to be patient in the face of behaviour that, to the unprepared, could be provocation for the most extreme and non-therapeutic reactions. We have learned that recovery and change comes in very small increments, and that relapse is often part of the process of change. We have learned that lasting changes in attitudes and behaviour cannot be mandated, but are the results [of] developing trust, of seeing examples and of coming to aspire to something different.'
- 'Judges have had to learn to communicate on an appropriate level with participants, to show respect and admiration for the smallest of forward steps and to administer sanctions for program breaches in a manner that will enhance and not inhibit future progress.'

Attending the fifth anniversary sitting of the Drug Court, the Attorney General, Hon Bob Debus MP, acknowledged the difficulties faced by candidates for the adult and youth Drug Court programs:

These are people who may be part of intergenerational drug abuse, or who have lost contact with their families after years of abuse, who may be homeless and jobless, who have mental health issues, who have used drugs for long periods of time and who have turned to crime to support that habit because nothing else works. We must be realistic about drug addiction, about life time battles, and about the fact that often this will be the first time many addicts have tried a rehabilitation program or even seen what a drug free life might entail.⁸³

⁸² Acting Senior Judge Neil Milson, *Media Release*, 5th Anniversary Speech: 'Lessons from the first five years', 5 February 2004.

⁸³ Attorney General, *Media Release*, 'NSW Youth Drug Court Expanded', 5 February 2004, p 2.

6. OTHER DRUG DIVERSION SCHEMES

6.1 Youth Drug Court

6.1.1 Brief overview⁸⁴

Establishment: The New South Wales Drug Summit, which was held at Parliament House in May 1999, recommended that, ‘There should be established a pilot program for a Children’s Drug Court as part of the Children’s Court system, to be adequately resourced for the treatment and rehabilitation of young people with alcohol and other drug problems.’⁸⁵ The Youth Drug Court commenced as a pilot program in July 2000, serving Western Sydney. The Youth Drug Court diverts young offenders with drug and/or alcohol problems onto a rehabilitation program that combines intensive judicial supervision, drug treatment and case management.

Jurisdiction: The Youth Drug Court operates within the Children’s Court jurisdiction, and hearings have been conducted, to date, from Cobham Children’s Court and Campbelltown Children’s Court. Unlike the adult Drug Court, the Youth Drug Court is not governed by its own legislation but procedural guidance is provided by Practice Directions issued by the Senior Children’s Magistrate. The Youth Drug Court is a pre-sentence program, whereas the Drug Court convicts adult offenders, then suspends their sentences while they undertake the program.

Eligibility: The main eligibility criteria for attending the Youth Drug Court are that applicants:

- are aged under 18 years at the time of the offence for which they are referred to the Youth Drug Court;
- have a demonstrable drug problem;
- are charged with an offence that can be dealt with by the Children’s Court;
- are found to be ineligible for a caution or conference under the *Young Offenders Act 1997*;
- indicate an intention to plead guilty;
- reside within the areas for accessing court services;
- are entitled to bail.

Referral: Young persons can be referred from any NSW Children’s Court to the Youth Drug Court. Prior to appearing at the Youth Drug Court, they will be screened by a Department of

⁸⁴ General information on the Youth Drug Court was obtained from Practice Directions No. 18 and No.19 of the Children’s Court of New South Wales, issued by the Senior Children’s Magistrate, Roger Dive, on 30 April 2001 and 12 March 2002; and Roger Dive et al, ‘NSW Youth Drug Court Trial’, Paper presented at the *Juvenile Justice: From Lessons of the Past to a Road Map for the Future* conference, convened by the Australian Institute of Criminology in conjunction with the NSW Department of Juvenile Justice, Sydney, 1-2 December 2003.

⁸⁵ NSW Drug Summit 1999, *Communique*, 21 May 1999, Recommendation 2.5. Similar sentiments were stated at Recommendations 6.11, 7.1 and 9.17.

Juvenile Justice counsellor to see if they fit the entry criteria.

Assessment: At the applicant's first appearance before the Youth Drug Court, the Magistrate determines their legal eligibility. If the Magistrate finds that the applicant is suitable for the program, the matter is adjourned and the applicant is referred for a comprehensive assessment by the Joint Assessment and Review Team. This involves representatives from the Department of Health, Department of Community Services, Department of Education and Training, and Department of Juvenile Justice evaluating the health, social and welfare needs of the young person and formulating a program plan. If the Magistrate formally accepts the applicant onto the program, sentencing is deferred and the applicant is released on bail and signs an undertaking to comply with the program regimen.

Program features: The program plan is tailored to the individual needs of the young person. Its conditions may include attending a drug or alcohol residential program, having counselling, submitting to urinalysis, or attending educational, vocational and recreational programs. Support persons are assigned to each young person to supervise their progress and assist them to comply with the bail conditions and attain the goals in the program plan. Intensive monitoring is conducted through regular reporting by the young person back to the court, and written reports from their case manager and juvenile justice staff.

Breach or completion: Breaches can be dealt with by reviewing the program plan, increasing supervision or counselling, increasing the time allowed for completion, or ultimately by discharge from the program. Sentencing takes into account the young person's participation in, or successful completion of, the Youth Drug Court program. An aftercare component may be incorporated into the sentence, to provide ongoing support for the young person.

6.1.2 Developments in 2004

On 5 February 2004, the Attorney General, Hon Bob Debus MP, announced that the Youth Drug Court would be extended to central and eastern Sydney. The additional services are expected to commence in the second half of 2004.⁸⁶

The Youth Drug Court trial is being fully evaluated by the Social Policy Research Centre, at the University of New South Wales. The evaluation is scheduled to be submitted to Cabinet in March 2004.⁸⁷

⁸⁶ Attorney General, *Media Release*, 'NSW Youth Drug Court Expanded', 5 February 2004, p 1.

⁸⁷ *Ibid*, p 2.

6.2 Cannabis Cautioning Scheme

6.2.1 Brief overview⁸⁸

The cannabis cautioning scheme is another initiative that resulted from the Drug Summit in May 1999.⁸⁹ The scheme was introduced across New South Wales on 3 April 2000, giving police the right to issue a caution to adults⁹⁰ for minor cannabis offences involving personal use.

Eligibility requirements: The cannabis offences that are eligible for a caution are the possession or use of up to 15 grams of dried cannabis leaf, stalks, seeds, or heads, or possession of equipment such as bongs for the administering of cannabis. 15 grams is half the amount of a 'small quantity' (30 grams) of cannabis leaf under Schedule 1 of the *Drug Misuse and Trafficking Act 1985*.

