7 DRUG COURT

This section of the report considers issues and trends that are specific to the Drug Court pilot. It includes a description of the Drug Court's objectives and processes, analysis of data from the pilot, and analysis of stakeholders' experience of the Drug Court. This section should be considered in conjunction with the findings of the HVolume Three of the evaluation which focuses on outcomes for drug court participants, together with Volume Four which reports on the Cost-Effectiveness evaluation of the Drug Court.

7.1 Background

Much of the following background information has been drawn from the document titled "An Introduction to the Drug Court of Victoria and Drug Treatment Orders" (May 2002) and the Drug Court Operating Manual.

The Drug Court is a pilot program operating in the Dandenong Magistrates' Court for a period of three years. The pilot program commenced in May 2002.

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.

To achieve this, participants in the Drug Court are sentenced to a Drug Treatment Order (DTO) that is managed by a specialised Drug Court Magistrate, with the support provided by a multidisciplinary team including the Drug Court Registrar, Case Managers and a Senior Case Manager who are specialist Community Corrections Officers, a Clinical Advisor, Victoria Legal Aid Solicitor, Police Prosecutor, drug treatment service providers, housing support workers and others.

7.2 Legislative and Policy Base

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

The Victorian Government's drug policy, set out in *A New Approach – Labor's Plan to Tackle the Drug Crisis* (released in July 1999) included a commitment to trial a specialist Drug Court. The policy basis for the Victorian Drug Court was not specified in this document. The Victorian model was developed after consideration of various drug court models in Australia and overseas, and in light of local and international research identifying the key components of successful drug courts. These components

are seen as critical in maximising the retention of participants on drug court programs. The Victorian model has adopted the following key features.

7.2.1 JUDICIAL SUPERVISION

The Drug Court is a division of the Magistrates' Court rather than a separate, stand-alone court. A Drug Court Magistrate who sentences a participant retains responsibility for the ongoing judicial supervision of that participant during the currency of the DTO.

It is fundamental to the success of the Drug Court that the DTO is administered in a manner consistent with the therapeutic principles of the Drug Court. While retaining ultimate responsibility for decision-making in review hearings, the Magistrate is required to adopt a team approach in the supervision of the Order, to take into account health/clinical and correctional perspectives. This is a fundamental shift from the current management of offenders.

7.2.2 TEAM APPROACH

The Drug Court Magistrate works closely with a specially appointed multi-disciplinary team comprising a Drug Court Program Registrar, bench clerk, case managers, clinical advisor, housing support workers, prosecutor, and defence counsel. Treatment agencies and other service providers are also involved in service delivery. The Drug Court utilises a collaborative, team-based approach to the supervision of the Drug Treatment Orders.

The case management process requires prosecution, defence counsel, Drug Court staff and the various agencies involved in the Drug Court process to adopt unconventional non-adversarial roles. These roles are necessary to facilitate the therapeutic aims of the Drug Court. Members of the Drug Court team revert to traditional adversarial roles at other stages of the Drug Court process.

7.2.3 TIMING OF INTERVENTION

Potentially eligible participants should be identified early and referred promptly to the Drug Court for assessment and intervention.

7.2.4 CONSENT

Participants must consent to participate in the Drug Court program. In order to maximise an individual's potential to succeed on the program each potential participant is given a full explanation about what the program may involve and is given at least a three week time period (being the delay between initial screening and final assessment) in which to consider their participation.

7.2.5 ACCESS TO SERVICES

The Drug Court must have access to a continuum of drug treatment and related rehabilitation services, which should be appropriately linked to enable the DTO to operate effectively.

7.2.6 HARM MINIMISATION

The Drug Court model acknowledges that recovery from drug dependence involves relapse and varying degrees of progress. Accordingly, drug use or offending while on the Drug Court program does not automatically result in cancellation of the DTO. Instead, a series of escalating sanctions are used to respond to non-compliance and, in some cases, further offending.

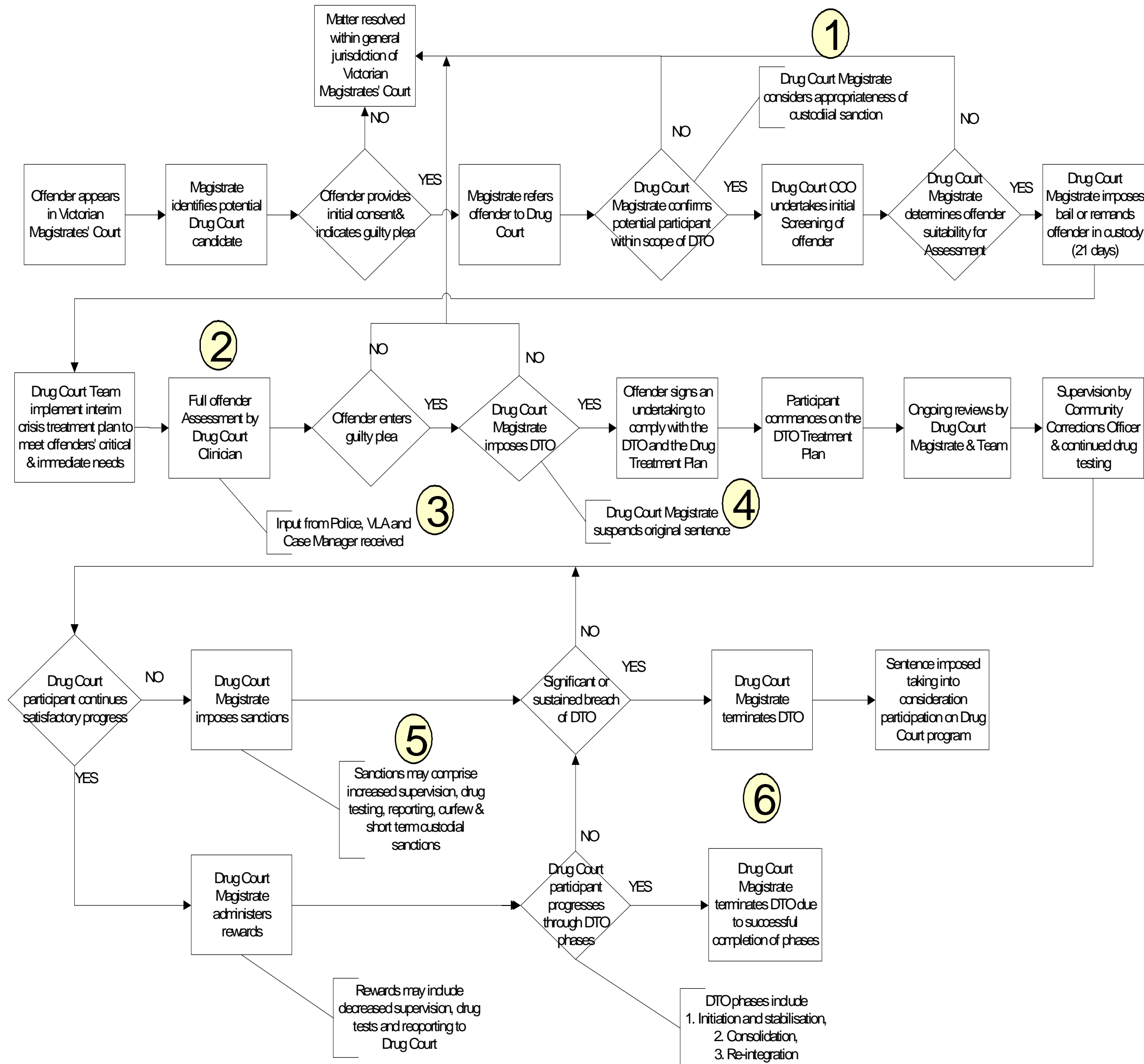
7.3 Process Flow Map

The following diagram provides an overview of the processes by which defendants are assessed for eligibility and suitability for a Drug Treatment Order, and then progress through the phases of the Order. A description of these processes is provided in the paragraphs that follow.

This diagram has been reproduced from the Drug Court Operating Manual. However, it should be noted that some elements of the diagram are not reflective of the actual approach taken and/or not compatible with legislation. The following corrections are identified by their corresponding numbers on the diagram:

1. Should read "custodial sentence", not custodial sanction.
2. Should read "Clinical Advisor" not Drug Court Clinician.
3. Input is provided by the Clinical Advisor and Housing Support Worker (where applicable) as well as Police, Legal Aid and Case Manager.
4. The Drug Court Magistrate does not suspend the original sentence. The defendant is sentenced to custody, and placed on a Drug Treatment Order. Together, those two elements form the DTO. The custodial part of the sentence is not activated, but it remains in force.
5. Sanctions can also include verbal warnings, variations of DTO conditions or community work, and these are more common than the sanctions listed in the diagram. The custodial sanctions are brought about by activating portions of the custodial component of the DTO.
6. Drug Treatment Orders are "cancelled", not "terminated". A DTO can be cancelled in two different ways. The Drug Court Magistrate can either cancel the treatment and supervision part of the DTO and activate an Order committing them to serve the remainder of the custodial part of the sentence, taking into account their progress while on the DTO, or the Drug Court Magistrate can cancel the entire DTO and re-sentence. Under either option, the participant cannot serve longer than the original sentence.

Figure 26: Process Flow Map



Source: Drug Court Operating Manual

7.4 Eligibility Criteria, Referral and Assessment

7.4.1 ELIGIBILITY

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

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

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

7.4.2 REFERRAL

The *Magistrates' Court Act* 1989 initially allowed referrals to come from Magistrates from the Dandenong Magistrates' Court only. In February 2003, Section 17ZR of the Sentencing Act allowed referrals to come from any court. A Magistrate refers a defendant before he/she has made a formal plea, where it appears that the defendant is eligible according to the stated eligibility criteria.

7.4.3 SCREENING AND ASSESSMENT

Prior to the case being referred and adjourned to the Drug Court, the Deputy Registrar conducts a brief screening by telephone to ascertain that the basic criteria are met, including whether the defendant has given verbal consent to their matter being adjourned to the Drug Court. Should the defendant be deemed ineligible, the referring Magistrate will finalise the matter in the usual manner. Where the defendant is deemed eligible for participation a date is set for the first Drug Court mention hearing.

The first mention hearing involves representations from the defendant's legal representative (who is often the Drug Court duty lawyer) and the Police Prosecutor. The Drug Court Magistrate must be satisfied that the defendant meets the eligibility criteria, including that the appropriate penalty is a term of imprisonment. If not considered appropriate as a Drug Court participant, the Magistrate will finalise the matter at this first mention hearing, or adjourn it back to the referring Magistrates' Court. Should the defendant be considered an appropriate Drug Court participant, a screening request is asked of the rostered Drug Court Case Manager, who completes the screening "on the spot". The Case Manager undertakes the (approximately one-hour) screening and provides a report to the Deputy Registrar, who ensures that the matter is recalled before the Drug Court Magistrate.

Should the Case Manager reach the conclusion from the on-the-spot screening that the defendant is not suitable for the Drug Court, the Magistrate will sentence the defendant at this first mention hearing (or adjourn it to the referring Magistrates' Court). Where the Case Manager considers the defendant is suitable for the Drug Court program, the matter is adjourned for 21 days to allow the defendant to have a thorough assessment by the Senior Case Manager and the Drug Court Clinical Advisor.

This assessment involves both a clinical focus and an environmental focus. The clinical focus is undertaken by the Clinical Advisor and includes an assessment of the drug and alcohol, medical and psychiatric needs of the defendant, and leads to the planning and subsequent provision of the appropriate treatment required. The Senior Case Manager assesses the defendant according to

environmental issues that impact on the defendant's ability to address their drug issues, including accommodation, social relationships, life skills, and any other issues that may impact on their capacity to comply with the Order's conditions. These two components are incorporated into the assessment report.

At the second mention hearing the defendant's legal representative makes submissions regarding the defendant's suitability for a DTO. The Magistrate, based upon these submissions, the assessment report and other relevant matters, makes a determination of whether the defendant is suitable for a DTO. At this point the defendant makes their plea. Should this plea be not guilty, the defendant is not eligible for the Drug Court and the Magistrate adjourns it for hearing by the referring Magistrates' Court (this approach also occurs, regardless of plea, if the Magistrate considers the defendant to be unsuitable for the Drug Court).

If the Magistrate, at the second mention hearing, decides it is appropriate to make a DTO, the defendant's consent is obtained and the Order is made. If the defendant has been in custody up to this point rather than on bail, they are released. At this point a time is established for the participant to report to the Magistrate for their regular review which, during Phase I, is once a week.

7.5 Operation of the Program

This section outlines the processes by which the Drug Treatment Order and the Drug Court operate once the participant is accepted into the program.

The DTO comprises three phases: Phase 1 - Stabilisation, Phase 2 - Consolidation, and Phase 3 - Re-Integration. The progression of participants through each of these phases and ultimately the successful completion of the program is the objective for each participant in the program.

Table 23: The three phases of a Drug Treatment Order

PHASE 1 STABILISATION	PHASE 2 CONSOLIDATION	PHASE 3 RE-INTEGRATION
Principal Goals	**Principal Goals**	**Principal Goals**
• Stabilise accommodation arrangements. • Stabilise income arrangements. • Stabilise physical, dental and mental health. • Reduce drug use. • Cease criminal activity.	• Strive to be drug free. • Remain crime free. • Consolidate social and domestic environment. • Develop life skills including job skills. • Identify major life issues and identify strategies to address. • Improve general health and wellbeing.	• To be relatively drug free and accept a drug free lifestyle. • Remain crime free and accept a crime free lifestyle. • Maintain sustainable social and domestic environment. • Maintain general health and wellbeing. • Address major life issues. • Gain employment or return to study. • Be fiscally responsible.
(Anticipated) Average Duration	**(Anticipated) Average Duration**	**(Anticipated) Average Duration**
12 Weeks	12 Weeks	26 Weeks

PHASE 1 STABILISATION	PHASE 2 CONSOLIDATION	PHASE 3 RE-INTEGRATION
Principal Means of achieving goals	**Principal Means of achieving goals**	**Principal Means of achieving goals**
• Commence and actively participate in drug treatment. • Assigned to CCS Drug Court Case Manager. • Development of detailed case management plan. • Terminate criminal associations. • Commence and actively participate in case management program. • Attend court weekly. • Submit random urine tests. • Participate in home visits by CCS Drug Court Case Manager. • Have stable accommodation/income.	• Continue to actively participate in updated drug treatment program plan. • Commence and actively participate in 'life skills' programs which may include financial/ budget, vocational/ educational, cognitive skills training, parenting/ relationships, life skills, counseling etc. • Attend court fortnightly. • Submit random urine tests. • Participate in home visits by CCS Drug Court Case Manager. • Develop new leisure activities.	• Continue/complete all requirements of drug treatment program plan. • Continue/complete 'life skills' program plan. • Attend court monthly (minimum). • Submit random urine tests. • Participate in home visits by CCS Drug Court Case Manager. • Seek/gain employment or commence educational/ vocational training program. • Pay or make arrangements to pay all outstanding debts. • Develop Termination of Order Transition Plan.

