

Process Evaluation  
and  
Policy & Legislation Review  
  
Final Report

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**November 2004**

This report was prepared by

HEALTH OUTCOMES INTERNATIONAL PTY LTD

in collaboration with

TURNING POINT ALCOHOL AND DRUG CENTRE INC.

Court Diversion Program Evaluation

Volume Two:  
Process Evaluation and Policy and Legislative Review

## ACKNOWLEDGEMENTS

The authors wish to acknowledge the staff of the many organisations and departments who provided input to stakeholder interviews and assistance with data acquisition. Special thanks to Janelle Morgan, Deb Porter, Cathy Burton, Graeme Ebert, Denise Abadee, Joseph Shields and Joyce Prinzi who assisted us in so many ways. Thanks also to the Court Diversion Program Evaluation Steering Committee for their ongoing support.

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# 1 EXECUTIVE SUMMARY

The Court Diversion Program Evaluation is an evaluation of three court-based diversionary programs aimed at a spectrum of criminal behaviours: the Drug Court pilot; the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) program; and the Criminal Justice Diversion Program (CJDP). This report encapsulates two of the four components to the overall evaluation: a Process Evaluation examining operational aspects of the programs, and a Legislative and Policy Review examining legislative and policy mechanisms established for the three programs. The evaluation has been undertaken by Turning Point Alcohol & Drug Centre and Health Outcomes International Pty Ltd.

The evaluation methodology involved the integrated analysis of qualitative and quantitative data. Stakeholder interviews were conducted in four locations (Melbourne, Moe, Ringwood and Dandenong) and covered policy and legislative issues, experience of the program and its success and critical success factors, participant and other stakeholder satisfaction, systemic issues impacting on successful program delivery, and other key operational issues.

Approximately 120 stakeholders were interviewed at management and service delivery levels including registrars and coordinators, Magistrates, program coordinators and staff, managers of interfacing programs, prosecutors, police officers, legal aid, private solicitors, housing, drug treatment agencies, nurses, and others. Interviews were also conducted with a range of strategic level stakeholders from within the Departments of Justice and Human Services, and other key agencies. In addition, 20 Drug Court participants and six CREDIT participants were interviewed.

Analysis of quantitative data covered participant characteristics and history, program throughput/referral and processing statistics, and outcome measures including sentencing. Data were accessed variously from computer databases (principally Courtlink and the Parallel Services System), directly from program managers, and from Victoria Police.

A review of available, relevant documents was also undertaken with a particular focus on key policy, funding and legislation documents provided by the Department of Justice, along with other reports provided by other stakeholders, including the Office of Housing. Some of the documentation received and included in the review were annual reports, reviews of various programs, strategic plans, promotional materials, guides to programs and program manuals, tools for use in the programs, and various papers supporting theoretical viewpoints and approaches in the criminal justice system.

## 1.1 Criminal Justice Diversion Program

CJDP is aimed at preventing the entry of first-time or low risk defendants into the criminal justice system. The objectives of the program are to reduce re-offending, avoid a first criminal conviction, assist a participant's rehabilitation, utilise the community's resources for appropriate counseling or treatment, and ensure that appropriate reparation is made to the victim of the offence.

Referrals to CJDP have increased gradually with the rollout of the program to more Magistrates' Courts. Over 13,500 defendants were referred to the program between November 2000 and

September 2003, and over 11,000 have participated in the program. Recent data suggests that about 6% of the incoming criminal case load is being referred to the CJDP. Overall, commencements in the CJDP in the 12 months ended 31 October 2003 were 7% below target, although monthly targets for new Diversion Orders were met or exceeded in the last eight months of that period. Stakeholder feedback and data analysis suggest that referral rates to the program vary between geographic locations, and between and within professional groups.

The most common demographic among participants was males aged 17-29 years, which accounted for 48.8% of referrals between July 2001 and September 2003. Overall, males represented over double the number of females within the database.

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

Qualitative and quantitative analyses undertaken for the Process Evaluation suggest that CJDP is successfully preventing the entry of first-time and low risk defendants into the criminal justice system. From a sample of 100 participants it appears that over 90% of participants are first-time defendants (with the remainder having very few, and relatively minor, prior convictions). Analysis of all diversion cases from November 2000 to September 2003 shows that 94% of diversions were successfully completed including the avoidance of a criminal conviction. Time spent in the program was highly variable, ranging from less than 30 days to over a year. More than two thirds of diversions took between 91-240 days to complete.

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

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

Benefits to victims included the increased likelihood of receiving compensation compared to a civil debt not attached to the completion of a Diversion Order. Analysis of victim satisfaction questionnaires indicated that the vast majority of victims were satisfied with the program. A minority felt that the reparation/donation ordered was too small for the gravity of the offence.

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

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

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

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

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

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

## 1.2 Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT)

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

The program aims to meet its objectives by, *inter alia*, bringing forward court referred treatment services to be available immediately after arrest and before being brought to court, that would otherwise only be available after sentencing; encouraging drug users to seek treatment; developing a commitment on the part of drug users to treatment by making it a condition of bail; and taking into account the defendant's commitment, progress and success in drug treatment at the time of sentencing.

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

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

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

A wide range of treatments were accessed by CREDIT participants. Individual Counseling, Consultancy and Continuing Care was recorded as having been accessed in over 65% of treatment episodes although this is not surprising as this is an element common to most treatment episodes.



Drug Withdrawal Residential accounted for 15% of episodes, while Residential Rehabilitation and Youth Outreach each accounted for just under 6%. Other, less commonly accessed treatments included Supported Accommodation (2.7% of episodes), Home Based Drug Withdrawal (1.7%), and Outpatient Drug Withdrawal (0.7%). With regard to the number of treatment episodes undertaken, 68% of participants were involved in one episode and just over 20% were involved in two episodes.

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

In contrast to CJDP, participants in the CREDIT program are usually repeat offenders whose offending is related to their illicit drug use. As such, compliance rates are considerably lower for CREDIT than CJDP, but were considered by treatment providers to be particularly encouraging given the complexities of the client group.

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

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

Stakeholder feedback on the effectiveness of the program reinforces this interpretation of the data. Stakeholders praised the effectiveness of treatment provided by treatment agencies and the brokerage role played by ACSO-COATS (an agency engaged by the Department of Human Services to arrange the provision of drug and alcohol services to registered clients by accredited agencies). The availability of treatment services was generally described as excellent, with most participants

being seen within 24 hours of being referred. All treatment providers interviewed reported excellent results with CREDIT participants, and stated that their success rates with such participants generally exceeded those where treatment was not mandated. Treatment providers felt that the CREDIT participants were more successful due to the duration of treatment, regular review in court and the motivation and incentive to comply.

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

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

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

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

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

Many stakeholders emphasised the importance of stable and appropriate housing to participant outcomes. However, the nature of the participants often posed challenges for available housing resources. Most properties are reportedly designed for families or multiple tenants rather than sole

occupants, and there were concerns expressed about co-locating two or more CREDIT participants (as this was seen as potentially detrimental to their treatment) or to house a CREDIT participant with a non-CREDIT client.

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

### 1.3 Drug Court

The Drug Court represents a fundamental shift in how courts address the issue of drug-related offending. The aim of the Drug Court is to protect the community by focusing on the rehabilitation of the participant’s drug or alcohol dependence with the objective of reducing the risk of further offending by stabilising their lifestyle and reintegrating them into society.

The study period for this evaluation was 20 May 2002 (commencement of the Drug Court pilot in Dandenong) to 30 June 2003. During this period there were 149 referrals to the Drug Court and a total of 59 Drug Treatment Orders (DTOs) were made. Of the 59 participants, 50 were male and 9 were female. The predominant demographic was males aged 26-35, which accounted for 47% of participants.

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

The initial target set for the Drug Court was 450 DTOs over three years. This target had been set on the basis of three Drug Courts operating for three years. Due to the late commencement of the pilot (among other reasons), the target for the 2002/03 financial year was subsequently set at 345 (or 109 per Drug Court). During the 2002/03 financial year there were 51 new DTO commencements at the pilot Drug Court, 53% below the stated target (for one Drug Court) for that year. However, the pilot program was never staffed to handle this level of throughput, and was always working towards the original target of 50 DTOs per year, a target it reached.

At 30 June 2003, 30 participants were recorded as being in Phase I (Stabilisation) of their DTO. Eleven participants were in Phase II (Consolidation), and one in Phase III (Re-integration). For the 12 participants who had progressed from Phase I to Phase II, the average time taken was 173 days (range 105-289 days), slightly more than double the anticipated duration of 12 weeks or 84 days. The one person to progress to Phase III had spent 168 days in Phase II, double the anticipated duration. DTOs had been cancelled for 17 participants who had significantly breached their DTO. Cancellations

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

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

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

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

It is important to contextualise these results. First, compared to other jurisdictions, the Victorian Drug Court performs testing more frequently (usually three times per week in Phase I compared to two in NSW, for example). This increases the probability of detecting drug use for any given level of use. Second, the Victorian urinalysis detects all drug groups and this includes methadone and other prescription medications which may be being used legitimately. However, due to the way in which the results are recorded, it is not feasible to distinguish legitimate from illegitimate drug use (as this would require the corroboration of every test with the prescribing doctor).

Third, some drugs stay in the body for longer periods of time. This is especially true of substances such as cannabinoids. With drug testing three times per week, it is highly likely that several consecutive positive tests could relate to a single instance of use. Fourth, some individuals may have shifted their use away from a substance that has been a problem for them – for example, reducing their heroin use, while their use of another substance (such as cannabis) may have increased. Although the available data identified positive tests by substance, this is insufficient to allow any such improvements in drug use to be identified without making significant assumptions. Although this analysis could not control for these four factors, changes in drug use are explored more fully as part of the Health and Wellbeing Study.

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

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

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

Re-offending within this group is higher than that of CREDIT or CJDP participants, as is to be expected given the program's objectives, eligibility criteria and the associated characteristics of the participant group. Re-offending patterns within the participant group up to 24 November 2003 suggest that approximately 72% of participants would be convicted of a subsequent offence within 12 months after commencement of their DTOs, for a total of 365 offences per 100 participants in that period. Analysis of recidivism against a comparison group is included in the cost-effectiveness component of this evaluation.

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

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

Another matter raised consistently by many stakeholders related to confusion over lines of reporting. Most members of the team have a line manager in their respective departments, but are also responsible to the Drug Court Program Manager. Whilst this provided challenges, and indeed may have benefits, it can also cause confusion and potential conflict with competing or inconsistent demands. The Drug Court Reference Group was, in part, established to help address these tensions. Conversely, one member of the Drug Court team, the Clinical Advisor, does not have a direct line manager beyond the Program Manager, which has the potential to contribute to feelings of professional isolation and a lack of support for the position. This potential was recognised and efforts were made by the Department of Justice to offer appropriate support to the position.

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

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

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

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

The Drug Court pilot is about halfway through its three-year duration and continues to evolve. Current participants as at 30 June 2003 had spent an average 8.6 months on the program, and the longest current DTO had been active for just over 12 months. Many of the benefits for participants may be

expected emerge over a longer time frame. Notwithstanding this limitation, support for the continuation of the Drug Court has been strong from all those consulted and much of this support relates to the belief that the program is producing positive outcomes for participants. Contributing to this has been the skilled and multidisciplinary team approach, goodwill on the part of many agencies, and features of the program itself including the provision of stable housing and the flexibility provided to the participant group. The inclusion of participants and the respect afforded to them throughout the process has empowered them and motivated their progression.

## 1.4 Overarching Policy and Legislative Issues

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

The following comparison of program data across the three programs demonstrates the continuum of criminal behaviours they cater for, and clearly differentiates the participant groups in each program.

**Table 1: Comparison of program data**

	<b>CJDP</b>	<b>CREDIT</b>	<b>Drug Court</b>
Current charges	92% of participants faced one charge; 5% faced 2 charges.  Most common categories of offence were “other”, theft, dangerous driving.	62% of participants faced one charge; 25% faced 2 charges; 8% faced 3 charges.  Most common categories of offence were drug related (especially possess/use) and property offences.	Number of charges not provided. Anecdotally, many faced multiple charges.  Most common categories of major offence were property offences (especially burglary and shopsteal) and drug trafficking/possession.
Age/sex	Mode = male aged 17-29 (49% of all participants).	Mode = male aged 20-29 (45% of all participants).	Mode = male aged 26-35 (47% of all participants).
Prior convictions	9% had priors (9 participants from a sample of 100).  Average 0.25 offences per participant.  Most common categories of offences were possess/use, handle stolen goods, theft.	96% had priors (96 participants from a sample of 100).  Average 21.9 offences per participant.  Most common categories of offences were possess/use, “other”, justice procedures.	100% had priors (58 out of 58 participants).  Average 40.2 offences per participant.  Most common categories of offences were possess/use, theft, justice procedures.
Successful completion rate	94% of completed diversions recorded as successful.	80% of all completed episodes recorded as successful.	No successful completions to date. Too early in pilot to expect a ‘steady state’ completion rate.

	<b>CJDP</b>	<b>CREDIT</b>	<b>Drug Court</b>
Recidivism	Results from a sample of 100 participants suggest 0-7% would re-offend in the first 12 months following commencement on the program (95% confidence interval).  Those who do re-offend would commit between 0-4 offences on average during their first 12 months (95% CI).	Results from a sample of 100 participants suggest 30-46% would re-offend in the first 12 months following commencement on the program (95%CI).  Those who do re-offend would commit between 5-9 offences on average during their first 12 months (95% CI).	Results from 58 participants suggest 60-84% would re-offend in the first 12 months following commencement on the program (95% CI).  Those who do re-offend would commit between 4-7 offences on average during their first 12 months (95% CI).

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

Our analysis of overarching policy and legislative issues suggests that:

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

Given the range and extent of diversion programs now in place, and the issues identified in the course of this review, it is our view that some form of unifying program framework may now be appropriate, together with a range of other targeted strategies to improve program uptake. It is our contention that the appropriate range of strategies extends beyond the policy and legislative domains. Potential elements of the response are presented in the report within a multi-level framework that considers not only the potential roles of policy and legislation, but also considers those of structural and funding arrangements, and managerial and operational processes. We consider that a strategy which considers the roles of each of these elements acting in concert in embedding Court Diversion Programs within the Victorian criminal justice system, and coordinates each of these elements, is more likely to succeed than a strategy that considers the role of policy and legislation in isolation. We have identified a range of options from radical to incremental for introducing such a framework.



## 1.5 Recommendations

### CJDP

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

### CREDIT

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

### DRUG COURT

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

### POLICY AND LEGISLATIVE ISSUES

- i) Consideration be given to the potential role of a consolidated policy statement or overarching policy framework for Court Diversion Programs in Victoria, providing support for these programs as a suite of options, setting out conceptual underpinnings, articulating the relationships between the programs and defining the broad parameters for their operation.

- j) Consideration be given to the potential roles of changed structural, funding, leadership and/or operational arrangements (including a planned and coordinated program of change management) to support the introduction of a consolidated policy statement.
  
- k) Discussions be held with the Magistrates' Court as to the desirability of introducing legislation to support the CREDIT program.

## 2 INTRODUCTION

### 2.1 Background

The Department of Justice currently delivers a range of court-based diversionary programs aimed at breaking the cycle of re-offending. These programs provide the Victorian Magistrate's Court with a range of programs that both support and inform the sentencing process at different stages of the criminal justice process. The focus of these programs is on addressing the causes of crime.

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

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

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

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

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

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

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

The evaluation methodology comprised four main components:

- A Process Evaluation that examined the operational aspects of the programs using both quantitative and qualitative data;
- A Legislative and Policy Review that examined the legislative and policy mechanisms established for the three programs and their effectiveness;

- An Outcomes Evaluation (Health and Wellbeing) that examined the effect of the Drug Court program on participants; and
- A Cost-Effectiveness Evaluation of the Drug Court program examining costs and recidivism.

This document presents the Process and Policy and Legislative Review components of the overall evaluation. It represents Volume Two of a report series which includes:

- Volume One: Court Diversion Program Evaluation: An Overview Report
- Volume Two: Process Evaluation and Policy and Legislative Review
- Volume Three: Health and Wellbeing Study – Victorian Drug Court
- Volume Four: Cost-Effectiveness Study – Victorian Drug Court

## 2.2 Evaluation Objectives

The objective of the Process Evaluation was to examine the operational aspects of the court diversion programs, using both quantitative and qualitative data. Key aspects considered included the strengths, weaknesses and critical success factors of the programs; impacts on participants; any difficulties experienced by stakeholders; and any changes made to the programs during their operationalisation.

The Process Evaluation was conducted across the three programs, however the greatest emphasis was placed on the Drug Court pilot given the evaluative work previously done in relation to CREDIT and CJDP<sup>1</sup>. The three diversion programs differ considerably in their history, target group and approach, and these factors were taken into account in the evaluation design. Nevertheless, there are a number of common elements across the programs and in the objectives of their evaluation that enable them to be presented as part of the same report structure, whilst still addressing each program area separately.

Table 2 sets out the key components of the Process Evaluation and the programs to which they relate. As shown in the table, the Process Evaluation involved two key tasks: eliciting information and analysing stakeholders' experience of the court diversion initiatives, and analysing secondary quantitative data from existing data sources.

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<sup>1</sup> In November 1999 Turning Point Alcohol and Drug Centre conducted an evaluation of the CREDIT program that was then being delivered at the Melbourne Magistrates' Court. The evaluation sought to identify and document the success of the CREDIT program in achieving its aims by assessing it against client uptake, retention, and satisfactory completion of treatment and extent of re-offending while on bail. More broadly, the evaluation focused on strengths and weaknesses associated with the program and opportunities for improvement. No formal evaluation of CJDP had taken place prior to the current evaluation. However, an internal process review was conducted by the Magistrates' Court of Victoria in December 2001. The review focused on identifying how to best address the challenges and improvement opportunities over 2002.

**Table 2: Overview of Process Evaluation components**

	Process Evaluation component	Drug Court	CREDIT	CJDP
<b>Stakeholder</b>	Experience of program, its success & critical success factors	✓	✓	✓
	Stakeholder satisfaction	✓	✓	✓
	Key operational aspects	✓	✓	✓
	Systemic issues impacting on successful program delivery	✓	✓	✓
<b>Data</b>	Participant characteristics and history	✓	✓	✓
	Participant throughput	✓	✓	✓
	Referral and processing times for each stage of the process	✓	✓	✓
	Status on exit from the program	✓		
	Sentencing outcomes		✓	✓
	Recidivism rates	✓	✓	✓

The objectives of the policy and legislation review were to:

- To examine CREDIT, CJDP and Drug Court and the relationship between these and other court-based diversion programs;
- To determine the effectiveness of the three programs in addressing a continuum of criminal behaviours ranging in risk and severity; and
- To identify and recommend appropriate changes to the legislative or policy models of these programs or their operations and business processes.

As our discussions with strategic-level and locally-based stakeholders progressed, it became apparent that issues such as program uptake and coordination between the programs needed to be considered within a multi-level framework that includes policy and legislation, structural and funding arrangements, and managerial and operational processes. Therefore, to provide a useful and cohesive analysis of the issues, the Policy and Legislation and Process Evaluation components of the Court Diversion Program Evaluation are presented within a unified framework in this report.

## 3 METHODOLOGY

The methodology undertaken for the evaluation of the three programs was multi-faceted and expansive. As there were several similar components to the Process Evaluation of each of these programs, they are best discussed together. The evaluation of the Drug Court involved some additional components such as an in-depth analysis of participant outcomes and a cost-effectiveness analysis, which are each addressed in separate reports.

### 3.1 Ethics Committee and Other Approvals

The Process Evaluation required approval from the Department of Justice Ethics Committee. A submission was prepared and received full approval from the Committee.

Approval was also sought and gained from the Victoria Police Research Coordinating Committee to access de-identified data on offending histories for samples of program participants.

### 3.2 Stakeholder Interviews

For the CREDIT and CJDJ programs, interviews were conducted across three Magistrates' Courts, Melbourne, Moe and Ringwood, which were chosen in consultation with the Department of Justice and the Evaluation Steering Committee to provide a mix of courts from central (city), metropolitan, and rural areas. The Drug Court evaluations were based in Dandenong, which is the only site for this pilot program. In addition, numerous stakeholders were consulted who had knowledge about more than one program and/or policy and legislative frameworks and issues, particularly contacts at senior Government levels.

In order to select relevant contacts for each of the programs at each locality, stakeholders to be interviewed were suggested by the Registrars of each of the selected courts. The Department of Justice also provided recommendations of stakeholders who should be consulted, principally at strategic/government level. The assistance provided by the Registrars and the Court Diversion Program Manager in this process is gratefully acknowledged.

A total of 80 interviews were held across the three programs, involving approximately 120 stakeholders. The majority of the consultations were face-to-face interviews, with around 10 conducted via teleconference.

The following table provides a summary of the interviews conducted across each location.

**Table 3: Stakeholder Interviews for Process Evaluation**

<b>Stakeholder Category Consulted</b>	<b>Melbourne</b>	<b>Moe</b>	<b>Ringwood</b>	<b>Dandenong</b>
Registrars and Coordinators	Registrar State Court Coordinator	Registrar Court Coordinator	Registrar Court Coordinator	Registrar/Program Manager Deputy Registrar
Magistrates	Chief Magistrate and Magistrates Chief Executive Officer	Chief Magistrate and Magistrate	Chief Magistrate with Magistrates group	Drug Court Magistrate
Program Coordinators and Staff	CREDIT Statewide Coordinator CJDP State Coordinator CJDP Melbourne Coordinator	CREDIT Clinician CJDP Coordinator	CREDIT Clinician CJDP Coordinator	Senior Case Manager Case Managers (x3) Clinical Advisor
Interfacing Program Managers	Bail Coordinator Juvenile Justice Coordinator Enforcement Review Officer Forensic Psychiatric Nurse Koori Liaison Officer			
Prosecutors	Police Prosecutor	Police Prosecutor	Police Prosecutor	Police Prosecutor
Police Officers	Inspector and Senior Sergeant, Victoria Police Drug and Alcohol Unit		Ringwood Police Station, S/C and Snr Sgt	
Legal Aid	Legal Aid Solicitors, group of 3	Legal Aid Solicitors, group of 3	Legal Aid Solicitor and Manager	Legal Aid
Private Solicitors	Solicitor	Solicitor (x2)	Solicitor	
Housing	Office of Housing Housing and D&A agency (provider specialising in both areas)	Supported Accommodation Program		WAYSS Ltd (Senior Managers and Case Workers)
Drug Treatment Agencies	Drug Treatment Agencies (x4)	Drug Treatment Agencies (x3)	Drug Treatment Agencies (x2)	Drug Treatment Agencies (x2)
Nurse	Mental Health Nurse – Forensicare	Nurse/Mental Health Liaison		Nurse and line manager, Mayne Health (urinalysis)
Other Agencies and Programs	Volunteer/Community Service Coordinator		Graffiti Program Salvation Army Court Chaplain	Centrelink Local Doctor

In addition to the stakeholders outlined in the table above, interviews were also conducted with a range of 'strategic-level' stakeholders including,

- Manager, Court Diversion Program, DOJ
- Former Drug Court Director, DOJ
- Court Services Statistician, DOJ
- General Manager, Community Correctional Services
- Director Legal Policy, DOJ
- General Manager, Victorian Government Reporting Service, DOJ
- Manager, Forensic Service Operations, DHS
- Assistant Director, Policy and Planning ACSO
- Acting Program Manager, ACSO-COATS
- Acting Manager, Homelessness Assistance, Office of Housing

Interviews with 20 Drug Court participants were also undertaken by Turning Point, the results of which are outlined in the Health and Well-being Study. Interviews with six CREDIT participants were also undertaken by Turning Point, and are discussed and summarised as part of this report. Defendant and Victim Satisfaction Surveys for CJDP were provided by the Senior Diversion Coordinator and analysed by Health Outcomes International.

