

# DRUG COURT OF NSW

## 2008 REVIEW



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## **REFLECTIONS ON 2008**

The most significant event this year was the release of the second independent evaluation of the Drug Court by the Bureau of Crime Statistics and Research (BOCSAR). The research covered a four-year period and involved the study of nearly 1000 offenders.

After controlling for pre-existing differences between the treatment and comparison groups, BOCSAR found that when compared with those in the Comparison Group, Drug Court participants (whether ultimately successful on the program or not) were 17 per cent less likely to be reconvicted for any offence.

The results in relation to those who successfully completed the Drug Court program were beyond expectations. Those participants were found to be:

- 37 per cent less likely to be reconvicted of any offence at any point;
- 65 per cent less likely to be reconvicted of an offence against the person;
- 35 per cent less likely to be reconvicted of a property offence; and
- 58 per cent less likely to be reconvicted of a drug offence.

The re-evaluation proves that the Drug Court protects the community against crime, an issue of particular and understandable concern to the public. A simultaneous economic analysis of the program provided the overall conclusion that the NSW Drug Court is more cost-effective than prison in reducing the rate of re-offending among offenders whose crime is drug related.

### *An evolving program*

A feature of the Drug Court of NSW is its ability to evolve and change in response to new issues, and to improve its programs and procedures as we continue to learn new ways of meeting our objectives. The court is governed by the legislation and the regulations prescribed by Parliament, by case law, and by detailed, published policies on many issues. Those policies govern such issues as graduation criteria, program termination, drug use and mental health concerns. The use of such policies ensures the court, whilst necessarily informal in nature at times, does not become arbitrary or inconsistent in the treatment and assistance of participants. During the year under review a number of policies were revised.

### **Additional assistance to successful participants**

The policy in relation to *Completion and Termination* was revised to formalise two aspects of assistance provided to successful participants. The first aspect relates to improvements in forensic investigation techniques. Such improvements have, in the past, led to graduates and other successful participants being charged with pre-program offences after the completion of their program. In an effort to minimise this occurring, the Registrar writes to the Commissioner of Police when a participant reaches Phase 3, seeking a check of all Police records and systems so as to ensure any and all outstanding matters or allegations are prosecuted in the near future. Secondly, two weeks before graduation, the prosecution team makes inquiries as to

any outstanding charges, allegations or incidents so as to ensure they can be considered prior to graduation.

The second assistance provided to those who have been highly successful on the program is for a check to be made by the Legal Aid team as to whether there are any Habitual Traffic Offender declarations imposed by the Roads and Traffic Authority in relation to the participant. The court may then be invited to consider quashing such declarations at final sentence.

### **Sanctions and Rewards**

The policy in relation to rewards for program success, and the sanctions imposed for breaches of program, was comprehensively reviewed this year. Policy 4 “*Sanctions and Rewards*” was revised in May 2008, and now includes a comprehensive schedule of guideline sanctions for various breaches of program. One notable addition to that schedule was the Court’s response to any attempt to subvert the honest collection of urine drug screening tests. The guideline sanction for such a breach of program is termination from the program.

The application of consistent and fair sanctions is very important within the Drug Court program. Consistency, predictability and fairness are important elements in creating a therapeutic environment for participants to address their offending, their drug use and the accompanying factors that have brought them to the program. There is often little discussion in the Drug Court, and no dissent or debate, about the level of sanctions to be imposed for a breach of program, as it is such a consistent and well-worn path that the team members and the participants all know what punishment is likely for any breaches of program in their week under review. So the publication, and then application, of a comprehensive list of guideline or standard sanctions saves a great deal of court time as well. The court is however very careful to retain all the appropriate discretions so as to ensure the sanction or sanctions imposed reflect all relevant factors for this individual participant.

#### *Buccal swab and other drug tests*

The Drug Court takes a very firm view regarding any participant who seeks to falsify drug tests. Providing a false sample, tampering with a sample, or attempting to manipulate the taking of a drug test is a very serious breach of program, and may result in the termination of the participant’s program. So as not to allow the testing regime to be defeated by a stated inability to provide a urine sample, or if the sample provided is suspected of having been substituted, the Registrar may direct the use of a buccal swab, which can then quickly provide the court with important evidence regarding possible drug use. Again, the Registry has documented the circumstances, procedures and manner of taking a buccal swab test.