Source: Drug Court Operating Manual, 1.2.1

7.5.1 CONDITIONS OF DRUG TREATMENT ORDER

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

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

In addition to the core conditions, the Drug Court Magistrate must attach at least one program condition to the DTO, but no more program conditions than the Magistrate considers necessary to achieve the purposes for which the DTO is made. A participant must comply with all program conditions attached to the DTO. These may include submitting to detoxification or other treatment, attending vocational, educational, employment or other programs, submitting to medical, psychiatric or psychological treatment, not associating with specified persons, residing at a specified place for a specified period, and anything else that the Magistrate considers necessary or appropriate concerning the participant's drug or alcohol dependency or the personal factors that the court considers contributed to the participant's criminal behaviour.

7.5.2 CASE CONFERENCES AND REVIEW HEARINGS

Review hearings for participants at the Drug Court are held weekly, fortnightly or monthly depending on which phase of the program the participant is currently situated (Phase I generally requires weekly

reviews). Prior to these review hearings, a case conference is held amongst the members of the Drug Court team who interact with the participant, in order to discuss the participant's progress and other relevant issues. They may discuss potential variations to the DTO, advancement in phase and any rewards or sanctions for compliance/non-compliance. The participant is not present at this case conference, but must attend the review which follows the case conference. The review hearing allows for the ongoing judicial supervision of the participant and gives the participant the opportunity to respond to issues raised in the case conference and discuss any issues with the Magistrate. Based on the case conference and also the participant's involvement in the review hearing, the Magistrate may choose to impose a sanction or offer a reward to the participant, or vary the conditions attached to their DTO.

Since March 2003, a new process, the "super case conference", has been introduced, which involves the meeting of all of the Drug Court team members. This is held once a month for each participant with a particular focus on their goals and what is required for them to achieve these, including progressing to the next Phase. This super case conference is future and outcome oriented and is aimed at providing planning and motivation to the participant.

7.5.3 REWARDS AND SANCTIONS

A system of rewards and sanctions is utilised to encourage compliance with the DTO. Compliant behaviour is rewarded by verbal praise, reduced substance testing requirements (i.e. reduced frequency of tests), and a reduction of other attendance requirements at the Drug Court. Also referred to in the Drug Court Manual are rewards such as vouchers to redeem goods/services at businesses, although this component has not been widely used due to budgetary constraints.

Should a participant not comply with certain requirements of their DTO, sanctions may be imposed such as verbal reprimands, increased requirement to submit to substance testing, other increases in attendance requirements at the Drug 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 in custody as 7- or 14-day blocks once sufficient days have accumulated. Conversely, the removal of accumulated imprisonment sanctions previously imposed is often used as a reward.

7.5.4 DRUG TREATMENT COMPONENT

It is a core condition of every participant's DTO that they undergo treatment for their drug or alcohol dependency. Drug treatment is brokered through the Community Offenders Advice and Treatment Service (ACSO-COATS) and is provided by a range of drug treatment agencies. The following information has been drawn from the following papers provided by the Department of Human Services: *Drug Court Pilot – Information for Drug Treatment Agencies* (5 April 2002)*;* and *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).

The Victorian drug treatment service system is defined in *Victoria's Drug Treatment Services: The Framework for Service Delivery* (March 1997) which outlines a comprehensive drug treatment service system consisting of twelve key service types, each with clearly articulated key service requirements. Services are designated for Regional and Statewide coverage. Treatment programs for offenders are part of the statewide services.

Key agents involved in the drug treatment component of the DTO are the Drug Court team (in particular, the Clinical Advisor), ACSO-COATS, and the drug treatment agencies. The Clinical Advisor is responsible for assessing the clinical needs of the participant. The Drug Court team, in consultation with the Drug Court Magistrate, then formulates an overall case plan. Once the court has approved the case plan, the Clinical Advisor purchases drug treatment (in the normal way for forensic programs) through ACSO-COATS. ACSO-COATS then makes an appointment at a drug treatment agency and notifies the Clinical Advisor of the appointment details. The course of drug treatment is determined by the treating clinician in consultation with the Clinical Advisor.

Alcohol and drug treatment agencies, in consultation with the Clinical Advisor, provide verbal and written reports advising of the participant's clinical progress. Reports in each of the three phases are required.

If the treating clinician believes the participant is unable to meet the conditions of the DTO then he/she notifies the Drug Court Clinical Advisor of the need for a variation of the DTO and the matter is discussed. ACSO-COATS is consulted in relation to the availability of services and any budgetary constraints. If agreement is reached, a submission is made to the Drug Court for a variation to the DTO. The Clinical Advisor notifies ACSO-COATS once the Drug Court Magistrate has made the variation.

If the treating clinician believes the participant is not meeting the treatment requirements because they are being deliberately non-compliant, or refusing to comply, or if the participant does not attend a drug treatment appointment, the treating clinician advises the Drug Court Case Manager. It is the responsibility of the participant to comply with the DTO. It is the responsibility of the Drug Court Magistrate to apply rewards and sanctions depending on participant behaviour. The court determines whether the non-compliance is a breach or lapse.

The Department of Human Services funds drug treatment service providers to provide an "Episode of Care" to clients. An Episode of Care is defined as:

> *"A completed course of treatment undertaken by a client under the care of an alcohol and drug worker which achieves significant agreed treatment goals"*

While client contacts or bed days may be elements of a treatment episode, an Episode of Care is the entire treatment sequence. The Episode of Care is completed upon achieving significant goals. These goals are negotiated with the participant on commencement of treatment, and are recorded in their Individual Treatment Plan (ITP).

Each Phase of the DTO is equated with one Episode of Care. The pre-requisites of an Episode of Care are a completed course of treatment, the achievement of a significant proportion of agreed

treatment goals (as identified in the ITP) and the ITP must be negotiated/completed before an Episode of Care can be registered as completed.

The following table summarises the drug treatment major objectives for each phase of the Drug Court Program.

Table 24: Drug treatment major objectives for the Drug Court Program

PHASE 1 STABILISATION	PHASE 2 CONSOLIDATION	PHASE 3 RE-INTEGRATION
Principal Objectives	**Principal Objectives**	**Principal Objectives**
• Risk Assessment. • Set treatment goals. • Engage participant in treatment. • Examination of reasons for use.	• Revision of treatment goals. • Maintaining engagement in treatment. • Maintenance of low risk behaviour. • Address problems surfacing in treatment. • Involvement of supports to participant (family; significant other, etc).	• Revision of treatment goals. • Exit planning. • Managing lapse/relapse. • Linkages to other A&D support services. • Reinforcement of gains made and goals achieved.
Secondary Objectives	**Secondary Objectives**	**Secondary Objectives**
• Harm minimisation – safe using. • Options about drug use. • Pharmacotherapy. • Advice to Clinical Advisor on appropriate linkages to other services. • Drug use reduction. • Role clarification. • Reporting guidelines. • Exit planning.	• Maintain drug use reduction. • Managing lapse/relapse. • Life skills. • Exit planning.	• Maintenance of stable pharmacotherapy use. • Further reduction in all types of drug use and acceptance of a drug free lifestyle. • Life skills.

Source: Drug Court Pilot – Information for Drug Treatment Agencies – April 2002

7.5.5 SUPPORT AND HOUSING COMPONENT

The Transitional Housing Management - Drug Court Housing Pathways Initiative (THM-DCHPI) is a collaborative project between the Office of Housing (OOH) of the Department of Human Services under the Victorian Homelessness Strategy, and Court Services, Department of Justice. The following information has been drawn from a report titled *Support and Housing Linked Component of "THM-Drug Court Housing Pathways Initiative"* (June 2003) provided by the Office of Housing Community Programs Group.

Drug Courts outside of Victoria have their accommodation component within either a custodial or clinical setting such as supported accommodation under the control or management of the Drug Court program. The Victorian approach instead accesses transitional housing and specialist homelessness support from existing community-based providers. The inclusion of transitional housing in the Drug

Court pilot acknowledges the important role that provision of stable housing fulfils in reducing drug use and criminal behaviours associated with drug use.

Evidence from Drug Courts in other states suggested that up to 40% of Drug Court participants could be homeless at the time of assessment. It is extremely difficult for people who are homeless and who have substance use issues to address these issues or to make significant changes in their lives until they find stable accommodation. Consequently, the OOH allocated 30 transitional housing properties to the Drug Court pilot.

Drug Court tenants in these properties have access to a Tenancy Administration Worker (TAW) and a Homelessness Support Provider (HSP), sometimes referred to within the Drug Court team as Homelessness Support Worker (HSW). The TAW's role is to fulfil the property and tenancy management role based on social housing standards and in accordance with the *Residential Tenancies Act* 1997. The TAW works with the tenant regarding rent and utilities payments, connection of utilities, reporting property maintenance situations, managing issues surrounding property damage and assisting the tenant to manage any neighbourhood issues which may arise. All of these tasks are regarded as being basic life skills which are vital for the success of future long term housing and enhance the work of the HSP.

The primary role of the HSP, in conjunction with the Drug Court team, is to assist the participant to address any factors underlying the fact that they are homeless or impacting upon the resolution of their homelessness, including and beyond alcohol and drug dependency. This incorporates the pursuit of long term housing options whilst residing in OOH transitional housing as a participant in the Drug Court program.

The support provided to each participant varies according to their progress on the DTO, the level of support required, and culminates in a long term housing plan. A period of bridging support is provided to the participant once they have moved into long term housing. Once the participant has moved into more permanent housing, housing support ceases.

Recent data provided by the Office of Housing on the range of services provided and their duration are presented in the following tables. Note that these data relate to the period from the commencement of the Drug Court to 30th November 2004. This period is approximately 12-16 months longer than other statistics cited in this report, and care should be taken in making any comparisons with other data.

From commencement of the Drug Court, THM-DCHAP has approved provided services in the form of assessment, support and/or housing to 97 individuals who have been on a DTO. This does not include the partners and children who have accessed some form of support from this service.

Table 25: Long-term housing achieved by Drug Court participants

Office of Housing accommodation	22
Private Rental> 2-4 weeks	4
Share Accommodation	1
Return to Family Home	4

The duration of the support and accommodation provided to Drug Court participants by THM-DCHAP is shown in the following table. Over 50% of participants received both housing and other support for more than 6 months during this period.

Table 26: Duration of support and accommodation provided by THM-DCHAP

Duration	Support	Accommodation
> 1-2 weeks	3.1%	0.0%
> 2-4 weeks	7.7%	2.0%
> 4-13 weeks	15.5%	17.6%
> 13-26 weeks	24.6%	19.6%
> 26 – 52 weeks	35.4%	45.1%
> 52 weeks	12.3%	13.7%

The assessed need for, and subsequent provision of a wide range of supports to Drug Court participants by THM-DCHAP are shown in the following table. The percentages shown represent the proportion of all Drug Court participants. (e.g. 73.8% of all Drug Court participants were assessed as needing assistance to obtain independent housing; 55.4% of all participants had these needs met by the THM-DCHAP directly; with 6.2% referred to another agency for assistance). It should also be noted that the columns “Provided” and “Referred” are not mutually exclusive – i.e. some participants may have been provided services directly by THM-DCHAP and also been referred to another agency for further assistance.

Table 27: Client needs and services provided by THM-DCHAP

Service	Needed	Provided	Referred
Assistance to obtain independent housing:	73.8%	55.4%	6.2%
Assistance to maintain housing/accommodation:	29.2%	23.1%	3.1%
Employment and training assistance:	29.2%	15.4%	10.8%
Financial assistance/material aid:	66.2%	60.0%	40.0%
Financial counseling and support:	53.8%	50.8%	6.2%
Family relationship counselling and support:	38.5%	24.6%	18.5%
Emotional Support:	60.0%	58.5%	13.8%
Living skills and personal development:	41.5%	36.9%	3.1%
Drug/Alcohol support or intervention:	72.3%	49.2%	35.4%
Transport:	43.1%	43.1%	1.5%
Assistance with legal issues/court support	100%	100%	35.7%
Health medical issues:	18.5%	4.6%	18.5%
Advice/information:	64.6%	64.6%	21.5%
Advocacy/liaison an behalf of client:	58.5%	58.5%	12.3%

Note: Types of support representing 20% or greater of the overall target are reported.

7.5.6 CANCELLATION OF THE DRUG TREATMENT ORDER

Ultimately, the Drug Court team and hopefully the participant, are committed to ensuring that the participant complies with their DTO, and successfully moves through each of the phases, such that their DTO can be completed and cancelled. Cancellation of the DTO in recognition of program compliance and completion can occur where the court considers that the participant has fully or substantially complied with the DTO, and where the continuation of the DTO is no longer necessary to meet the purposes for which it was made. In simple terms, it means that the participant has displayed the ability to maintain a balance in their lifestyle that does not involve detrimental levels of alcohol or drug use, or any associated offending.