Stakeholder comments and opinions were categorised for each program utilising a system of topics or categories that allowed the development of themes. The analysis tended to focus on those issues or opinions that were raised by multiple stakeholders, and/or those issues which were seen to have considerable potential impact.

### **3.3 Analysis of Program Data**

Analysis of quantitative data was undertaken, where available, covering the following aspects of court diversion processes and outcomes:

- Participant characteristics and history;
- Participant throughput/referral and processing times; and
- Outcome measures including sentencing and recidivism.

The data obtained for the Process Evaluation for each of the programs, and the sources of the data are summarised in the following table. Further details of the data sets used and the approaches taken to data analysis are provided within the results sections of this report.



**Table 4: Data Accessed for Process Evaluation**

<b>Program</b>	<b>Data</b>	<b>Source</b>
CREDIT	Throughput and participant characteristics	Parallel Services System Database.
CREDIT	Participant offending history and recidivism (for a sample of participants)	Courtlink system and Victoria Police records.
CJDP	Throughput and participant characteristics	Parallel Services System Database. Additional reports received from Senior Diversion Coordinator.
CJDP	Participant offending history and recidivism (for a sample of participants)	Courtlink system and Victoria Police records.
CJDP	Defendant and Victim satisfaction surveys.	Surveys received from Senior Diversion Coordinator.
Drug Court	Throughput	Via Drug Court Registrar (DRUIS and paper records), and Courtlink system.
Drug Court	Recidivism	Courtlink system and Victoria Police records.

The assistance of the following groups and individuals in obtaining and interpreting data is gratefully acknowledged: Magistrates' Court Technology Group, Platypus Systems, Victoria Police, Department of Justice, Drug Court Registrar, Senior Diversion Coordinator, CREDIT State Coordinator, Court Diversion Program Manager.

### **3.4 Documents Review**

A review of the available, relevant documents was undertaken with a particular focus on key policy, funding and legislation documents provided by the Department of Justice, along with other reports provided by other stakeholders consulted, including the Office of Housing. Some of the documentation received and included in the review were annual reports, reviews of various programs, strategic plans, promotional material, guides to programs and program manuals, tools for use in the programs, and various papers supporting certain theoretical viewpoints and approaches in the criminal justice system.

## 4 CONCEPTUAL AND POLICY UNDERPINNINGS OF COURT DIVERSION PROGRAMS

Court diversion programs are part of a wide suite of interventions implemented at different points of the criminal justice system that aim to address the causes of crime, break the cycle of re-offending, and reduce or prevent the entry of defendants into the criminal justice system. Examples of the range of diversion programs currently operating in Victoria include:

- Pre- and at arrest (Cannabis Cautioning Program; Illicit Drug Diversion Cautioning; Drug Diversion Program; Rural Outreach Diversion Workers);
- Pre-trial (CREDIT; Bail);
- Pre-sentence (CJDP; Juvenile Justice Group Conferencing);
- Sentence (Deferred Sentencing; Conditional Adjournment; Intensive Correction Order [ICO]; Victorian Children's Court Clinic Drug Program);
- Post-sentence (Drug Court and DTO; Combined Custody and Treatment Order [CCTO]; Community-Based Orders with Treatment Conditions; FOCiS Program [drug education for first offenders]); and
- Post-prison (Parole; Post-Prison Release Services).

Drugs, and drug-related crime, are among the most serious problems confronting the criminal justice system, with drug offenders representing a challenge to community services, treatment agencies, the courts and correctional authorities because of their high offending and recidivism rates and vulnerability to relapse.<sup>2</sup> Current custodial sanctions are failing to deal effectively with offenders with drug problems, and many offenders who commit crimes to feed a drug addiction continue to abuse drugs and offend following release from prison<sup>3</sup>.

Both the Drug Court pilot and the CREDIT program are targeted at individuals who are drug dependent and whose dependency contributed to their offending. The Criminal Justice Diversion Program is aimed at preventing the entry of first-time or low-risk defendants into the criminal justice system. The following paragraphs outline the key conceptual principles underpinning the design of these programs.

### 4.1 Therapeutic Jurisprudence

*Therapeutic jurisprudence proposes a broadening of the role of the judge, which has traditionally been limited to fact finding and law applying. Therapeutic jurisprudence asks why the judicial role should not extend to the search for solutions to an individual's cycle of offending. This is a perspective that deserves to be taken very seriously by the judiciary.<sup>4</sup>*

Therapeutic jurisprudence is a relatively simple concept leading to a complex array of options for criminal justice system intervention in a range of domains, including criminal offending and/or drug addiction, among others.

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<sup>2</sup> Freiberg A (2001) *Sentencing Review: Drug Courts and Related Sentencing Options: Discussion Paper*

<sup>3</sup> Drug Court Operating Manual 1.2

<sup>4</sup> Judge Stan Thorburn, District Court, Auckland NZ, in support of Winick and Wexler (2003) *Judging in a Therapeutic Key*. (cited in Popovic J *Therapeutic Jurisprudence and Judicial Officers: Complementing Conventional Law and Changing the Culture of the Judiciary*)

Therapeutic jurisprudence has been described as “the study of law’s healing potential”.<sup>5</sup> According to Winick and Wexler, it seeks to assess the therapeutic and counter-therapeutic consequences of law and how it is applied, and to effect legal change designed to increase the former and decrease the latter. It uses the tools of the behavioural sciences to assess law’s therapeutic impact and, when consistent with other important legal values, to re-shape law and legal processes in ways that can improve the psychological functioning and emotional wellbeing of those affected.

Therapeutic jurisprudence has been described as one of the major “vectors” of a growing movement in the law “towards a common goal of a more comprehensive, humane, and psychologically optimal way of handling legal matters”.<sup>6</sup> In addition to therapeutic jurisprudence, these vectors also include, among others, preventive law, restorative justice, facilitative mediation, and specialised treatment courts. These specialised courts or “problem solving courts” include drug treatment courts, domestic violence courts and mental health courts, among others.<sup>7</sup>

The Victorian Drug Court pilot (in common with specialised treatment courts elsewhere in Australia and overseas) incorporates principles of therapeutic jurisprudence. These principles include ongoing judicial intervention, close monitoring of and immediate response to behaviour, the integration of treatment services with judicial case processing, multi-disciplinary involvement, and collaboration with community-based and government organisations<sup>8</sup>.

Principles of therapeutic jurisprudence are also evident in the design of the CREDIT program (i.e. the provision of drug treatment services as a condition of bail, with the incentive of a potentially lower sentence following successful completion of the program); and CJDP (the objectives of which include assisting an offender’s rehabilitation, utilising the community’s resources for appropriate counseling or treatment, and ensuring that appropriate reparation is made to the victim of the offence, together with the incentive of avoiding a criminal conviction on successful completion of the program).

## 4.2 Restorative Justice

Restorative justice has been defined as “a systematic response to wrongdoing that emphasises healing the wounds of victims, offenders and communities caused or revealed by the criminal behaviour”.<sup>9</sup> Practices and programs reflecting restorative purposes respond to crime by identifying and taking steps to repair harm, involving all stakeholders, and transforming the traditional relationship between communities and their governments in responding to crime. The Criminal Justice Diversion Program conforms to these principles.

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<sup>5</sup> Winick B, Wexler D (2001) *Therapeutic Jurisprudence and Drug Treatment Courts: A Symbiotic Relationship*. University of Arizona College of Law and University of Puerto Rico School of Law

<sup>6</sup> Daicoff S (2000) The role of therapeutic jurisprudence within the comprehensive law movement. In Stolle D, Wexler D, Winick B (Eds) *Practicing Therapeutic Jurisprudence: Law as a helping profession* pp465-92 Carolina Academic Press, Durham NC. (cited in Winick and Wexler 2001 *op cit*)

<sup>7</sup> Winick and Wexler (2001) *op cit*

<sup>8</sup> *Ibid*

<sup>9</sup> Restorative Justice Online [www.restorativejustice.org](http://www.restorativejustice.org) accessed November 2003.

### 4.3 Harm Minimisation

The Drug Court pilot and CREDIT program are established within a conceptual framework of harm minimisation. The National Drug Strategic Plan defines harm minimisation as "*involving a range of approaches to prevent and reduce drug-related harm, including prevention, early intervention, specialist treatment, supply control, safer drug use and abstinence.*"<sup>10</sup>

Harm minimisation is the fundamental principle governing Australia's development of policies and programs at the national and State/Territory levels to address the negative impact of legal and illicit drugs on our society. Harm minimisation recognises that, despite our best efforts, some people will choose to use drugs, even some illicit drugs. It does not mean that we, as individuals, or as a system, condone that use. Within this context, it should be made clear that harm minimisation does not condone illicit drug use, and should not be equated with the legalisation of drugs. It is an approach that aims to reduce the adverse health, social and economic consequences of alcohol and other drugs by minimising or limiting the harms and hazards of drug use for both the community and the individual without necessarily eliminating use.

This approach also acknowledges that recovery from addiction typically involves lapse, relapse and varying degrees of progress. Accordingly, for example, re-offending or further drug use whilst on a Drug Treatment Order in the Drug Court does not automatically result in its cancellation. A series of escalating sanctions are instead used to respond to non-compliance and, in some cases, further offending, whilst compliant behaviours are positively reinforced through rewards.

### 4.4 Conceptual Framework of Diversion Strategies

Principles of therapeutic jurisprudence, restorative justice and/or harm minimisation are embedded within a range of diversion strategies in Victoria (and elsewhere) which aim to divert offenders from the usual criminal justice process. The purpose of diversion programs in the Victorian Magistrates' Court is to create a platform of diversion options for young and adult offenders including bail and sentencing options to:<sup>11</sup>

- Maximise the appropriate diversion of offenders cautioned or charged with an offence away from the formal criminal justice system; and
- Minimise the progression of offenders further into the criminal justice system.

Diversion strategies have developed in response to a growing awareness that incarceration does not address the underlying causes of criminal behaviour. They aim to treat the causes of criminal behaviour primarily by providing links to treatment and support services. These services may be outside the justice system (e.g. drug treatment, homelessness services, health and mental health support, and anger management)<sup>12</sup>.

As well as addressing the underlying causes of criminal behaviour, these programs also aim to reduce the increasing burden on the prison system. There are direct savings to the prison system by diverting

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<sup>10</sup> *The Framework of drug education*, Drug-Ed Net Australian Drug Foundation 1997, p1.

<sup>11</sup> *Diversion in the Magistrates' Court*, Department of Justice, undated.

<sup>12</sup> *Ibid*

offenders who would otherwise be facing a term of imprisonment. There are also potential indirect savings by reducing recidivism rates and delaying recidivism periods for offenders who, whilst not immediately facing a term of imprisonment, are likely to continue offending and may in the future be facing a term of imprisonment<sup>13</sup>.

The development of a broad platform of diversion options is fundamental to ensuring that offenders are dealt with at the least restrictive level within the criminal justice system, thus meeting sentencing objectives while at the same time minimising the likelihood of a person progressing further into the criminal justice system. It is essential that diversion strategies are available at different stages of the system and that a variety of alternative programs are available to tackle the range of problems that arise in an appropriate way<sup>14</sup>.

Figure 1 shows a model of diversion options for drug-related offenders developed by Spooner and colleagues.<sup>15</sup> Frameworks covering a similar spectrum of interventions have also been described by Popovic<sup>16</sup> and Freiberg<sup>17</sup> (the latter being based on the diagram shown here). There are numerous possible diversion strategies, and each strategy can be implemented in a variety of ways and by a range of agencies.

The model characterises the various diversion options in terms of the juncture at which intervention occurs. Opportunities for diversion occur throughout the criminal justice process including pre-arrest, pre-trial, pre-sentence, post-sentence and pre-release. This provides a conceptual framework for considering the spectrum of diversion options that governments may choose to adopt within their jurisdictions, and for contextualising the Victorian court diversion programs (Drug Court pilot, CREDIT and CJDP) within the wider continuum of diversion interventions in place in Victoria.

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<sup>13</sup> *Ibid*

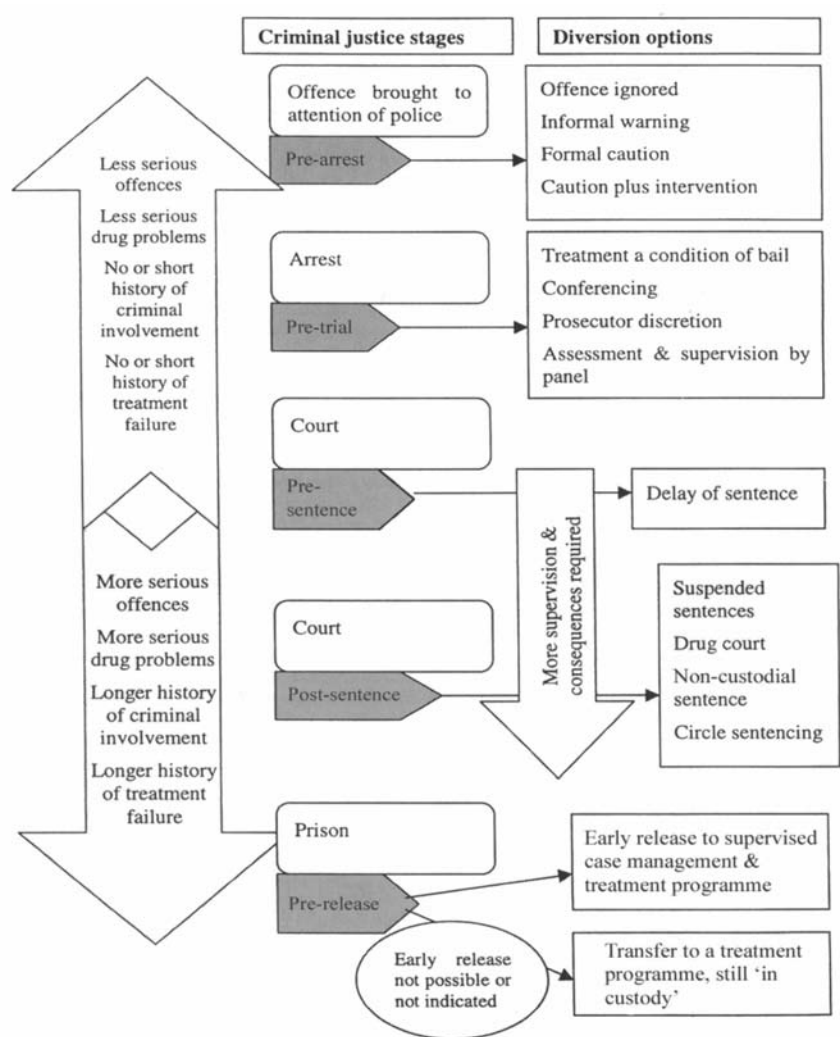
<sup>14</sup> *Ibid*

<sup>15</sup> Spooner C, Hall W, Mattick RP (2001) An overview of diversion strategies for Australian drug-related offenders. *Drug and Alcohol Review* 20: 281-94

<sup>16</sup> Popovic J, *Therapeutic Jurisprudence and Judicial Officers: Complementing Conventional Law and Changing the Culture of the Judiciary*

<sup>17</sup> Freiberg A *op cit*

Figure 1: Model of diversion options



Source: Spooner C, Hall W, Mattick RP (2001) An overview of diversion strategies for Australian drug-related offenders. *Drug and Alcohol Review* 20: 281-94

## 4.5 Policy Framework

Key elements of Australia's and Victoria's policy frameworks affecting court diversion programs are summarised in the *Protocol for the Provision of Community-Based Drug Treatment for Court Based Diversion Programs* (Department of Human Services and Department of Justice, in Consultation with the Community Offenders Advice and Treatment Service, June 2002), as follows.

### 4.5.1 NATIONAL ILLICIT DRUG STRATEGY (NIDS) DIVERSION INITIATIVE

The Council of Australian Governments' (COAG) meeting on 9 April 1999 discussed a national approach to address illicit drug use. The Heads of Government agreed to work together to make a new investment in prevention, early intervention, education and diversion of drug users to counseling and treatment.

The Deed of Agreement between the Commonwealth and the State of Victoria for the NIDS Diversion Initiative was signed on 1 August 2000 and the initiative announced jointly by the Victorian Premier and Prime Minister on 23 August 2000. In Victoria the scheme consists of the statewide introduction and/or expansion of diversion programs. These target offenders for diversion into drug treatment by the police at the point of arrest and by the courts at either bail or sentencing.

The implementation of the programs throughout Victoria under the NIDS Diversion Initiative is being overseen by a State Reference Group consisting of members from the Commonwealth Department of Health and Aged Care, Victorian Departments of Human Services and Justice, Victoria Police and a member from the Australian National Council on Drugs (ANCD). The State Reference Group makes recommendations to the State and Commonwealth Ministers for Health about suitable providers to undertake services and oversees the implementation of the initiative within Victoria.

#### **4.5.2 NATIONAL DRUG STRATEGIC FRAMEWORK**

The National Drug Strategic Framework 1998-2002 provides a shared vision, a framework for cooperation and a basis for coordinated action to reduce the harm caused by drugs in Australia until the year 2002. The Framework, which is agreed by the Commonwealth and all State and Territory governments, is the successor of the National Drug Strategy. Instituted in 1985, the national strategy approach seeks to focus on harm minimisation, drug control, an inter-sectoral approach, international cooperation, and evaluation and accountability.

#### **4.5.3 VICTORIA'S TREATMENT SERVICES: THE FRAMEWORK FOR SERVICE DELIVERY**

The document *Victoria's Drug Treatment Services: The Framework for Service Delivery* (Department of Human Services (1997)) provides the direction for the redevelopment of alcohol and drug treatment services within Victoria. Services to be purchased by ACSO-COATS (an agency engaged by the Department of Human Services to arrange the provision of drug and alcohol services to registered clients by accredited agencies), conform to unit costs and the service delivery framework established under the redevelopment.

#### **4.5.4 VICTORIAN GOVERNMENT'S DRUG POLICY - A NEW APPROACH**

Released in July 1999, *A New Approach – Labor's Plan to Tackle the Drug Crisis* included the expansion of court based diversion, such as the CJDP and CREDIT programs, along with a commitment to the trial of a specialist Drug Court in the Dandenong region. These initiatives are concerned with finding new ways to deal with drug related crime and its causes.

The strategy provides a framework for responding to continuing demand growth in the prison system. Aims of the CJDP, CREDIT and Drug Court initiatives are in accordance with this strategy, as well as contributing to the 'Reducing Re-offending' strategy, Drug Policy, Crime Prevention and Corrections Sub Committee of Cabinet.

#### 4.5.5 LEGISLATIVE FRAMEWORK

Relevant legislation includes:

- *The Sentencing Act 1991*
- *The Sentencing (Amendment) Act 2002*
- *The Sentencing and Other Acts (Amendment) Act 2001*
- *Magistrates' Court Act 1989*
- *The Corrections Act 1986*
- *The Alcohol and Drug Dependent Persons Act 1968*
- *The Health Services Act 1988*
- *The Drugs, Poisons and Controlled Substances Act 1981*
- *Information Privacy Act 2000*
- *Children and Young Persons Act 1989*
- *Bail Act 1977*



## 5 CRIMINAL JUSTICE DIVERSION PROGRAM

This section of the report considers issues and trends that are specific to the Criminal Justice Diversion Program (CJDP). It includes a description of the program's objectives and processes, an analysis of program data, and an analysis of stakeholders' experience of the program.

### 5.1 Background

Much of the following background information has been drawn from the 2002 Criminal Justice Diversion Manual prepared by Criminal Justice Diversion Coordinators Anna McCasker and Nicole Daly.

CJDP is aimed at preventing the entry of first-time or low risk defendants into the criminal justice system. The vision of the program is broadly stated in the CJDP Manual as improving the efficient use of court resources by facilitating their development as an alternative and/or complementary procedure to normal case processes.

The objectives of Criminal Justice Diversion are to:

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

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

#### 5.1.1 LEGISLATIVE AND POLICY BASE

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

## **5.2 Eligibility Criteria and Referral**

### **5.2.1 ELIGIBILITY**

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

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

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

### **5.2.2 REFERRAL**

A request for inclusion in CJDP can be made by several parties including the informant, the sub-officer authorising the brief, the prosecutor, the defendant, the defendant's legal representation or the court, including the Magistrate or the criminal justice diversion coordinator. Regardless of who refers a defendant to the program, a central tenet applies that the referral must be approved by the informant or sub-officer authorising the brief. Also the defendant (with or without legal representation) must accept their participation in the program, with the alternatives available being to plead guilty or not guilty and have the matter dealt with according to normal court procedures and statutory sanctions provided for the particular offence.

## **5.3 Operating Processes of the Program**

The following is an outline of the processes by which CJDP operates. It should be noted that this outline does not necessarily stipulate exactly how the program is currently operating in all Magistrates' Courts, as local nuances may exist.

Defendants are charged and bailed or served with a summons to appear in Court in the usual manner.

Prior to the hearing day, a Diversion Notice is filed indicating police consent. No matter proceeds by way of diversion unless this form is filed and signed by a person authorising the brief. The notice also provides informants with the opportunity to suggest an appropriate outcome to the case. The Diversion Notice is copied to the defendant, the court, and the police brief.

A Diversion Brief is prepared which includes a summary of the offence, the defendant's prior history, and a witness cost sheet for restitution and compensation. The Brief is filed at the appropriate court at least 7 days prior to the mention date.

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

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

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

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

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

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

## **5.4 Analysis of Program Data**

Program data were obtained from two main sources. The Senior Diversion Coordinator provided data used for activity monitoring and reporting, which covered the period November 2000 to September 2003. Data were also extracted from the Parallel Services System database consisting of records from June 2001 to September 2003.

The CJDP database is specifically designed as a monitoring tool, not as an evaluation instrument. The data collected is retrospective and the elements are designed to enable monitoring of the throughput of the system, participants' progress and some basic outcomes.

Recidivism rates were explored through analysis of a sample of 100 randomly selected CJD participants. Victoria Police provided criminal histories for the sampled individuals on a de-identified basis.

#### 5.4.1 OVERALL ACTIVITY

##### *Number of participants in the program*

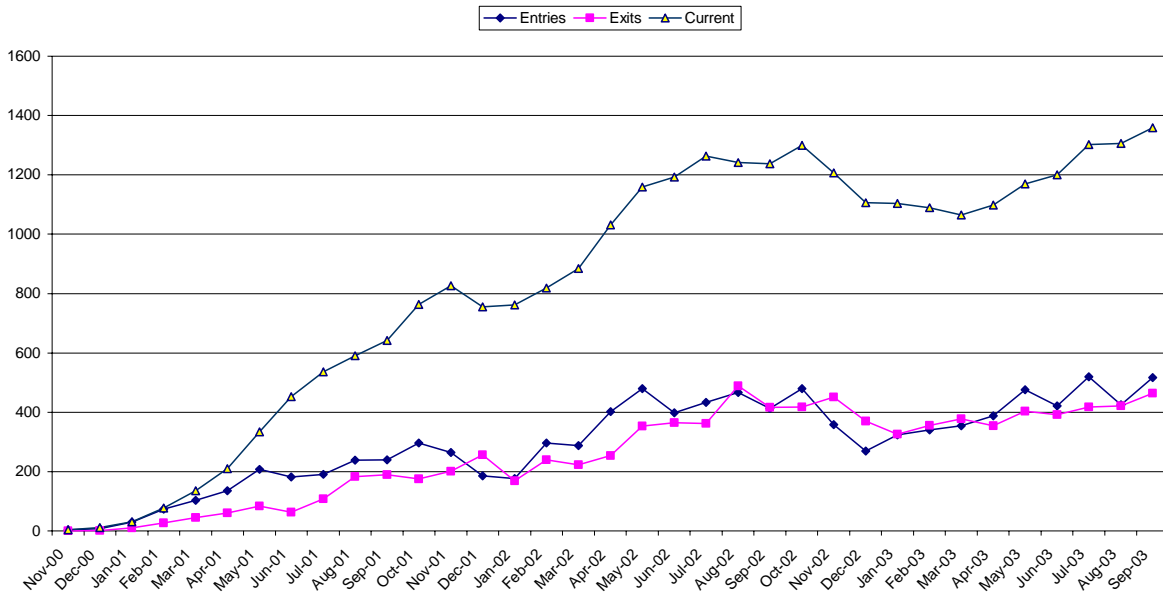
Figure 2 shows entries to and exits from the program and the number of current participants each month between November 2000 and September 2003. Overall there has been an increase in the rates of both entries to and exits from the program during the past two years. However, entries have exceeded exits and this has given rise to the overall growth in the number of current participants.