### **Appeal provisions**

The legislation governing appeals from decisions of the Drug Court were amended this year to ensure any appeals could be heard in the one jurisdiction, and at the one time. This is of course both efficient and fair. Amendments to the *Criminal Appeal Act 1912* overcome the need for appeal proceedings to be heard in more than one

court, even when the Drug Court is finalising cases that have never been the subject of a Drug Court program.

### **Judicial Education**

To assist judges and magistrates make timely and accurate referrals to the Drug Court, referral checklists are provided to judicial officers sitting in the referring courts. During the July District Court vacation, a field trip to visit the Drug Court and the Compulsory Drug Treatment Correctional Centre (CDTCC) was organised for District Court judges. The judges spent the morning at the Drug Court, observing the special nature of the proceedings, and the therapeutic relationship between the participants and the Drug Court Judge. They then travelled to the CDTCC in Parklea to tour the Centre and meet the CDTCC Director, program staff and prisoners. The field trip was very successful, and will be repeated in 2009.

### **Some words of thanks**

Working in and with the Drug Court is very different. It is very different from ordinary work for all our professional staff and teams, whether it is in the registry, in the field, or in the courtroom. It takes a great deal of determination, commitment and enthusiasm to achieve results, and that energy-sapping commitment is sometimes required in challenging and disheartening circumstances.

So I would like to pay tribute to all our dedicated professionals who assist the court in guiding offenders towards recovery. The evaluations over some years now have proven what we knew was being achieved, but to see it set out so firmly in the re-evaluation by BOCSAR is something all team members should be very proud of.



J R Dive  
**Senior Judge**

## **PROGRAM SUMMARY**

Offenders who are before a Local or District Court in the Western Sydney catchment area, who appear to meet eligibility criteria, and who seek entry into the Drug Court program, must be referred to the Drug Court for consideration. The program's eligibility criteria are set out in the *Drug Court Act 1998* and supporting regulation.

Whenever there are more referred offenders than there are available program places, a weekly random selection ('ballot') process occurs to determine which applicant is assigned to each available place.

If selected, an offender is given a preliminary health screen by Justice Health and further investigations regarding the offender's eligibility are made. If considered potentially suitable, the offender must then undergo detoxification, where a detailed assessment of the individual's treatment needs is conducted and, where possible, a highly suitable treatment plan is formulated.

Offenders successful in the ballot may later be excluded from the Drug Court due to ineligibility, unwillingness to participate, or lack of a highly suitable treatment plan. In addition, the Drug Court will consider an offender's criminal history and background when assessing if it is appropriate for a person to enter a Drug Court program. A history of violence, sexual assault or dangerous conduct may prevent the Court from accepting a person. Offenders who are referred to the Drug Court but do not enter the Drug Court Program are sent back to the referring court for sentence.

After detoxification and assessment, the eligible and suitable offender appears before the Drug Court where he or she receives a sentence that is suspended, and signs an undertaking to abide by his or her program conditions. This process marks the commencement of the offender's Drug Court program.

### **Program progression**

There are four fundamental aspects that are common to each Drug Court program plan:

- Evidence-based treatment of drug use.
- Social support and the development of living skills.
- Regular reports to the Court regarding participant progress, and
- Regular testing for drug use.

Each participant's program comprises three phases. Each phase has distinct goals that must be achieved before the participant graduates to the next phase of their program. A program will last for at least 12 months unless it is terminated sooner.

**Phase One** is the 'initiation' phase where participants are expected to reduce drug use, stabilise their physical health and to cease criminal activity. In this phase, participants are required to undergo drug testing at least three times a week and to report back to the Drug Court once a week.

**Phase Two** is the 'consolidation' phase where participants are expected to remain drug-free and crime-free, and to develop life and job skills. In this phase, testing for drug use is conducted twice weekly and report-back court appearances occur fortnightly.

**Phase Three** is the 'reintegration' phase where participants are expected to gain or be ready to gain employment, and to be financially responsible. In this phase, drug testing is conducted twice weekly and report-back court appearances are conducted monthly.