Where a participant is unable to meet the requirements of the DTO, the DTO may be cancelled. Prior to this cancellation, an application to cancel hearing is listed at the Drug Court, which is held three weeks after the application to cancel is served on the participant. During the intervening period the participant must continue to attend the court for weekly reviews, meetings with case managers and substance testing. At the breach hearing, the Magistrate, following representations by the police prosecutor and the participant's legal representation, and receiving progress reports from the case manager and the clinical advisor, will determine whether or not to allow the participant to remain on the program or to cancel the Order. Should the DTO be cancelled, the original period of imprisonment imposed when the participant entered the DTO is ordered to be served, less any periods of imprisonment served by way of sanctions and time credited for the time spent on the DTO.

7.6 Analysis of Program Data

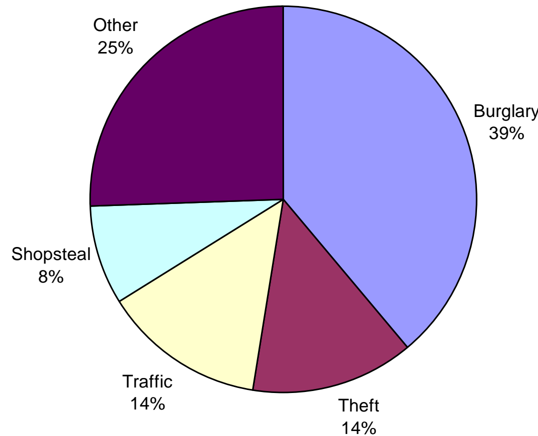
Data was provided by the Department of Justice (DoJ) sourced from the Courtlink system in July 2003, together with a series of reports from the Drug Court Registrar. The assistance of the Drug Court Program Registrar, DoJ and Victoria Police in providing this data is gratefully acknowledged. The data included all DTO participants and Drug Court activity from 20 May 2002 (the Drug Court commencement date) to 30 June 2003 (the end of the study period). A total of 59 Drug Treatment Orders (DTOs) had been made by 30 June 2003.

7.6.1 PARTICIPANT CHARACTERISTICS AND HISTORY

Profile of charges

The following figure shows the major offence committed by participants in the Drug Court program. The most common major offence was burglary (23 participants, including one burglary with intent), followed by theft and trafficking (8 participants each).

Figure 27: Major offences of DTO participants

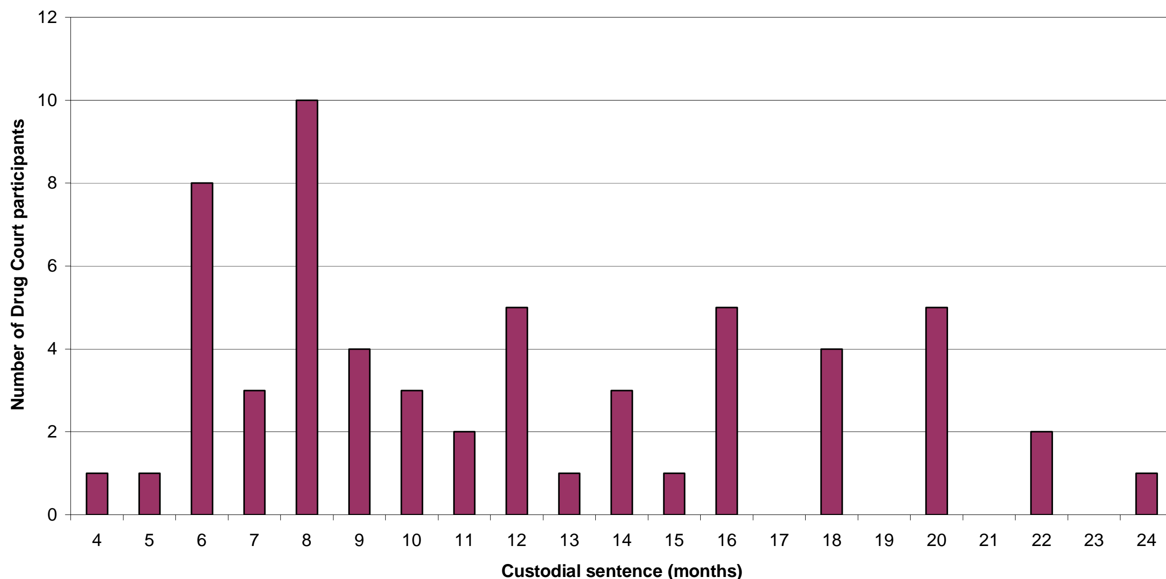


Overall, 68% of major offences were property-related including burglary (22), shopsteal (5), theft (4), theft of motor car (4), possess stolen goods/proceeds of crime (2), attempted burglary (1), burglary with intent (1), handle stolen goods (1). Drug related offences represented 15% of all offences committed, including traffic heroin (4), traffic (4), and possess heroin (1).

Length of custodial sentence

In order to qualify for a DTO, defendants must first receive a custodial sentence and this sentence forms one component of the DTO. The median sentence was 10 months and the mean was 12 months. The following graph shows the range and distribution of the custodial sentences among the 59 Drug Court participants.

Figure 28: Length of custodial sentence



Offending history

The offending histories of 58 Drug Court participants were provided to the Department of Justice by Victoria Police (the record for the 59th participant was not located). The data were aggregated by the Department and provided in summarised form to the evaluators for further analysis. The following table summarises prior convictions (dating back to 1993/94). On average, participants had 40 prior convictions each, with 50% of offences being property-related and 19% being drug related.

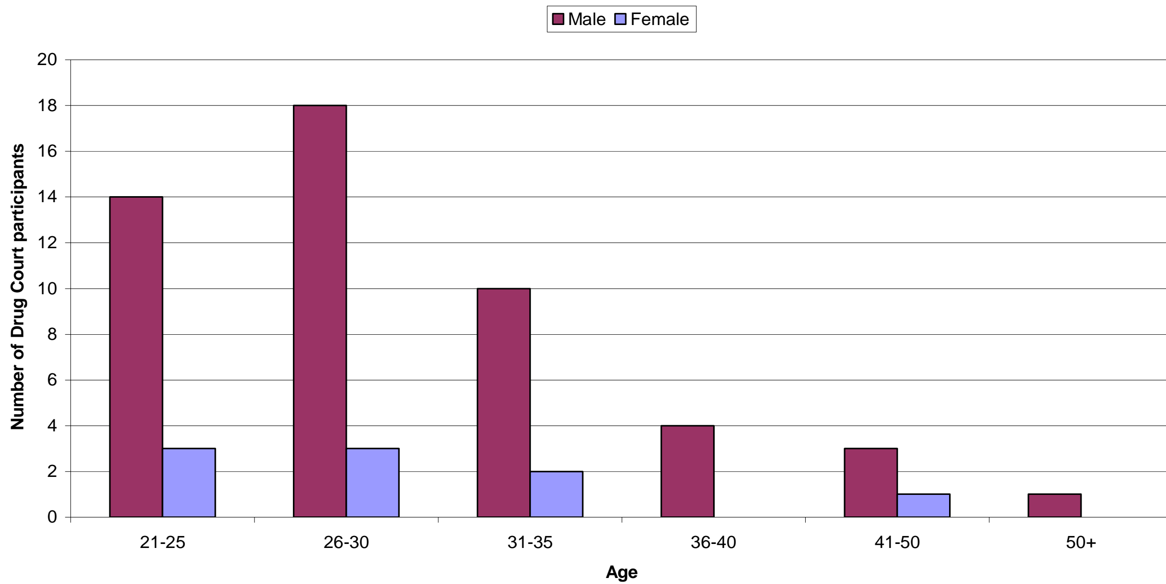
Table 28: Offending history (prior convictions) of Drug Court participants

Offences committed	Number of times offence was committed (58 individuals)	Average priors per individual
Drugs (possess/use)	329	5.7
Theft (other)	288	5.0
Justice procedures	217	3.7
Handle Stolen Goods	213	3.7
Other	201	3.5
Burglary (other)	196	3.4
Deception	149	2.6
Going equipped to steal	123	2.1
Theft of M/car	113	1.9
Drugs (Cult/Man/Traffic)	109	1.9
Theft (shopsteal)	107	1.8
Theft from M/car	64	1.1
Assault	59	1.0
Behaviour in Public	51	0.9
Property Damage	42	0.7
Weapons/Explosives	42	0.7
Robbery	9	0.2
Regulated Public Order	5	0.1
Theft (bicycle)	4	0.1
Burglary (aggravated)	3	0.1
Abduction/Kidnap	2	<0.1
Arson	2	<0.1
Harassment	1	<0.1
Total	2,329	40.2

Age and gender

Of the 59 Drug Court participants recorded on the Courtlink system, 50 were male and 9 were female. 36% of all participants were aged 26-30, with 29% aged 21-25. 54% were males aged between 21 and 30. This may have begun to change subsequent to the study period. Anecdotally, the average age of more recent entrants to the program has been reported as being lower than that of the participant group shown here. It was suggested by one stakeholder that older people with longer drug use histories may have been the first people to access the program.

Figure 29: Age-gender profiles of participants



Cultural background

Of the 59 participants recorded on Courtlink as at 1 July 2003, 32 (54%) were identified as being Australian. The next most common cultural background was Vietnamese (7 participants or 12%). The remaining 20 (one-third of participants) came from a mix of 16 other cultural backgrounds.

Table 29: Number of Drug Court participants by cultural background

Cultural background	Number of participants
Australian	32
Vietnamese	7
Croatian	2
Greek	2
Mäori	2
Romanian	2
Afghan	1
Indonesia	1
East Timor	1
Egyptian	1
Indian	1
Khymer	1
Lebanese	1
Polish	1
Spanish/Ital	1
Turkish	1
Uruguayan	1
Yugoslav	1

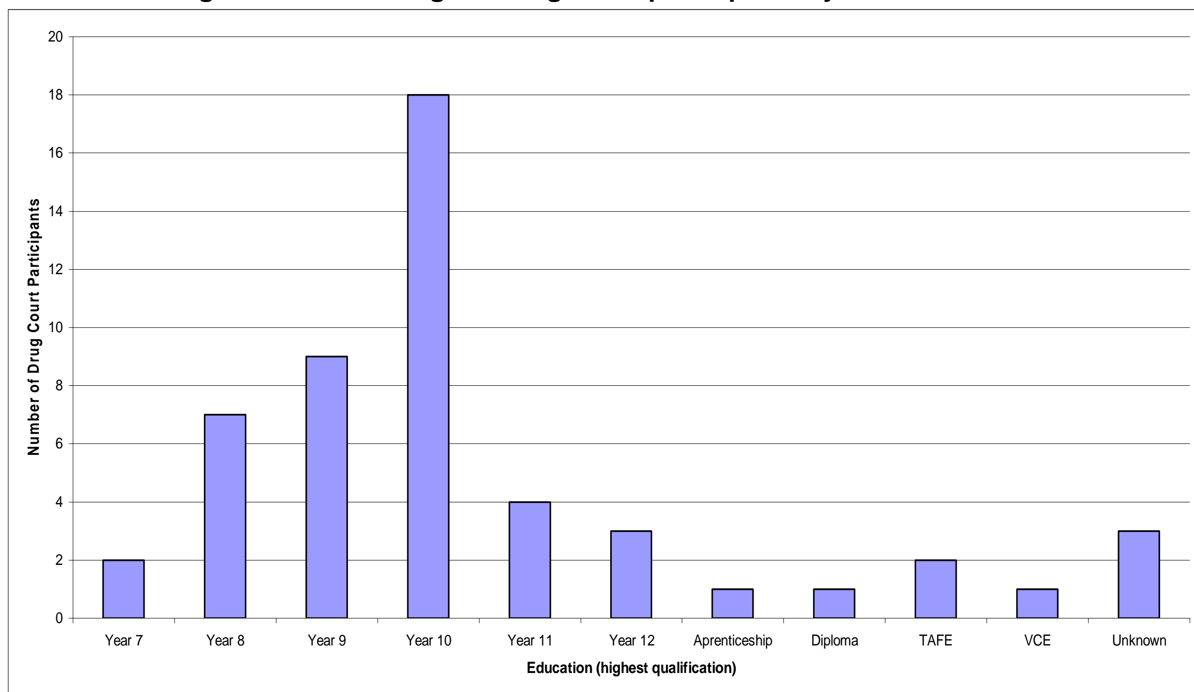
First language

Of the 59 participants, 75% had English as their first spoken language and 12% had Vietnamese as their first spoken language. Eight other languages were represented among the remaining 8 participants.

Education level

Data from Courtlink indicates that 71% of Drug Court participants have an education level of Year 10 or less. Ten percent have a Trade education or have studied tertiary or TAFE education. The profile is illustrated in the following figure

Figure 30: Percentage of Drug Court participants by education level



Employment

53 Drug Court participants (90%) were unemployed at the time of commencement of their DTO. Five were employed, and one was receiving a Pension.