Other eligibility criteria are:

- the drug is for personal use – the scheme does not apply to persons caught supplying cannabis, ie. dealers;
- the identity of the offender is confirmed;
- the offender is not involved in any other criminal offence;
- the offender has no prior convictions for drug or violence offences;
- the offender admits the offence, consents to a caution and signs the caution notice;
- the offender has not already received two cannabis cautions.

Police discretion on how to proceed: A person cannot demand a caution. Police retain the discretion to charge the individual depending on the specific circumstances involved, even when he or she is eligible for a caution.

Consequences of receiving a caution: Receiving a caution means that no criminal conviction is recorded and the person does not have to go to court. It is therefore considered a diversionary strategy. The caution notice issued by police provides health and legal information on cannabis use and a contact phone number for seeking advice and treatment. From September 2001, a second caution meant that the recipient had to undertake a mandatory education session about using cannabis. The scheme is intended to benefit the legal system by facilitating the productive use of

⁸⁸ Except where otherwise footnoted, information was obtained from the NSW Office of Drug Policy website at <http://www.druginfo.nsw.gov.au/diversion/cannabis_cautioning_scheme>

⁸⁹ NSW Drug Summit 1999, *Communique*, 21 May 1999, Recommendation 6.7. Related cannabis recommendations are outlined under '6. Breaking the Drugs and Crime Cycle' of the *Communique*.

⁹⁰ Cautions and warnings are available to juveniles under the *Young Offenders Act 1997*, including for certain drug offences: see section 8.

court time and resources. Similarly, police do not have to attend court for minor cannabis matters, allowing them to concentrate on more serious crimes.

Limit on cautions: There is a limit of receiving cautions on two occasions. If a person is caught for a minor cannabis offence on a third occasion, the person will be charged and required to attend court.

6.2.2 Future of the scheme

The cannabis cautioning scheme was initially a one year trial from 3 April 2000 to 3 April 2001. More than 2000 cautions were issued in the first year. The scheme was extended to April 2003.

In its policy document on drugs for the 2003 State election, the Carr Government pledged to continue 'innovative Drug Summit programs' including the cannabis cautioning scheme.⁹¹

In March 2004 the Special Minister of State, Hon John Della Bosca MLC, confirmed that the Carr Government would not enact legislation legalising the recreational use of cannabis but was still considering conducting a trial of 'regulated access to medicinal cannabis'. The Minister commented favourably on the continuation of the cannabis cautioning scheme, as part of the Government's 'utilitarian position' on the recreational use of cannabis:

As to recreational users who are found to be users in the course of a police investigation but are not dealing in commercial quantities...we have a cautioning scheme in place. Both the police and the justice system have found that this scheme is a beneficial way of informing young people who are using cannabis for recreational purposes about its potential ill-effects and the fact that it is an illegal drug. The cautioning scheme has been very successful in dealing with the recreational use of cannabis. Those initiatives are the result of the attitude taken by the Government to the recreational use of cannabis. It is with some pride I say that the Government does not take an overly punitive approach to the enforcement of that law.⁹²

⁹¹ Australian Labor Party, New South Wales Branch, *Securing a better future: Labor's plan for action on drugs*, p 7. Accessed at <http://www.nswalp.com/alpweb/2003electionpolicies/Better_Future.pdf>

⁹² Hon John Della Bosca MLC, Questions Without Notice, 'Cannabis Medical Use', *NSWPD*, 30 March 2004, p 7648.

7. MEDICALLY SUPERVISED INJECTING CENTRE

The Sydney Medically Supervised Injecting Centre (MSIC) is operated by Uniting Care in Darlinghurst Road, Kings Cross. It opened in May 2001 and has been approved to continue until 2007.

7.1 Establishment of the MSIC

In 1997 the Wood Royal Commission into the NSW Police Service recommended that consideration be given 'to the establishment of safe, sanitary injecting rooms under the licence or supervision of the Department of Health'.⁹³ The Government established a parliamentary committee, the Joint Select Committee into Safe Injecting Rooms, to investigate the issue. However, the majority of the Committee recommended that the establishment or trial of injecting rooms should not proceed. Some of the reasons given included safety concerns, impact on the local community, crime risks, and allocation of resources.⁹⁴

The Drug Summit, held at Parliament House in May 1999, passed a resolution that:

The Government should not veto proposals from non-government organisations for a tightly controlled trial of medically supervised injecting rooms in defined areas where there is a high prevalence of street dealing in illicit drugs, where those proposals incorporate options for primary health care, counselling and referral for treatment, providing there is support for this at the community and local government level...⁹⁵

The *Drug Summit Legislative Response Act 1999* authorised the creation of a medically supervised injecting centre. In introducing the legislation, the Government maintained that allowing a trial to proceed did not condone the use of illicit drugs:

In all instances the Government remains committed to the view that self-injection of addictive substances cannot be normalised, and must be rejected as a behaviour on social, health and moral grounds...The model that will be trialled for 18 months aims to save lives and reduce the spread of disease, but especially focuses on providing a gateway for referral to treatment and counselling...This centre is not a shooting gallery, with the negative and perjorative attributes we have seen reported...The

⁹³ Royal Commission into the New South Wales Police Service, *Final Report, Volume II: Reform*, May 1997, paragraphs 2.19-2.22 and p 235.

⁹⁴ Parliament of NSW, Joint Select Committee into Safe Injecting Rooms, *Report on the Establishment or Trial of Safe Injecting Rooms*, February 1998, Chapter Seven: Conclusion and Recommendation.