Participants appear regularly before the Court. The Drug Court team meets before Court each day to receive reports from treatment providers and Probation Officers and to discuss the participants who will be appearing that day. In the light of this discussion the Judge then speaks to each participant about his or her progress. Rewards and sanctions can be conferred as set out in the Act. The most severe form of sanction available to the court, short of program termination, is a custodial sanction of up to 14 days.

A Drug Court program can be terminated when:

1. The Court decides that the participant has substantially complied with the program, or
2. The participant applies to have it terminated, or
3. The Court decides that the participant is unlikely to make any further progress in the program, or that further participation poses an unacceptable risk to the community that the offender will re-offend.

When a program is terminated the Court must reconsider the initial sentence. If appropriate, that sentence can be set aside and another sentence or sentencing alternative imposed in its place. In deciding the final sentence the Court will take into consideration the nature of the offenders participation in the program, any sanctions that have been imposed, and any time spent in custody during the program. The initial sentence cannot be increased.

When the Court finds that a participant has substantially complied with a program a good behaviour bond is the usual final court order. The Court awards a Certificate of Graduation or a Certificate of Substantial Achievement to participants who have met the standards that the Court has set.

For further information, including policies and decisions of the Drug Court, go to: [www.lawlink.nsw.gov.au/drugcrt](http://www.lawlink.nsw.gov.au/drugcrt)



## **PROGRAM LEGISLATION**

The *Drug Court Act 1998* (the Act) commenced on 5 February 1999, and the Drug Court first sat three days later. The legislation is supported by the *Drug Court Regulation 2005*.

The legislation has provided a solid foundation for program operation. It has been subject to regular, minor amendment to clarify operating procedures. It was comprehensively reviewed in 2002. The review concluded that the Act “has provided the program with a solid but flexible framework for its operation” and has “supported the achievement of the program’s aims”. Key aspects of the legislation are outlined below.

### **Objects of the Act**

The program’s objectives are set out in section 3 of the Act. They are:

- To reduce the drug dependency of eligible persons,
- To promote the re-integration of such drug dependent persons into the community,
- To reduce the need for such drug dependent persons to resort to criminal activity to support their drug dependencies.

It is noted that these objectives encourage the court to deal with offenders, not only by treating addiction, but also by attending to the social circumstances of drug offenders. Such a broad focus is crucial if the Court is to make long lasting changes in the lives of participants that will result in protracted reductions in criminal activity.

### **Dual jurisdiction of the Drug Court of NSW**

The Act gives the Drug Court the jurisdiction of both a Local and a District Court. This dual jurisdiction assists in targeting Drug Court program resources towards more serious offenders who warrant intensive intervention. NSW is fortunate in having the Magistrates Early Referral Into Treatment (MERIT) program for bailed defendants with drug problems, allowing the Drug Court to concentrate on convicted offenders who would otherwise be in full-time custody.

It is likely that around 20% of matters referred to the Drug Court would otherwise have proceeded to the District Court. This figure is higher than the actual proportion of matters referred from the District Court, as Local Courts simply refer apparently suitable and eligible strictly indictable matters directly to the Drug Court.

### **Violent offenders and offenders with mental health problems**

The Act provides two restrictions on violent offenders entering the program: Section 5 (2) prevents offenders charged with an offence involving violent conduct from entering the program, while section 7A (2) requires the Court to determine whether “having regard to the person’s antecedents, it would be appropriate for the person to participate in a program under this Act”.

Both criteria can require legal argument, and hearings as to the appropriateness of an offender entering the Drug Court program can require psychiatric assessment to support the Court's consideration of any future propensity for violence. However, s.7A (2) offers some flexibility to the Court to consider offenders who may have violent conduct in their criminal record, but who are found after hearing to be appropriate participants for an intensive Drug Court program.

The Regulation provides that a participant "must not be suffering from any mental condition that could prevent or restrict the person's active participation in a program under the Act". The availability of a Justice Health psychiatric clinic for Drug Court participants enables the active participation in the program of some persons with moderate mental health conditions.