The number of entries increased at a fairly steady rate from August 2001 to October 2002, with a reduction in December 2001 being consistent with a decrease in overall court activity during the Christmas period (a pattern demonstrated each year). However, growth in the number of entries appears to have leveled off somewhat after October 2002. This may be related to the querying of legislation over demerit points for driving offences which occurred between October 2002 and June 2003 when new legislation came into effect (this is discussed in relation to stakeholder views regarding eligibility criteria, below).

The number of exits followed a similar trend to the number of entries, rising until about October 2002, then remaining fairly constant thereafter. The number of participants in the program each month has risen throughout the period, reflecting the cumulative effect of more entries than exits each month, and the duration of their participation.

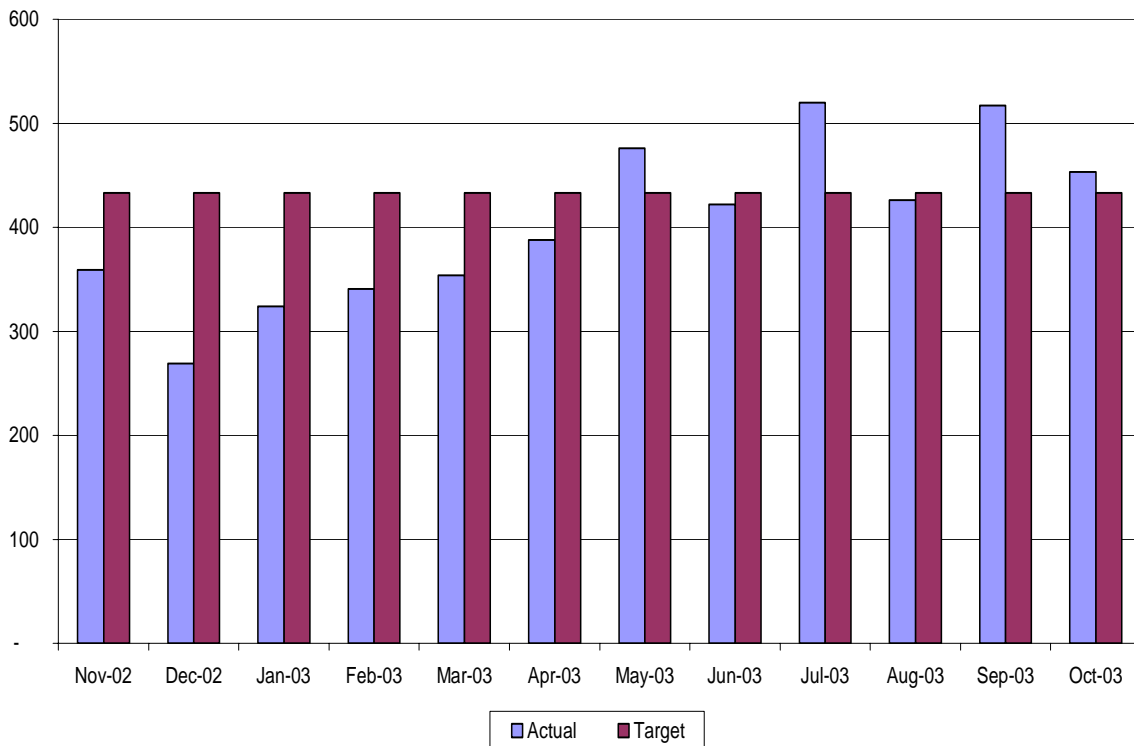
The introduction of new legislation in June 2002 supporting the CJD does not appear to have had a discernible effect on the number of entries to the program.

**Figure 2: Number of CJDJ participants by month**



The following figure compares actual against targeted commencements on the program, based on data provided to the evaluators by the Department of Justice for the 12 months ended 31 October 2003. Targets were exceeded in four of the 12 months shown, although total commencements were 7% below target over this period, due largely to shortfalls in the earlier months of operation. Targets were met overall during the most recent eight month period shown in the graph.

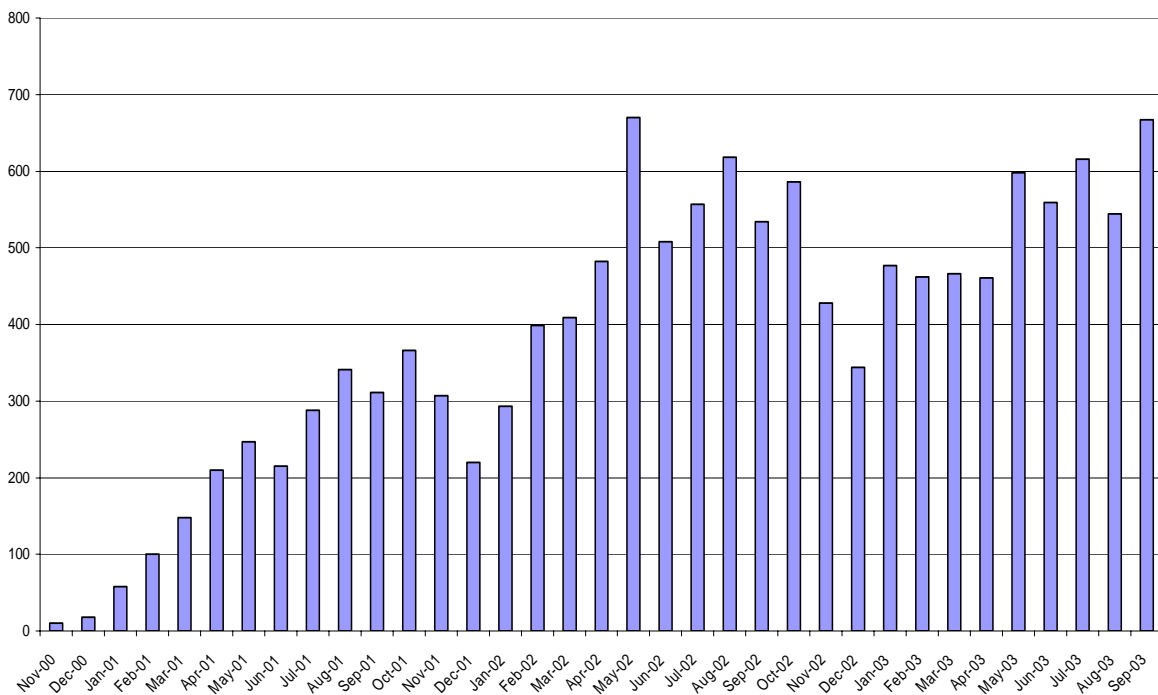
**Figure 3: Actual v targeted commencements**



**Referrals to the program**

Analysis of the diversion data indicated that a total of 13,517 defendants were referred to the CJDJ between November 2000 and September 2003, with referral rates following a seasonal pattern and a general increase until mid to late 2002, similar to that observed in the previous graph. This is shown in Figure 4. In the 2002/03 financial year, a total of 4,725 referrals were made to the program. The Department of Justice has advised that no targets were set for the number of referrals to CJDJ – only for the number of persons entering Diversion Plans. The introduction of new legislation in June 2002 supporting the CJDJ does not appear to have had a discernible effect on the number of referrals to the program.

**Figure 4: Number of referrals to CJDJ by month**



The majority of referrals came from the police (61.9%). Additionally a considerable 32.8% of the referrals were via the defendant or defendant’s solicitor, with a further 4.8% being referred by the courts.

**Table 5: Referral sources**

Referral Source	%
Police	61.9
Defendant or Defendant’s Solicitor	32.8
Court	4.8
Other	0.5

### **Referrals by court location**

Table 6 displays the location of the Magistrates' Courts where CJDP participants were processed in Victoria. The table shows that Melbourne Magistrates' Court processed the highest number of referrals accounting for 2,105 or 17% of the 13,517 cases assessed between November 2000 and September 2003.

Of the 45 Magistrates' Courts that have processed referrals to CJDP, the seven courts of Melbourne, Ringwood, Dandenong, Heidelberg, Sunshine, Broadmeadows and Frankston have been the main users of the program, having processed 77% of referrals.

**Table 6: Referrals to CJDP by court location**

<b>Court Location</b>	<b>Number of cases</b>	<b>Court Location</b>	<b>Number of cases</b>
Melbourne Magistrates' Court	2105	Echuca Magistrates' Court	50
Ringwood Magistrates' Court	1761	Colac Magistrates' Court	49
Dandenong Magistrates' Court	1439	Hamilton Magistrates' Court	48
Heidelberg Magistrates' Court	1279	Portland Magistrates' Court	42
Sunshine Magistrates' Court	1217	Horsham Magistrates' Court	41
Broadmeadows Mag. Court	1043	Swan Hill Magistrates' Court	39
Frankston Magistrates' Court	903	Mildura Magistrates' Court	39
Moe Magistrates' Court	335	Castlemaine Magistrates' Court	38
Ballarat Magistrates' Court	284	Mansfield Magistrates' Court	29
Shepparton Magistrates' Court	275	Myrtleford Magistrates' Court	27
Geelong Magistrates' Court	256	Stawell Magistrates' Court	27
Bendigo Magistrates' Court	219	Kerang Magistrates' Court	26
Korumburra Magistrates' Court	177	Maryborough Magistrates' Court	26
Bairnsdale Magistrates' Court	121	Cobram Magistrates' Court	21
Sale Magistrates' Court	111	Dromana Magistrates' Court	19
Werribee Magistrates' Court	109	Ararat Magistrates' Court	17
Kyneton Magistrates' Court	86	Wonthaggi Magistrates' Court	11
Wangaratta Magistrates' Court	80	St Arnaud Magistrates' Court	7
Warrnambool Magistrates' Court	69	Corryong Magistrates' Court	1
Bacchus Marsh Mag. Court	62	Hopetoun Magistrates' Court	1
Wodonga Magistrates' Court	62	Ouyen Magistrates' Court	1
Seymour Magistrates' Court	53	Orbost Magistrates' Court	1
Benalla Magistrates' Court	50		

### **Prosecuting agency**

5,950 of the cases recorded on the database included relevant data concerning prosecuting agencies. Of these, 5,926 or 99.6% were Victoria Police. A total of 24 prosecutions were recorded as having been made by other agencies, as shown in the following table. Given the low (47%) completion rate of this field in the database, these statistics should be treated with caution.

**Table 7: Prosecuting agency**

Prosecuting Agency	Number of cases
Victoria Police	5,926
Commonwealth Director of Public Prosecutions	10
Natural Resources and Environment	5
Office of the Chief Electrical Inspector	3
Dept of Primary Industry	2
Victorian Workcover Authority	1
Victorian Taxi Directorate	1
Vic Roads	1
Department of Human Services	1

***Referrals where a diversion did not proceed***

Of the 13,517 referrals to the CJDPA recorded on the database between November 2000 and September 2003, 2,474 did not proceed with the program (18%). The most common reason for not participating in the program was a refusal to take part.

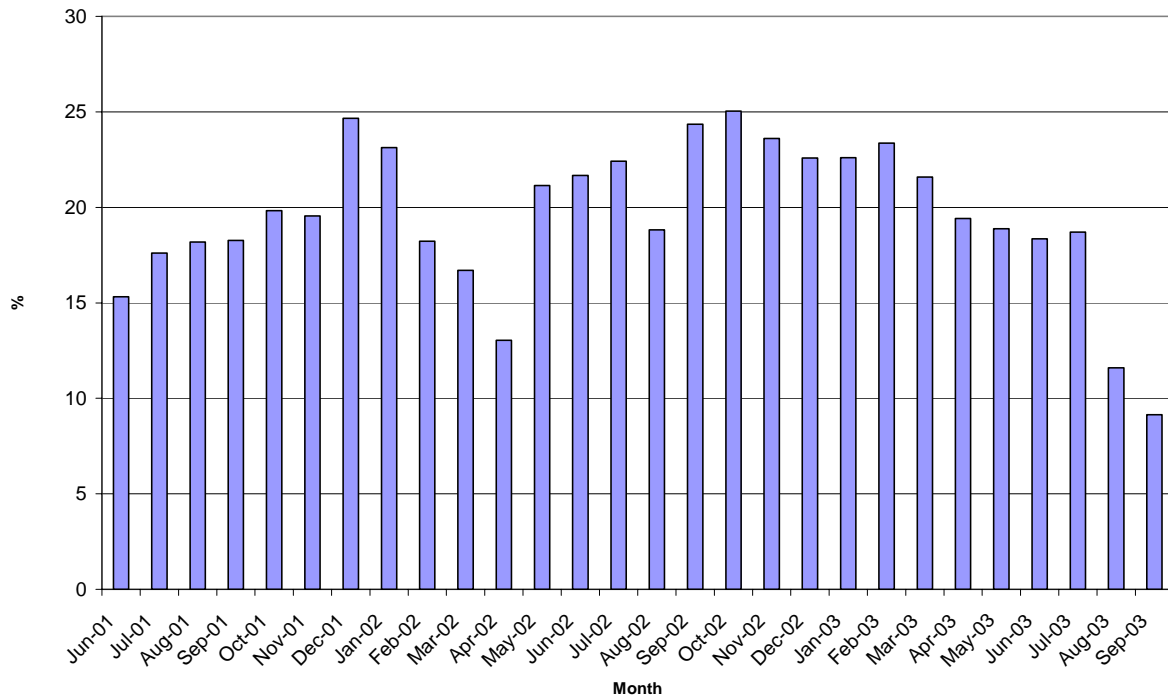
**Table 8: Reasons for not proceeding with program**

Reasons	% of cases that did not proceed
No Appearance (Defendant)	15
Not Undertaken (Defendant)	10
Refused	75

Figure 5 shows the percentage of referrals which did not proceed with the program on a monthly basis. Results indicate that October 2002 had the highest percentages of defendants who did not proceed with the program (25%). This may be related to the driving demerit points issue being raised at this time. Similarly December 2001 and September 2002 also produced high numbers of referrals not proceeding with the diversion explaining for 24.7% and 24.4 % respectively. The apparent decline in more recent months is influenced by data recording, since some cases “not undertaken” may be retrospectively recorded.



**Figure 5: Percentage of referrals not proceeding with program**



**Number of charges**

Table 9 summarises the total numbers of charges faced by defendants referred to CJDP. According to the results, nearly 92% of defendants in the database faced only one charge, and nearly 5% of offenders faced two charges.

**Table 9: Percentage of defendants by number of current charges**

Number of Charges	% of Defendants
1	91.8
2	4.9
3	1.3
4+	2.0

**Most common charges faced by defendants referred to CJDP**

Analysis was conducted of the specific charges faced by defendants referred to the CJDP between July 2001 and September 2003. The largest category was charges recorded on the system as “other”, which accounted for 35% of all charges recorded on the system. The second largest category was theft at 17% of all charges and third was careless driving at 9%. These were followed by unlawful assault (5%), criminal damage (4%), and willful damage (2%). A further 34 categories were also listed, each accounting for 0-2% of all charges recorded on the system.

Related to the extensive use of the “other” category is the fact that categories were nominated prospectively, based on the charges that were expected would commonly be faced by defendants referred to the program. Although conjecture, it is possible that “other” includes one or more commonly used charges which were not anticipated when the system was being developed.

The fields have subsequently been reviewed. Following is a list of the categories which have been added, and which may well have been included within the ‘other’ category previously:

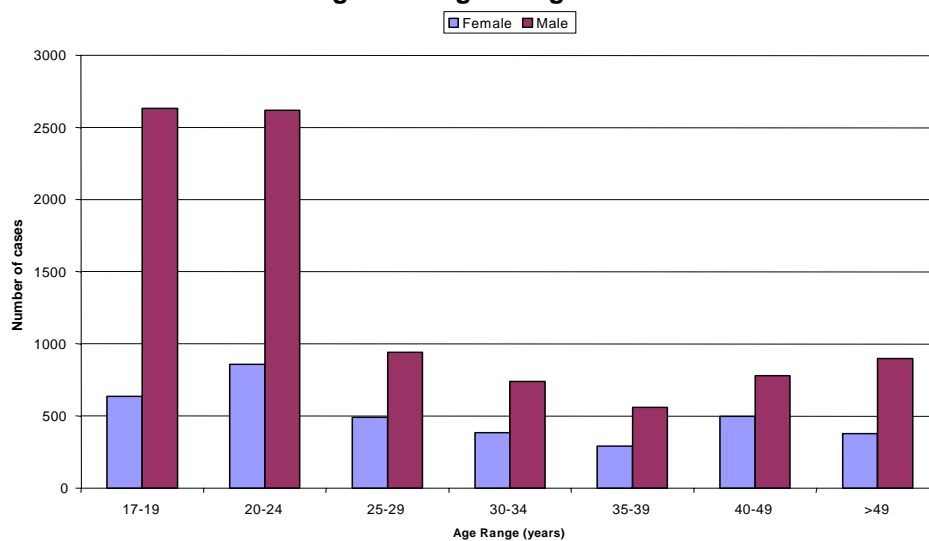
- Make a False Document to Prejudice Other (mainly PTC Concession Card)
- Use a False Document to Prejudice Other (mainly use false Concession Card)
- Travel Without Valid Ticket – PTC
- Attempted Theft
- Theft from Shop (shopsteal)
- Cultivate a Narcotic Plant – Cannabis
- Possess Amphetamine
- Use Amphetamine
- Possess Ecstasy
- Use Ecstasy
- Possess Heroin
- Use Heroin
- Hinder Police
- Drunk in a Public Place

## 5.4.2 PARTICIPANT PROFILES

### *Age and gender*

It is apparent from Figure 6 that the majority of those referred for diversion were young males. Males aged 17-29 years of age inclusive accounted for 48.8% of referrals between July 2001 and September 2003, whilst numbers of females were more evenly distributed by age. Overall, males represented over double the amount of females (9,169 vs 3,527) within the database.

**Figure 6: Age and gender**



### Offending history

The offending histories of 100 randomly selected CJDP participants were provided to the Department of Justice in de-identified form by Victoria Police. A sample of this size is generally regarded as being sufficient for the purpose of profiling specific characteristics of participants in a program (in this case their prior offending history). The data were aggregated by the Department and provided in summarised form to the evaluators for analysis. Criminal histories were provided back to 1993/94. Of the 100 individuals, nine had criminal histories prior to entering CJDP, for a total of 25 offences. A summary of these offences, based on summary data provided to the evaluators, is provided below.

**Table 10: Prior convictions in a sample of 100 CJDP graduates**

Offences committed	Number of times offence was committed (by nine of the 100 individuals)	Average prior offences per individual (across all 100 individuals)
Drugs (possess/use)	6	0.1
Handle Stolen Goods	3	0.03
Theft (shopsteal)	3	0.03
Justice procedures	3	0.03
Drugs (cult/man/traffic)	2	0.02
Behaviour in Public	2	0.02
Assault	1	0.01
Burglary (other)	1	0.01
Theft of m/car	1	0.01
Theft (bicycle)	1	0.01
Theft (other)	1	0.01
Other	1	0.01
Total	25	0.25

#### 5.4.3 TIME SPENT IN THE PROGRAM

Overall case processing times (for all criminal cases) are measured from the date of first appearance at court to the date of finalisation (e.g. not guilty, or guilty and sentenced). The court's case processing time standard for 2003/04 reporting to the Department of Treasury and Finance is that 85% of all criminal cases will be finalised within six months of the defendant's first appearance at court. The national benchmark is that 90% of matters would be finalised within six months of commencement.

One of the aims of CJDP is to prevent the entry of first-time or low risk defendants into the criminal justice system. One of the inputs to achieving this aim is an early response from the program – i.e. minimal delays from first appearance at court and entry into the program.

Analysis of case processing times conducted by the Department of Justice found that of the participants who successfully exited CJDP between July and September 2002:

- 86.6% exited within six months of their first appearance at court, with individual regions ranging from 65.1% to 100%.

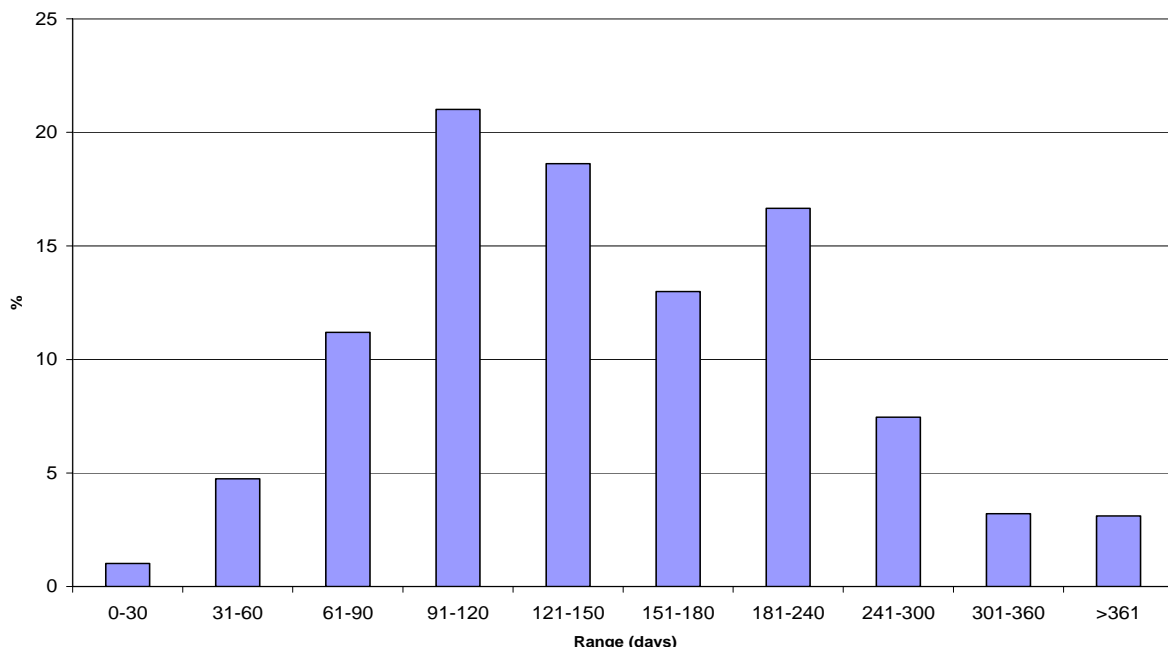
- 61.2% had entered a Diversion Plan within 30 days of their first appearance at court, with individual regions ranging from 38.7% to 84.6%, while approximately 10% of participants had not entered a Diversion Plan within three months of their first appearance at court.
- 49.9% had exited CJDP within three months of entering a Diversion Plan, and 94.3% had exited within six months of entering a Diversion Plan.

The case processing time from program entry to exit was found to vary according to the conditions imposed under the Diversion Plan. Of the participants undertaking counseling/treatment, 15% had exited the program within three months of the Diversion Plan being entered, while 64.9% of participants required to make a donation had exited within the same period. All participants required to apologise to the victim exited the program within three months of the Diversion Plan being entered.