⁹⁵ NSW Drug Summit 1999, *Communique*, 21 May 1999, Recommendation 3.15, 'Medically supervised injecting rooms'.

term “shooting gallery” infers criminal activity involving the giving up on injecting addicts and trying to profit from their suffering. The facility the Government is proposing to trial is not about giving up on the problem – it is about not giving up at all. It is about not turning a blind eye to the problem.⁹⁶

The *Drug Summit Legislative Response Act 1999* inserted Part 2A into the *Drug Misuse and Trafficking Act 1985*, commencing on 10 March 2000. Some of the key provisions of Part 2A are:

- **Single licence:** Only one licence is allowed to be issued for a supervised injecting centre for the self-administration of prohibited drugs, initially for 18 months (s 36A).
- **Restrictions on issue of licence:** A licence must not be issued unless the ‘responsible authorities’ (the Commissioner of Police and the Director-General of the Department of Health) are of the opinion that satisfactory internal management protocols for the centre have been finalised, that there is community and local government acceptance of the proposal to establish the centre, and that the proposed premises are suitable for use as an injecting centre (s 36F).
- **Exemptions from liability for users:** It is not unlawful for a person at a licensed injecting centre to be in possession of (otherwise than for supply), or to self-administer, an ‘exempt quantity’ of a prescribed drug, or to be in possession of an item of equipment for use in its administration (s 36N). An ‘exempt quantity’ means a small quantity, as listed in Schedule 1 of the *Drug Misuse and Trafficking Act 1985*.
- **Exemptions from liability for staff:** It is not unlawful for a person to engage, participate or otherwise be involved in the conduct of the licensed injecting centre (s 36O). A person is not liable for any act or omission in connection with the conduct of the centre, as long as the act/omission was done in good faith and not in a reckless or grossly negligent manner (s 36P).
- **Children:** Children are prohibited from the part of the centre used for the administration of drugs (s 36I).
- **Review:** The responsible authorities are required to arrange for the ongoing review of the licensed injecting centre (ss 36B & 36K).

Potential sites in Kings Cross were considered and community meetings were held. The premises at 66 Darlinghurst Road emerged as a strong contender. In June 2000 the Uniting Church lodged its application for a licence to operate the MSIC, and the licence was granted in October 2000 by the licensing authorities (Police Commissioner and Director General of Department of Health). The decision was unsuccessfully challenged by the Kings Cross Chamber of Commerce and Tourism in the Supreme Court in March 2001. Consequently, the MSIC was able to start operating in May 2001.

⁹⁶ Special Minister of State, Hon John Della Bosca MLC, Drug Summit Legislative Response Bill, Second Reading Speech, *NSWPD*, 21 October 1999, p 1771.

7.2 Functions of the MSIC

The layout of the MSIC is sequential, with clients arriving at the front entrance, moving through the premises in one direction, and leaving from the rear exit. The space is divided into 3 stages:⁹⁷

Stage 1 – waiting room and assessment area: Clients are assessed for eligibility to use the service. Staff establish that the client is an existing injecting drug user, not aged under 18 years, not pregnant or accompanied by a child, and not intoxicated. The client's demographic information and medical history is collected, including information about previous drug overdose and treatment.

Stage 2 – injecting room: There are 8 open booths, supervised by two trained staff including a registered nurse. Clients are supplied with a clean needle, advised on safe injecting practices and provided with first aid and other clinical services. There are waste bins for used needles and a resuscitation room for managing drug overdoses.

Stage 3 – after care area: Clients remain under observation until they are ready to leave. Counsellors and social welfare staff can link clients with other services including housing, legal, drug treatment and rehabilitation.

7.3 Final evaluation report on the MSIC trial

The *Final Report of the Evaluation of the Sydney Medically Supervised Injecting Centre* was released on 9 July 2003 and provided information about the centre's operations during the first 18 months of the trial from 1 May 2001 to 31 October 2002.⁹⁸ The report was produced by the MSIC Evaluation Committee.⁹⁹

(i) Client characteristics

- During the 18 month trial, 3810 individuals registered to use the MSIC, 73% of whom were male. The average age of the clients was 31 years.

⁹⁷ Information was obtained from the Sydney Medically Supervised Injecting Centre website at <www.sydneymsic.com> under 'What we do and how we do it'.

⁹⁸ MSIC Evaluation Committee, *Final Report of the Evaluation of the Sydney Medically Supervised Injecting Centre*, 2003, accessed from the MSIC website at <www.sydneymsic.com> Select 'Background Info'.

⁹⁹ The Committee comprised: Professor John Kaldor, Deputy Director of the National Centre in HIV Epidemiology and Clinical Research at the University of New South Wales; Helen Lapsley, previously Senior Lecturer in the School of Public Health and Community Medicine at UNSW; Professor Richard Mattick, Director of the National Drug and Alcohol Research Centre at UNSW; Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research, and Andrew Wilson, previously the Chief Health Officer, NSW Department of Health.

- Only 28% of clients had completed high school, and 21% were in full-time employment. Social security payments were the main form of income for 57%.
- 26% had been in prison in the past 12 months.

(ii) Drug history of clients

- Clients had been injecting drugs for an average of 12 years, since the age of 19.
- Nearly half the clients (42%) reported they had injected daily in the month prior to registration, and 39% had injected in a public place in the previous month.
- 66% of clients reported that they had tried some form of drug treatment, with 26% having entered at least one type of drug treatment in the 12 months prior to registration at the MSIC.
- 44% of clients reported that they had survived a heroin-related overdose prior to registration at the MSIC. 74% said that an ambulance attended at the time of the last overdose.

(iii) Drug use at the MSIC

- During the 18 month trial, there were over 55,000 supervised injections.
- Heroin was the drug most frequently injected at the MSIC (on 61% of visits), followed by cocaine (30% of visits).
- 42% of clients reported that if the MSIC had not existed they would have injected in a public area, such as a street, park, beach or public toilet, followed by 28% who said they would have injected in their own home.

(iv) Clinical services and referrals

- Apart from supervising injections, the MSIC provided over 13,000 occasions of 'other onsite clinical service delivery' during the 18 month trial such as vein care, injecting advice, and counselling.
- 1385 referrals were arranged for 577 clients. To state these figures another way, one in 41 visits resulted in a referral for further assistance. 43% of the referrals were for drug treatment, 32% were to primary health care facilities, and 25% were to social welfare services.
- In addition to the sterile injecting equipment provided at the MSIC, a total of 30,271 needles and syringes were dispensed on 3545 occasions (an average of 9 per occasion), to be taken from the premises.
- 409 drug-overdose related incidents were managed by the staff, a rate of 7.2 overdoses per 1000 visits. 329 of these were heroin overdoses.

(v) Impact on crime and public amenity

- Analysis of recorded crime data from January 1999 to September 2002 failed to show evidence that the MSIC had caused an increase in theft and robbery incidents in Kings Cross. Crime rates were more likely to be reflective of other factors. For example, the downward trend in theft and robbery in early 2001 may have been due to the heroin shortage.
- However, some loitering was apparent outside the MSIC, especially when it initially opened,

and at Kings Cross railway station (located directly across the road from the MSIC). There was also some indication of an increase in drug-related activity at the railway station, which some community members who were interviewed attributed to the MSIC.