### **Restrictions on residence and referring courts**

Program legislation restricts Drug Court participation to offenders who are resident in Western Sydney and who are convicted by Local and District Courts in Western Sydney. The Court would welcome consideration by government of a second Drug Court to serve the remainder of the Sydney area, and the consideration of a regional pilot program.

### **Program ballot**

The legislation does not describe how the program is to allocate program places to the large number of offenders seeking to enter the program. The program has around two persons seeking entry for every program place available, although some persons seeking entry do not (following legal argument) prove to be eligible and/or suitable – for example, some referred offenders are not "highly likely" to receive a full-time custodial sentence.

To efficiently allocate program resources, the Court introduced a ballot system to determine which referred offenders would be assessed for program entry. Each week the Senior Judge determines how many male and female referrals will be accepted.

In an effort to address the over-representation of Indigenous persons in custody, prospective participants who identify as Aboriginal or Torres Strait Islander are advantaged in the ballot system.

## STATISTICAL OVERVIEW

### 2008 activity

<b>Program entry</b>	<b>Persons</b>
Placed in ballot	317
Accepted after ballot	262
Not entered into Program	104
Awaiting Initial Drug Court Sentence	26

<b>Program progression</b>	<b>Participants</b>
Participants who entered Phase 1 in 2008	132
Participants who progressed to Phase 2 in 2008	97
Participants who progressed to Phase 3 in 2008	71
Phase 1 participants as at 31/12/08	52
Phase 2 participants as at 31/12/08	43
Phase 3 participants as at 31/12/08	48
Participants on program as at 31/12/08	143

<b>Court Determinations</b>	<b>Participants</b>
Terminated after "potential to progress" hearing	37
Terminated after "risk to community" hearing	27
Retained after "Potential to progress" or "risk" hearing	29

<b>Programs Completed</b>	<b>Participants</b>
Graduated	29
Substantial Compliance	6
Non Custody	30
<b>Total Non custody</b>	<b>65</b>
Custody	86
<b>Total completions</b>	<b>151</b>

In the almost ten years of program operation to 31 December 2008, 1680 offenders had commenced Drug Court programs. There were 143 offenders undertaking Drug Court programs at that date and 1485 finalised cases. Of the remaining 52, nine were deceased and 43 were awaiting sentence and/or subject to bench warrants for their apprehension.

The main success measure used by the court is the number and proportion of program participants who receive a non-custodial sentence at program completion. Within this group, there are program graduates (those who meet all program standards, including protracted abstinence from all drug use) and those who do not meet all program goals but who have met significant progression such that their custodial sentence can be set aside. This year, 43% of participants received non-custodial outcomes, and the long-term trend is that 45% of participants successfully complete the program.

**Program activity by year for the past five years (2003 to 2008)**

<b>Year</b>	<b>Program entrants</b>	<b>Sentenced program completers</b>	<b>Non Custody (Graduates)*</b>	<b>Custody</b>	<b>% Non Custody</b>
2004	142	133	62 (20)	71	47%
2005	165	150	74 (36)	76	49%
2006	164	155	62 (33)	93	40%
2007	169	176	78 (28)	98	44%
2008	132	151	65 (29)	86	43%

**NB:** The number of those classed as program graduates shown in brackets.

## **EVALUATION OF THE DRUG COURT OF NSW**

In 2007 the Drug Court requested that the Bureau of Crime Statistics and Research (part of the NSW Attorney General's Department) undertake a second evaluation of the Drug Court program. This second evaluation was completed and released in November 2008.

The first evaluation, released in 2002, considered the first 19 months of program operation and found that "Despite the high dropout rate (about 40%) the NSW Drug Court program has proved more cost-effective than imprisonment in reducing the number of drug offences and equally cost-effective in delaying the onset of further offending."

Six years later, BOCSAR's second evaluation came to the far stronger conclusion that "participants in the NSW Drug Court are significantly less likely to be reconvicted than offenders given conventional sanctions (mostly imprisonment)."

Compared to offenders given conventional sanctions, Drug Court participants were found to be:

- 17 per cent less likely to be reconvicted for any offence,
- 30 per cent less likely to be reconvicted for a violent offence, and
- 38 per cent less likely to be reconvicted for a drug offence at any point during the follow-up period (which averaged 35 months).