For this evaluation, time spent on the program was calculated as the number of days spent by participants from their hearing date to the date of completion<sup>18</sup> and the results are shown in the following graph. The graph reveals a bi-modal distribution of case durations, with 21% of participants taking 91-120 days to complete, 18% taking 121-150 days and 17% taking 181-240 days. Overall, more than two thirds of cases take between 91-240 days to complete, 17% take less time than this and 15% take more than 240 days.

The completion of some Orders within 0-30 days has occurred where participants completed the anticipated conditions of their Order (e.g. donation, letter of apology) prior to their court hearing. These actions were taken into account by the Magistrate at the hearing, making a short completion (0-30 days after the hearing) possible.

**Figure 7: Percentage frequency distribution of the case duration**



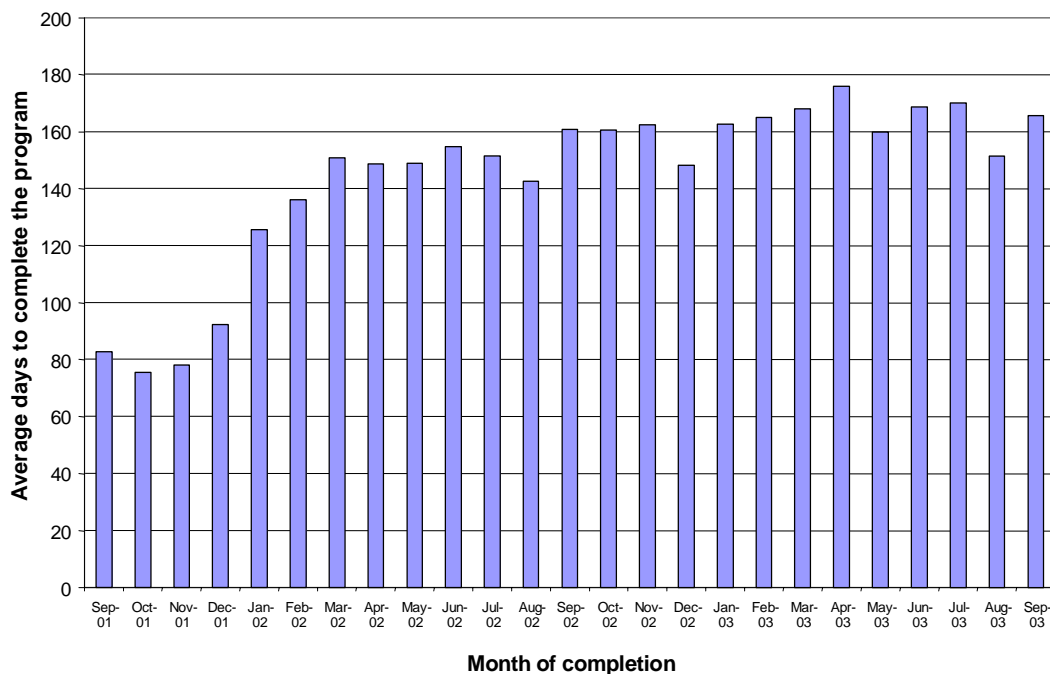
<sup>18</sup> The database recorded a number of dates including: case initiated; received diversion notice; date of hearing; date of completion; extended date(s) of completion; return to court. The analysis presented here is based on the elapsed time between the date of hearing and the last extended date of completion for each participant, as recommended by the Senior Diversion Coordinator.

When interpreting the above analysis and especially when making comparisons with other sentencing options (such as bonds) it should be noted that other programs use different recording conventions and this affects the apparent case durations and limits comparability. For example, for bonds the 'completion date' is the date the bond is ordered, whereas a diversion is recorded as completed once the participant is discharged from the program.

It should also be noted that time taken to complete the program can be influenced by a number of factors, some of which are outside the control of participants. For example, duration is affected by the total value of donations or restitution the participant is ordered to pay, together with the amount they can afford to pay each week. Another factor outside the participant's control is the availability of placements for volunteer service, which (anecdotally) are regarded as a factor that often contributes to the time taken to complete a diversion.

Also of interest is the question of whether the time taken to complete a diversion has increased or decreased over time. This is explored in Figure 8 which shows the average time taken to complete a diversion for all cases commenced between July 2001 and September 2003. The conclusion reached from this graph is that this measure is relatively stable. The apparent increase in the first seven or more months of the graph is an artifact: The average durations of completed cases in the early months of the graph are necessarily shorter than those in later months because only completed cases are included in the analysis, and only cases which commenced in or after July 2001. Further analysis (e.g. analysis of outliers) also failed to identify any discernable patterns.

**Figure 8: Average days taken to complete a diversion by month of completion**



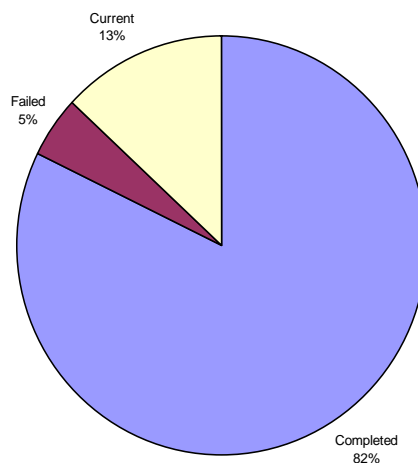
#### 5.4.4 OUTCOMES

Of the 13,517 cases referred between November 2000 and September 2003, 82% received a Diversion Order while 18% did not proceed.

Figure 9 shows that of those who received a Diversion Order, 82% had completed, 5% had failed and 13% were still current as at 30 September 2003. This represents a completion rate of 94% when current Orders are excluded.

It is worth noting that the 'failed' category includes partial completions or completion of some but not all conditions of a Diversion Order, and that partial completion is taken into account by Magistrates in sentencing. We understand that the proportion of failed diversions has increased slightly in recent months (to 5-6%) and that a system is being developed to record and analyse reasons for failed diversions.

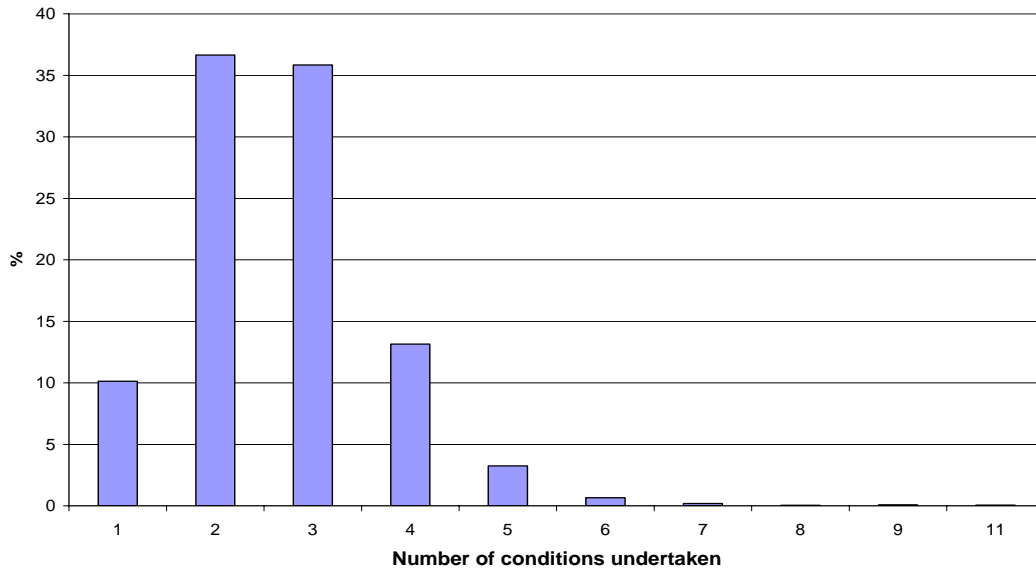
**Figure 9: Participant outcomes**



#### ***Number of conditions per participant***

Figure 10 illustrates the total number of conditions imposed by Magistrates as part of Diversion Orders. A total of 22,046 conditions are recorded in the database for 9,807 participants who commenced between July 2001 and September 2003. Participants most commonly received two or three conditions (36.7% and 35.8% of participants respectively) and very few participants received more than four conditions.

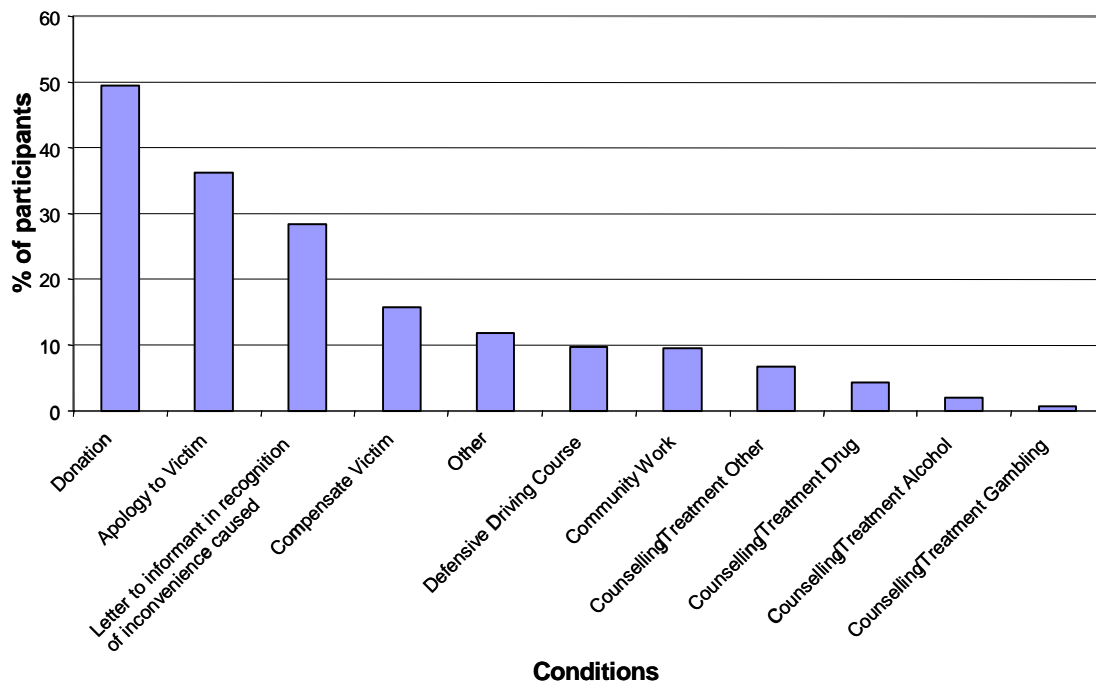
**Figure 10: Number of diversion conditions by percentage of participants**



**Conditions undertaken**

Figure 11 represents the various conditions imposed on CJDP participants. According to the results, a 'donation' was the condition most utilized, with this condition applying to almost 50% of participants. The 'apology to the victim' and 'letter to informant' conditions were also undertaken frequently by participants (36% and 28% of all diversions respectively). It is also noteworthy that the counseling conditions (including counseling/treatment other, counseling/treatment drug, counseling/treatment alcohol, and counseling/treatment gambling) were utilized the least among the participants, together undertaken by 13% of the participants.

**Figure 11: Diversion conditions by percentage of participants**



## Recidivism

The offending histories of 100 randomly selected participants who commenced on the CJDP between 1 July 2002 and 31 December 2002 were provided to the Department of Justice in de-identified form by Victoria Police. The data were aggregated by the Department and provided in summarised form to the evaluators for further analysis. Offences dealt with in court up to 21 November 2003 were included in the data set, providing a minimum window of 325 days and a maximum of 508 days since commencement on CJDP. Of the 100 individuals, four people were convicted of a total of eight offences. A summary of these offences, based on summary data provided to the evaluators, is provided below.

Assuming that the commencement dates within the sample are evenly distributed (implying an average 417 day window for re-offending), then the analysis suggests, at a 95% confidence interval, that between 0-7% of the population of CJDP participants re-offended within 12 months of commencing on CJDP. Those who did re-offend would commit between 0-4 offences on average during their first 12 months after entering the program.

**Table 11: Recidivism in a sample of 100 CJDP graduates**

Offences committed	Number of times offence was committed (by four of the 100 individuals)	Average new offences per individual (across all 100 individuals)
Theft (shopsteal)	2	0.02
Sex (non-rape)	1	0.01
Deception	1	0.01
Theft of m/car	1	0.01
Theft (other)	1	0.01
Going equipped to steal	1	0.01
Justice procedures	1	0.01
Total	8	0.08

Source: Department of Justice

## 5.5 CJDP Defendant and Victim Satisfaction Questionnaires

CJDP coordinators seek to ensure that defendants participating in the CJDP, and victims (where relevant) complete satisfaction questionnaires following their experience of the program. Survey forms are sent to victims when the plan is issued. Survey forms are sent to participants after the plan is finalised. Responding is voluntary. A summary of the responses provided to each of these brief questionnaires is provided below.

### 5.5.1 DEFENDANT QUESTIONNAIRES

The first question in the questionnaire inquired whether court staff adequately explained the CJDP to the participant. Of 789 responses to this question, 783 were satisfied that the program was adequately explained. Of the six participants who felt that they were not informed sufficiently, their explanation was that their lawyer had informed them rather than court staff.



When asked to indicate the value placed on the opportunity to participate in CJDP, particularly in not having an accessible police record, 742 respondents highly valued the opportunity, whilst a further 29 respondents found this somewhat valuable. Only six respondents placed no value on this feature of the program.

In responding to a question concerning their opportunity to express an apology, 160 participants stated that an apology was not included as part of their diversion order. Of those who apologised as part of their Order, 202 (32% of the 633) participants felt that CJDP provided them with an opportunity to apologise that otherwise may not have occurred, 319 (50%) felt that CJDP provided a positive end to their involvement in the matter, and 354 (56%) welcomed the opportunity to express an apology to and thank those involved<sup>19</sup>. Of those (633) who did apologise, only 19 indicated that they had not wished to apologise for the matter.

Participants were asked to identify whether they undertook any courses as part of their diversion order. Many also indicated the amount of restitution that they were required to pay to their victims or charitable organisations, along with any community work undertaken. A wide range of programs, courses and voluntary work were undertaken. These commonly included defensive driving courses, anger management programs, and a range of counseling options, as well as community work, and restitution to victims and charitable organisations.

Defendants were offered the opportunity to provide any further comments in relation to the program as a whole. The responses overwhelmingly supported the benefit and worth of CJDP. Of 246 responses, 230 were clearly positive in their tone. A further 12 were largely positive but contained some level of constructive criticism, whilst four were negative in their appraisal of the program.

Several participants indicated that CJDP shows a human side to the law, showing a sense of compassion and understanding. Numerous participants displayed their appreciation for being given a “second chance”, and many indicated that it allowed them to see the impact of their actions, and feel remorse concerning the incident in question. Several participants highlighted the value of the program to all parties involved, seeing it as a positive and mutually acceptable process and outcome to participants, their victims, local charities, and the courts.

Of the few negative comments received, three participants stated that they felt pressured or compelled to take part in CJDP, despite their claims that they did not commit the stated offence. Related to this, two participants felt that they had not been able to tell their side of the story. These two participants expressed considerable anger towards the victims, who the participants considered to be at fault. Other concerns related to four participants only hearing about the program by chance, or learning of this opportunity at the last minute.

Defendants who elected not to use CJDP were not surveyed. However, anecdotal advice received by the evaluators is that the majority of defendants who did not wish to be diverted would have pleaded not guilty. A small minority may have considered CJDP too onerous.

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<sup>19</sup> Respondents were able to tick more than one response hence the proportions do not add to 100%.

### 5.5.2 VICTIM QUESTIONNAIRES

The first question inquired whether court staff adequately explained the CJDP to the victim. Of 164 respondents to this question, 148 felt satisfied with how the program was explained to them. Of the 16 victims who felt that they weren't informed sufficiently, the most common reason for this view involved the lack of paperwork provided to explain the program, or the late arrival of such paperwork.

The survey asked whether CJDP allowed victims to express their views to the court. 146 of 156 respondents felt satisfied with this aspect of the program. Those less than satisfied with their inclusion and role in the process as victims cited problems with the timing of paperwork (after the hearing for example), dissatisfaction with the penalty received by the participant, and simply knowing nothing about the program due to a lack of information.

The survey also asked whether they had received assistance from court staff. 40 victims indicated that they had received assistance via the telephone, whilst a further five and four victims respectively, indicated that they had received assistance in person prior to the hearing day or at the interview on the hearing day itself. Of these 49 respondents, 46 felt that the assistance provided adequately addressed their query.

Victims were asked to indicate whether the conditions of the participant's Diversion Plan (the Order) adequately reflected the gravity of the offence. The vast majority, (136 of 162 victims) felt satisfied that the Diversion Plans were appropriate. Of the 26 who were less than satisfied, the majority felt that the donation/reparation was too small, the community service too short, or the offence too severe for diversion. Beyond simple proclamations calling for harsher penalties, comments made by victims pertaining to their position as a victim included the need for the psychological distress of the victim to be considered, and the need for victims to receive full payment for damage or losses incurred as a result of the participant's actions. Some anecdotal examples suggested that full payment for damage or loss was not occurring for some victims, and there was a belief that the victim deserved restitution under the Order before other organisations, such as charitable groups.

The final question asked victims to indicate whether the CJDP proved beneficial in providing them with access to the justice system. 152 of 161 victims were satisfied that the program had provided them with such access. Of the 9 who believed that the program did not improve their access to the justice system, the most common reasons involved the feeling that they had not been informed, or did not know of the hearing until after the event. One victim indicated that they did not access the justice system through the program due to concerns over fronting the perpetrator.

It is clear that across the victims surveyed, support for the program and its processes is as strong as the level of support expressed by participants.

## 5.6 Stakeholders' Experience of CJDP

The following discussion highlights key issues and themes which emerged from the stakeholder consultations carried out in Melbourne, Ringwood and Moe during March/April 2003. It should be noted that this analysis provides a snapshot of key issues at a certain point in time and that these issues, and efforts to address them, are continuing to evolve.

### **5.6.1 PROGRAM DESIGN AND IMPLEMENTATION ISSUES**

Stakeholders were generally satisfied with the program design, although some concerns were expressed over the emphasis on the police informant in approving referral for CJD, and the consistency of Magistrates allowing diversion to take place. These arguments were countered by stakeholders expressing a belief that involving the police informant in approving referrals facilitated police adoption and involvement in the program, whilst Magistrates must maintain their discretionary powers.

Inconsistencies in program operation in different locations appeared to be relatively minor, with one Magistrate mentioning that their court deals with all diversion cases in open court, whereas some other courts deal with diversion through a hearing in chambers.

### **5.6.2 POLICY AND LEGISLATION ISSUES**

The initial lack of supporting legislation behind the CJD is thought by some stakeholders to have been a major barrier to its adoption by Magistrates, and numerous stakeholders mentioned the improvement since the program has been backed by legislation (new legislation was introduced in June 2002). However, this perception is not reflected in the data (see Section 5.4.1) which show that referrals and entries to the program have remained relatively steady since that time. There was some sentiment that the program was not well marketed at the start, with some stakeholders being informed via email (which may go unread) rather than consultative approaches. (There is some evidence to support this perspective as referrals in the first year of operation were considerably lower than in the subsequent two years, although this could equally reflect the gradual rollout of the program and/or a gradual uptake as knowledge of the program became more widespread). Concerns still existed with some coordinators that they lacked the capacity to effectively market the program.

### **5.6.3 LEADERSHIP**

There was generally strong support for the use of deputy registrars as diversion coordinators, although there was some comment that better knowledge of the welfare sector and the client group would be useful for the coordinators in dealing with some client types, to assist in referral to relevant supports.

Leadership from Magistrates in supporting the program was generally considered vital because it influences other key stakeholders.

### **5.6.4 FUNDING**

Several comments were made by stakeholders regarding the impact of funding uncertainty on staff retention. These people expressed the view that early decisions regarding the committal of continued funding to the program would help ensure that key staff, particularly coordinators, can be assured of the continuation of their positions and assist in the promotion of the program. Uncertainty over the program's future was believed to have led to at least two coordinators vacating their positions due to concerns over long term employment prospects.

### 5.6.5 ELIGIBILITY CRITERIA

The eligibility issue most widely discussed by stakeholders involved the use of CJDP for driving offences. There was universal opposition to the use of diversion in order to avoid the loss of penalty or demerit points, and therefore possibly one's licence. There were concerns that despite a police directive, some police were still referring matters involving demerit points and that some Magistrates allowed the diversion. However, there were also concerns that some courts may adopt a blanket rule against all driving related matters. This approach was considered inappropriate by many stakeholders from a range of backgrounds, who believed that certain driving offences, such as careless driving, are particularly suitable for diversion. For example, in the case of careless driving, which does not attract demerit points, it was considered that a defendant with no prior record, who just did "something stupid", should not be deprived of the opportunity to have the offence diverted.

Section 128A of the *Magistrates' Court Act* 1989 was amended in June 2003 which effectively enabled traffic offences subject to demerit points to be considered by way of diversion. In addition it also provided that demerit points would still be incurred even if the matter was heard by way of diversion. This therefore enables any traffic offence other than one subject to a mandatory sentence or penalty or a drink/drug driving offence to be considered for diversion.

Other than issues surrounding driving offences, stakeholders were generally very satisfied with the eligibility criteria, particularly the lack of prior offences and the seriousness of the offence, whilst Magistrates were generally keen to maintain the flexibility and discretion they currently possess.

### 5.6.6 REFERRAL AND ADMISSION

A Diversion Coordinator estimated that around 5% of the incoming criminal case load is being referred to CJDP, with the majority of these being considered appropriate for diversion. Data relating to the referral rate were not recorded during the period covered by this review. However, a separate hearing code was introduced in 2003/2004 for Diversion. Data since its introduction indicates that 6% of the incoming criminal case load is being referred to CJDP, which is consistent with the above estimate.

In general there was strong satisfaction that most referrals were appropriate, and the high completion rate as shown in the analysis of program data supports this. There were some issues raised in relation to the referring practices of police informants, with some stakeholders believing that inappropriate cases were being referred due to a lack of knowledge of guidelines. However, there are no datasets which would enable this assertion to be validated. Education or refresher courses of police were proposed as the solution to this problem, including the training of new recruits.

In general, it was considered that the process of referral and admission to CJDP worked smoothly, particularly due to the numerous stakeholders that can play a relevant role in encouraging or allowing diversion, such as informants, their senior sergeant, the solicitor who may suggest diversion to the informant, the CJDP coordinator, and the Magistrate. These roles were considered on most occasions to provide safeguards to ensure that the CJDP was used appropriately.

One suggested change to the current approach called for the program to allow judicial registrars to make Orders for Diversion (under certain circumstances, within guidelines) to take the load off

Magistrates and improve consistency (as there are only 12 coordinators). This radical approach would be a first in Australian criminal courts, however we understand that in civil courts there is precedence for registrars making certain Orders.

#### **5.6.7 SUPERVISION AND PLACEMENT FOR PARTICIPANTS**

Many participants as part of their Diversion Order are required to undertake community work. Keep Australia Beautiful has acted as the broker for this community work, linking participants with relevant and appropriate community work or courses to fulfil the requirements under their Order. A range of stakeholders were consulted whose primary role in relation to CJDP was as an organisation, generally non-profit, that actively requires community assistance. These agencies, both government and non-government, also provide courses, such as anger management, counseling, defensive driving, drug education, or positive lifestyles, which may require attendance under the Order.

There was strong satisfaction across all stakeholders who referred to supervision or program placement. Stakeholders were generally satisfied with the timeliness of access to the appropriate range of interventions, although delays were sometimes experienced placing participants in community work. There was an issue in relation to the workload demanded of the brokerage agency, however this matter was being resolved, whilst the generally limited resources of many of the agencies made it difficult for some participants to be placed. Despite this, all but nine of the nearly 700 participants placed by the brokerage agency have successfully completed their community work or programs.