- The amount of discarded syringes in public places was generally lower after the MSIC opened than before (based on syringe counts by the Needle Clean-Up Team and reportage by local residents). Public injecting also seemed to decrease, although these improvements in amenity were likely to be associated with the reduced supply of heroin available at the time of the evaluation.

(vi) Conclusions of evaluation

In summary, the report concluded from the available evidence that:¹⁰⁰

- the operation of the MSIC in Kings Cross is feasible;
- the MSIC made service contact with its target population, including many who had no prior treatment for drug dependence;
- there was no detectable change in heroin overdoses at the community level, but a small number of the heroin overdoses managed at the centre may have been fatal had they occurred elsewhere;
- the MSIC made referrals for drug treatment, especially among frequent attenders;
- there was no increase in risk of blood borne virus transmission;
- there was no overall loss of public amenity and no increase in crime;
- the majority of the community accepted the MSIC initiative;
- the MSIC has afforded an opportunity to improve knowledge that can guide public health responses to drug injecting and its harms.

(vii) Other perspectives

Contrary to the findings of the MSIC Evaluation Report, some police officers, business owners, and community members maintain that the MSIC attracts drug dealers and users to conduct their activities near the centre, thereby expanding the drug market in the area.

In December 2003, the police Local Area Commander, Superintendent Dave Darcy, was quoted as saying, 'I'm trying to improve the railway station as an amenity the best way that I can but I've also got the injecting centre across the road and I can't do anything about it...[the centre is] right in the heart of Kings Cross at a point in time when things are so dynamically changing within our business community. I believe it's in the wrong place and business is hurting because of it.'¹⁰¹

¹⁰⁰ Ibid, at 10.4 on p 207.

¹⁰¹ John Kidman, '800 deals every day and police can do nothing', and 'Heroin crisis worsens at Kings Cross', *The Sun Herald*, 14 December 2003. The article cited a number of indicators that the centre was a 'honey pot' for drug traders, including: three overdose deaths which occurred in late 2003 in the Tudor Hotel next door to the centre; the removal of Telstra payphone boxes opposite the centre, apparently because they were being frequently used to arrange drug deals; and heroin transactions observed by reporter Marnie O'Neill in Bayswater

However, NSW Police Assistant Commissioner, Dick Adams, in response denied that the injecting room had become a 'honey pot' for drug dealers and asserted that crime in the area had fallen since the injecting room opened: 'In the two years since Superintendent Darcy and his team have been working at Kings Cross with the [injecting room], reported crime is down by 50 per cent...Every death we can save through the [injecting room], every addict that we can get off the street so it doesn't affect the amenity of residents and people who use those areas, we applaud.'¹⁰²

Dr Ingrid van Beek, the MSIC's medical director, also pointed out: 'Drug supply has been endemic in Kings Cross for more than 30 years...The establishment of the [injecting room] was in response to the drug situation that existed and is not the cause of it.'¹⁰³

7.4 Extension of the trial from 2003 to 2007

The original trial period of the MSIC was for 18 months, from 1 May 2001 to 31 October 2002. The *Drug Summit Legislative Response Amendment (Trial Period Extension) Act 2002* extended the trial for another 12 months to 31 October 2003. After the final evaluation report was released in July 2003, the Government sought to extend the trial again.

The Drug Summit Legislative Response Amendment (Trial Period Extension) Bill was introduced in the Legislative Assembly on 5 September 2003 and was passed on 17 September. Opposition Members were allowed a conscience vote. The Bill passed the Legislative Council on 14 October 2003 without amendment.

The *Drug Summit Legislative Response Amendment (Trial Period Extension) Act 2003* extends the trial period for a further 4 years, from 31 October 2003 to 31 October 2007.

Section 36B of the *Drug Misuse and Trafficking Act 1985* is amended to provide that a review of the operations of the centre and the legislative framework is to be completed by 1 May 2007. The review will therefore be available for consideration before the trial concludes in October 2007.

The amending Act does not change the current licence holder or any of the licence conditions, except for the length of the trial. Introducing the Bill, the Parliamentary Secretary in the Legislative Assembly, Neville Newell MP, stated:

Road, about 100 metres from the centre. John Kidman also reported allegations by the manager of a takeaway food outlet that, 'one of his staff was threatened by two men wielding a syringe after they staggered from the clinic and into his premises two weekends ago.'

¹⁰² (no author) 'Police chief defends heroin injecting room', *The Sydney Morning Herald*, 15 December 2003, p 5.

¹⁰³ *Ibid.*

The extension period will be used to trial and assess new approaches to encouraging drug users into treatment. For example, a special case manager will be appointed to the centre to build relationships with clients and service providers in the area, and to take a proactive approach in client referral and follow-up. Other research suggested by the New South Wales Expert Advisory Group on Drugs and the independent evaluators of the trial will also be considered. This includes research into the impact on the health of individuals of early intervention at drug overdoses in the centre. The extension will also provide an opportunity for information and data to be collected over a longer period and to take account of any changes in the drug market, such as any changes in the supply of heroin.¹⁰⁴

Recent performance statistics were also quoted at the time of introducing the legislation that extended the trial:

- 5038 individuals were assessed and registered at the centre in the 26 months to 30 June 2003.
- New registrations had stabilised at a rate of approximately 197 per month.
- One in every 5 visits resulted in the provision of health care and medical and social services by centre staff.
- 906 referrals had been arranged for drug treatment, 614 for health care (the majority being for medical consultations), and 488 for social welfare services.
- 600 drug overdose-related clinical incidents were recorded as requiring medical management but there were no deaths. 502 of those incidents were heroin overdoses.¹⁰⁵

¹⁰⁴ Neville Newell MP, Parliamentary Secretary, Drug Summit Legislative Response Amendment (Trial Period Extension) Bill, Second Reading Speech, *NSWPD*, 5 September 2003, p 3240.

¹⁰⁵ *Ibid*, p 3241.

8. DRUG TREATMENT PRISONS

Legislation was introduced in May 2004 that provides the framework for compulsory drug treatment at a specialised correctional facility. The concept is modelled on overseas programs and is also similar in some respects to the drug program at Bendigo Prison in Victoria.