Accommodation

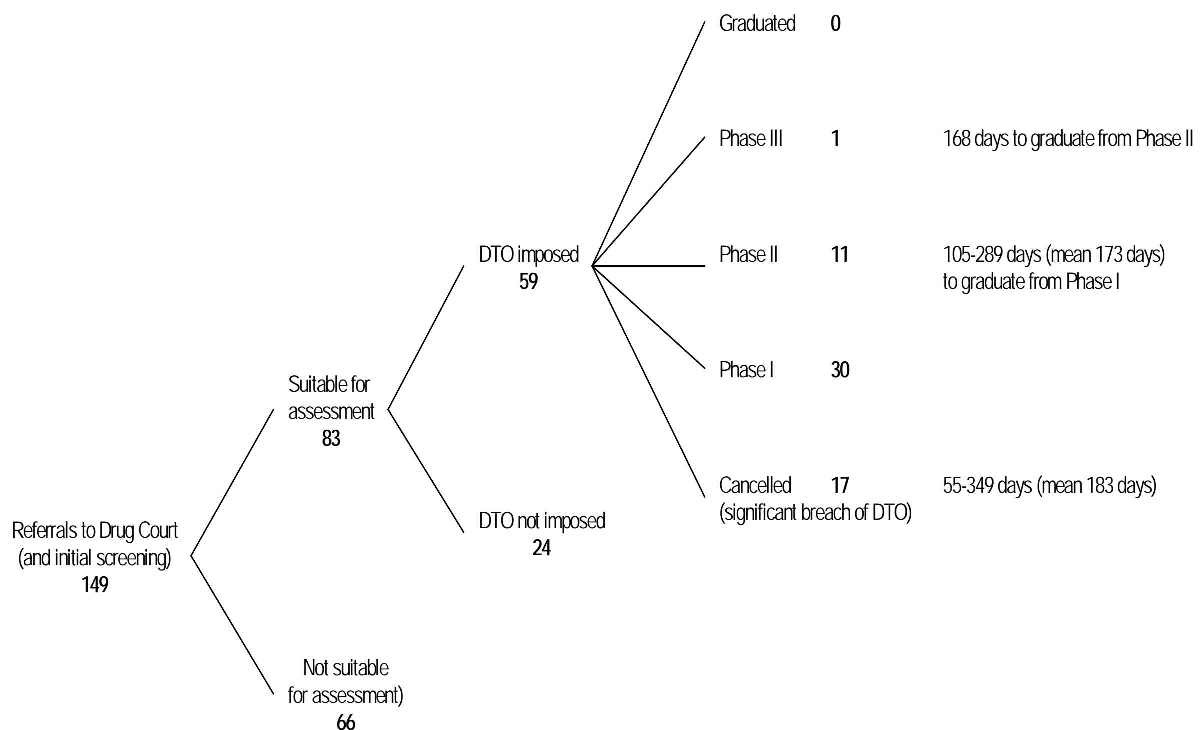
Early findings from the Health and Wellbeing Study undertaken as part of this evaluation, based on interviews with 20 Drug Court participants in late 2002/early 2003 suggest that 40% of participants lived alone, 40% with parents, 15% with a spouse/partner, and 5% with friends. Of the 20 participants, 50% lived in Western Accommodation and Youth Support Services (WAYSS) housing, 35% lived in a dwelling owned by the participant or the participant's parents, spouse or partner, and 15% were in rental accommodation.

7.6.2 PARTICIPANT THROUGHPUT, REFERRAL AND PROCESSING TIMES

Figure 31 represents total throughput of the Drug Court as at 30 June 2003, based on data provided by the Drug Court Registrar. As at this date, a total of 149 referrals had been made to the Drug Court. Of these, 83 defendants (56%) were found suitable for assessment at their first mention hearing, and following assessment and second mention hearing, 59 (40%) had received DTOs.

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.

Figure 31: Drug Court throughput and participant status as at 30 June 2003



Of the 59 participants, 30 were recorded as being in Phase I of the program as at 30 June 2003[25]. Twelve participants had progressed to Phase II, and one of these had subsequently progressed to Phase III. There had been no graduates from the program at this time. To place these results in context, it must 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 222 days on the program, whereas under the *Sentencing Act* a DTO can operate for up to two years.

According to the Drug Court Operating Manual[26], the anticipated average duration for Phase I of a DTO was 12 weeks (or 84 days). For the 12 participants who had progressed to Phase II by 30 June

[25] This figure includes four participants who had absconded. Warrants had been issued for their arrest but their DTOs could not be terminated until they were found.
[26] *Drug Court Operating Manual* Section 1.2.1, dated 17/12/2001

2003, the mean length of time spent in Phase I was 173 days (range 105-289 days), slightly more than double the anticipated duration.

The Drug Court Operating Manual also anticipated a 12-week average duration to complete Phase II of a DTO. The one participant who had progressed to Phase II by 30 June 2003 had taken 168 days, exactly double the anticipated duration.

The effects of these extended periods in DTO phases on Drug Court operations and funding, reasons for this occurring, and measures taken to address this, are discussed in the section on stakeholders' experience of the program.

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).

Screening and assessment outcomes

The elapsed time between the first and second mention hearings (as described in Section 7.4.3) was 21 days in 44 (53%) of the 83 cases found suitable for assessment, and was less than 30 days in 73 (88%) of cases. The average elapsed time overall was 28 days.

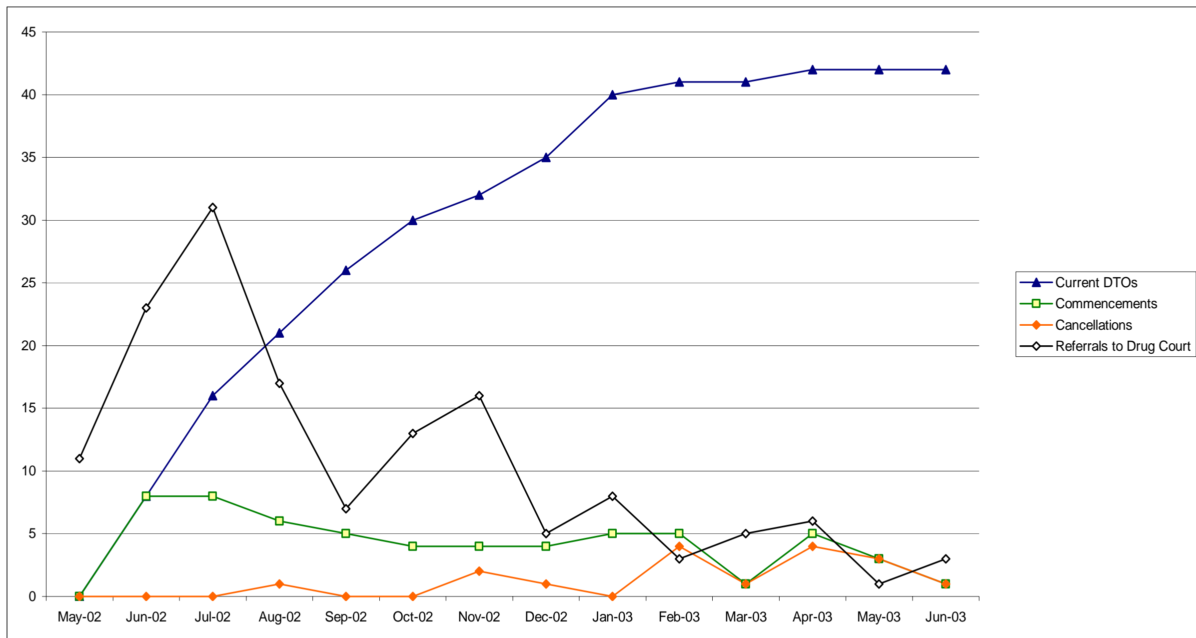
Among the 66 defendants found at the first mention hearing to be unsuitable for assessment, the main reasons included "Community Based Order imposed" (24%), "Referred to CREDIT" (10%), "Violent offences" or "Offences not suitable" (9%), "Intensive Corrections Order imposed" (7%), and "Imprisonment imposed" (7%).

Among the 24 defendants found at the second mention hearing to be unsuitable for a DTO, the main reasons included "Community Based Order imposed" (29%), "Imprisonment imposed" (13%), "Query on motivation" (8%), "Nature of offences" (8%), and "Intensive Corrections Order imposed" (8%).

DTOs commenced, current and cancelled by month

Figure 32 shows numbers of referrals made to the Drug Court, numbers of DTOs made and cancelled, and total active DTOs for each month of the study period.

Figure 32: Referrals to the Drug Court and DTOs made, current and cancelled



The Drug Court received 11 referrals in May 2002 and 23 referrals in June 2002. Referrals peaked at 31 in July 2002 and have since declined overall with two to three-monthly fluctuations. The decline in referrals is thought to be due in part to the education of the referring Magistrates and the legal profession. In the early days of the pilot, there were greater numbers of inappropriate referrals to the Drug Court. Also, by this time, the Drug Court was operating near capacity, meaning that new DTOs could not commence until existing DTOs had been cancelled.

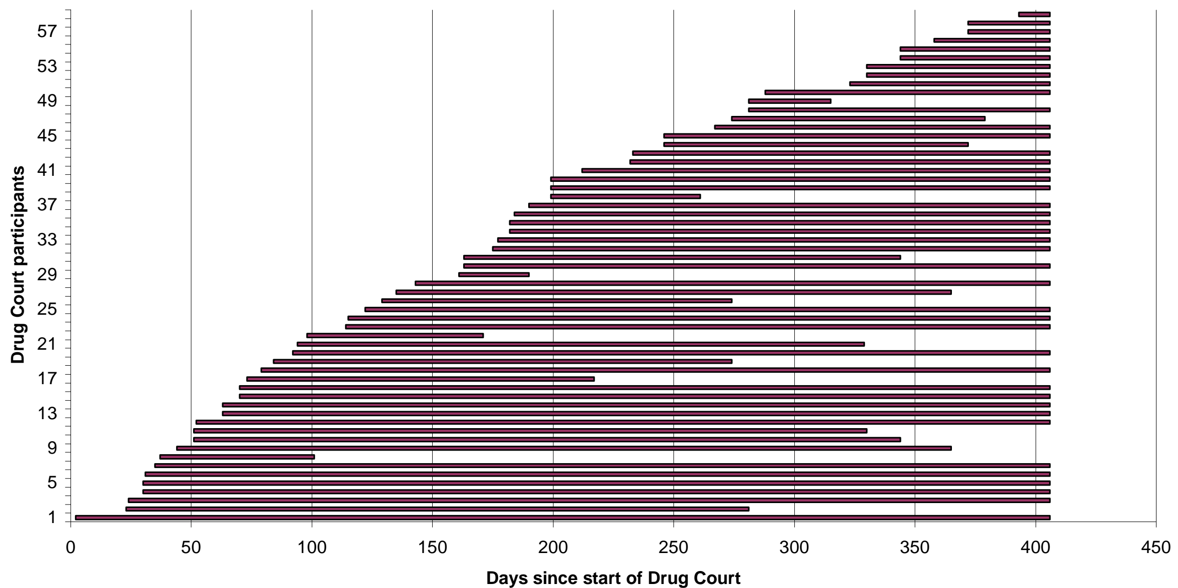
The first DTO was made on 12 June 2002. A total of eight DTOs were made during June 2002, another eight during July 2002. DTO commencements then steadied at 4-6 per month from August 2002 to February 2003, and declined to 0-1 per month thereafter. A total of 59 DTOs had been made by 30 June 2003, the end of the study period.

The total number of active Drug Court participants reached 40 in January 2003, 41 in February/March 2003 and 42 in April/May/June 2003. This is the main reason for the decline in new DTOs being made from February 2003, as a new DTO could only be made once an existing DTO was cancelled. This was due to case managers believing they had reached the maximum number of participants they could manage effectively. This may have also contributed to the lower referral rate after this time as delays in referrals to the Drug Court may have caused prospective participants to have their matter dealt with before the Magistrates' Court rather than wait.

The first DTO cancellation occurred on 29 August 2002 and a total of 17 DTOs had been cancelled (for serious breach of DTO) as at 30 June 2003.

The following graph shows the timing and duration of each individual participant's DTO (the horizontal axis shows elapsed days since commencement of the Drug Court pilot on 20 May 2002. The 42 who were still on the program on 30 June 2003, had spent an average 222 days on the program (range 13-404, median 224). At that date, the Drug Court had been operational for a total of 406 days.

Figure 33: Timeline of individual participants' commencements and cancellations during the study period



Drug Court hearings

Between 20 May 2002 and 30 June 2003, a total of 103 Application Hearings (i.e. first and second mention hearings – refer to Section 7.4.3), 1,759 Review Hearings (refer to Section 7.5.2) and 42 Breach Hearings (refer to Section 7.5.6) were held, for a total of 1,904 hearings. These are summarised in the following table. The available data did not permit a comparison of the frequency of hearings per participant at different phases of the DTO. However, given the majority of cancellations involved participants in Phase I of their DTO, it can be assumed that the majority of breach hearings were held during this phase.

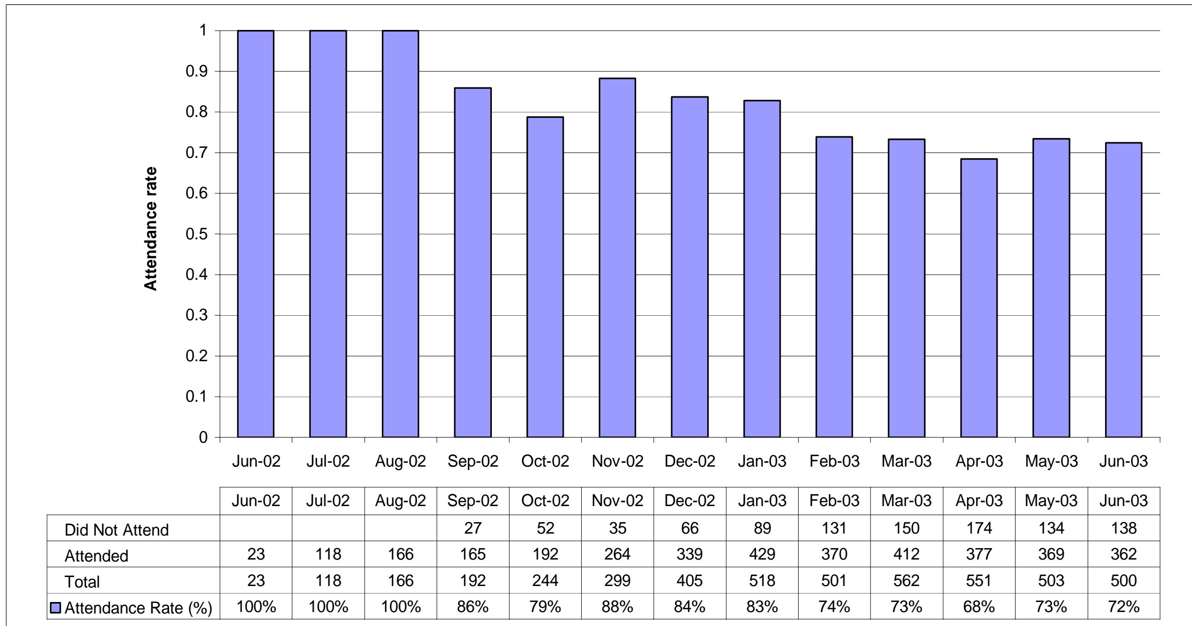
Table 30: Drug Court hearings

	Application hearings	Review hearings	Breach hearings
Total	103	1,759	42
Average per participant	2.1	34.5	0.8
Median per participant	2	31	0
Max per participant	3	82	4
Min per participant	2	1	0

Urinalysis attendance and results

Urinalysis results were analysed for the period 20 May 2002 to 30 June 2003. During this period there were a total of 3,586 attendances for urinalysis, and 996 non-attendances. The overall attendance rate was therefore 78.3%. Analysis of program data, presented below, shows a decrease in attendance rates as the total number of tests increased.