Compared to offenders given conventional sanctions, participants who completed their Drug Court program were found to be:

- 37 per cent less likely to be reconvicted of any offence,
- 65 per cent less likely to be reconvicted of an offence against the person,
- 35 per cent less likely to be reconvicted of a property offence and
- 58 per cent less likely to be reconvicted of a drug offence.

The evaluation found no significant difference between all Drug Court participants and the control group when considering property offending.

A simultaneous review of Drug Court costings undertaken by the Centre for Health Economics Research and Evaluation concluded that the overall cost of managing offenders through Drug Court programs was slightly less than conventional sanctions, even after the cost of incarcerating persons terminated from the Drug Court is considered.

Dr Don Weatherburn, Director of the Bureau of Crime Statistics and Research said that the findings added to a growing body of international evidence that Drug Courts are more cost-effective than prison when it comes to reducing the risk of re-offending among recidivist offenders whose crime is drug-related.

The decision by the Drug Court to undertake a second evaluation is consistent with best practice advice from US Drug Court evaluators, who have concluded that "one-shot evaluations of a drug court, especially during its early phases of implementation, may give a distorted picture of program impacts". As Goldkamp et al. (2001) point out, "time-dependent external and internal factors such as changes

in the judge, treatment provider, or program structure, as well as changes in client characteristics over time, may have substantial impacts on a drug court's effectiveness."

For the Drug Court of NSW, this was particularly relevant. Being the first Australian drug court, and differing greatly from existing US programs, there were significant challenges faced in the first months of implementation. These initial months of operation were also the period of the initial evaluation.

Many of these challenges related to the development of an effective partnership between the health and justice system and are described in the first BOCSAR evaluation. In 2002 BOCSAR concluded that "While the Court experienced a number of difficulties in its first year of operation, several interviewees reported that many of these issues have been resolved or partly resolved, resulting in a much improved Drug Court Program in its second year of operation."

Since the period initially evaluated by BOCSAR, the proportion of participants who completed their Drug Court program and went on to receive a non-custodial sentence has increased significantly.

In requesting BOCSAR re-evaluate the Drug Court program, it was hoped that this increased success rate was reflected in increased effectiveness in reducing offending. That has proved the case.

The government and media response to this second evaluation has been positive, although the second evaluation has understandably received less attention than the first. The Court is also pleased to acknowledge the warm responses from health and justice colleagues locally, nationally and internationally.

Crucially, this second evaluation has allowed the Court to demonstrate its value to the wider community. The Court has been shown to be both a cheaper option than custody, even when considering the cost of incarcerating unsuccessful participants, and to be effective in reducing crime.

## **VISITORS TO THE DRUG COURT OF NSW**

The Drug Court has since inception hosted Australian and international visitors. Significantly, in 2008 the Court hosted the Attorney General and the Member for Parramatta at the October graduation ceremony.

Visitors to the Court in 2008 included:

MARCH: A delegation of judges from Thailand

SEPTEMBER Mr Chuan-Hsi Chen, Ministry of Justice, Taiwan and and a accompanying delegation of six officers

SEPTEMBER Mr Ip Peng Kun, Director of the Social Welfare Bureau of Macau and an accompanying delegation of 17 officers

OCTOBER Mrs Kasiana Nawayap, Mr Murphy Saesaria and Mr Elijah Mathias from the Papua New Guinea Magisterial Service

OCTOBER The Hon John Hatzistergos, Attorney General and Minister for Justice, and Ms Tanya Gadiel MP, Member for Parramatta

NOVEMBER Ms Elisa Buggy, Coordinator Special Programs, Tasmanian Department of Justice

The Court has also hosted numerous student groups throughout the year, including groups from high schools, TAFE colleges and universities.

## **TEMPORARY RELOCATION OF THE DRUG COURT OF NSW**

The NSW Attorney General's Department has undertaken a significant capital works project in Parramatta, creating a new 'Justice Precinct' by the construction of new offices for many NSW justice agencies, by the construction of the Sydney West Trial Court complex, and the redevelopment of the existing Parramatta Court Complex.

The Drug Court of NSW was located within the Parramatta Court Complex since its 1999 inception, and in June 2008 was temporarily relocated to the new Sydney West Trial Complex for the twelve months of the redevelopment.