#### **5.6.8 COMMUNICATION BETWEEN STAKEHOLDERS AND AGENCIES**

General reports of the efficiency and quality of communications between stakeholders and agencies were very encouraging. The links created by coordinators with community agencies, particularly the brokerage agency were praised, however it was considered that the program did not market itself well in the community sector, and thus may be missing some agencies that could otherwise be involved. Coordinators' communication with Magistrates was generally considered to be strong, despite occasional difficulties.

#### **5.6.9 PROGRESS THROUGH THE PROGRAM**

When discussing participants' progress through the program many stakeholders commented on the number of adjournments that take place due to the CJDP (data are not available to test the validity of this view). Although this slows their progress through the system and therefore affects finalisation rates, it is influenced by a number of factors, some of which are outside the control of participants as described earlier in relation to the length of time spent on the program.

Other aspects considered to impact on participants' progress through the system were considered to be occasional delays in informants approving diversion, and some court regions and Magistrates having a greater propensity to adjourn cases.

#### **5.6.10 PROGRAM COMPLIANCE**

Consistently strong praise was received about the level of participants' compliance with their Diversion Orders. Across Victoria, 94% of cases complied with the Order, and hence were considered to be successful diversions.

#### **5.6.11 INTERFACE WITH OTHER PROGRAMS AND SERVICES**

A range of programs interface with CJDP, with the relationship for the large majority of them considered to work well. Magistrates were satisfied with the range of options that diversionary programs offer. Most comments concerning interfacing programs related to police cautioning. Some stakeholders suggested police cautioning and CJDP are potentially duplicative in the sense that an offender could be given more than one chance for the same type of offence (once through police cautioning and again through CJDP). Some stakeholders were reportedly confused by the range of diversionary programs, with two stakeholders attributing some of this confusion to the similar terminology of CJDP and diversionary programs. In this regard, a deliberate change in terminology was suggested by several stakeholders.

#### **5.6.12 GAPS**

When asked whether there were gaps within CJDP or between CJDP and other programs which resulted in defendants missing out on accessing a diversion program, several stakeholders responded that defendants who did not receive legal advice were disadvantaged because they were less likely to hear about the program. Particular concern was expressed that defendants who did not qualify for Legal Aid and could not afford representation (or chose not to be represented) could potentially miss out through a lack of knowledge about the program.

#### **5.6.13 IMPACTS**

##### ***Participants***

The benefits of the program to participants were espoused by numerous stakeholders. They particularly focused on the participant avoiding a criminal record, which enhances their future career and life opportunities. Also praised was the benefit participants receive from undertaking community work, including in some cases job skills or even employment with the placement agency, along with better links to various community supports.

Stakeholders also considered that the program reduced recidivism in participants by diverting them out of the criminal justice system (although no data has been presented to validate this view). Stakeholders reported a high level of satisfaction among participants in relation to the program, a viewpoint supported by the analysis of participant satisfaction surveys (refer Section 4.3).

## ***Victims***

Stakeholders tended to see the program as benefiting victims in two main ways over traditional approaches that were seen to exclude and ignore victims in the judicial process. Firstly, victims were seen to benefit from the recognition of their feelings and experience, whilst the nature of the Diversion Order allows many victims to receive compensation that would be unlikely to be paid as a civil debt not attached to the completion of a Diversion Order.

## **5.7 Conclusion**

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

Qualitative and quantitative analyses suggest that CJDP is successfully preventing the entry of first-time and low risk defendants into the criminal justice system. From a sample of 100 participants it appears that over 90% of participants are first-time defendants (with the remainder having very few, and relatively minor, prior convictions). Analysis of all diversion cases from November 2000 to September 2003 shows that 94% of diversions were successfully completed including the avoidance of a criminal conviction. Time spent in the program was highly variable, ranging from less than 30 days to over a year. More than two thirds of diversions took between 91-240 days to complete.

The re-offending rate within this group is low. From a sample of 100 participants it appears that around 3.5% would be convicted of a subsequent offence in the 12 months following commencement on the program, at an average rate of 7 offences per 100 participants.

Interviews with a range of stakeholders, and analysis of participant satisfaction questionnaires, suggest the program is highly successful in assisting participants' rehabilitation and that diversion plans have been successful in identifying and meeting participants' rehabilitation needs. The program has also fostered better linkages to various community supports. While there was general satisfaction with the timeliness of access to appropriate interventions, delays were sometimes experienced in matching participants to appropriate voluntary work.

Benefits to victims included the increased likelihood of receiving compensation compared to a civil debt not attached to the completion of a Diversion Order. Analysis of victim satisfaction questionnaires indicated that the vast majority of victims were satisfied with the program. A minority felt that the reparation/donation ordered was too small for the gravity of the offence.

Overall feedback from stakeholders has been particularly positive. The central strength of the program included the fact that all participants in the process have something to gain or benefit. The participant can avoid a criminal conviction by complying with the Diversion Order and can recognise,

acknowledge (by pleading guilty) and take responsibility for their actions. Victims receive recognition and possibly compensation. For Magistrates it provides flexibility and the application of therapeutic jurisprudence, whilst police are included very centrally in the process. In achieving these outcomes the program benefits from its flexibility, where the Diversion Order can be tailored to suit the offence, the participant and the victim.

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

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

Some stakeholders were concerned that defendants who did not qualify for Legal Aid and could not afford representation (or chose not to be represented) were disadvantaged because they were less likely to be made aware of the program and thus ran the risk of missing out on the opportunity to participate. Other concerns regarding the program related to a lack of consistency in the approval for diversion by police informants, however there was also strong recognition by most stakeholders that the role of the informant was crucial to ensuring police adoption and support for the program. A lack of uniformity in approaches within various courts was also a concern to some stakeholders with diversion occurring through a hearing in chambers in some courts, but in other courts taking place in open court.

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

## **5.8 Recommendations**

It is recommended that:

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



## 6 COURT REFERRAL AND EVALUATION FOR DRUG INTERVENTION AND TREATMENT (CREDIT)

This section of the report considers issues and trends that are specific to the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) Program. It includes a description of the program's objectives and processes, analysis of program data, and analysis of stakeholders' experience of the program.

### 6.1 Background

Much of the following background information has been drawn from the *Guide to the CREDIT Program for CREDIT Drug Clinicians* (The "CREDIT Manual" - September 2002) and the *Deed of Agreement* – Victorian Proposal for CREDIT.

The CREDIT program seeks to minimise drug use and drug-related offending by enabling the provision of drug treatment services as a condition of bail. The program was specifically created to address inadequacies in the criminal justice system for dealing with people with drug abuse problems as identified by Magistrates, police and health service providers.

The broad policy objectives of CREDIT (as agreed between the Department of Human Services and Department of Justice) are:

- Reducing the likelihood of a sentence involving incarceration;
- Delaying or reducing further offending behaviours;
- Reducing the cost to the health system;
- Helping defendants to become more productive members of the community;
- Reducing direct costs to the justice system; and
- Improving the quality of life for defendants.

The CREDIT Manual outlines the aims and objectives of the CREDIT program to include:

- Bringing forward court referred treatment services to be available immediately after arrest and upon being brought to court, that would otherwise only be available after sentencing;
- Encouraging drug users to seek treatment (by capitalising on the reality that they have been charged);
- Develop a commitment on the part of drug users to treatment by making it a condition of bail;
- Monitoring the drug treatment progress of defendants via regular reporting to the court;
- Reducing the risk of further offending to support drug use, along with other associated criminal activity or harm to self and others;
- Taking into account the defendant's commitment, progress and success in drug treatment at the time of sentencing; and
- Developing a model drug treatment diversion program.

The CREDIT program commenced as a pilot in the Melbourne Magistrates' Court in late 1998. This pilot was developed via collaboration between the Melbourne Magistrates' Court, the Departments of Justice and Human Services, and Victoria Police. The initial pilot period was extended in Melbourne

Magistrates' Court before other Magistrates' Courts were progressively introduced to the program from late 2000.

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

### **6.1.1 LEGISLATIVE AND POLICY BASE**

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

## **6.2 Eligibility Criteria, Referral and Assessment**

### **6.2.1 ELIGIBILITY**

CREDIT is aimed at providing assistance for the lower to mid range of offences (as distinct from the Drug Court which focuses on more serious offenders and offences). The CREDIT program does not target particular age groups or stages of drug use, and is open to first time offenders along with those with some previous criminal and/or drug use history. The defendant is eligible for the CREDIT program provided that they meet of the following criteria:

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

There is no maximum number of times a person can be referred to or participate in the CREDIT program, a guilty plea is not a requirement and the defendant agrees to participate. Should the defendant decline to participate, their case is dealt with in the usual manner. The defendant is also not eligible to be on the CREDIT program if more than two months has elapsed since the defendant was charged, as the program is intended to provide access to drug treatment immediately after the person has been charged.

### **6.2.3 REFERRAL AND ASSESSMENT**

Anyone can refer a person to the CREDIT program, however this is most commonly undertaken by legal representatives, Magistrates, the police (the informant), the defendant or other services. For police to refer an apparently eligible defendant, they must bail the defendant to the next sitting day (or within 48 hours) of the Magistrates' Court to be assessed by the CREDIT clinician. The person charged or their representative may also contact the CREDIT clinician directly to make an

appointment for an assessment. The CREDIT clinician assesses the person to determine their eligibility for the program and makes a recommendation to the Magistrate.

The clinician assesses the defendant in order to establish:

- The nature of their drug problem;
- Their history of prior treatment for substance use;
- Their general psychosocial history and current circumstances;
- Whether they are a likely candidate to benefit from treatment; and
- What type of treatment is most appropriate.

Should the defendant not provide their informed consent to participate in the program, the clinician will still provide them with education regarding substance use and healthy lifestyles, and should the defendant be interested in treatment but not via the CREDIT program, the clinician can still provide links to appropriate treatment agencies.

As part of the assessment process, the clinician discusses the available treatment options with the defendant in order to make recommendations about the most suitable approach. This treatment plan may change during the course of the defendant's participation to ensure that it reflects changing circumstances. All participants are referred to counseling, consultancy and continuing care ("the four Cs") and may be referred to other treatment options, including residential withdrawal, home-based withdrawal, outpatient withdrawal, supported accommodation, residential rehabilitation, specialist methadone and youth outreach.

If the court accepts the CREDIT clinician's recommendation, the CREDIT clinician arranges drug treatment at an accredited drug treatment agency. Under CREDIT, people brought before a Magistrate may be released on bail for periods of up to four months. A variety of treatment options are available, brokered by ACSO-COATS (an agency engaged by the Department of Human Services to arrange the provision of drug and alcohol services to registered clients by accredited agencies), with supervision provided through clinicians attached to the Magistrates' Court. While participation in the CREDIT program is a condition of bail, the person must consent to the treatment. Performance on the CREDIT program may be taken into account at the time of sentencing, with successful participation in the program possibly resulting in a lesser sentence.

### **6.3 Operating Processes of the Program**

The following is an outline of the processes by which CREDIT operates. It should be noted that this outline does not necessarily stipulate exactly how the program is currently operating in all Magistrates' Courts, as local nuances may exist.

CREDIT is available at an early stage in a person's progression through the court process. Following referral of prima facie eligible participants, and the assessment by the CREDIT clinician, the CREDIT bail hearing is conducted. The defendant by this point must also have had the opportunity for legal advice from their own legal representation or a duty lawyer should they choose. At this hearing the CREDIT clinician, via the clerk, provides the Magistrate with the Short Assessment Report (A full written assessment must be completed, along with a treatment progress report at the next court

appearance for the charge attached to CREDIT). The Magistrate takes into account the clinician's recommendations but ultimately has the discretion to either approve or reject the defendant's involvement in the CREDIT program.

If deemed appropriate, participation in the CREDIT program is made an express condition of the defendant's bail. These conditions vary depending on the defendant and their circumstances.

In arranging the CREDIT participant's drug treatment services, the CREDIT clinician contacts ACSO-COATS which acts as the brokerage agency to place the participant with a service provider. This information is communicated to the CREDIT clinician who then acts as the communication point for informing the participant of the details of their first appointment with a drug treatment service provider.

During the drug treatment period (the period of bail), regular communication is required between the drug treatment agency and the CREDIT clinician, including the completion of forms by the agency to inform of dates of appointments, missed appointments, any reasons for non-attendance and the completion, discharge or exit (planned or unplanned) from the treatment program. The CREDIT clinician notifies the treatment service provider when the CREDIT episode has ceased, or when to exit the participant from treatment.

Should a variation be required in treatment, the treatment provider can request a variation from the CREDIT clinician, who then contacts ACSO-COATS to facilitate the change (if this requires a change in treatment type or provider). A participant may also request a variation in the treatment plan.

At least one interim review in court of the defendant's progress is generally held prior to their attendance at court for sentencing. This review monitors progress in both treatment and lifestyle activities, provides encouragement and praise (where warranted), allows defendant input and provides for any necessary variations to be made. It is essentially a review of whether participation in the CREDIT program should be continued or terminated, and if the former, what possible alterations are required.

Based upon this review and with consideration of the CREDIT clinician's recommendations, the Magistrate uses their discretion to determine whether the participant would benefit from further treatment, and determine a time for a further adjournment, during which, treatment will continue according to the review.

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

Upon successful completion of the CREDIT program requirements as outlined in the participant's bail conditions, the participant is presented with a certificate of completion which is signed by both the CREDIT clinician and the Magistrate. Whilst not always possible, continuity for both the participant

and the Magistrate is sought via the coordination of cases within a court to allow the participant's court appearances to be dealt with by the same Magistrate including their initial bail application, interim review(s) and sentencing.

Defendants only participate in the CREDIT program during their periods of bail. Once their matter is heard, their involvement with the CREDIT program ceases. Following sentencing, a defendant may require a further episode of treatment for a community disposition.

### **6.3.1 TREATMENT PACKAGES**

Treatment packages available under CREDIT are detailed below. No specific timeframe is set for the completion of these treatment packages, and Episodes of Care are based on achievement of goals.

Package A (One Episode of Care): Counseling, Consultancy and Continuing Care. Counseling may take the form of individual counseling or group sessions. An Individual Treatment Plan is negotiated and the participant is encouraged to achieve harm minimisation goals.

Package B (Two Episodes of Care): Home-Based Withdrawal and Counseling, Consultancy and Continuing Care for post-withdrawal support. This package is designed for participants who are motivated to undertake withdrawal from their substance misuse. The counselor supports the participant post-withdrawal to ensure continuity of treatment support. The withdrawal treatment type is chosen matching participant need to treatment type. This package attempts to work within the participant's living environment.

Package C (Two Episodes of Care): Counseling, Consultancy and Continuing Care plus Residential Withdrawal and post-withdrawal support. This package is designed for those participants whose substance use raises serious medical or other complex problems. Counseling is provided pre-admission to a residential setting to prepare the participant and maintain motivation, and post-withdrawal to provide support for gains made.

Package D (Three Episodes of Care): Counseling, Consultancy and Continuing Care plus Withdrawal plus Residential Rehabilitation. This package is for participants with long-term, entrenched substance use, a program of withdrawal with counseling and subsequent admission to a residential rehabilitation program.

## **6.4 Analysis of Program Data**

The following paragraphs present an analysis of data extracted from the Parallel Services System database. The extract consisted of records from January 1999 to May 2003. There were 2,703 client episodes on the database for this period. (Note that a participant may have multiple court episodes) In addition, more recent throughput data for the months of June and July 2003, and supplementary summaries for the 12 month period to 30 September 2003 were obtained from the CREDIT Statewide Coordinator. The efforts of the CREDIT Coordinator and her colleagues in compiling these summaries are gratefully acknowledged.

The CREDIT Database is specifically designed as a monitoring tool, not as an evaluation instrument. The data collected is retrospective and the elements are designed to enable the Department to monitor the throughput of the system, and the progress and outcomes of participants.

Recidivism rates were explored through analysis of a sample of 100 randomly selected CREDIT participants. A sample of this size is generally regarded as being sufficient for the purpose of profiling specific characteristics of participants in a program (in this case their offending history). Victoria Police provided criminal histories to the Department of Justice for the sampled individuals on a de-identified basis. The Department summarised the data and provided the outputs to the evaluators for further analysis.

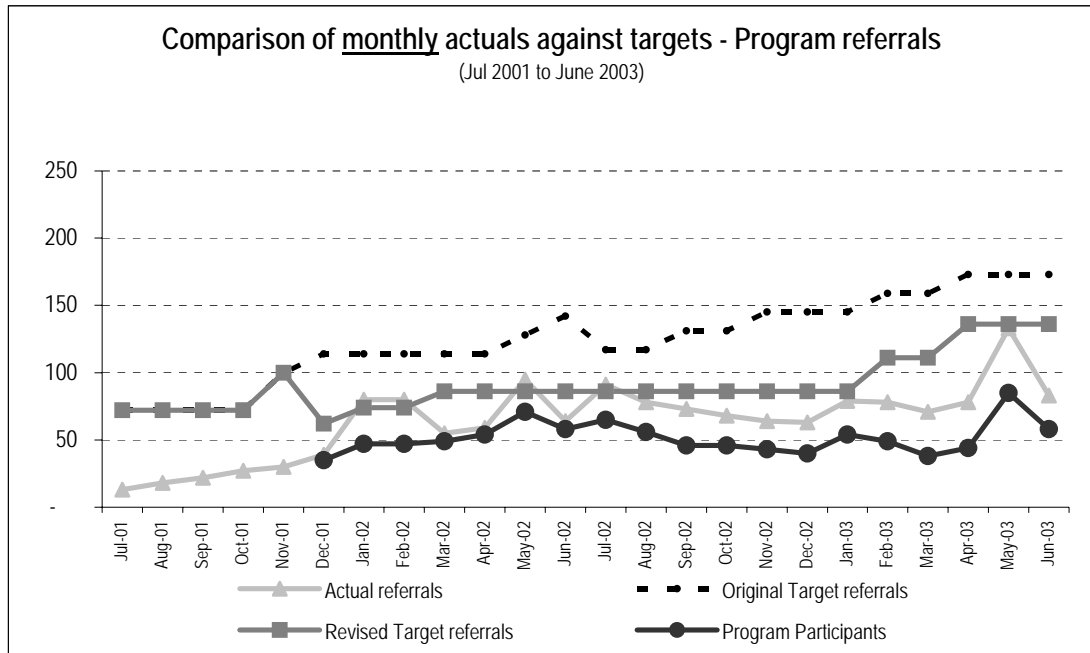
The use of a range of data sources has enabled the evaluators to make use of all data available to them, in order to provide as comprehensive a picture as possible. However, it has also meant that the analysis presented below does not always include the full time-frame in which CREDIT has been operating. In addition, the timeframe has been deliberately segmented in some analyses to explore changes over time. The timeframe used is specified in each graph and table.

#### **6.4.1 OVERALL DEMAND**

##### ***Referrals***

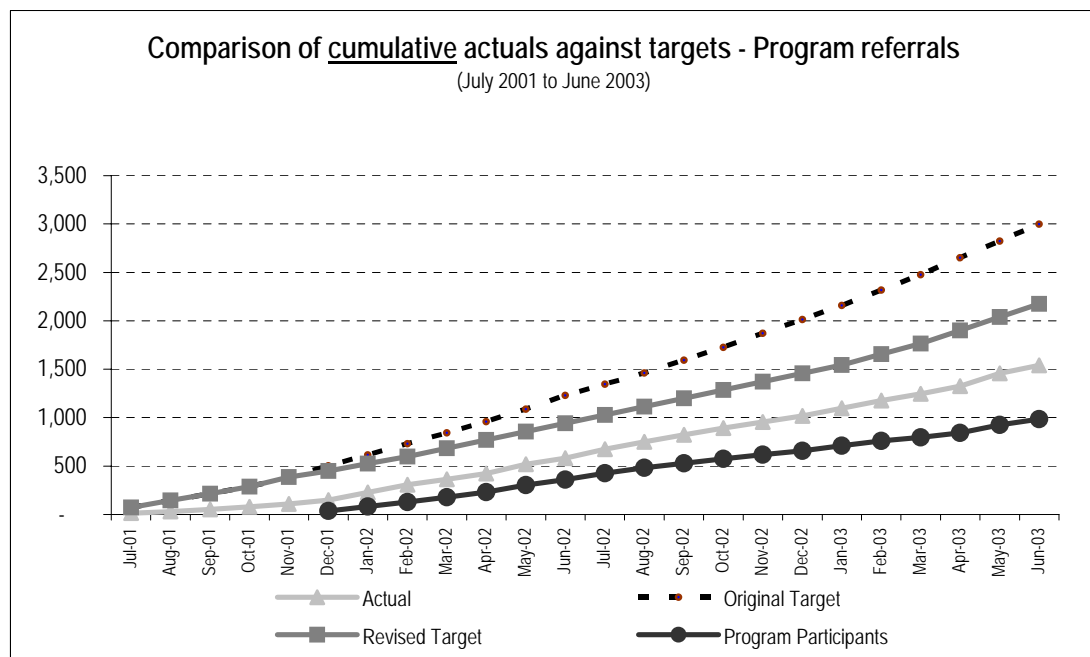
The following two graphs show referrals to CREDIT from July 2001 to June 2003. Referrals have been lower than expected, and this may be contextualised with reference to the gradual rollout to successive courts through to May 2003 (see Table 12). Monthly targets were revised downward from December 2001 but remained higher than actual referrals to the program. During the 2002/03 financial year, there were 963 referrals to CREDIT, 53% below the target of 2,068.

**Figure 12: Comparison of monthly actual referrals against targeted referrals, July 2001 – June 2003**



Source: Report to Corrections Long Term Management Steering Committee 1 August 2003

**Figure 13: Comparison of cumulative actual referrals against targeted referrals, July 2001 – June 2003**



Source: Report to Corrections Long Term Management Steering Committee 1 August 2003

Analysis of throughput data for the 12 months ended 30 September 2003, provided by the CREDIT Coordinator, shows that a total of 1,071 referrals to CREDIT were made during this period. A breakdown of referrals by source is given in Table 12. Over three quarters of all referrals were made by legal practitioners and Magistrates (54% and 22% respectively).