8.1 Proposed drug treatment correctional centre at Parklea

On 25 February 2004 the Premier, Hon Bob Carr MP, announced that a drug treatment correctional centre would be created in New South Wales, targeting male recidivist offenders with a drug dependency.¹⁰⁶

(i) *Establishment*

The Government plans to establish the compulsory drug treatment correctional facility at Parklea Correctional Centre by the end of 2005.¹⁰⁷ It will be located in a special wing at Parklea, with a high perimeter fence and an internal dividing wall to separate inmates who are participating in the program. The capital and refurbishment budget is \$1.5 million, and a further \$6 million will be provided over two years to meet operating and recurrent costs.¹⁰⁸

(ii) *Consultation*

An interagency Compulsory Treatment Task Force was formed to undertake detailed planning for the New South Wales program. One of the participants in the Task Force, Emeritus Professor Ian Webster, chair of the New South Wales Expert Advisory Group on Drugs, gave 'significant advice on the proposals.' The Senior Drug Court Judge, Neil Milson, studied similar programs in the United States of America in 2003. The Government has also acknowledged the influence of programs from the Netherlands.¹⁰⁹

The Government released the Compulsory Drug Treatment Correctional Centre Bill 2004 as an Exposure Draft. Consultation with organisations took place and public comment was invited on the bill until 24 March 2004:

¹⁰⁶ (No author), 'New jail for drug addicts', *The Sydney Morning Herald*, 26 February 2004, p 2.

¹⁰⁷ Special Minister of State, Hon John Della Bosca MLC, Compulsory Drug Treatment Correctional Centre Bill, *NSWPD*, 12 May 2004, p 8769.

¹⁰⁸ Special Minister of State, Hon John Della Bosca MLC, Questions Without Notice, 'Parklea Correctional Centre Offenders Compulsory Drug Treatment', *NSWPD*, 25 February 2004, p 6499.

¹⁰⁹ Special Minister of State, Hon John Della Bosca MLC, Compulsory Drug Treatment Correctional Centre Bill, *NSWPD*, 12 May 2004, p 8770.

The [draft] bill was advertised in the press and on the Internet and was sent to 48 targeted individuals and organisations...Fifteen submissions were received, including many constructive comments from the Director of Public Prosecutions, the Chief Magistrate of the Local Court, the NSW Ombudsman, the Legal Aid Commission, the Law Society of New South Wales, and the Acting Privacy Commissioner. A number of refinements were made to the bill in response to the submissions.¹¹⁰

(iii) Legislation

The Compulsory Drug Treatment Correctional Centre Bill was introduced in the Legislative Council on 12 May 2004 by the Special Minister of State, Hon John Della Bosca MLC.

Amendments are planned to the *Drug Court Act 1998*, the *Crimes (Sentencing Procedure) Act 1999*, and the *Crimes (Administration of Sentences) Act 1999*. The aspects covered by each Act would be:

- *Drug Court Act 1998* – eligibility of convicted offenders for compulsory drug treatment; referral of eligible offenders to the Drug Court; making compulsory drug treatment orders.
- *Crimes (Sentencing Procedure) Act 1999* – provision for compulsory drug treatment detention as a new form of custodial sentence that may be imposed on an offender.
- *Crimes (Administration of Sentences) Act 1999* – stages and duration of compulsory drug treatment detention; compulsory drug treatment personal plans; rewards and sanctions for compliance or non-compliance with personal plans; progression and regression between stages of detention; community supervision orders; revocation of compulsory drug treatment orders; release on parole.

(iv) Drug Court jurisdiction

The detention of participants at the drug treatment correctional centre would be ordered and supervised by the Drug Court at Parramatta. This appears to be a novel development for Australia. The court would decide the eligibility of candidates; make compulsory drug treatment orders; approve the progression or regression of offenders through stages of the program; and determine the time and conditions of an offender's parole.

(v) Eligibility

The drug treatment correctional centre is envisaged to initially accommodate up to 100 male offenders who have a long-term drug addiction and have committed multiple offences over a substantial period, but who have failed or never accessed drug treatment. The target group of

¹¹⁰ Special Minister of State, Hon John Della Bosca MLC, Compulsory Drug Treatment Correctional Centre Bill, *NSWPD*, 12 May 2004, p 8769.

male recidivist drug-dependent offenders reflects the Government's view that 'Offenders who have a drug addiction commit a disproportionate level of crime in the community.'¹¹¹ Typical drug-related crimes are break and enter offences, car theft, and stealing from the person.

Introducing the Compulsory Drug Treatment Correctional Centre Bill, the Special Minister of State, Hon John Della Bosca MLC, remarked:

The Compulsory Drug Treatment Correctional Centre will target a hard-core group of offenders with long-term drug addiction and an associated life of crime and constant imprisonment. It is for offenders who have failed to enter or complete other voluntary or court-based treatment programs...The aim is to achieve better outcomes for the State's most desperately entrenched criminal addicts by assisting them to become drug free and crime free, to take personal responsibility, and to achieve a more productive lifestyle.¹¹²

The eligibility criteria are outlined in the definition of 'eligible convicted offender' in proposed s 5A(1) of the *Drug Court Act 1998*. An offender must:

- appear to have a long-term drug dependency;
- have been convicted of an offence that, in the opinion of the Drug Court, is related to the offender's drug dependency and associated lifestyle;
- have been sentenced to imprisonment with an unexpired non-parole period of at least 18 months but not more than 3 years; and
- have been convicted of other offences at least 3 times in the previous 5 years. Offences are to be counted that resulted in a sentence of imprisonment, suspended sentence of imprisonment, community service order, or good behaviour bond.

(vi) Exclusions

Proposed s 5A(2) of the *Drug Court Act 1998* excludes offenders from eligibility if:

- they have been convicted at any time of murder, attempted murder, manslaughter, sexual assault, any sexual offence involving a child, firearms offences, an offence of serious violence (eg. malicious wounding, but not common assault), drug offences involving a commercial quantity or large commercial quantity of a prohibited drug or plant, and any other offence prescribed by regulation; or

¹¹¹ Special Minister of State, Hon John Della Bosca MLC, Questions Without Notice, 'Parklea Correctional Centre Offenders Compulsory Drug Treatment', *NSWPD*, 25 February 2004, p 6498. The Department of Corrective Services is cited in estimating that 70-80% of offenders are serving sentences for drug-related crimes.

¹¹² Special Minister of State, Hon John Della Bosca MLC, Compulsory Drug Treatment Correctional Centre Bill, *NSWPD*, 12 May 2004, p 8769.

- they suffer from a mental condition, illness or disorder that is serious or leads them to being violent and could restrict their active participation in a drug treatment program.