Figure 34: Attendance at urinalysis by calendar month



	Jun-02	Jul-02	Aug-02	Sep-02	Oct-02	Nov-02	Dec-02	Jan-03	Feb-03	Mar-03	Apr-03	May-03	Jun-03
Did Not Attend				27	52	35	66	89	131	150	174	134	138
Attended	23	118	166	165	192	264	339	429	370	412	377	369	362
Total	23	118	166	192	244	299	405	518	501	562	551	503	500
Attendance Rate (%)	100%	100%	100%	86%	79%	88%	84%	83%	74%	73%	68%	73%	72%

The results of the urinalysis tests have also been analysed, based on Drug & Alcohol Running Sheets. Of the 3,586 attendances, 2,735 (76.3%) produced positive tests (i.e. detected drug use), 650 (18.1%) were negative, and 134 (3.7%) failed to provide a urine sample. The results of 67 tests (1.9%) were not recorded (e.g. date, collection type and sample type were recorded but outcome and/or status fields were left blank).

It is important to contextualise the results of this analysis by making the following observations:

- 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 (it also increases the cost of the Drug Court).
- 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 (this would require the corroboration of every urine test with the prescribing doctor).
- 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 a week, it is highly likely that several consecutive positive tests could relate to a single instance of use.
- Some individuals may have shifted their use away from one substance that has been a problem for them – for example, reducing their heroin use, while 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 picked up without making significant assumptions.

The analysis presented below could not control for these factors. Changes in self-reported drug use are explored as part of the Health and Wellbeing Study.

It is also important to note that the Drug Court, by virtue of its role in the overall suite of court 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.

Moreover, 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, covering their patterns of drug use (including drug type and level of use):

- Before commencement of the DTO;
- During Phase I;
- During Phase II;
- During Phase II; and
- After graduation.

The first urinalysis test occurred on 14 June 2002. As Figure 35 shows, the highest rates of negative tests were recorded in the early months of the program (at which time there were relatively few participants).

Figure 35: Percentage of negative tests by calendar month

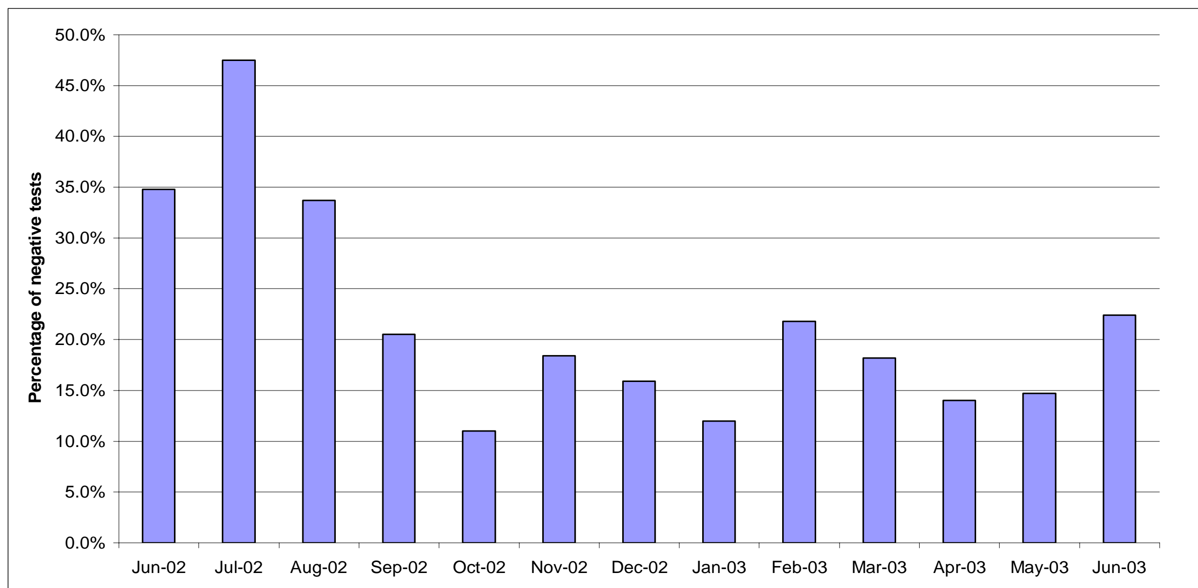
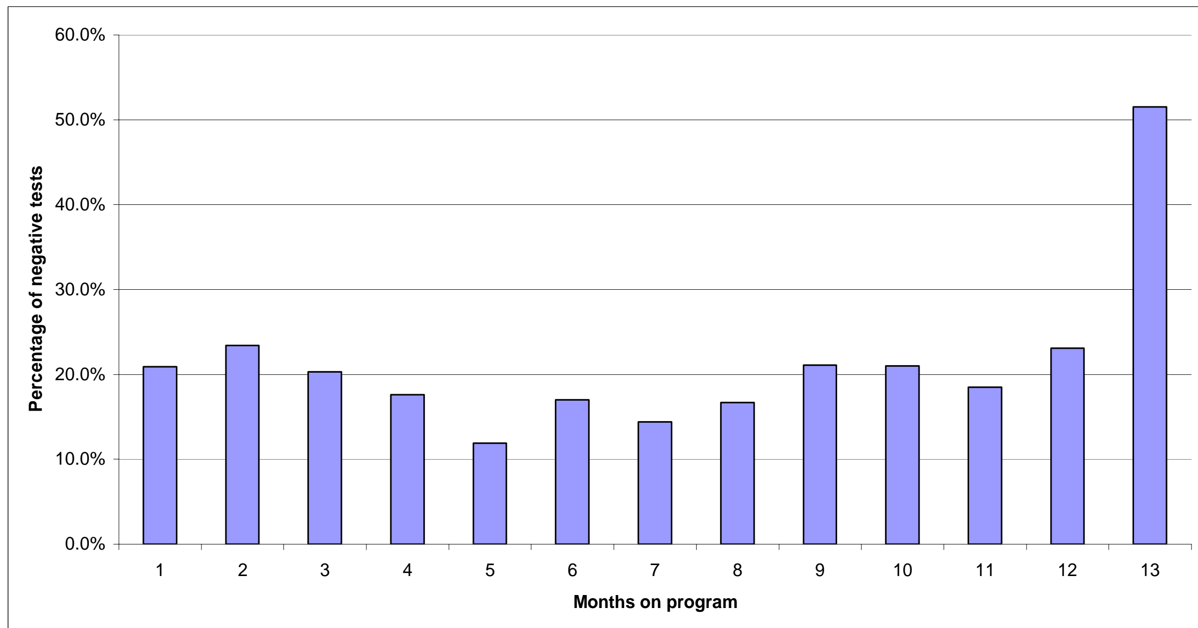


Figure 36 shows the percentage of negative tests recorded for participants, on average, by the number of months spent on the program. For example, on average participants in their second month on the program submitted negative urine tests in 23% of cases. This reduced slightly (i.e. drug usage increased on average) during the 3rd, 4th and 5th months. Possible explanations for the upward creep in the average percentage of negative tests after month 7 (and the outlier at month 13) include:

- Participants responding to the program by reducing their drug use; and/or
- The cancellation of DTOs for participants who persistently failed to test negative, since the proportion of these individuals in the program reduces in each successive month shown in the graph.

Figure 36: Percentage of negative tests by month on the program



Urinalysis test results are strongly patterned by individual participant. The following table shows that 63% of participants 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. As noted previously, care must be exercised in interpreting these results as the frequency of positive tests is likely to be related to the frequency of testing.

Table 31: Summary of urinalysis results for individual participants

Percentage of tests that were negative	Percentage of participants
0-10%	63%
11-20%	8%
21-30%	8%
31-40%	0%
41-50%	8%
51-60%	2%
61-70%	2%
71-80%	4%
81-90%	0%
91-100%	6%
TOTAL	100%

Rewards and sanctions

Between 20 May 2002 and 30 June 2003, a total of:

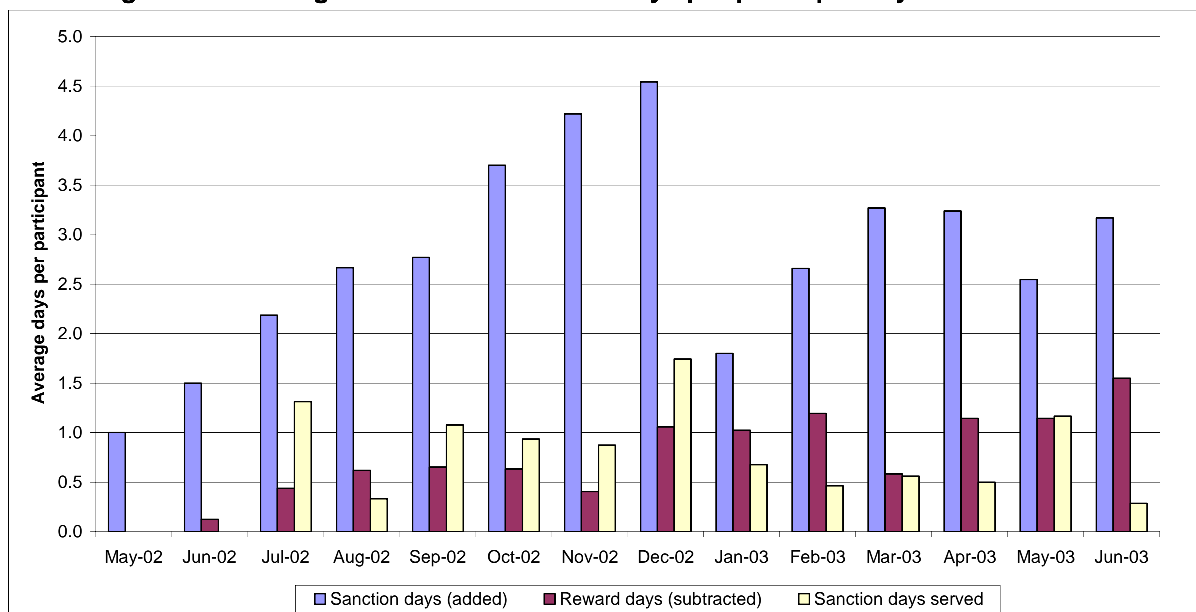
- 1,272 days of potential custodial sanctions were imposed on participants for failing to comply with DTO conditions;
- 382 days were deducted from sanctions imposed on participants, as a reward;

- 324 days were served in prison by way of sanctions for non-compliance with the DTO; and
- 650 hours (81 days) of community work were ordered.

The most common reasons for sanctions being imposed included admission of substance use (approximately 28% of reasons recorded), failure to attend appointments (approx 12%) and positive tests (approx 4%). The method of recording reasons (in a free text field) in the database precluded a detailed analysis of the data and the figures given here are approximate because in many cases the field was left blank or more than one reason was recorded. Similarly, although other rewards and sanctions (such as verbal praise or reprimands) were said to have been commonly used, these were not, in general, recorded.

The following graph shows the average number of sanction and reward days per participant for each calendar month of the Drug Court's operation within the study period. The graph shows steady growth in the average number of days given to each participant during the first eight months of the pilot, with a sharp decrease in January 2003 (attributed to a new Magistrate looking at other options for sanctions rather than imprisonment such as community work, variation to DTOs and increased testing), leveling out at around 3 days per participant from February-March 2003.

Figure 37: Average sanction and reward days per participant by calendar month



The number of reward days subtracted from participants' cumulative totals has increased, with some fluctuations, from 0-0.5 days in the first seven months to 0.5-1.5 in the last seven months in the graph. Average sanction days served (i.e. the custodial component of the DTO) has fluctuated between 0-1.75 days per participant per month and has decreased since January 2003 (with the exception of May 2003).

Figure 38 shows the average number of sanction and reward days per participant by month of participation in the program. For example, participants received an average of 0.7 sanction days during the first month on a DTO. By their third month, this had increased to an average 4 days per participant. After month 5, the average number of sanction days added to participants' cumulative totals decreased, reaching just one day per month for those in their 13th month on the program.

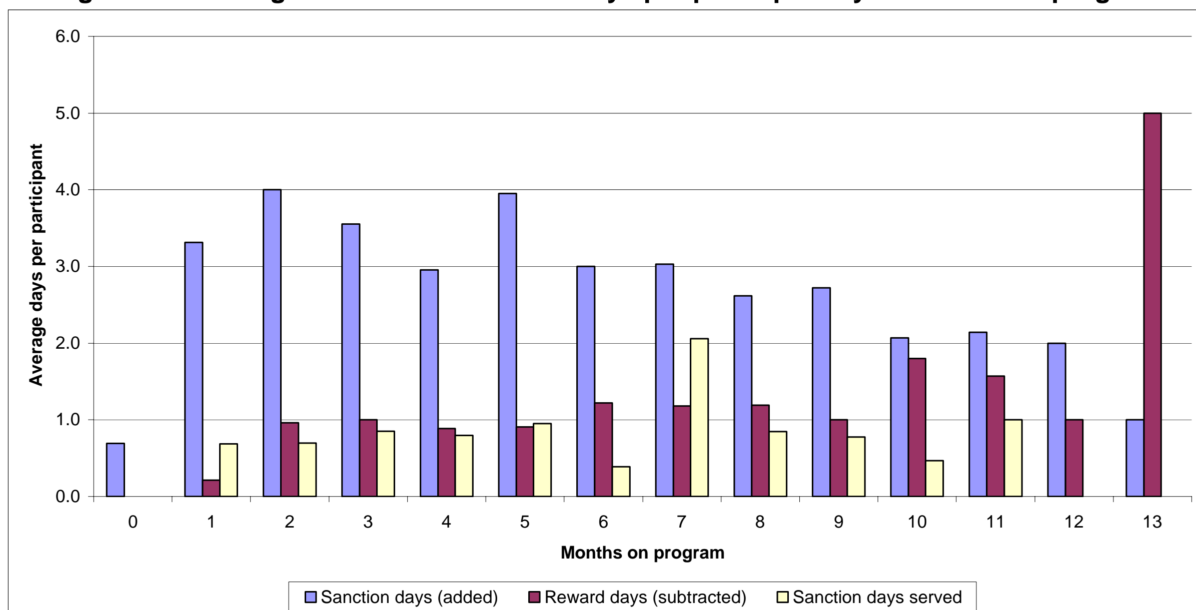
Reward days subtracted from participants' cumulative totals averaged around one per month and increased very slightly with length of time on the program.