**Table 12: Number of referrals to CREDIT by Magistrates' Court and source,  
1 Oct 2002 – 30 Sep 2003**

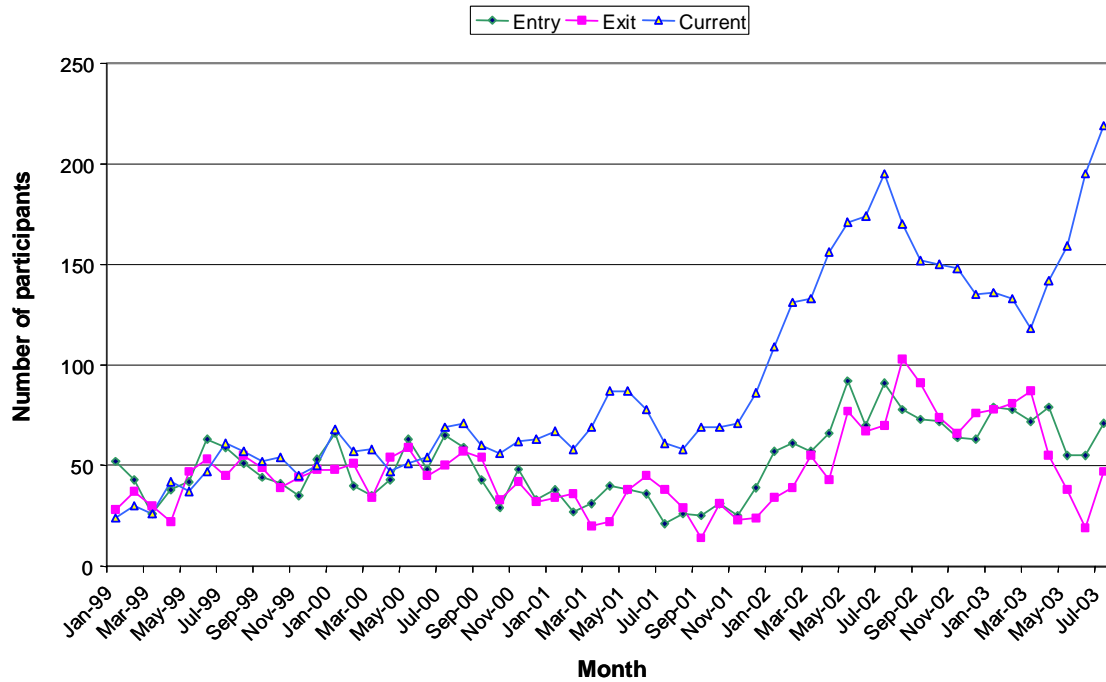
Court (and CREDIT commencement date)	Source of Referral											Total
	Legal	Magistrate	Other worker	Self	Police	Bail Program	Family	Medical practitioner	CREDIT Participant	Other	CHAD Nurse	
Melbourne (Nov 1998)	147	85	7	17	13	32	3	0	2	1	1	308
Ringwood (Dec 2001)	86	36	9	6	7	0	3	0	0	2	0	149
Geelong & Colac (Feb 2002)	92	27	4	13	1	0	3	3	2	0	0	145
Sunshine (Feb 2001)	47	47	7	8	1	3	0	0	1	0	0	114
Broadmeadows (Feb 2003)	47	23	16	4	3	0	0	6	0	0	1	100
Dandenong (Dec 2000)	64	5	5	7	7	0	2	0	1	0	0	91
Moe & Korumburra (Nov 2001)	45	1	9	4	12	0	3	0	1	0	0	75
Frankston (Feb 2003)	20	3	8	7	4	0	1	0	0	0	0	43
Heidelberg (Apr 2003)	17	4	1	2	0	0	1	0	0	0	0	25
Bendigo & Ballarat (May 2003)	13	3	3	1	1	0	0	0	0	0	0	21
Total	578	234	69	69	49	35	16	9	7	3	2	1071

***Number of participants in the program***

The number of commencements has increased markedly each month since the start of 2002 with the rollout of the program to more Magistrates' Courts, as illustrated in Figure 14. In the years 1999-2001, the number of participants newly registered on the program varied generally between 25-60 per month, whilst in 2002 and the first half of 2003, the number of participants newly registered on the program ranged from 60-80 per month. The total number of current participants has gradually increased over time, as there has been a cumulative effect of more participants entering than exiting the program.



**Figure 14: Number of CREDIT participants registered on the database by month, Jan 1999 – July 2003**



**Utilisation of CREDIT by police station**

Table 13 shows the number of participants entering the CREDIT program by police station (of the arresting officer), grouped into court regions. These groupings were provided to the evaluators by the Department of Justice, having been verified with the Principal Registrar. It must be noted that some police stations refer to more than one court, with the applicable court in each case depending where the offence was committed. Therefore, the grouping below indicates the referring police station and the Magistrates’ Court that was most likely to have processed the cases. The table shows a concentration of participants using the CREDIT program whose offences occurred in the precincts of the City of Melbourne and in the inner suburbs.

**Table 13: Number of CREDIT participants by court and police station, Jan 1999 – May 2003**

Court/Police Station	Number of participants	Court/Police Station	Number of participants
<b>Melbourne Magistrates’ Court</b>		<b>Dandenong Magistrates’ Court</b>	
Melbourne City Police Station	318	Springvale Police Station	52
Melbourne Regional Response Unit	248	Dandenong Police Station	45
City Patrol Group	226	Springvale C.I.U.	16
Collingwood Police Station	113	Pakenham Police Station	10
Richmond Police Station	63	Total	123
Force Response Unit	57	<b>Geelong Magistrates’ Court</b>	
St Kilda Police Station	56	Geelong Police Station	87
Melbourne City Uniform	52	Corio Police Station	27
Prahran Police Station	44	Total	114

Court/Police Station	Number of participants	Court/Police Station	Number of participants
<b>Melbourne Magistrates' Court (cont)</b>		<b>Ringwood Magistrates' Court</b>	
Melbourne C.I.B.	35	Knox Police Station	22
Carlton Police Station	30	Nunawading Police Station	16
St Kilda Road Police Station	29	Ringwood Police Station	15
Malvern Police Station	24	Box Hill Police Station	14
Moorabbin Police Station	23	Lilydale Police Station	12
Elwood Regional Support Group	20	Boronia Police Station	11
Flemington Police Station	19	Total	90
Prahran CIU	17	<b>Moe Magistrates' Court</b>	
Glen Waverley Police Station	17	Moe Police Station	30
Transit Uniform Patrol	16	Morwell Police Station	22
Melbourne Bicycle Patrol	15	Wonthaggi Police Station	12
Transit CIB	14	Total	64
South Melbourne Police Station	13	<b>Frankston Magistrates' Court</b>	
Caulfield Police Station	10	Chelsea Police Station	15
Total	1,459	Cranbourne Police Station	10
<b>Sunshine Magistrates' Court</b>		Frankston Police Station	10
Sunshine Police Station	56	Total	35
Footscray Police Station	51	<b>Heidelberg Magistrates' Court</b>	
Keilor Downs Police Station	39	Preston Police Station	12
Altona North Police Station	22	Northcote Police Station	11
Melton Police Station	20	Total	23
Werribee Police Station	19	<b>Heidelberg/Melbourne Mags Crts</b>	
Footscray C.I.U.	12	Hawthorn Police Station	12
Total	219	Other (85 stations) and unknown	331

### **Utilisation of CREDIT by assessment location**

Table 14 shows the location of Magistrates' Courts where participants were processed in Victoria. Consistent with the numbers of participants by police station, the table indicates that Melbourne Magistrates' Court processed 66% of the participants in the CREDIT database. The outer suburban Magistrates' Court of Sunshine, Dandenong, and Ringwood processed a total of 599, or 23% of the participants. Geelong Magistrates' Court had the highest regional representation processing 140 or 5.4% of the total whilst Moe processed 86 or 3.3% of the total participants.

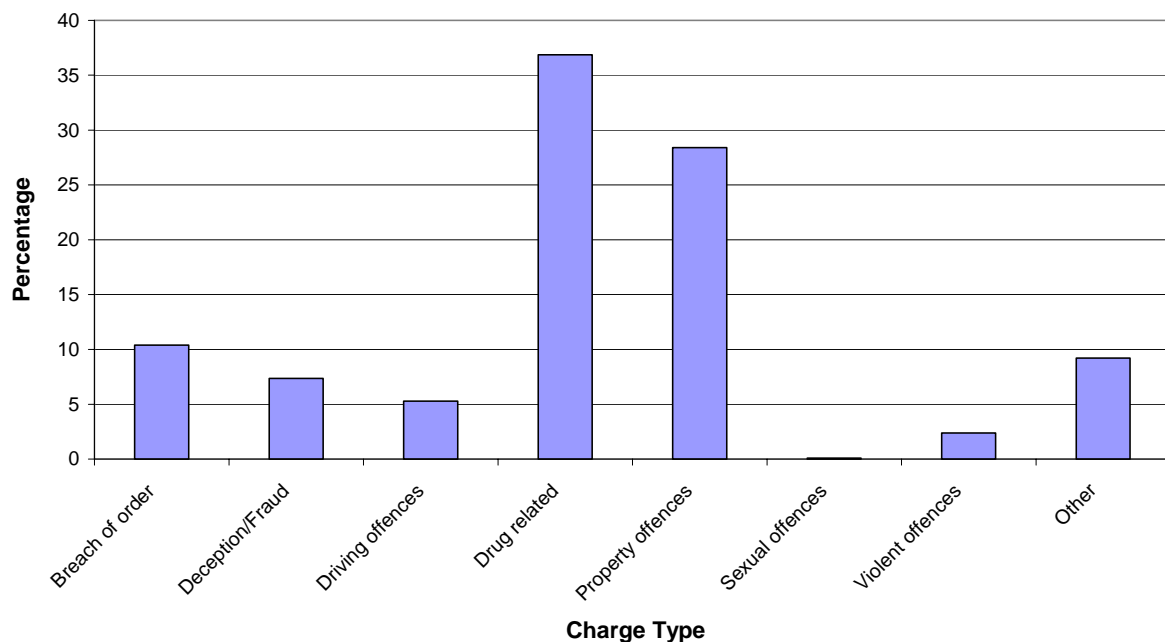
**Table 14: Number of CREDIT participants by assessment location, Jan 1999 – May 2003**

Assessment Location	Number of participants
Melbourne Magistrates' Court	1711
Sunshine Magistrates' Court	246
Dandenong Magistrates' Court	209
Ringwood Magistrates' Court	144
Geelong Magistrates' Court	143
Moe Magistrates' Court	100
Broadmeadows Magistrates' Court	27
Frankston Magistrates' Court	14
Heidelberg Magistrates' Court	7
Ballarat Magistrates' Court	1

**Profile of charges**

Defendants referred to CREDIT can face multiple current charges and Figure 15 shows the percentage of all current charges that were faced by defendants entered on the CREDIT database. Over 36% of all current charges faced by these defendants were drug related, whilst nearly 30% of charges were related to property offences. The explanation provided to the evaluators in relation to the violent offences shown in the graph is that the offences would have been relatively minor (e.g. resisting arrest) and were not the defendant's major offence. This could not be explored further on the basis of available data.

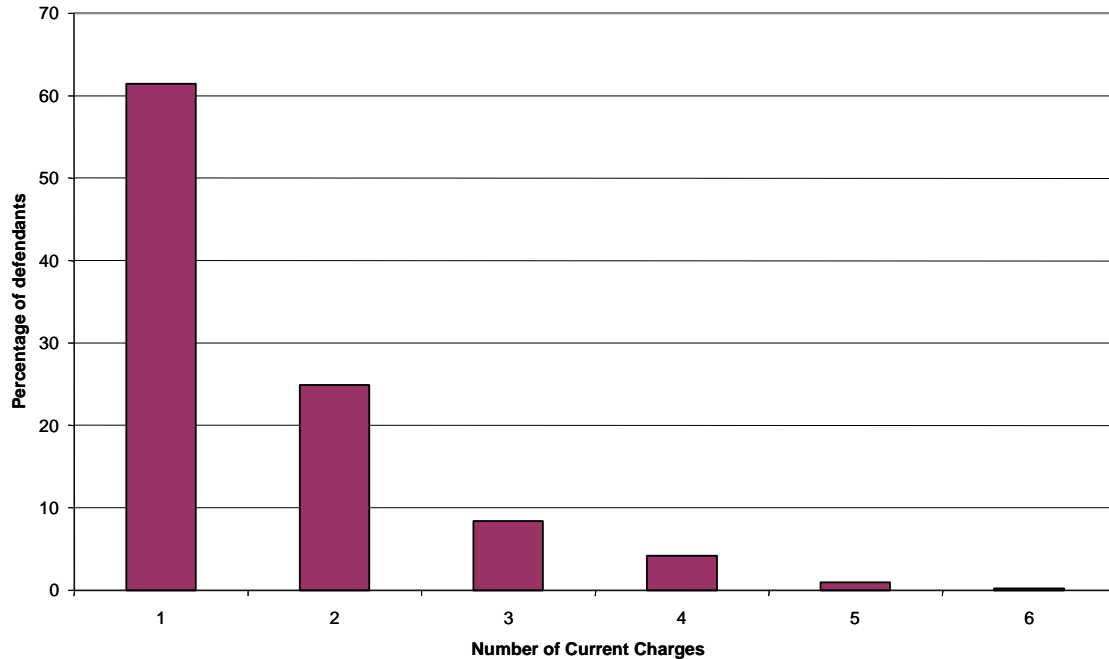
**Figure 15: Percentage of offences by type of current charges, Jan 1999 – May 2003**



### Number of charges

Figure 16 shows the number of current charges faced by defendants in the CREDIT database. The percentage of defendants who faced one charge was over 60%, whilst about 25% of defendants faced two charges.

Figure 16: Percentage of defendants by number of current charges, Jan 1999 – May 2003

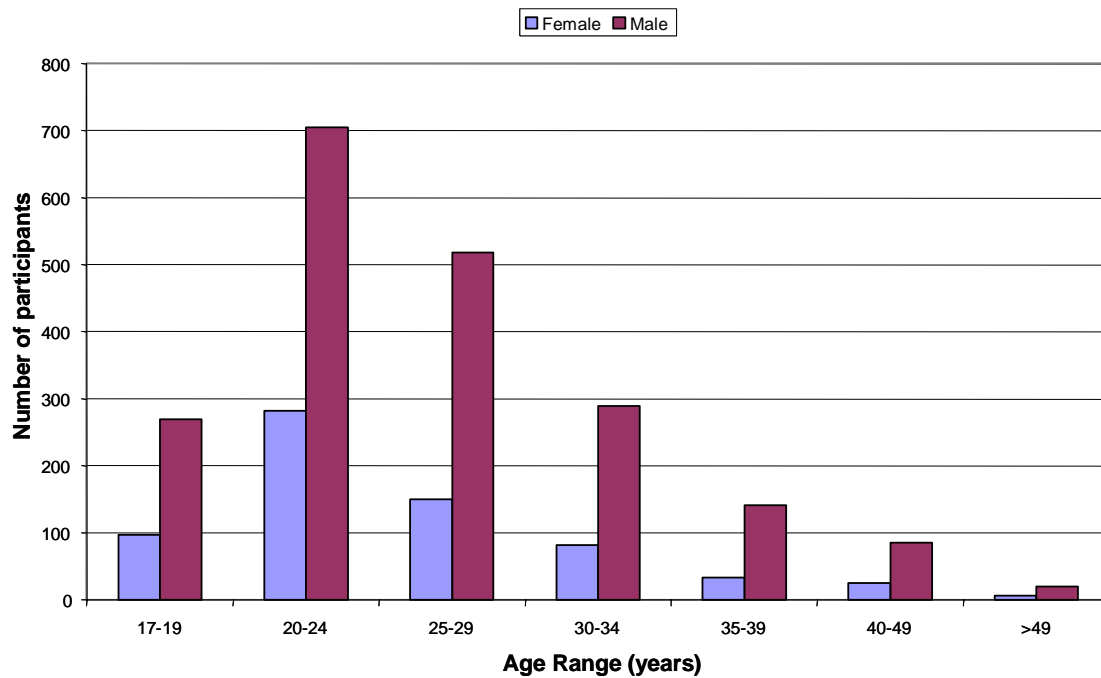


## 6.4.2 PARTICIPANT PROFILES

### Age and gender

Figure 17 shows that the most common age/gender combination for CREDIT participants comprises males aged 20-29 years, accounting for 45.2% of all persons on the database. Overall, males have over a three times higher representation in the database than females (2,028 vs 673). Similar percentages of male (13.3%) and female (14.4%) participants are aged 15-19 years. Among female participants, 35% are in the 20-24 age group, while 64.1% of participants are aged 20-29 years. Among male participants, the comparable percentages are 42% and 60.3% respectively.

**Figure 17: Age and gender profiles of CREDIT participants, Jan 1999 – May 2003**



**Aboriginality**

Of the 1,825 participant episodes recorded, 44 or 2.4% of participants stated they were Aboriginal, 16 or 0.8% stated they were Aboriginal and Torres Strait Island and 3 (0.2%) were Torres Strait Islanders. Of the 63 participants recognised as indigenous, 37 were processed at Melbourne Magistrates’ Court whilst 11 faced charges at Geelong Magistrates’ Court and five were processed at Dandenong Magistrates’ Court.

**Country of birth**

Table 15 indicates the country of birth of participants on the CREDIT database. The table shows that the overwhelming majority of participants (73%) were born in Australia. The only other country of birth of note was Vietnam, with over 12% of participants.

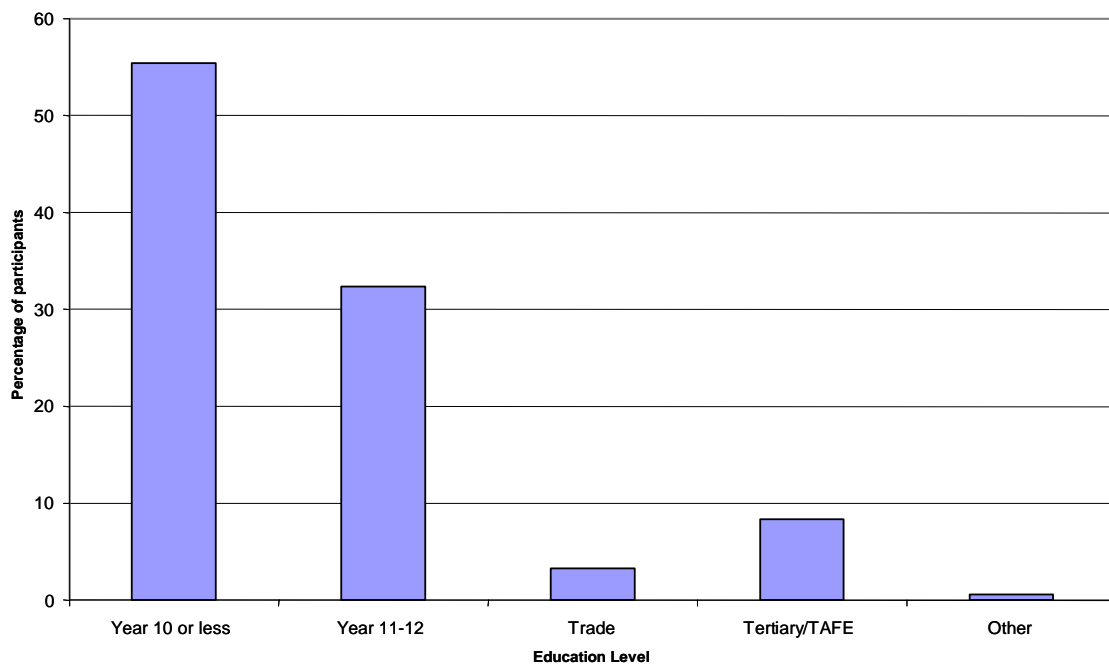
**Table 15: Percentage of participants by country of birth, Jan 1999 – May 2003**

Country of Birth	Percentage of participants
Australia	73.4
Vietnam	12.4
Philippines	1.9
New Zealand	1.4
United Kingdom	1.2
Thailand	0.8
African nations	0.7
Indonesia	0.7
South American countries	0.7
Cambodia	0.6
Greece	0.5
Poland	0.4
Other European countries	0.4
Other Asian countries	0.4
Other/Unknown	4.5

**Education level**

Data from the CREDIT database indicates that over half of all participants have an education level of Year 10 or less, whilst a further 32% have an education level of Year 11-12. Less than 10% of participants have a trade education or a tertiary or TAFE education.

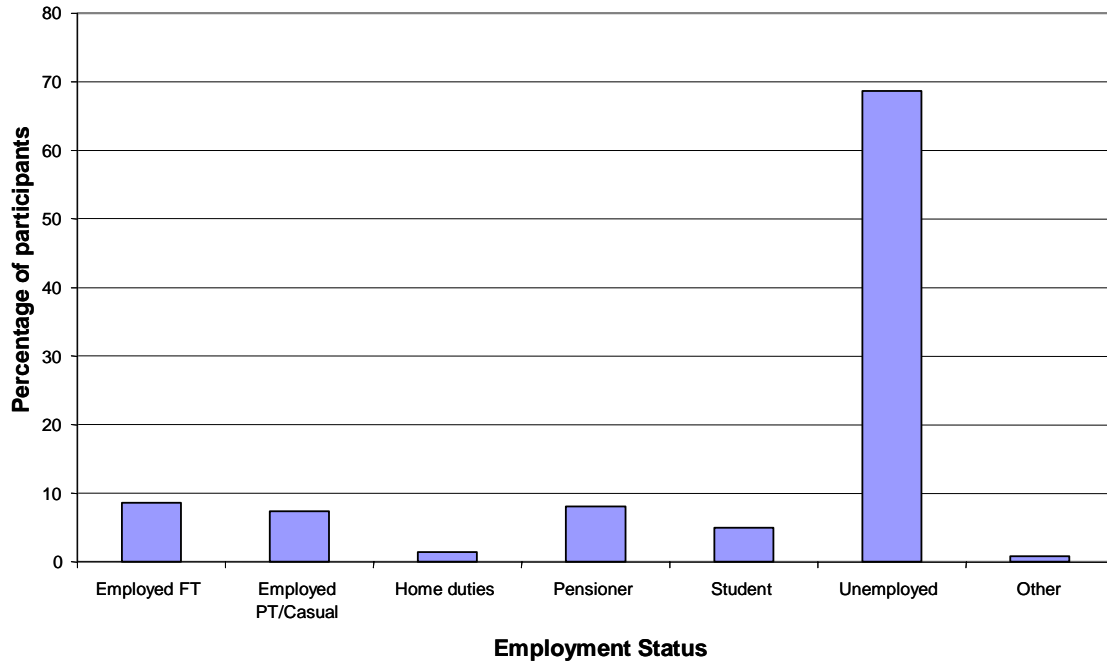
**Figure 18: Percentage of CREDIT participants by education level, Jan 1999 – May 2003**



## Employment

Figure 19 shows that over 68% of participants are unemployed. 8% of participants were in the employment categories of either full-time employment or pensioner status, whilst over 7% were employed part-time or casual.

Figure 19: Employment status of CREDIT participants, Jan 1999 – May 2003



## Custody of children

Overall, 1,194 CREDIT participants (74% of the total) do not have children, or are not recorded as having children, whilst 412 participants (26% of participants) are recorded as having children. Nearly 40% of participants with one, two, or 4 or more children have custody of those children, and just under 30% of participants with three children have custody.

## Offending history

The offending histories of 100 randomly selected CREDIT participants were provided to the Department of Justice in de-identified form by Victoria Police. The data were aggregated by the Department and provided in summarised form to the evaluators for analysis. Criminal histories were provided from 1993/94. Of the 100 individuals, 96 had criminal histories prior to entering CREDIT, for a total of 2,194 offences (highest among the 96 individuals was 93 priors, lowest 1 prior, mean 22.9 priors). A summary of these offences is provided below.

**Table 16: Prior convictions in a sample of 100 CREDIT graduates**

<b>Offences committed</b>	<b>Number of times offence was committed (by 96 of the 100 individuals)</b>	<b>Average offences per individual (across all 100 individuals)</b>
Drugs (possess/use)	344	3.4
Other	300	3.0
Justice procedures	267	2.7
Theft (other)	247	2.5
Handle Stolen Goods	154	1.5
Theft (shopsteal)	152	1.5
Burglary (other)	114	1.1
Deception	96	1.0
Assault	82	0.8
Drugs (Cult/Man/Traffic)	75	0.8
Theft of M/car	56	0.6
Weapons/Explosives	53	0.5
Going equipped to steal	50	0.5
Behaviour in Public	49	0.5
Property Damage	47	0.5
Theft from M/car	44	0.4
Regulated Public Order	41	0.4
Robbery	11	0.1
Theft (bicycle)	5	0.1
Burglary (aggravated)	3	<0.1
Harassment	2	<0.1
Sex (Non-Rape)	1	<0.1
Arson	1	<0.1
Total	2194	21.9

### 6.4.3 SUBSTANCE USE

#### ***Substance first used***

Over 55% of participants on the CREDIT database reported using cannabis as the first substance, whilst 25% of participants report alcohol as the first substance of use. 12% of participants reported heroin as their first substance of use.

#### ***Main substance used***

The main substance reported being used by CREDIT participants was heroin. Over 76% of participants identified heroin as the main substance used. Other significant main substances reported were cannabis and amphetamines, which were used by 11.5% and 5.6% of participants respectively.