(vii) Compulsory drug treatment detention

If the Drug Court determines that a drug offender is eligible and suitable, the court can order the offender to serve his sentence of imprisonment by way of compulsory drug treatment detention at the drug prison and later in the community. Proposed Part 2A, Division 3 of the *Drug Court Act 1998* deals with making compulsory drug treatment orders, including restrictions on the making of those orders. The Drug Court must not make a compulsory drug treatment order unless it has referred the offender to the multidisciplinary team for assessment and has had regard to the team's report. Team members include a person nominated by the Director of the Compulsory Drug Treatment Correctional Centre (ie. the prison Governor); a probation and parole officer appointed by the Commissioner of Corrective Services; and a representative of the Chief Executive Officer of the Corrections Health Service. No appeal lies against the decision of the Drug Court to make or not make a compulsory drug treatment order.

Compulsory drug treatment detention consists of 3 stages (outlined in proposed Part 4A, Division 1 of the *Crimes (Administration of Sentences) Act 1999*):

- ***Stage 1 – closed detention:*** the drug offender is to be kept in full-time custody at the Compulsory Drug Treatment Correctional Centre.
- ***Stage 2 – semi-open detention:*** the drug offender may be granted leave from the Compulsory Drug Treatment Correctional Centre, with the approval of the Commissioner of Corrective Services, to allow the offender to attend employment, training or social programs.
- ***Stage 3 – community custody:*** the offender may reside outside the Compulsory Drug Treatment Correctional Centre under intensive supervision at accommodation approved by the Drug Court.

An offender will be able to progress from one stage of detention to the next, after serving at least 6 months in each stage, but only when comprehensive assessment reports relating to the offender have been prepared and the Drug Court makes a 'progression order'. The Drug Court will also be empowered to regress a drug offender to a lower stage of detention, by making a 'regression order', if the offender has failed to comply with his or her personal plan: proposed s 160M of the *Crimes (Administration of Sentences) Act 1999*.

(viii) Drug treatment personal plan

Each offender will be required to comply with a compulsory drug treatment personal plan approved by the Drug Court. The personal plan will contain conditions relating to conduct and good behaviour, attendance for counselling or other treatment, the management of the offender in

the drug prison, compulsory periodic drug testing, and involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the offender into the community.

Although personal plans will be individually tailored, mandatory conditions for all personal plans would include that offenders: must not commit any further offences; must not use any drug other than those prescribed by a medical practitioner or dentist; must not resort to violence; and must comply with a community supervision order if one is made: proposed Part 4A, Division 2 of the *Crimes (Administration of Sentences) Act 1999*.

Regular assessment reports are to be prepared on the progress of each participant, with regard to his treatment, rehabilitation, and compliance with his drug treatment personal plan: proposed Part 4A, Division 5 of the *Crimes (Administration of Sentences) Act 1999*.

Rewards for compliance with the personal plan include conferral of privileges, a decrease in supervision, or an application to the Drug Court to decrease the frequency of drug testing.

(ix) Community supervision order

If a drug offender has progressed to semi-open detention (Stage 2) or community custody (Stage 3) and is eligible to spend time outside the drug treatment correctional centre, the Drug Court is to impose a community supervision order on the offender: proposed s 106O of the *Crimes (Administration of Sentences) Act 1999*. A community supervision order may contain conditions relating to drug testing, the supervision of the offender outside the prison system (eg. electronic monitoring), and conditions relating to residence and association with other persons or places.

(x) Non-compliance with program

Non-compliance with the personal plan may be penalised within the correctional centre by such measures as withdrawal of privileges and increased supervision. An application has to be made to the Drug Court to increase the frequency of drug testing, as this involves variation of the personal plan: proposed s 106I of the *Crimes (Administration of Sentences) Act 1999*. The Drug Court would also have to be requested to vary a community supervision order.

The Commissioner of Corrective Services must refer an offender to the Drug Court if his failure to comply is considered to be of such a serious nature that it might warrant the Drug Court making a regression order or a revocation order. Referral to the Drug Court is also mandatory if a participant on the program is charged with one of the offences listed at proposed s 5A(2) of the *Drug Court Act 1998*, eg. an offence of serious violence, sexual assault, firearms offence, commercial drug offence.

An offender's failure to comply with a condition of the personal plan may lead the Drug Court to revoke his compulsory drug treatment order if the failure is of a serious nature and, in the opinion of the court, the offender: is unlikely to make any further progress on the program; or poses an unacceptable risk to the community of re-offending; or poses a significant risk of harming others or

himself: proposed Part 4A, Division 3 of the *Crimes (Administration of Sentences) Act 1999*. Termination from the program will cause the offender to be returned to full-time detention in the normal correctional system.

(xi) Parole and release

The Drug Court is to be the parole authority for drug offenders serving their sentences by way of compulsory drug treatment detention. The court would determine whether offenders are to be released on parole and the conditions of that parole: proposed Part 4A, Division 4 of the *Crimes (Administration of Sentences) Act 1999*. However, after release on parole, the Parole Board becomes responsible for the supervision and revocation of a parole order governing an offender.

Post-release case management services 'will include ongoing mentoring and linkages to housing and employment. Overseas experience suggests that this type of post-release support is extremely important for offenders to prevent them returning to drugs and crime.'¹¹³

(xii) Evaluation

The Special Minister of State, Hon John Della Bosca MLC, anticipated that the success of the compulsory drug treatment correctional centre program would be assessed after two years to decide whether to extend it to female offenders.¹¹⁴

The legislation requires a statutory review of the program to be conducted during the first 4 years of operation: proposed s 106Z of the *Crimes (Administration of Sentences) Act 1999*.

(xiii) Regulations

The legislation makes provision for details of various matters to be elaborated in regulations, such as: the type of drug treatment; the preparation and implementation of compulsory drug treatment personal plans; the role and responsibilities of offenders under the personal plans; the role and responsibilities of persons in charge of care and treatment; the frequency of assessment reports; post-release case management; and measures to encourage a drug-free environment in the correctional facility such as search and security procedures, restrictions on visits to inmates, and the nature of drug-testing. The Government has foreshadowed that there will be another public consultation process before regulations are made.¹¹⁵

¹¹³ Special Minister of State, Hon John Della Bosca MLC, Compulsory Drug Treatment Correctional Centre Bill, *NSWPD*, 12 May 2004, p 8771.

¹¹⁴ Special Minister of State, Hon John Della Bosca MLC, Questions Without Notice, 'Parklea Correctional Centre Offenders Compulsory Drug Treatment', *NSWPD*, 25 February 2004, p 6499; and Second Reading Speech, Compulsory Drug Treatment Correctional Centre Bill, *NSWPD*, 12 May 2004, p 8770.