Possible explanations for the gradual reduction in sanction days and increase in reward days with each month of participation include any or all of the following:

- Progressive improvement in participants' attendance rates, reduction in drug use, etc, in response to the counseling, support and encouragement provided through the program.
- The cancellation of DTOs for the least successful participants, since the proportion of these individuals in the program reduces in each successive month shown in the graph.
- The high proportion of participants in Phase I in the early stage of the pilot. As the number of participants in each Phase becomes more balanced, a reduction in the number of sanctions and an increase in the number of rewards is to be expected.

As at 30 June 2003, two participants had been on the program for 13 months. They received 6 and 4 reward days respectively, producing the outlier shown in the graph.

Figure 38: Average sanction and reward days per participant by month on the program



At 30 June 2003, 13 Drug Court participants had actually served out custodial components of their DTO, collectively serving a total of 324 days in prison. The highest number of days served by any individual was 65 and the lowest was 7 (since custodial days are accumulated and are generally served in custody as 7 or 14-day blocks once sufficient days have accumulated). The average amongst the 13 participants who had served days in custody was 24.9 days.

7.6.3 STATUS ON EXIT FROM THE PROGRAM

To 30 June 2003, the only exits from the program have occurred where a DTO has been cancelled for significant breach of the DTO. No participants had graduated from the program at that time. The following table summarises the reasons for cancellation. (Figures 32 and 33 indicate when these cancellations occurred.)

Table 32: Reasons for cancellation of Drug Treatment Orders

Reason for cancellation of DTO	Number
Fail comply with one or more conditions of DTO (i.e. re-offend)	14
Not likely to achieve one or more objectives of DTO/re-offend	1
Fail comply with one or more conditions of DTO/re-offend/not likely to achieve one or more objectives of DTO	1
Participant applied to have DTO cancelled	1
Total	17

7.6.4 SENTENCING OUTCOMES FOLLOWING CANCELLATION OF DTO

All 17 participants whose DTOs were cancelled received a custodial sentence (or had the remaining custodial component of their DTO activated). On average, the post-DTO sentence was 74 days shorter than the original sentence received prior to being admitted onto the Drug Court program (range 0-183 days shorter, median 76 days shorter).

For 16 of these 17 participants, the total length of time spent on the Drug Court program added to their subsequent custodial term exceeded the length of time they would have spent in prison had they not proceeded with their DTO. On average, these participants would have spent an extra 90 days in the court/criminal justice system by the end of their custodial term (range 75 days shorter to 237 days longer, median 61 days longer).

7.6.5 RECIDIVISM

The offending histories of 58 Drug Court participants were provided in de-identified form by Victoria Police[27]. The data were aggregated by the Department and provided in summarised form to the evaluators for further analysis. Offences dealt with in court to 24 November 2003 were included in the dataset, providing a minimum window of 147 days and a maximum of 553 days since commencement of each DTO. 40 of the individuals were convicted of new offences following the commencement of their DTOs for a total of 203 offences. A summary of the new offences committed by Drug Court participants is provided below.

[27] Victoria Police manually extracted the required data from their systems and provided it in de-identified form to the Department of Justice. The Department provided the data in summarised form to the evaluators. The data provided to the evaluators indicated that records had not been located for one of the 59 Drug Court participants. Time and budget constraints precluded this being followed up.

Table 33: Recidivism among Drug Court participants

Offences committed	Total number of offences (by 40 of the 58 individuals)	Average offences per individual (across all 58 individuals)
Theft (other)	26	0.4
Deception	21	0.4
Drugs (possess/use)	19	0.3
Burglary (other)	18	0.3
Justice procedures	18	0.3
Other	18	0.3
Theft (shopsteal)	16	0.3
Handle Stolen Goods	15	0.3
Theft from M/car	12	0.2
Going equipped to steal	12	0.2
Theft of M/car	9	0.2
Drugs (Cult/Man/Traffic)	7	0.1
Behaviour in Public	4	0.1
Assault	3	0.1
Weapons/Explosives	2	0.0
Property Damage	1	0.0
Burglary (aggravated)	1	0.0
Theft (bicycle)	1	0.0
Total	203	3.5

Source: Department of Justice

If the commencement dates within the sample are evenly distributed[28] (implying an average 350 day window for re-offending), and the 58 participants included in this analysis are representative of future Drug Court participants, then the results from this analysis suggest that between 60-84% of participants would re-offend within the first 12 months after commencement of their DTOs (at a 95% confidence interval). Those who did re-offend would commit between 4-7 offences on average during the first 12 months following commencement of their DTOs.

It should be noted that the recidivism data shown above may include some convictions for offences committed prior to their DTO commencement, but dealt with in court after DTO commencement. The Drug Court prosecutor searches police information to ensure all matters are dealt with when the DTO is imposed, but in some instances charges may not have been laid at the time the search is conducted. Therefore there is the possibility that charges dealt with after the DTO was imposed may actually relate to offences committed prior to participation in the Drug Court.

The data provided to the evaluators did not enable analysis of elapsed time to first offence among the population of DTO participants, or changes in the frequency of offending relative to length of time on the DTO or phase of the DTO. However, it should be noted that even if such analysis had been possible, greater participant numbers would be required to draw statistically meaningful conclusions

[28] Although commencement dates for these individuals are analysed elsewhere, the summary data provided to the evaluators on recidivism for the purposes of the Process Evaluation did not link individual commencement dates to individual offending dates.

about indicators based on participant sub-groups (e.g. participants in Phases I, II and III; distribution of times to first offence etc.).

7.7 Stakeholders' Experience of the Drug Court

The Drug Court at Dandenong is a pilot program and is continuing to evolve. The majority of the consultations for this evaluation took place during March and April 2003 – the 10th and 11th months of a three-year pilot. Evaluation findings are necessarily reflective of this fact. The commentary provided below focuses on current systemic issues but also includes key implementation issues which, although now resolved or in the process of being resolved, provide a context to the implementation and operations of the Drug Court.

Although numerous issues were raised 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 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. There was a strong sentiment among many of those interviewed that the program is now operating considerably better at an operational level.

7.7.1 PROGRAM DESIGN AND IMPLEMENTATION ISSUES

Some stakeholders involved in the Drug Court pilot (at both policy and service delivery levels) felt that they had been inadequately consulted or involved in program design and implementation processes prior to its commencement, and this may have impacted upon some communication and 'ownership' issues encountered after implementation (which are discussed later).

Members of the Drug Court team reported that they had felt inadequately prepared at the commencement of the pilot, (e.g. with regard to their roles and responsibilities) and initially lacked sufficient background knowledge and understanding of program parameters to make informed decisions concerning day-to-day operational issues. Further, initial delays in appointing a Drug Court Program Registrar may have compounded these early implementation issues.

It was suggested that the early days of the pilot might have progressed more smoothly if there had been a longer transitional phase in which the planning team and the Drug Court team worked together to resolve operational issues and ambiguities. The inaccuracies noted earlier in the flowchart shown in Figure 26 illustrate the difficulties, complexities and risks of misinformation being communicated and confusion developing from the outset of the pilot.

On the other hand, it was argued that a degree of ambiguity was unavoidable at the policy level in the 'bedding down' of a new pilot. Members of the Drug Court team had generally come from areas where they had had immediate supervision, and a period of adjustment may have been inevitable while team members became accustomed to the greater levels of professional autonomy in the Drug Court environment and the complexity of taking up new (and complex) roles in a multidisciplinary team.

The nature of the Drug Court's initial accommodation layout provided poor work space for the Drug Court team, some of whom were located in different premises, which impeded communication and team building. There were substantial improvements in this respect when dedicated offices for the Drug Court team were established across the road from the Magistrates' Court. However, offices for the Drug Court Registrar and Magistrate continue to be located within the main court complex.

7.7.2 ROLE ISSUES WITHIN THE TEAM

More than any other question or matter, role issues within the Drug Court team prompted the most discussion from stakeholders. The composition of the Drug Court team is discussed in section 7.2.2. Role issues are discussed below in relation to role delineation, team structure, professional and personal tensions within the team, and leadership and lines of reporting.

Role delineation

Many Drug Court team members emphasised a lack of clarity in their roles when the Drug Court commenced. In the initial stages, concerns by stakeholders regarding roles were attributed to a disjointed transition from planning to implementation and delays in appointing a Program Manager at the outset.

As a result of this perceived lack of clarity, it appears that some team members placed their own interpretations on what their roles should be, with a tendency to go beyond the roles originally envisaged, resulting in further blurring of various team members' roles and responsibilities. For example, the counseling of participants is an aspect of the program where several stakeholders felt there was considerable overlap of roles, resulting in the duplication of team resources and some professional and personal tensions.

Case Managers also reported that they were required to undertake the analysis and interpretation of urine results, something for which they had not been trained.

Efforts to resolve role clarity are ongoing, including a facilitated workshop in May 2003 which was observed by the evaluation team. Progress certainly seems to have been made in this area and may be expected to continue.

Team structure

Some stakeholders and agencies initially did not consider themselves to be included as members of the core Drug Court team or felt they were excluded from receiving information they required in order to work effectively, when their clear preference was for greater inclusion and recognition. This may have been exacerbated by early accommodation arrangements which created a geographic divide between some members of the team. Team members felt that the relocation to new offices had assisted to bridge some of this divide and had enhanced team, personal and working relationships. Recent advice to the evaluators has been that issues related to team structure have now largely been resolved.

Professional and personal tensions within the team

The multidisciplinary nature of the Drug Court brings together a team of people with diverse professional backgrounds and from a range of organisational cultures. This probably contributed to initial tensions regarding appropriate roles. Similar tensions over roles existed both between members of the Drug Court team, and between some service providers and the Drug Court team. For example, transitional housing case workers and managers reported that they experienced difficulties in establishing a role in the Drug Court that they considered was appropriate to the aims of the Drug Court and as originally envisaged during Drug Court planning (see "support and housing component" in section 6.3). From the perspective of both WAYSS and the Office of Housing, this appeared to reflect a lack of recognition of the importance of stable housing for the program, and the role that transitional housing case workers could take in facilitating that stability.

A practical consequence of this tension during the early months of the Drug Court was that WAYYS experienced difficulty obtaining needed information, such as participant histories, from the Drug Court team who believed such information was confidential. Recent advice to the evaluators from one stakeholder has been that the tensions experienced initially have now been resolved.

Leadership and lines of reporting

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 progression of the Drug Court. Should the pilot be rolled out to other areas, consideration will need to be given to the leadership structure involved and skill mix required to fulfil the Drug Court team leadership role and the relationship between the Drug Court Program Registrar and the Magistrate. An important development in the Drug Court has been the leadership provided by the current Magistrate, which was praised by all team members.

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 provides 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.

It should be noted that one member of the Drug Court, 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 that position. This potential was recognised and efforts were made by the Department of Justice to offer appropriate support to this position.

7.7.3 FUNDING

Treatment providers can claim one Episode of Care for each of the three Drug Court Phases. Frequency of appointments and the achievement of treatment goals are agreed between the Clinical Advisor and the treatment agency clinicians. Treatment providers were initially stretched as Drug

Court participants remained in Phase I for longer than expected (e.g. the average duration of Phase I has been more than double the anticipated 12-weeks). Initially, all participants were in Phase I (the most treatment intensive phase) rather than in a variety of phases as is expected to occur over time. Participants in a variety of treatment phases will alleviate some of the pressure on treatment providers. DHS has responded to treatment agency pressure by providing 2 EFT pre-paid complex counselor positions, with reduced Episode of Care levels (77 rather than 110 episodes per annum), to assist with the long term and complex nature of these participants.

Questions were also raised about the adequacy of initial and ongoing funding to the Drug Court. This issue appears to stem from a combination of factors, including the expectation that team members' salaries and other costs would be met from the existing budgets of some agencies (within the context of general funding increases made to those agencies at about the same time), and the preparation of costings at a time when the program was at an early stage in its development, making it difficult to anticipate all costs that would emerge.

The funding difficulties were further compounded by the fact that housing and drug treatment services had submitted bids that included funding related to the Drug Court, which were unsuccessful. Drug Court team members from a number of agencies expressed concern that there is a lack of funding to cover staff absences or leave. There was some sentiment that the Drug Court needs its own budget distinct from the agencies that contribute to it in order to improve ease of administration and accountability.

7.7.4 ELIGIBILITY CRITERIA

There was general satisfaction with the eligibility criteria for the Drug Court program. Unlike CREDIT, those with alcohol dependence can be included on the program, although violent offence exclusions still apply. The geographical constraints on eligibility were considered appropriate given the pilot nature of this program. Whilst this approach keeps drug users in the area in which their drug use takes place, it also allows participants to be near supports and local services and the Drug Court itself.

7.7.5 REFERRAL, SCREENING AND ADMISSION

There was general satisfaction with the referral process in place. Solicitors and Magistrates in the area were considered to have a good knowledge of which cases to refer, particularly following a talk by the current Magistrate, which appears to have reduced inappropriate referrals. There was some concern that the program may lose credibility with solicitors if suitable defendants are unable to participate in the Drug Court due to waiting lists or other capacity constraints, with places being limited due to the level of funding and caseload capacity of Case Managers and the Drug Court team in general.