**Nature of drug use**

Table 17 outlines the nature of drug use by substance. Participants were interviewed by CREDIT clinicians regarding their duration and pattern of substance use (in line with the DSM 4 questionnaire). The following classification is based on CREDIT clinicians' interpretation of participants' reported drug use. Drug use among this group is most commonly categorised as 'dependence'. This varies from a low of 53% of ecstasy users to a high of 87% of heroin users. Participants using ecstasy had the highest percentage of use categorised as 'abuse' (24%) and 'recreational' (24%). Benzodiazepines and heroin had the lowest recordings of recreational use at 0% and 4% respectively. Cocaine and heroin use was classified as abuse in 0% and 9% of cases respectively.

**Table 17: Percentage of nature of drug use by substance, Jan 1999 – May 2003**

<b>Substance</b>	<b>Abuse</b>	<b>Dependence</b>	<b>Recreational</b>
Alcohol	18%	74%	8%
Amphetamines	16%	70%	14%
Benzodiazepines	21%	79%	0%
Cannabis	14%	76%	10%
Cocaine	0%	83%	17%
Ecstasy	24%	53%	24%
Heroin	9%	87%	4%
Other	11%	89%	0%
<b>ALL</b>	<b>11%</b>	<b>84%</b>	<b>5%</b>

(Some percentage values may not add to 100% due to rounding)

**Period of use**

Figure 20 shows the mean and standard deviation of period of substance use among CREDIT participants by the main substance recorded for each participant. The period of use is taken from the age participants first started using, and excludes any periods of discontinued use (e.g. if a participant first started using 60 months ago, but stopped for 10 months and then resumed use, the period of use is recorded as 50 months). The variability of period of use for all substances is very wide. Alcohol had the highest mean period of use (146 months), followed by cannabis (105 months) and benzodiazepines (102 months).

Figure 21 illustrates the frequency distribution of the period of use among participants using heroin as their main substance. About 25% of participants reported using heroin for a period of 1-30 months, whilst a further 28% have used heroin for 31-60 months.

Figure 20: Mean +/- standard deviation for period of use by substance

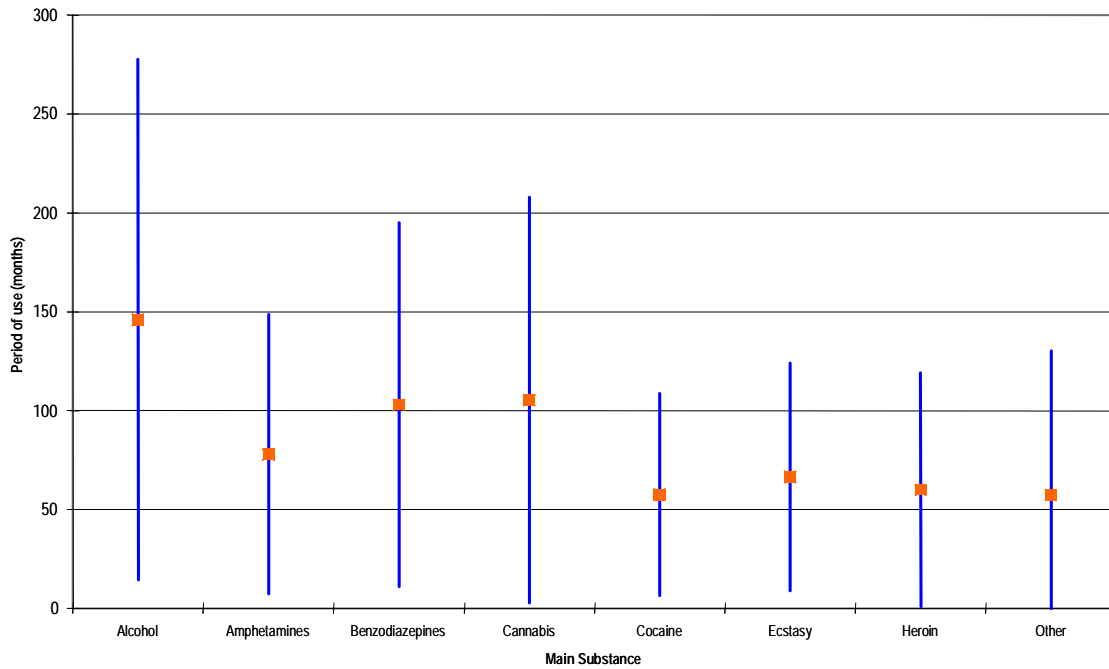
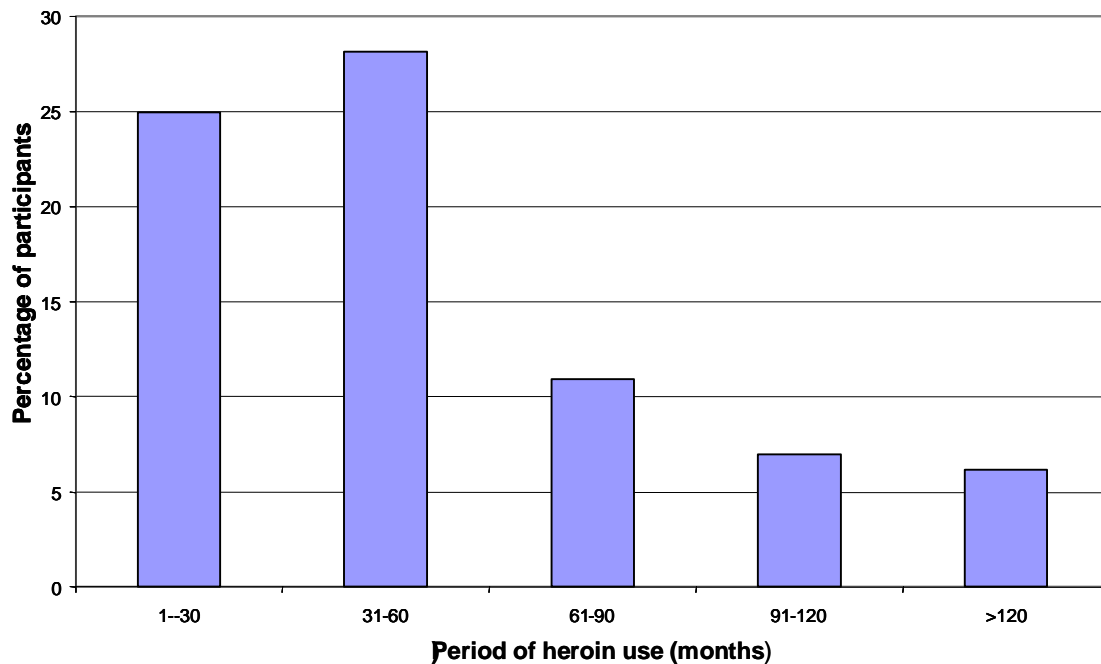


Figure 21: Percentage frequency distribution of heroin use period



#### 6.4.4 TREATMENTS

Table 18 illustrates the treatment undertaken by participants on the CREDIT Program. Individual Counseling, Consultancy & Continuing Care is clearly the most utilised treatment accounting for over 65% of treatment episodes, but since it is a common element in virtually all treatment packages offered (as described in Section 6.3.1), its prevalence is to be expected. Drug Withdrawal Residential

accounts for 15% of treatment episodes, whilst Residential Rehabilitation and Youth Outreach each account for just under 6%.

**Table 18: Percentage of CREDIT participants by treatment type, Jan 1999 – May 2003**

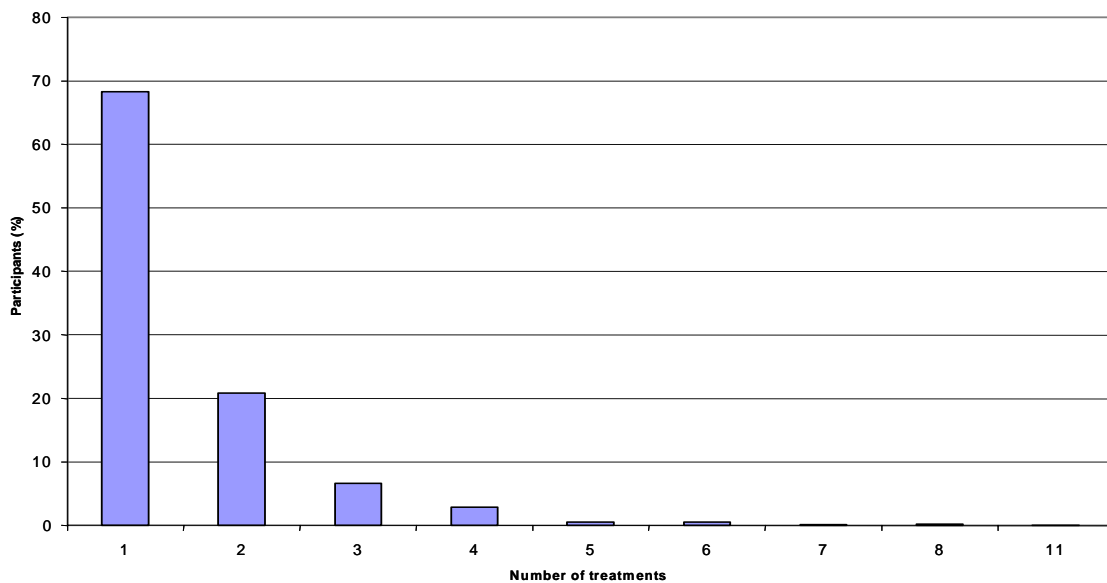
Treatment type	Percentage of participants
Counselling, Consultancy & Continuing Care (individual)	65.3
Drug Withdrawal Residential	15.1
Residential Rehabilitation	5.8
Youth Outreach	5.6
Supported Accommodation	2.7
Drug Withdrawal - Home-based	1.7
Drug Withdrawal - Outpatient	0.7
Counselling, Consultancy & Continuing Care (group)	0.5
Specialist Methadone/Methadone	0.4
Client Education	0.2
Buprenorphine	0.1
Drink Drive Education	0.0
Drug Withdrawal Rural	0.0
Other	1.8

(Some percentage values may not add to 100% due to rounding)

**Number of treatments attended**

Figure 22 shows the number of treatment episodes attended by participants. 68% of participants were involved in one treatment episode only, whilst just over 20% of participants were involved in two treatment episodes.

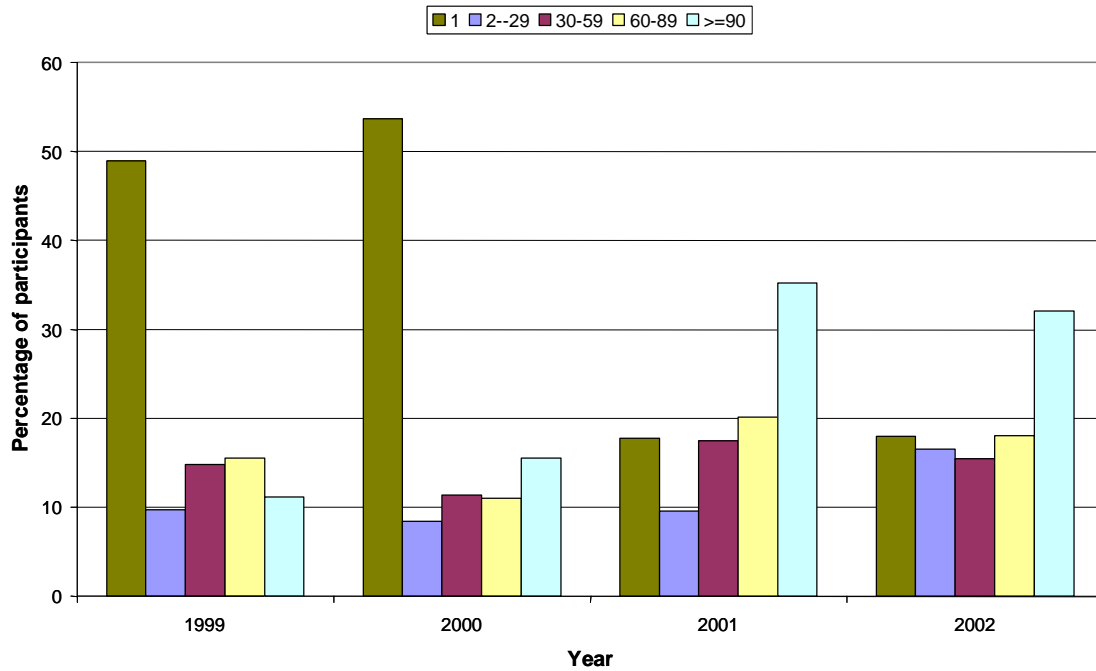
**Figure 22: Percentage of CREDIT participants by number of treatments, Jan 1999 – May 2003**



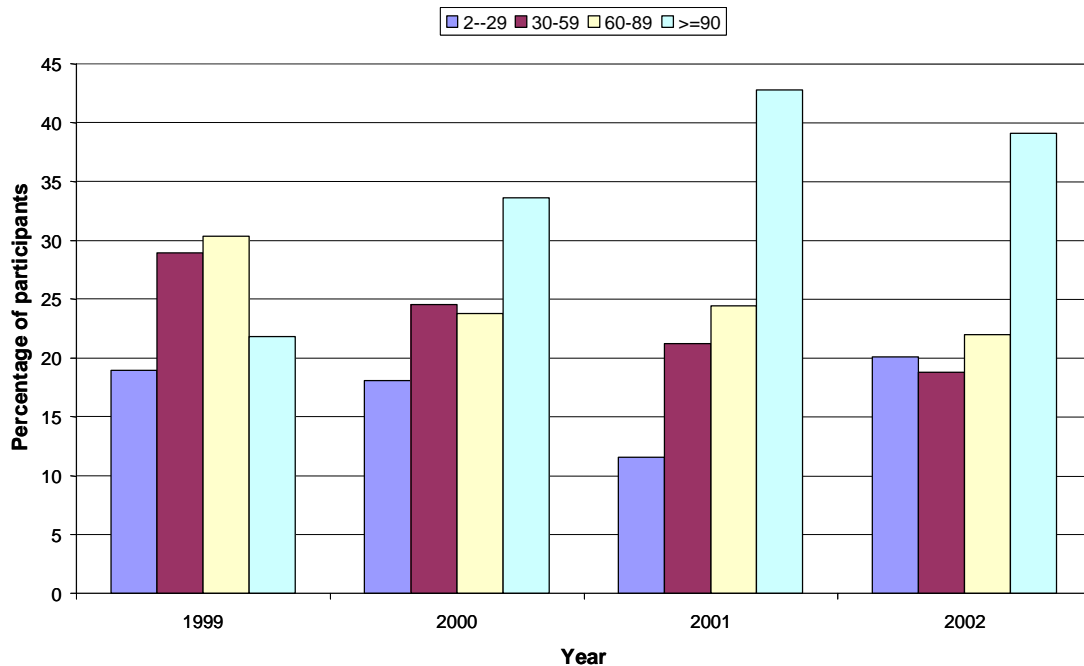
### 6.4.5 TIME SPENT IN THE PROGRAM

The time spent in the program (measured in days) has a wide range, as illustrated in Figure 23. The large numbers of participants recorded as spending one day on the program in 1999 and 2000 is due to an administrative procedure of defendants being entered on the system as having been assessed, but then subsequently found not suitable and closed off. Figure 24 shows the same data excluding these one-day cases.

**Figure 23: Days spent on the CREDIT Program by time period**



**Figure 24: Days spent on the CREDIT Program by time period, excluding 1-day cases**

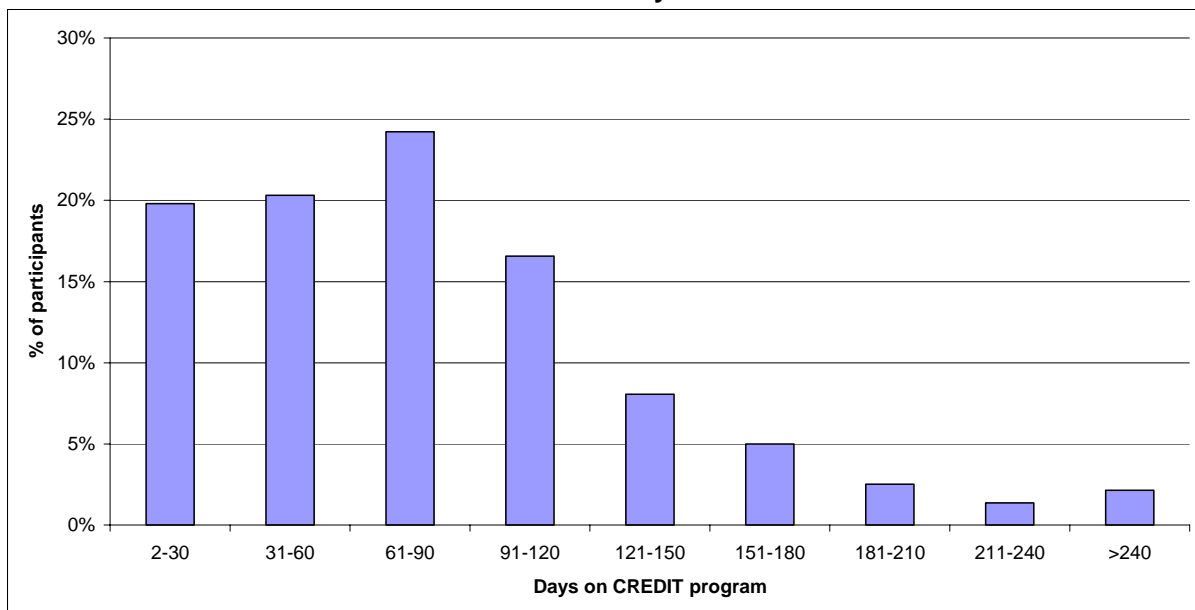


The figures illustrate that over the four year period, there has been a progressive migration of participants towards longer duration in the program. This has had a number of consequences, particularly raising concerns among service providers that they are not being appropriately remunerated for the additional work involved. It also has the potential in the future for these participants to bottleneck the program, limiting access by new participants. (The latter has not been an issue to date, given the lower than expected participation rates.)

The *Guide to the CREDIT Program for Accredited Drug Treatment Providers – August 2000* describes four treatment packages available under CREDIT (see Section 6.3.1). Although no specific timeframe was set for the completion of these treatment packages, the document suggests an “average” length of time for each treatment type, of 8 weeks for Package A, 10 weeks for Packages B and C, and 14 weeks for Package D.

Figure 25 shows the frequency distribution of days spent on the CREDIT program. Of all participants entered on the CREDIT database, 34% were defendants entered on the system as having been assessed, but then subsequently found not suitable and closed off (as discussed above). These cases have been excluded from Figure 25. Of those participants who spent two or more days on the program, nearly two thirds (64%) spent 2-90 days (i.e. up to 13 weeks), 17% spent 91-120 days (i.e. 13-17 weeks), 8% spent 121-150 days (i.e. 17-21 weeks), and 11% spent more than 150 days (i.e. more than 21 weeks) on the program.

**Figure 25: Percentage frequency distribution of days spent in the program, Jan 1999 – May 2003**



The reasons behind this extended duration of treatment are unclear. Feedback from the CREDIT Statewide Coordinator and others suggests that some Magistrates and clinicians have sought to retain participants in treatment for as long as possible in order to maximise the benefit of the program to them. Although CREDIT was intended to provide a point of entry to treatment services, the data suggests that it been used as a vehicle for providing longer term treatment for some participants. It

has also been suggested that access to treatment services is more readily available under such programs as CREDIT than clients would have outside the program.

The currently available data do not provide an objective basis for determining whether the treatment services provided under the CREDIT program are being used appropriately (this would require some form of assessment of what the duration *should* be for each individual). Further, the question of what is “appropriate” requires consideration of the effect of duration in the program on participant outcomes. Whilst retention in treatment has been shown to be associated with improved outcomes, the extent to which continued treatment should be provided under CREDIT is unclear. Further research is required in this area so that a more informed decision can be made on what is the optimum duration of participation in the program.

#### 6.4.6 COMPLETED EPISODES AND OUTCOMES

Table 19 shows the number of completed episodes and outcomes for CREDIT participants for the 12 months ended 30 September 2003, based on data provided by the CREDIT Coordinator covering this period. During this period, a total of 702 episodes were completed. Of these, 428 (61%) were recorded as successful and a further 70 (10%) were recorded as ‘partially completed’. The remaining cases were unsuccessful, for the range of reasons shown below.

The CREDIT team provided the following definitions for the outcomes recorded in Table 19:

- A *successful completion* is defined as “Attended treatment and engaged well in treatment throughout the entire period of bail. Made significant positive progress. Attended scheduled reviews with clinician. Attended all court hearings”.
- *Partially completed* is defined as “Attended some treatment. Engaged well and made progress. Not recorded as successful as they did not attend treatment frequently enough. Attended all court hearings”.
- *Did not attend court, attended treatment* is the outcome recorded for participants who would have been successful except that they failed to attend court. Where a participant fails to attend court, bail is forfeited so they automatically cease to be eligible for the CREDIT program.
- *Attended treatment, remanded*, is the outcome recorded for participants who would have been considered successful had they not been remanded (e.g. for re-offending while participating in the program).
- *Did not attend court, attended some treatment* is the outcome recorded for participants who “Attended some treatment, made some progress, but failed to attend court”.
- *Attended some treatment, remanded* is the outcome recorded for participants who “Attended some treatment, made some progress, but were remanded”.
- *Did not participate* is defined as “Attended minimum amount of treatment. Not interested in participating in treatment”. (In the table below it also includes outcomes recorded as *Did not attend treatment, remanded; Did not attend court, did not attend treatment; and Did not attend treatment*).

The CREDIT database records these outcome types in order to provide additional information about the participant for the CREDIT team. However, all except the first of these categories essentially refer to an unsuccessful outcome.

**Table 19: Number of CREDIT completed episodes and outcomes, 1 Oct 2002 - 30 Sep 2003**

	Successful	Partially Completed	Did Not Attend Court Attended Treatment	Attended Treatment, Remanded	Did Not Attend Court, Attended Some Treatment	Attended Some Treatment, Remanded	Did not participate	Total
Melbourne	122	33	1	3	10	6	30	205
Sunshine	59	13	0	1	1	7	36	117
Dandenong	54	4	2	0	7	9	11	87
Ringwood	58	4	2	2	5	2	11	84
Geelong & Colac	37	8	4	1	2	0	9	61
Moe & Korumburra	41	4	0	0	1	2	12	60
Broadmeadows	38	3	0	1	2	0	13	57
Frankston	10	1	0	0	0	1	5	17
Heidelberg	8	0	0	1	0	0	3	12
Bendigo & Ballarat	1	0	1	0	0	0	0	2
Total	428	70	10	9	28	27	130	702

#### 6.4.7 SENTENCING OUTCOMES

Table 20 shows the percentage of participants who received sentencing outcomes following completion of the CREDIT program. Across all participants who had completed CREDIT from its inception up until 30 September 2003, 80% were recorded as having successfully completed the program (as defined above) and 20% were recorded as having an unsuccessful outcome.

The most common sentencing outcomes were a Bond, CBO, Suspended Sentence or Fine. Overall, 92% of sentences were non-custodial.