¹¹⁵ Special Minister of State, Hon John Della Bosca MLC, Compulsory Drug Treatment Correctional Centre Bill, *NSWPD*, 12 May 2004, p 8771.

8.2 Compulsory drug treatment detention in the Netherlands

Criminal courts in the Netherlands have the power to place recidivist drug addicted criminals into drug treatment in special prison units in major cities such as Rotterdam, Amsterdam, and Utrecht.¹¹⁶ These compulsory placement orders are called ‘Strafrechtelijke Opvang Verslaafden’, translating into English as ‘Order under the criminal law for the care of addicts’.

The aim is to combat the problems caused by recidivist drug addicts who commit property offences to fund their habits and negatively impact upon the public amenity by injecting and discarding needles. The short sentences of imprisonment usually received by this group of offenders previously meant there was insufficient time to make progress in treatment. Therefore, placing these addicts into a facility by means of compulsion represented an opportunity to change their behaviour.

Drug users are eligible for the program if they have been convicted regularly but treatment interventions have failed to be effective. The maximum placement is two years. There are 3 stages of treatment, during which the offender is given increasingly more freedom yet also more responsibility:

- *a closed phase* of 6 months which concentrates on physical recovery;
- *a semi-closed phase* of 6 to 9 months; and
- *an open phase*, also 6 to 9 months, when offenders live in the community but are still supervised by a case manager.

Besides intensive drug treatment, assistance is provided with work training, housing, managing money, and other life skills. There is a strong local connection with the municipal council of the city where each program is located because drug addicts will hopefully be reintegrated into the community.

8.3 Prison drug treatment programs in the USA

Substance abuse treatment is available in the Federal prison system and various State prisons in the United States of America.

Federal prisons are operated by the Federal Bureau of Prisons.¹¹⁷ In 2002, about 50 of the Federal prisons had a residential drug abuse treatment program and 16,243 inmates participated

¹¹⁶ Information was obtained from press releases issued by the Dutch Ministry of Justice, eg. ‘The SOV (measure for the criminal reception of addicts) enters into force on 1 April’, 2 April 2001. Accessed from <http://www.justitie.nl/english/press/press_releases>

¹¹⁷ Federal information was obtained from: Federal Bureau of Prisons, *Substance Abuse Treatment Programs in the Federal Bureau of Prisons: Fiscal Year 2002 Report to Congress*, January 2003. Accessed at <<http://www.bop.gov/cpdpg/cpddrugrpt02.pdf>>

in the program. This compares to 12,541 participants in 2000 and 15,441 in 2001. Inmates are housed in a separate unit of the prison reserved for drug treatment. Admission criteria include: the Bureau of Prisons determining that the inmate has a substance use disorder; the sentence is of sufficient length; and the inmate must be willing to sign the agreement to participate in the residential drug abuse treatment program. The program is typically 9 months in length, with a minimum of 500 hours of drug treatment. Apart from drug treatment, the inmates spend time in education, work skills training and recreation. Evaluations have found that inmates who complete the program are less likely to be re-arrested and less likely to use drugs when compared to similar offenders who did not participate.

An example of a State program is the In-Prison Therapeutic Community program that operates in selected Texas Department of Criminal Justice (TDCJ) prison units.¹¹⁸ Inmates in these units receive long-term intensive chemical dependency treatment and rehabilitation, with an average duration of 9 months. The idea of a 'therapeutic community' is that inmates with similar needs and problems provide mutual support and work together towards common goals such as behavioural change and accepting responsibility. Successful participants continue treatment after being released into the community, for a minimum of 12 months, while under the supervision of the Parole Division of TDCJ.

8.4 Bendigo Prison drug program¹¹⁹

(i) Establishment

Bendigo Prison is a medium security facility located in central Victoria. The prison opened in 1863 and until 1997 operated as a mainstream prison. It was then modified to become a specialist prison offering drug and alcohol treatment to male offenders with substance abuse problems.¹²⁰

The drug treatment program at Bendigo Prison was created as part of the Kennett Government's 'Turning the Tide' drug strategy.¹²¹ The program commenced operating in June 1997 and has a capacity of around 80 male prisoners.

¹¹⁸ Information was obtained from the TDCJ website at <www.tdcj.state.tx.us>

¹¹⁹ Unless otherwise footnoted, information on Bendigo Prison was supplied by the Corrections Victoria Resource Centre. The author is indebted to Malcolm Feiner for his assistance. Any error in adapting or interpreting the material remains that of the author.

¹²⁰ There is no duplicate program for female offenders. A women's prison, the Dame Phyllis Frost Centre at Deer Park, has a 10-bed drug unit that offers a 6 month program.

¹²¹ Office of the Premier, Hon Jeff Kennett MP, 'Premier Opens Victoria's First Prison Drug Centre', *News Release*, 19 May 1997.

(ii) Community model

Bendigo Prison endeavours to replicate the outside community instead of a conventional prison environment. The community model combines therapeutic, educational, medical and correctional services. Industrial work, study courses, and health and lifestyle programs are available at the prison. The emphasis on developing prisoners' social skills also encourages prisoners to communicate, be involved in decision-making, and to take responsibility for their actions. Prison officers need to display support and understanding towards offenders. Therefore, the traditional polarisation between prison officers and inmates is not applicable.

The prison community is organised into 4 groups which meet on a weekly basis. The purpose of community group meetings is to identify problems or request changes (within the constraints of prison operations and security), and to provide information about activities in the prison. Issues raised within any of the 4 community groups can be referred to the weekly Prison Liaison Meeting.¹²² Once a month a 'whole of community' meeting is held and all staff and prisoners are expected to attend. These meetings provide feedback from prison management on the community's performance during the preceding month. Items on the agenda may include discussion of any 'incidents', significant achievements, up and coming events, and reports from the drug and alcohol, education, and industries sections.

*(iii) Entry to program*¹²³

Offenders who have a long history of substance abuse, or were under the influence of a drug at the time of the offence, may be considered suitable for the drug treatment program at Bendigo Prison. About a third of prisoners transferring to Bendigo have the status of Identified Drug User, meaning that they have been detected using drugs in prison.¹²⁴

Candidates for the program have been sentenced to imprisonment and are already in custody. They are not directed by the sentencing judge to undertake the program. Rather, the Sentence Management section of Corrections Victoria determines where prisoners are placed in the correctional system. Interviews are conducted with all prisoners, enabling drug and alcohol issues to be identified. Alternatively, drug and alcohol workers may refer prisoners, or an individual prisoner who is interested in undertaking the drug program at Bendigo may request a transfer.