The screening and assessment processes were the subjects of greater discussion, particularly by those team members responsible for undertaking these processes. Whilst there was a strong belief that the right individuals were being included and excluded from the program, dissatisfaction was expressed with the assessment tool used by the Clinical Advisor and Senior Case Manager to assess participants' suitability for a DTO. It is seen as complex, time consuming and difficult to complete.

Some sections of the tool are reportedly not being completed. There was some sentiment that those using the tool should have been involved in its design. It was also suggested that the tool be evaluated.

It must be emphasised, however, that any evaluation of the assessment tool should be undertaken against broader criteria than just the satisfaction of those who use it. The assessment tool must also provide an objective, consistent, comprehensive and accountable framework for the assessment of defendants, and it is highly probable that in meeting these objectives, some compromises must be made with regard to complexity, time requirements and user-friendliness.

If the assessment tool were to be evaluated, consideration should also be given to outcome-based measures of the effectiveness of the tool in identifying suitable participants (and excluding those who are deemed unsuitable). Further discussion and consultation with the Drug Court members who use the tool should also be considered.

7.7.6 TREATMENT SERVICES

There was general praise for the timeliness and effectiveness of the drug treatment being provided to Drug Court 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 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. ACSO-COATS also has a quality control function and acts as an intermediary in addressing difficulties, including facilitating variations to treatment.

7.7.7 OTHER SERVICES

Access to stable accommodation was also seen as a critical success factor and the importance of the roles of Housing Support Workers and Tenancy Administration Workers (as described in section 7.5.5) was recognised. Stakeholders considered that the provision of transitional housing enhanced participants’ sense of stability, forming a vital component of an environment conducive to addressing their drug problems and related issues. The provision of this housing under the *Residential Tenancies Act* makes transitional housing an extremely relevant experience for participants as this is the framework under which their future long term housing will be experienced.

Drug treatment available to the Drug Court is provided by community-based services. These services may provide residential or non-residential services. However, none are able to detain participants against their will so are not secure facilities. Participants who attend these agencies are treated as if they have a voluntary status.

Many members of the Drug Court team felt there was a need for a detoxification facility similar to that which exists in Parramatta at the New South Wales Drug Court. The desire for such a facility is based

upon the aim of ensuring that people commence the DTO from a 'clean' base. Some stakeholders saw a brief period in detox (e.g. up to seven days) as desirable for some people in custody commencing a DTO, and for some participants serving sanction days to quickly break the cycle of drug use. These stakeholders argued that, while the ultimate goal is to treat participants in the community and the participant is ultimately responsible for their achievement or lack of achievement, a detoxification facility could be used to help protect participants from "putting at risk the good work they have done" on the program without participants becoming dependent upon it.

However, at a policy level it was argued that there were appropriate crisis and support mechanisms already in place within the program. A detoxification unit was seen as being at odds with Victoria's overarching approach which operates on a community-based rather than closed residential model of care.

Some stakeholders also identified unfulfilled needs, including weekend services in general, particularly methadone and other medication, and the need to include other relevant practitioners within the service providers to the Drug Court team, including improved access to dual diagnosis practitioners, psychologist or psychiatrist (preferably the latter in order to also administer medication) and counselor support.

Several Drug Court team members mentioned the need for recreational services and possibly a recreational officer to provide a range of such activities for participants. One of the greatest risks to relapse in these participants was considered to be boredom. Whilst some efforts had been made to provide recreation opportunities, funding constraints and the limited capacity of staff prevented any real progress in this area.

A policy-level stakeholder suggested that a day program might be an appropriate addition to the suite of resources available to the Drug Court. This was based on the view that people de-skill after years of addiction and a day program provides a means to re-develop life and work skills. This may be most appropriate during Phases II and III of the DTO.

7.7.8 COMMUNICATION BETWEEN STAKEHOLDERS AND AGENCIES

The main barrier to communication emphasised by many stakeholders is the lack of time and capacity for staff to initiate, foster and maintain links between agencies, and this may have hindered the resolution of professional tensions in the early months of the program. Issues concerning communication tended to relate to role and team issues which have previously been discussed.

7.7.9 PROGRAM COMPLIANCE

Compliance with the conditions of the DTOs is reportedly very high given the client group, with participants attending an estimated three quarters of all appointments made. This was seen as a strong indication of the success of the program in motivating participants.

At the time of stakeholder consultations, in April/May 2003, nine DTOs had been cancelled. By 30 June 2003, 17 out of 56 DTOs had been cancelled – a rate of 30%[29]. The process for cancellation was considered by stakeholders to be appropriate, with suitable opportunities being provided to participants to comply (see Sanctions and Rewards below). However, questions were raised over why the Senior Case Manager cannot prosecute part-breaches as Corrections officers would under a Community Based Order.

The urinalysis testing was seen as an important component of the program, providing an objective measure of drug use, a means of corroborating self-reports, a mechanism used as part of rewards and sanctions, and a means of providing motivation for improvement in some participants, hence contributing to their program compliance and progression through the phases. At the case conference, Case Managers advise the Magistrate and team regarding the participant's latest test results. A toxicologist (at Dorevitch Pathology) is accessible if there are issues that need clarification. The Case Managers initially had concerns about presenting the information at the case conference (due to a lack of training in this area), and the Toxicology Supervisor at Dorevitch Pathology attended on two occasions to train and inform staff. As a result, the case managers are still presenting the information and are prepared to continue to do so.

7.7.10 REWARDS AND SANCTIONS

The process of providing rewards for compliance and imposing sanctions for non-compliance is still evolving. The intangible benefits of praise and genuine interest from the Magistrate were mentioned as an important reward by many stakeholders.

7.7.11 PROGRESSION THROUGH THE PHASES OF THE DRUG TREATMENT ORDER

The transition from Phase I to Phase II of a Drug Treatment Order has taken longer than expected for the majority of participants (as shown in the analysis of program data in Section 7.3). This has been attributed to several factors. Perhaps most importantly, 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 Phase II. 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 move from Phase I to Phase II. There was a belief expressed in some quarters that too much focus may be placed upon urinalysis rather than improvements in other indicators such as health and well-being measures that assess aspects of daily living competencies.

Drug Court team members suggested that there had been a lack of clarity about the criteria or decision making 'rules' that should be applied to evaluating participants' readiness to progress to the next phase. This is now being addressed through the development of a more formalised process of team decision-making, about which strong satisfaction was expressed. The current Magistrate has also been highly praised in providing direction and momentum in this area.

[29] Although caution must be excercised in comparing results with other Drug Courts given important differences in program

A concern resulting from the slow progression of participants through the program relates to job search requirements with Centrelink. Drug Court participants have their requirement to look for employment waived during the first three months of the DTO, which is intended to cover Phase I. However, following the three month period, participants have received notices that they must be looking for work and provide evidence of this, which is difficult when they are still in Phase 1 and regularly attending the Drug Court. The motivational impact and detriment for participants of not moving through phases was also discussed by stakeholders.

It was suggested that participants appear to progress more quickly once they have moved into Phase II. From the experience gained in the pilot to date, it is now expected that Phase I will take longer than 12 weeks, partly because this phase includes identifying those who are not making sufficient progress and cancelling their DTOs. The Drug Court Magistrate anticipates that participants in Phases II and III may progress comparatively more quickly.

7.7.12 DATA COLLECTION

The issue of data collection was a contentious one for stakeholders in the Drug Court. Strong dissatisfaction was expressed in the data collection system, DRUIS, which was considered not to be user friendly and thus not fully utilised. We understand modifications were made to DRUIS in July 2003.

Issues of data collection have two aspects: the technology and the culture. Whilst from a technology perspective the challenge is developing a system that is user friendly and captures useful and accurate information, the challenge from a culture perspective is to ensure that team members value and appreciate the place of data and how it can meaningfully contribute to their work. Both aspects of this issue are worthy of consideration in the context of ongoing monitoring and evaluation of the Drug Court pilot.

7.7.13 IMPACTS ON PARTICIPANTS

The Health and Well-being Study being undertaken as part of the Court Diversion Program Evaluation provides details of impacts on participants and feedback from participants regarding their experience of the Drug Court. In regard to impacts, stakeholders had the greatest praise for the program in the area of welfare and social functioning. The vast majority of participants have shown considerable improvements in this area. 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 during the current program, or on later occasions should they not succeed on this occasion.

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design and the stages at which they were evaluated, by way of comparison the NSW Drug Court had, when evaluated, cancelled 233 of the 457 orders made (51%).

7.8 Conclusion

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 were made.

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.

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. The Drug Court Magistrate anticipates that participants in Phases II and III may 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 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. 63% of participants 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) and this increases the probability of detecting drug use. Second, the Victorian urinalysis detects all drug groups and this includes methadone and other prescription medications which may in some cases be being used legitimately. Third, some drugs stay in the body for longer periods of time and, with drug testing three times per week, it is 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. The available data did not allow any such shifts to be picked up

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 would be required for a representative group of participants showing their patterns of drug use before commencement, during Phases I, II and II, and after graduation.

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 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.

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. 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. 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.

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.

7.9 Recommendations

It is recommended that:

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 the 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.

8 OVERARCHING POLICY AND LEGISLATIVE ISSUES

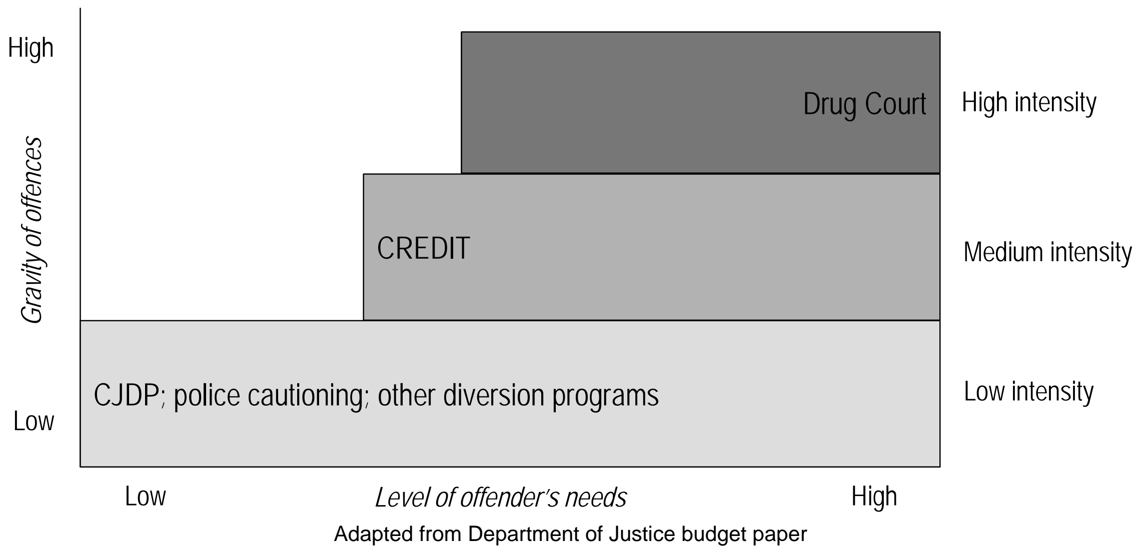
As described in Section 4 of this report, CJDP, CREDIT and Drug Court are part of a suite of interventions available in Victoria implemented at different points of the criminal justice system that aim to address the causes of crime, break the cycle of re-offending, and reduce or prevent the entry of defendants into the criminal justice system. While these are all court-based programs, they differ in regard to their eligibility criteria and the range of and conditions under which participants receive treatment services. This section examines the relationship between the three programs and other court-based diversion programs, and their effectiveness in addressing a continuum of criminal behaviours ranging in risk and severity. Possible changes to the legislative and policy framework under which these programs operate are also discussed.

8.1 Program Relationships

Section four of this report provides an overview of key conceptual and policy underpinnings of court diversion programs in Victoria. Figure 1 illustrates one conceptual model of diversion options. In common with other such models, it depicts the spectrum of diversion programs as a graduated set of interventions within an integrated and consistent continuum of eligibility criteria.

The following diagram illustrates the anticipated relationship between the three programs considered in the Court Diversion Program Evaluation, adapted from an early budget paper on the proposed Drug Court pilot. At one end of the spectrum, programs such as CJDP are targeted at low-needs offenders who have committed relatively minor offences, and the relative intensity of the program is correspondingly toward the low end of the spectrum of interventions. In contrast, the Drug Court is targeted at high-needs offenders, more serious offences, and provides intensive support for participants to ensure they comply with the conditions of their DTO. The CREDIT program is placed at an intermediate level between these two programs. Although the CJDP, CREDIT program and the Drug Court differ in regard to the point of intervention with participants (i.e. pre-sentence versus sentencing) and have different eligibility criteria, it is likely that some offenders will progress from one program to another over time if their offending behaviour continues.

Figure 39: Relationship between the Drug Court, CREDIT and CJDP



Adapted from Department of Justice budget paper

Comparison of the eligibility criteria for these programs reveals a program logic that is broadly consistent with these aims, as shown in the following table.

Table 34: Qualitative comparison of eligibility criteria

	CJDP	CREDIT	Drug Court
Offender focus	Low-risk offenders who are unlikely to be imprisoned.	Lower to mid range of offenders and offences.	Higher level of offenders and offences.
Defendant is potentially eligible for inclusion if:	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. CJDP is appropriate to the circumstances (e.g. in consideration of prior convictions and other factors). Defendant and prosecution consent to an adjournment for the purpose of CJDP.	The defendant has a drug problem (illicit drugs only, not alcohol). The defendant is on bail. The defendant has been charged by a police officer from a police station that would normally bail the defendant to attend at a court where CREDIT is operating. The defendant consents to participate.	The defendant is dependent on drugs or alcohol and the dependency contributed to the commission of the offence. A sentence of imprisonment is appropriate and is imposed. Sentence would not be served by way of intensive corrections or suspended sentence. Offence is within jurisdiction of Magistrates' Court and punishable upon conviction by imprisonment. Defendant is willing to consent, in writing, to the DTO.
Defendant is *not* eligible if:	Police informant or court does not consider a diversion to be appropriate.	Defendant is charged with a sexual offence or a violent offence where injury was inflicted. Defendant is on a court Order with a drug treatment component	Defendant is charged with a sexual offence or an offence involving the infliction of actual bodily harm. Subject to a Parole Order, Combined Custody and Treatment Order, Intensive Corrections Order, Community Based Order or Sentencing Order of the County or Supreme Court.