**Table 20: Sentencing outcomes, Jan 1999 – Sep 2003**

Sentencing Outcome	Percentage of participants - successful program outcome	Percentage of participants - unsuccessful program outcome	Total
Bond	22%	2%	24%
CBO	19%	3%	22%
Suspended Sentence	15%	3%	18%
Fine	12%	2%	14%
Other	4%	1%	5%
ICO	3%	1%	5%
Custodial < 3 months	0%	2%	3%
Custodial 3-6 months	1%	2%	2%
Custodial 6-12 months	1%	1%	2%

Sentencing Outcome	Percentage of participants - successful program outcome	Percentage of participants - unsuccessful program outcome	Total
Custodial > 12 months	0%	1%	1%
Pay compensation	1%	0%	1%
Dismissed	1%	0%	1%
CCTO	0%	0%	1%
LMV	0%	0%	0%
Discharged	0%	0%	0%
Drug Treatment Order	0%	0%	0%
Total	80%	20%	100%

(Some percentage values may not add to 100% due to rounding)

Table 21 provides a breakdown of sentencing outcomes by charges. As previously shown, charges relating to drug and property offences were the most common for participants. Bonds were the most common sentencing outcome for drug related offences (i.e. 28% of all drug related offences resulted in a Bond), whilst other common outcomes were CBO (18%), Fine (16%), and Suspended Sentence (13%). For property offences, a CBO was the most common sentencing outcome (22%), followed by Suspended Sentence (19%), Bond (17%), and Fine (13%).

**Table 21: Sentencing outcomes (percentage distribution) by charges, Jan 1999 – May 2003**

Sentence Outcome	Breach of Order	Deception/ fraud	Driving offences	Drug related	Property offences	Violent offences	Other
Bond	14	13	10	28	17	24	18
CBO	23	25	20	18	22	22	23
Suspended Sentence	22	22	26	13	19	24	19
Fine	14	12	17	16	13	11	13
ICO	2	6	6	4	3	0	2
Custodial < 3 months	5	4	2	3	6	5	9
Custodial 3-6 months	8	3	2	3	5	5	5
Custodial 6-12 months	3	2	3	2	4	3	2
Custodial > 12 months	0	3	1	1	2	0	3
Pay compensation	1	2	2	0	2	0	1
LMV	1	1	4	1	1	0	1
Dismissed	0	1	1	1	1	3	0
Drug Treatment Order	0	0	0	1	0	0	0
CCTO	0	1	0	0	0	0	0
Discharged	0	1	0	1	0	0	0
Diversion program	0	0	0	0	0	0	0
Acquittal	0	0	0	1	0	0	0
Other	6	6	6	9	4	3	6

### **Recidivism**

The offending histories of 100 randomly selected CREDIT participants, who commenced on CREDIT between 1 July 2002 and 31 December 2002, were provided to the Department of Justice in de-identified form by Victoria Police. A sample of this size is generally regarded as being sufficient for the



purpose of profiling specific characteristics of participants in a program (in this case their offending history). The data were aggregated by the Department and provided in summarised form to the evaluators for analysis.

Offences dealt with in court up to 21 November 2003 were included in the dataset, providing a minimum window of 325 days and a maximum of 508 days since commencement on CREDIT. The analysis excluded charges which were committed prior to commencement on CREDIT and dealt with by the court after the completion of CREDIT. Of the 100 individuals, 43 were convicted of new offences following their commencement on CREDIT, for a total of 300 offences. Of these 43 individuals, 30 had completed CREDIT and 13 were still on the program. A summary of the new offences committed by this sample of CREDIT participants is provided below.

**Table 22: Recidivism in a sample of 100 CREDIT graduates**

<b>Offences committed</b>	<b>Number of times offence was committed (by 43 of the 100 individuals)</b>	<b>Average offences per individual (across all 100 individuals)</b>
Other	72	0.7
Justice procedures	49	0.5
Handle Stolen Goods	30	0.3
Drugs (possess/use)	27	0.3
Theft (other)	24	0.2
Deception	16	0.2
Theft (shopsteal)	15	0.2
Assault	13	0.1
Burglary (other)	12	0.1
Drugs (Cult/Man/Traffic)	11	0.1
Theft of M/car	6	0.1
Regulated Public Order	6	0.1
Behaviour in Public	5	0.1
Going equipped to steal	4	<0.1
Property Damage	3	<0.1
Theft from M/car	3	<0.1
Weapons/Explosives	3	<0.1
Burglary (aggravated)	1	<0.1
<b>Total</b>	<b>300</b>	<b>3.0</b>

Source: Department of Justice

Assuming that the commencement dates within the sample are evenly distributed (implying an average 417 day window for re-offending), then this analysis suggests, at a 95% confidence interval, that between 30-46% of the population of CREDIT participants re-offended within the first 12 months after commencing on CREDIT. Those who did re-offend would commit between 5-9 offences on average during their first 12 months after entering the program.

Ideally an analysis should be undertaken that compares these outcomes with those for a comparable group of individuals that did not participate in the CREDIT program. This was outside the scope of this study, but is an area that warrants further investigation, as well as an analysis of the program features

(e.g. duration of treatment) and participant characteristics that influence the outcomes of their participation in the CREDIT program.

## **6.5 Stakeholders' Experience of the CREDIT Program**

The following paragraphs highlight key issues and themes emerging from the stakeholder consultations carried out in Melbourne, Ringwood and Moe during March/April 2003. It should be noted that this analysis provides a snapshot of key issues at a certain point in time and that these issues, and efforts to address them, are continuing to evolve.

### **6.5.1 PROGRAM IMPLEMENTATION ISSUES**

Many stakeholders referred to the limited communication received by Magistrates when CREDIT was being established, which some believe has contributed to differing levels of support by Magistrates for the program. Some CREDIT clinicians considered they had had insufficient time to promote the program in their local area.

Another significant implementation issue raised in the consultations revolved around the lack of space within some courts to provide appropriate facilities for the CREDIT program. This lack of infrastructure can impede the operation of the program, with facilities in one court visited allowing restricted access to the CREDIT clinician for participants and solicitors. Some of these issues have led to a sentiment amongst some stakeholders that the CREDIT program is not given the same support by the courts as 'registrar-based programs' such as CJDP. We understand that efforts are being made with court registrars generally to increase their knowledge of and support for diversion programs.

Some stakeholders in Moe expressed the view that CREDIT is "a metropolitan model that has been imposed upon a rural area" – referring both to a perceived lack of consultation when the program was implemented, and the exclusion of alcohol (which is a more significant problem than illicit drugs in rural areas as discussed further below).

In Ringwood, the CREDIT program is sometimes used in conjunction with other bail conditions which can include regular urine testing and an abstinence-based (rather than harm minimisation) approach. Where these additional conditions are imposed, it is made clear to participants that these are separate from those of the CREDIT program. The Ringwood Magistrates' Court is the fourth largest user of the CREDIT program (after Melbourne, Sunshine and Dandenong) and had one of the higher success rates at 72% of completed cases during the April-June quarter of 2003 (compared to 63% across all courts during the same period). Magistrates at Ringwood speculate that the use of additional bail conditions in combination with CREDIT may well have contributed to this success. Nevertheless, the approach taken has caused divided opinion amongst stakeholders. From a treatment provider and program design/management perspective, the use of mandated urine testing and abstinence was considered inappropriate to the underpinning principles of the CREDIT program, which is based on a harm minimisation approach.

### **6.5.2 POLICY AND LEGISLATION ISSUES**

Several stakeholders mentioned that some Magistrates consider the CREDIT program to be inconsistent with the Bail Act. Anecdotally, some Magistrates prefer to bail defendants and subsequently decide whether they are suitable for CREDIT, while others prefer to base the decision whether to grant bail on whether the defendant is suitable for CREDIT. Undercurrents of dispute regarding this issue are thought to have affected the uptake of the program. In the words of one stakeholder, “some Magistrates really don’t want to go there, unless there is the protection of legislation”. However, there were many stakeholders who did not consider that a legislative backing would be necessary or helpful to the utilisation of the CREDIT program, unlike other programs such as the Drug Court and CJDP. In our view there is some merit in both arguments: Legislative change may well increase the uptake of the program, but effort may be better invested in winning the ‘hearts and minds’ of Magistrates in regard to the program rather than by specific legislation.

### **6.5.3 LEADERSHIP**

The roles of the CREDIT clinician and Magistrates were those most discussed from a leadership perspective. Stakeholders considered that the level of support that Magistrates show for the program has an important bearing on the overall level of support for the program in the court community. Some Magistrates are very supportive of the program while others are not.

The CREDIT clinicians’ leadership role is also of critical importance as they are the ‘driver’ behind the program at each court. The clinician acts as the conduit rather than a clinician per se, as their role is not to provide the treatment but to create links to treatment services and advise Magistrates on clinical issues. Generally this approach was considered to be working well, although some stakeholders reported that certain clinicians were ‘burning out’ due to their attempts to provide counseling to participants in addition to their intended role.

The importance of the role of DHS as the lead agency for the program and the brokerage and liaison role of ACSO-COATS were also recognised.

### **6.5.4 FUNDING**

Opinions expressed in relation to funding tended to focus on the length of time that participants remained on the program, extending the bail period and resulting in long Episodes of Care. Treatment agencies were praised for their professionalism in providing CREDIT services with no increase in their remuneration (a Counseling Episode of Care is funded at \$655.81 for a fully completed episode, regardless of its duration or the number of contacts with the participant to reach the agreed treatment goals). As noted in Section 6.4.5, there has been an increase in participants’ duration in treatment under the program, the costs of which have largely been absorbed by service providers to date. Any analysis of the appropriateness of the length of participation (in terms of participant outcomes) should also take into account what impact any extension in duration would have on remuneration payments to service providers and the consequent funding requirements of the program.

Funding issues were also raised in relation to the need to provide cover when CREDIT clinicians are on leave, with participants said to be potentially left ‘hanging’ during such periods. We understand that

funding is budgeted for 2003/04 to provide casual clinicians during periods of annual leave for all CREDIT clinicians across the State.

### 6.5.5 ELIGIBILITY CRITERIA

More stakeholders had an opinion on the eligibility criteria for CREDIT than any other issue. These viewpoints essentially revolve around two particular exclusion criteria to CREDIT referral, violent offences and alcohol abuse by the defendant, although further issues were raised in relation to in custody assessments and time limitations.

Almost universally among stakeholders at the service delivery level was the view that alcohol-dependent defendants should be eligible for the program. This was particularly pronounced in rural areas such as Moe, where alcohol is said to be a greater problem than illicit drugs, but was a sentiment also expressed by metropolitan stakeholders<sup>20</sup>.

The status of violent offences in relation to CREDIT was also important to stakeholders, with many, but not all stakeholders preferring a more flexible approach in this area. Eligibility for the CREDIT program is restricted to persons charged with a non-violent offence (defined as an offence where no physical injury was inflicted). However, a number of stakeholders raised concerns about the wide range of activities that can fall within the category of “violent offence”. For example, resisting arrest falls within this category, and was the subject of most contention among stakeholders. Examples were provided of defendants “swearing at police” and being charged with resisting arrest, and therefore being ineligible for the program. It was commonly considered that the exclusions against violence do not appear to consider the nature or severity of the offence or an assessment of the defendant’s history, where there should be greater latitude to exercise discretion. By way of comparison, the “actual bodily harm” definition of a violent offence used by the Drug Court in relation to violent offences does not appear to experience these problems. The principle of concern is whether the exclusion of defendants on the basis of their prior offending history (which may include some level of violence), results in the exclusion of a group of people who might benefit from participating in the program.

The restriction against violent offences was also considered problematic due to the fact that many acts of violence are the result of drug use, and many stakeholders considered there should be an avenue for such defendants to be included<sup>21</sup>. There was some opposition by police to greater discretion in relation to violent offences, although this view was not universal amongst police<sup>22</sup>. Despite the exclusion of violent offences, examples were provided by stakeholders of how some courts have circumvented this constraint. In particular, where a defendant is charged with multiple offences, one or some of which are not categorised as violent offences, the court brings the defendant onto the CREDIT program via the non-violent offence. This was indicated in the analysis of charges shown earlier.

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<sup>20</sup> The Commonwealth will only pay for treatment through the CREDIT program for illicit drugs. However, the pathways can be used for alcohol problems and the State will pay for treatment. Treatment is available through ACSO-COATS, but it cannot be claimed as a CREDIT episode.

<sup>21</sup> A non-violent offence is defined as an offence where no physical injury was inflicted. Offenders charged with a violent offence where physical injury occurs are ineligible for CREDIT.

<sup>22</sup> These views were expressed by individual police officers and are not necessarily representative of the views of Victoria Police in general.

Several stakeholders also referred to constraints presented by the fact that the program does not allow in-custody assessments. One stakeholder explained that CREDIT bail is what people in cells often need, as it is a critical time where they may be ready to respond to treatment. Examples were given of unofficial flexibility with regard to this matter, with clinicians visiting defendants in custody at the request of Magistrates to determine their suitability for CREDIT.

#### **6.5.6 REFERRAL**

The most prevalent comment made by stakeholders in relation to referral was that referral numbers had been lower than was generally expected, a comment that was consistent across all three courts visited. The source of referral was initially limited to police and Magistrates, but this was subsequently altered to allow referrals to come from anywhere. It was initially envisaged that police would be the main referrers, but as Table 12 showed, the majority of referrals were made by legal practitioners and Magistrates, with less than 5% of referrals coming from police. At one court visited, there were 10 police referrals compared to 80 by solicitors. One police prosecutor suggested that many police lacked sufficient knowledge about the program<sup>23</sup>.

Explanations offered for the low referral rates by police include the view that it involves extra work, and that it might be seen by some police as too lenient or a “soft option”. A further explanation suggested by one stakeholder was the perception (discussed elsewhere) of CREDIT not being as well-supported within the Magistrates’ Court as “registrars’ programs” like CJDP and Drug Court – hence, work allocation or referrals from within the court would be relatively low.

#### **6.5.7 TREATMENT SERVICES**

The effectiveness of treatment provided by treatment agencies, and of the brokerage role played by ACSO-COATS, were praised. All treatment providers reported achieving excellent results with CREDIT participants, and considered that their success rates with such participants often exceeded those where treatment is not mandated. (No empirical evidence was provided to support this perspective, and is another area that warrants further investigation and analysis.) Treatment providers felt that the CREDIT participants were more successful due to a longer period of treatment, regular review in court and the motivation and incentive to comply. On the other hand, one treatment provider felt that the mandated nature of the treatment led to an over-emphasis on attendances rather than outcomes.

Some stakeholders thought that treatment services were less effective in dealing with dual diagnosis participants, which are common among the CREDIT client group.

Generally the treatment providers are readily available via the CREDIT clinician and can be seen within 24 hours of referral.

Generally, the level of supervision was considered to be working well by all involved. Treatment providers considered the paperwork that was required to be excessive, but comply because payment is linked to its completion.

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<sup>23</sup> This was a view expressed by one individual and is not necessarily representative of the views of Victoria Police in general.

### **6.5.8 NON-TREATMENT SERVICES**

Many stakeholders emphasised the importance of stable and appropriate housing to participant outcomes. Due to there being fewer CREDIT referrals than anticipated, one housing agency had opted to use National Illicit Drugs Strategy funded beds for supported housing in general, but still gave preference to CREDIT participants in accordance with their funding arrangement.

Despite services being allocated specifically for CREDIT participants, the nature of the participants often posed difficulties for available housing resources. Most properties are designed for families or multiple tenants, with fewer being suited to sole occupants. There were concerns about co-locating two CREDIT participants (as this was seen as potentially detrimental to their treatment), or to house a CREDIT participant with a non-CREDIT client.

The availability of Salvation Army chaplains was also seen as beneficial, providing links to support services for participants in the program.

### **6.5.9 COMMUNICATION BETWEEN STAKEHOLDERS AND AGENCIES**

All comments related to communication between stakeholders focused upon the role of the CREDIT clinician, with these comments being highly positive as a whole. The range of stakeholder groups that commented on the role of and communication with the clinician highlights the clinician's pivotal role in the program. Concerns or shortages reported in communication were rare. However, both Legal Aid and private solicitors did report concerns that the CREDIT clinician has no duty to inform the solicitor when the participant is not doing well, and the lawyer can sometimes first learn of this at court.

### **6.5.10 PROGRESS THROUGH THE PROGRAM**

Few comments were made by stakeholders concerning the rate of participants' progress through the program, which appeared to reflect general satisfaction with individual participants' progress. However, as noted in the analysis of CREDIT program data, the length of time spent by some participants on the CREDIT program has been substantially longer than the anticipated guide of up to 90 days. We have previously noted the need to investigate whether longer duration of treatment is associated with better outcomes in programs of this type, and the implications this may have on the optimum time in the program.

### **6.5.11 PROGRAM COMPLIANCE**

In contrast to CJDP, participants in the CREDIT program are usually repeat offenders whose offending is related to their illicit drug use. As such, compliance rates are considerably lower for CREDIT than CJDP, but were considered by treatment providers and CREDIT clinicians to be particularly encouraging given the client group.

A concern was raised by a legal practitioner in Ringwood regarding the response by some Magistrates to a participant's lapse in the program, with some Magistrates appearing to take the view that failing the requirements of CREDIT warrants a greater penalty. This had led the solicitor to consider whether

they should even support bail under the CREDIT program. It is unclear from this isolated comment whether this issue exists in other areas, although it seems to be linked more to the nature of the program operating at Ringwood, and possibly reflects a lack of understanding of harm minimisation principles and how they relate to lapses of this type.

#### **6.5.12 INTERFACE WITH OTHER PROGRAMS AND SERVICES**

The Bail Advocacy Program was regularly mentioned by some stakeholders as a program of a similar nature to CREDIT, and is regarded by some as being more flexible in that it can include violent offenders, those with alcohol dependence, and in-custody assessments.

Considerable comment in Ringwood was afforded to the East Care program run by the Salvation Army. Some stakeholders tended to see the programs as being complementary whilst others viewed them as overlapping. The East Care program caters for clients who would be ineligible for CREDIT (e.g. alcohol dependent, violent offenders, in-custody assessments etc) but may also include clients eligible and suitable for CREDIT.

#### **6.5.13 OUTCOMES**

This section provides a summary of stakeholders' views and perceptions regarding outcomes from the CREDIT program, including a range of individuals involved in the delivery of the program (e.g. CREDIT clinicians, Magistrates, police, legal aid, treatment providers and others) and six participants in the program<sup>24</sup>. It should be noted that these comments reflect the views and perceptions of stakeholders, based on their experience, which may or may not be reflected in the empirical evidence.

##### ***Drug using behaviour***

Stakeholders recognised that any drug program such as CREDIT has a limited capacity to effect long-term change in drug use behaviour, and that there are many external factors that can impact on this activity. Indeed, drug use was recognised as being a long-term chronic condition, with reduced use (including abstinence) often characterised by lapses. Notwithstanding this context, the general consensus among stakeholders was that CREDIT had helped to reduce participants' drug use, including switching to less harmful drugs, in a manner that assisted the participants to achieve in other areas. Stakeholders felt that the program assisted participants to explore their patterns of drug use in an honest way. This, they noted, was the first step and they were then able to address the factors that led to the drug use.

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<sup>24</sup> Although not considered to be a representative sample of CREDIT participants, these were included amongst the other stakeholder interviews to complete the cross section of stakeholders who refer to, manage, provide services to, and use the program. The views of participants were not dissimilar to views recorded in previous CREDIT evaluations.

### ***Re-offending behaviour***

All stakeholders expressed confidence that re-offending was reduced in program participants, with several treatment providers mentioning that none of their CREDIT participants were known to have re-offended. The importance of stable housing was mentioned as a key ingredient to avoiding re-offending. It was considered that the program provided an opportunity for participants to discuss both the issues relating to their offending behaviour as well as addressing the actual offending. The capacity to be able to openly and honestly engage in discussion about the sensitive issues relating to offending and substance use was often commented on and cited as a key strength of the system.

### ***Welfare and social functioning***

Again within the context in which CREDIT works, stakeholders noted that through participants' interactions with the CREDIT clinician and alcohol and drug clinicians, participants were able to 'take a good look at their lives' and make some changes. They were typically clear that some changes would be 'for life' while others would be hard to keep up. However, the program was seen as a catalyst for change for many participants. Key benefits included better access to the broader health and community service system, and a greater capacity to engage in treatment following a positive introduction through the CREDIT program together with a new perspective about the help that is available.

Stakeholders provided glowing anecdotal references to the positive outcomes experienced in participants' welfare and social functioning. Many stakeholders spoke of participants who might have died if they had not been involved in the CREDIT program, and those who have gone on to improve their life circumstances and activities, such as returning to study. Several stakeholders reasoned that, at minimum, involvement in CREDIT allows participants to understand what drug treatment involves and also assists their knowledge of various services that can support them in the future. In this sense, even a participant who "failed" CREDIT compliance may nevertheless achieve benefits in the future.

### ***Characteristics of participants who succeed***

Several key characteristics were identified that assist participants to succeed in the CREDIT program. Those characteristics most often identified by stakeholders were stable accommodation, support from family and other social supports. Several treatment providers felt that older participants that had tried unsuccessfully in the past were often ready to make a change. This was particularly the case where their prior attempts and exposure to drug counselors had been a positive experience. Stakeholders stated that the program worked well for people who were committed to it and ready for the challenges it presents. We have noted previously the need to undertake more research into what participant characteristics and program attributes are associated with successful outcomes.



## 6.6 Conclusion

The number of referrals to CREDIT has been lower than expected. During the 2002/03 financial year, there were 963 referrals to CREDIT, 53% below the target of 2,068. Over three quarters of referrals have come from legal practitioners and Magistrates. Stakeholder feedback and analysis of the available data indicate that referrals to the program have been uneven between geographic areas, and between and within professional groups.

The number of new commencements on a monthly basis has increased markedly since the start of 2002 with the rollout of the program to more Magistrates' Courts. The total number of current participants has gradually increased over time, as there has been a cumulative effect of more participants entering than exiting the program.

In general, people who receive CREDIT bail have significant offending histories. Analysis of a sample of 100 CREDIT participants found that 96% had prior criminal convictions, for an average of 21.9 prior convictions per participant. The main substance reported to be used by participants was heroin.

A wide range of treatments were accessed by CREDIT participants. Individual Counseling, Consultancy and Continuing Care was recorded as having been accessed in over 65% of treatment episodes, although this is not surprising as this is an element common to most treatment episodes. Drug Withdrawal Residential accounted for 15% of episodes, while Residential Rehabilitation and Youth Outreach each accounted for just under 6%.

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

Across all participants on the database who had completed CREDIT by 30 September 2003, 80% were recorded as having successfully completed the program (i.e. "Attended treatment and engaged well in treatment throughout the entire period of bail. Made significant positive progress. Attended scheduled reviews with clinician. Attended all court hearings"). The majority (92%) of sentences imposed were non-custodial. Custodial sentences were received by 30% of the sub-group who did not successfully complete CREDIT, and 2.5% of the sub-group who did successfully complete the program. Although these statistics do not necessarily prove that CREDIT bail provides a strong incentive for participants to commit to treatment, they suggest that it reduces the likelihood of a

sentence involving incarceration, and that Magistrates take participants' progress into account at the time of sentencing.

Stakeholder feedback on the effectiveness of the program reinforces this interpretation of the data. Stakeholders praised the effectiveness of treatment provided by treatment agencies, and of the brokerage role played by ACSO-COATS. All treatment providers interviewed reported excellent results with CREDIT participants, and attributed this success to the duration of treatment, regular reviews in court and the motivation and incentive to comply. It was commonly considered that the participants most likely to be successful in the CREDIT program were those who had stable accommodation, support from family and other social supports. Stakeholders stated that the program worked well for people who were committed to it and ready for the challenges it presents.

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

The re-offending rate of CREDIT participants is between that of CJDP and Drug Court (and substantially higher than that of CJDP). From a sample of 100 participants it appears that around 38% would be convicted of a subsequent offence in the first 12 months following commencement on the program, at an average rate of 263 offences per 100 participants.

A significant implementation issue identified by several stakeholders concerned a lack of space within some courts to provide appropriate facilities for the CREDIT program. Stakeholders also considered that the level of support that Magistrates show for the program has an important bearing on the overall level of support for the program in the court community. The CREDIT clinician's leadership role is also of critical importance. The range of stakeholders who commented positively on the role and communications of the clinician highlights this pivotal role in the program.

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

## 6.7 Recommendations

It is recommended that:

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