¹²² The Prison Liaison Committee consists of the: Operations Manager, Drug and Alcohol Manager, Education Manager, Industries Supervisor, Prison Supervisor, Prison Peers, Community Group Representatives (two from each community), and Sporting Representatives (one from each community).

¹²³ Information on entry to the program was obtained through personal communication on 29 April 2004 with Sue Dain of Caraniche, the company that supplies the treatment services at Bendigo Prison.

¹²⁴ Marlene Morison, Jacinta Pollard, Deli Baker and Mandy Smith, 'Bendigo Prison Community: Evaluation of a prison based residential drug and alcohol program', Paper presented at APSAD/Methadone Conference, 20-22 November 2000.

There are no prescribed offences that are excluded from eligibility, but various practical considerations can cause an offender to be assessed as unsuitable:

- Offenders may theoretically have committed any crime, such as murder, armed robbery, or a sexual offence, but their security classification must allow them to be sent to Bendigo Prison, a medium security facility.
- Offenders must also be able to mix with the general prison population, which can be a problem for sex offenders.
- Prisoners with ongoing court matters may not be suitable if those matters are likely to disrupt their participation in the program.
- Sentence duration is another relevant factor. Short sentences can be prohibitive, as participants should ideally attend Bendigo for 12 months.
- Irrespective of the means by which a potential participant is identified, he must feel ready to address his drug or alcohol problems. Foremost, the program at Bendigo is a voluntary option.

By contrast, the drug prison planned for New South Wales would involve the Drug Court making orders for compulsory drug treatment detention. The proposal also features narrower eligibility criteria, such as the specific exclusion of offenders with a prior conviction for a sexual, violent, or commercial drug offence.

(iv) Program content and drug treatment

The reception and orientation process for prisoners arriving at Bendigo involves: screening and assessment; development of a drug and alcohol plan; assigning a case manager to each participant; work and education orientation sessions; and allocation to program groups.

The drug and alcohol treatment programs available at Bendigo Prison are provided by Caraniche Pty Ltd. Caraniche is a private psychology company that has supplied psychological services to Victorian prisons since 1993.¹²⁵

The programs conducted at Bendigo include:¹²⁶

¹²⁵ For more information about this organisation, visit the Caraniche website at <<http://www.caraniche.com.au>>

¹²⁶ There is some variation in descriptions of the programs at Bendigo Prison depending on the source of the material. The summary provided here is based on information posted on the Caraniche website at <<http://www.caraniche.com.au>> including a conference paper by Marlene Morison, Jacinta Pollard, Deli Baker and Mandy Smith, 'Bendigo Prison Community: Evaluation of a prison based residential drug and alcohol program', presented at

- ***Intensive drug treatment program:*** 4 months duration. The prisoner is required to engage in group psychotherapy and individual counselling to explore the issues underlying their drug use. The group sessions facilitate forming positive relationships and working through issues together.
- ***Comprehensive drug treatment program:*** Similar components to the intensive program, but for 10 weeks duration (approximately 40 hours). This program is for participants who are not suitable for the intensive treatment program, for example, because their sentence is shorter or they have lower motivation.
- ***Alchemy program:*** A group program that targets prisoners with serious alcohol problems.
- ***Skills development programs:*** Group programs for 12-24 hours over 16 weeks, on such subjects as anger management, conflict resolution, communication and assertiveness, relationship skills, loss and grief, and relapse prevention.
- ***Peer program:*** For those prisoners who have completed the drug program and become prison 'peers', providing support to new prisoners and representing the prisoners on committees.
- ***Moving on program:*** A program to prepare prisoners for release from prison or transfer to another prison to finish the remainder of their sentence.

Prisoners have to undergo regular urine analysis testing. This is most frequent in the intensive program, where participants are tested 2-3 times a week.

(v) Future relocation of program

The specialist drug treatment programs at Bendigo Prison are scheduled to be transferred to the new Correctional Programs Centre, which is currently under construction for Corrections Victoria. It is located next to Barwon Prison at Lara, 70 kilometres south-west of Melbourne. The 300-bed centre will specifically house prisoners undergoing treatment for drug and alcohol problems, sex offenders, and those with a history of violent crimes. The Correctional Programs Centre is expected to be finished by October 2005.¹²⁷

APSAD/Methadone Conference, 20-22 November 2000.

¹²⁷

Andrea Petrie and Sasha Shtargot, 'New prisons to boost capacity', *The Age*, 27 February 2004.

9. CONCLUSION

At all levels of the criminal justice system, including the police, the courts and corrective services, the management of drug-dependent offenders represents an ongoing challenge. Concerns about the effectiveness of conventional penalties, particularly full-time imprisonment, and the likelihood of re-offending have contributed to a greater emphasis in recent years on the rehabilitation and diversion of drug offenders. Diversionary drug programs are available at various stages from pre-arrest to post-sentencing, according to the type of offender and the nature of their offences:

The rationale for diversion strategies is different for first offenders relative to recidivist offenders with a drug-use problem. . . Options operating earlier in the criminal justice process are typically aimed at keeping juveniles and first offenders out of the criminal justice system, while those operating later in the criminal justice process tend to focus more on addressing those underlying or ongoing factors that contribute to intensive and repeat offending.¹²⁸

The latest diversionary drug initiative is the Carr Government's proposal for offenders who are sentenced to imprisonment for a drug-related offence, and have a history of drug abuse, to serve their sentence at a specialist drug correctional centre. The involvement of the Drug Court in making treatment orders and overseeing the progress of participants appears to be a unique development in Australia. A legislative framework, contained in the Compulsory Drug Treatment Correctional Centre Bill, was introduced in the Legislative Council in May 2004.

Existing drug diversion programs such as MERIT and the Drug Court have demonstrated that the rehabilitation of offenders with an entrenched drug-dependency is likely to be slow and fraught with set backs. But early indications from evaluation reports are that intensive supervision, individually-tailored treatment, and court monitoring are having a positive impact on the health, social development, and re-offending rates of participants who complete the programs. It is therefore likely that a diversionary approach will continue in the foreseeable future.

¹²⁸

Bruce Flaherty and Joanne Jousif (NSW Attorney General's Department), 'MERIT: Magistrates Early Referral Into Treatment', Paper presented at the Crime Prevention Conference, Sydney, 12-13 September 2002, p 4.

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