Feedback received from stakeholders suggests that the CJDP, CREDIT and Drug Court programs provide a coordinated systemic response without significant gaps or overlaps in eligibility criteria. Qualitative consideration of the eligibility criteria supports this feedback. For example, CREDIT and Drug Court cannot be accessed concurrently because CREDIT is a bail program while Drug Court is a sentencing option. Moreover, the eligibility criteria for CREDIT specifically exclude persons who are on a court Order with a drug treatment component. However, there is nothing to preclude a CREDIT participant proceeding to a DTO following completion of CREDIT, although in practice, this has not occurred to date. Again this is perhaps illustrative of a continuum of programs at different points of the justice system, rather than an overlap in the programs

Similarly, to be simultaneously eligible for CREDIT and CJDP, a defendant would need to have an illicit drug problem, no (or few and minor) prior convictions, would have committed and admitted to the facts of a minor offence, and would be on bail. In such instances, eligibility for either program would be determined in the usual manner based on the individual circumstances of the case. Stakeholders did not perceive any problematic overlap between CREDIT and CJDP eligibility, and an analysis of program data revealed that the characteristics of CJDP participants and CREDIT participants (especially offending histories) are quite distinct.

Table 35 compares selected findings from the analyses of program data presented in the previous sections, including demographic characteristics, current major charges, criminal histories and recidivism rates among program participants. Comparison across these indicators for the three programs reveals a striking gradient which is broadly consistent with the gradients of participant needs, gravity of offences and program intensity as depicted in Figure 39. One can conclude therefore that the program logic underpinning these programs as an integrated continuum of responses is working effectively.

Table 35: Comparison of program data

	CJDP	CREDIT	Drug Court
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.

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

* The proportion of Drug Court participants who re-offend within 12 months of entering the program (60-84% at a 95% confidence interval) is significantly higher than the proportion of CREDIT participants (30-46%). However, among those participants of both programs who do re-offend, there is no significant difference between the offending rates (i.e. the number of offences per participant who re-offends) (p=0.07).

8.2 Program Uptake and Coordination

As noted in previous sections of this report regarding CJDP, CREDIT and Drug Court, the uptake of all three programs has been lower than anticipated, with actual participation rates considerably below target rates (although there is some discussion about what the relevant target rates for the Drug Court were). Moreover, the analyses of CJDP and CREDIT data and stakeholder feedback suggest that utilisation of the programs is highly variable from location to location, and between and within professional groups. This lower uptake and perceived variability across professional groups have implications for the policy and legislative framework under which these programs operate.

While conceptual models of diversion options (such as those illustrated in Figures 1 and 39) depict the spectrum of diversion programs as a graduated set of interventions within an integrated and consistent continuum of eligibility criteria, our observations of the Victorian environment suggest that these diversion programs may lie along a continuum more by coincidence rather than being a deliberately planned and integrated set of programs.

As an example of this view, Magistrate Popovic[30] contends that therapeutic jurisprudence has unwittingly crept into practice in Victoria over a number of years. She notes that "*the addition of programs and specialist courts has been somewhat haphazard*" and that "*there does not appear to be a jurisprudential or at least theoretical framework for the existing programs for courts, judicial officers and policy makers to follow*".

Similarly, Professor Arie Freiberg[31] points out that the programs have been implemented on an ad hoc basis as a pragmatic response by the Victorian Magistrates' Court to a perceived lack of specific services in necessary areas – a process he has described as "*pragmatic incrementalism*".

There is nothing inherently bad about incremental or pragmatic approaches to program development – indeed, such approaches can be instrumental in successfully introducing new paradigms and practices into complex, multi-stakeholder environments. However, given the range and extent of diversion programs now in place, and some of the themes identified through the Process Evaluation

[30] Popovic J, *Therapeutic Jurisprudence and Judicial Officers: Complementing Conventional Law and Changing the Culture of the Judiciary*
[31] Cited in Popovic J *op cit*

and described previously, some form of clearly articulated unifying policy and program framework may now be appropriate.

A number of the issues raised by stakeholders in the interviews about CJDP, CREDIT and Drug Court are in one way or another related to this process of "pragmatic incrementalism". In particular, these issues are concerned with aspects of program uptake and coordination. As Magistrate Popovic argues, "*With the benefit of hindsight, the ad hoc nature of the accretion of parallel services…has led to difficulties in the management and administration of the programs within the Victorian Magistrates' Court*'. [32]

For example, many informants to this evaluation commented that court diversion programs have been subject to ambivalence and/or resistance among some members of some professional groups, including Magistrates. This variability in views about the 'legitimacy' of the programs is important as it reflects value judgments inherent within the various organisational cultures and has fundamentally influenced the extent of uptake of the programs, and the ways in which they have been used. Terms like 'therapeutic jurisprudence' and 'harm minimisation' have become value-laden leading to their dismissal by some as "pop-culture psycho-babble".[33] Addressing this variability in views and promoting referrals to the various programs will be critical to the success of any future expansion of the Drug Court within Victoria, as well as continuing to influence the use of the CJDP and CREDIT programs.

Some stakeholders have been quick to attribute these issues of 'legitimacy' to a lack of legislative foundation. The CREDIT program, for example, is not supported by specific legislation, whereas supportive legislation for the CJDP was introduced in June 2002, and specific legislation underpinned the Drug Court from the outset. Some Magistrates suggested that specific legislation to support the CREDIT program would increase Magistrates' acceptance and use of the program. However, others expressed the view that legislation is not necessarily an appropriate or effective means to effect cultural change or improve program uptake. The introduction of supporting legislation for the CJDP does not appear to have had a significant impact on referrals to the program, although whether the continued increase in referrals would have been achieved without this legislation is problematic. It may be that the provision of supportive legislation is more symbolic in promoting the 'legitimacy' of these programs than practical in increasing referral and uptake rates.

Although our findings suggest that the programs' eligibility criteria are on the whole well coordinated, each program is managed independently of the other, and the structural arrangements supporting each are likewise independent. Given the varying histories of the programs and the timing of their development and rollout, together with the different points at which they operate within the court process, this is perhaps not surprising. However, the variety of structural and operational arrangements which support the management of the programs (each of which may be entirely appropriate from an individual program perspective) impact on perceptions about the overall coordination of programs, the complexity of diversion options available in the Victorian system, the relative importance or legitimacy of the various diversion options, and therefore the use of the programs.

[32] *Op cit*
[33] Popovic J *op cit*

For example, CREDIT has not yet been recognised or accepted within some courts as an integral part of the court, to the same extent as other programs such as CJDP. This has been influenced at least in part by the fact that the coordinator of the program within each court is not a registrar from the court system, but a drug clinician whose background is from outside the court system (as is appropriate to the requirements of the role and its associated tasks).

Problems of program uptake and coordination have also been attributed to the ways in which the programs were implemented. For example, some Magistrates felt that they had not been sufficiently consulted during program design and implementation, and some Moe stakeholders asserted that CREDIT was "a metropolitan model that has been imposed upon a rural area". Stakeholder feedback also suggests that there remains a lack of awareness about the programs among some stakeholder groups, although this has been gradually improving and there are examples of successful initiatives on the part of program staff to raise awareness at the local level.

Some stakeholders interviewed at the policy/strategic level have suggested that deliberate steps need to be taken to open up issues of the 'legitimacy' of court diversion programs to debate within the sector as a precursor to change management and training, and to improve the status of court diversion programs and therapeutic interventions as part of the 'real business' of the courts.

8.3 Potential Policy Responses

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 previously, some form of overarching policy framework for court diversion programs 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 – and potentially also includes structural and/or funding arrangements, change management and operational processes. A strategy which considers the distinct roles of each of these elements in embedding Court Diversion Programs within the Victorian criminal justice system, and which coordinates each of these elements, is more likely to succeed than a strategy that considers the role of policy and legislation in isolation.

The contribution of each of these domains to the overarching program logic must be considered, with a view to formulating a coordinated response to the various issues affecting program uptake. Various

alternative approaches may be envisaged. While it is beyond the scope of this evaluation to prescribe a specific approach, the following table outlines potential responses at "in-principle" levels together with examples.

The table differentiates potential elements of the response by the level of action within a multi-level framework, and presents a range of options from radical or 'big bang' approaches (involving some form of 're-launch' of court diversion programs within a newly articulated program logic, organisational structure and/or legal framework), to approaches which leave these elements largely as they are and focus on fine-tuning or staged changes to address specific issues. These two groups of approaches should be viewed as opposite ends of a continuum and are not mutually exclusive.

Table 36: Possible approaches to enhance program uptake and coordination

	Radical	Incremental
Policy and Legislative level	New overarching policy statement and/or legislation setting out conceptual underpinnings, articulating a unifying framework, and establishing broad parameters for diversion programs in Victoria (not necessarily involving policy changes at individual program level).	Specific legislation to address concerns regarding legitimacy of CREDIT.
Structural and Funding level	Changes to organisational or program structures to bring diversion programs within a more unified management and/or policy development structure.	Fine tuning of structural arrangements to address specific issues such as perceptions that serve to marginalise CREDIT within the courts system.
Managerial and Operational level	Re-packaging or re-branding of diversion programs within an overarching strategy. Planned and coordinated program of change management to clarify the overarching logic of the programs, how they relate to one another, educate the various professional groups about their roles and responsibilities (including reviews of job descriptions and/or performance criteria where necessary) and convey consistent and positive messages about the strategy. This could include opening up the issues to debate within the sector as discussed earlier.	Focused change management initiatives in specific areas – e.g. working with local 'champions' within specific regions and/or professional groups to address negative perceptions about programs.

8.4 Conclusion

On the basis of our analysis of eligibility criteria, program throughput data, participant characteristics and stakeholder feedback, we consider 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. In general, the boundaries between the programs seem to be well-defined. A comparison of data across the three programs demonstrates a continuum of criminal behaviours they cater for and clearly differentiates the participant groups in each program.

There is a continuum of programs that can be fitted to conceptual frameworks of diversion options, but this is not widely recognised. Whilst our observations of the Victorian environment indicate that the diversion programs lie along such a continuum, it is unclear as to whether this is coincidental or a deliberately constructed and integrated set of programs. The development of a consolidated policy statement or overarching policy framework that clearly articulates where the programs sit, and which supports court diversion programs as a suite of options may assist in promoting a greater understanding of their respective roles. Program uptake is variable – between locations, and between and within professional groups – and in general has been below target. Current legislation seems sufficient except in relation to CREDIT where further consideration and discussion seems warranted regarding the desirability of specific supporting legislation.

Given the range and extent of diversion programs now in place, and some of the key themes identified through the Process Evaluation, it is our view that some form of unifying policy and program framework may now be appropriate, together with a range of other targeted strategies to improve program uptake. It is our contention that this needs to be developed within a multi-level framework that considers not only the potential roles of policy and legislation, but also considers structural and funding arrangements, and managerial and operational processes. A strategy which considers the roles of each of these elements in embedding Court Diversion Programs within the Victorian criminal justice system, and coordinates each of these elements acting in concert 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 a unifying framework for Victorian Court Diversion Programs.

8.5 Recommendations

It is recommended that:

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, clearly 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.

APPENDIX A: DEFENDANT AND VICTIM SURVEY FORMS FOR CJDP

DIVERSION QUESTIONNAIRE
(Victim)

Your views and thoughts are welcomed in relation to the Diversion process. Please complete the following questions to help evaluate the process. The questionnaire is separate to the previous letter and shall be treated confidentially and your anonymity preserved.

Q.1 Did the paperwork supplied by the Court adequately explain your right to participate in the Diversion Program? ☐ **Yes** ☐ **No**

If No, why?

____

Q.2 Do you believe the options made available through the Diversion Program enabled you to satisfactorily express your views to the court? ☐ **Yes** ☐ **No**

If No, why and how can the court improve this process?

____

Q.3 Did you seek assistance from court staff?

☐ **Yes (via the telephone)** ☐ **No**
☐ **Yes (in person prior to the hearing day)**
☐ **Yes (at the interview on the hearing day)**

If Yes, was your query adequately answered? ☐ **Yes** ☐ **No**

If No, why?

____

Q.4 Do you believe the conditions to be undertaken by the defendant as set out in the Diversion Plan adequately reflect the gravity of the offence?
☐ **Yes** ☐ **No**

If No, why?

____

Q.5 Do you believe, as a victim, the Diversion Program was beneficial in terms of providing access to the Justice System? ☐ **Yes** ☐ **No**

If No, why?

____

DIVERSION QUESTIONNAIRE
(Defendant)

Your views and thoughts are welcomed in relation to the Diversion process. Please complete the following questions to help evaluate the process. The questionnaire is separate to the previous letter and shall be treated confidentially and your anonymity preserved.

1 Available Information

Did the advice given by Court staff adequately explain the Diversion Program?

☐ **Yes** ☐ **No**

If No, Why?

___

2 Police / Court Record

Please indicate the value you place on the opportunity given by the Diversion Program of not having an accessible police record

☐ Highly valued
☐ Somewhat valuable but will increase when I apply for occupational or other opportunities
☐ No value
☐ Other, please specify

___

3 Opportunity to Express Apology

Please indicate if any of the following were relevant:

☐ An apology did not form part of my Diversion conditions
☐ The Diversion Program provided an opportunity to apologise that otherwise may not of occurred
☐ I felt that the apology provided a positive end to my involvement in the matter
☐ I welcomed the opportunity to express my apology and thanks to those involved
☐ I did not wish to apologise
☐ Other, please specify

___

3 Diversion Programs

Please identify the course(s), if any, you undertook.

1. ________________________ 2. _________________________

The benefit I gained from the course(s) was

☐ Exceptional
☐ Practical
☐ Minimal
☐ Of no benefit at all

Do you have any other comments with regards to the course(s) or the Program as a whole?