**The Sydney West Trial Complex photographed from George St**

The Drug Court is particularly grateful to the Attorney General's Department in providing court space and a temporary registry at the Sydney West Trial Complex while the Parramatta redevelopment occurred. Retaining the Drug Court at Parramatta minimised disruption for clients, staff and partner agencies. The Drug Court will return to the Parramatta Court Complex in mid-2009.



## **DRUG COURT OPERATIONS**

The Drug Court involves judicial, legal, health and correctional officers working together in a partnership based on therapeutic jurisprudence.

In 2008 the Drug Court sat for 227 days. A typical Drug Court sitting day lasts five to six hours and involves 30-50 court appearances by program participants, of which 5-15 will involve specific legal matters and the balance will involve supervision and monitoring of the participant's progress.

The sitting day commences at 9.30 am with a 90 minute team meeting, where representatives from all program agencies discuss each participant appearing that day with the consideration of their health, drug testing and correctional reports, and any new legal matters. This ensures the efficient operation of the Court, which is particularly important in providing the stable, consistent program environment that supports positive client outcomes.

The remainder of the sitting day involves individual appearances by participants, who discuss their progress in treatment directly with the Judge and other team members, who offer praise or censure as warranted. While legal matters are still conducted in a formal adversarial setting, progress reports operate in a team environment.

Outside the court setting, health and corrections officers attached to the program undertake therapeutic and supervisory activities in line with the participant's individual treatment plan and court undertaking.

While the Court day can be dominated with supervision, the Drug Court's role as a sentencing court should not be overlooked. In 2008, initial sentences were given to 132 program entrants, with final sentences given to 151 persons whose program have come to an end.

Since October 2005 the Drug Court has had additional responsibilities in relation to the Compulsory Drug Treatment Correctional Centre (CDTCC) program. While the number of entrants into this program has been relatively low, the number of active CDTCC participants under Court supervision has grown steadily.

The introduction of the CDTCC program has seen the workload for the Drug Court increase by, on average, one full sitting day each week. The Court has developed efficient working arrangements, including case process protocols, in relation to the CDTCC programs and it is anticipated that CDTCC workload will stabilise at its current level.

## **JUDICIAL OFFICERS**

The Drug Court Act provides that there be a senior Drug Court Judge, as well as Drug Court Judges who are required to be Judges of the District Court. This does not prevent temporary appointments to the role of Drug Court Judge. Since inception, there have been three Judges appointed as Senior Drug Court Judge, and six Judges appointed as Drug Court Judges.

In 2008 the court was led by Senior Drug Court Judge Roger Dive with support from Drug Court Judges Ian Barnett and Ken Taylor. Judge Taylor is also the NSW Privacy Commissioner, and his appointment to the Drug Court in early 2008 was welcomed by all involved with the Court.



**Judges Barnett, Taylor and Dive with Attorney General the Hon John Hatzistergos MLC at the Drug Court's October 2008 graduation ceremony.**

## **DRUG COURT REGISTRY**

The Drug Court Registry maintained the high levels of service during 2008 that saw them awarded the 2007 Attorney General's Department Annual Achievement Award for Client Service Excellence. During the year major changes were made to the Drug Court's website, available at [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au)

Additional information on Drug Court decisions is also available through the NSW Attorney General's Department Caselaw Service, an online service providing published judgments and decisions of NSW Courts and Tribunals. This is available at [www.lawlink.nsw.gov.au/caselaw](http://www.lawlink.nsw.gov.au/caselaw)

## **OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)**

The main role performed by the ODPP solicitors attached to the Drug Court is the traditional role of a prosecutor. This involves presenting factual material to the Court, screening matters to ensure the appropriate charges have been laid, determining the correct jurisdiction for the purpose of sentencing, arguing questions of law and making submissions on legal and factual matters.

There are aspects of the traditional role of prosecutors that are peculiar to the Drug Court and the *Drug Court Act* (the Act). These include:

- ascertaining whether an offence is one involving “violent conduct” or “sexual assault” within the meaning of the Act,
- ensuring that the applicant meets the requirements of the Act and regulation with respect to address,
- investigating and assessing the “antecedents” of a potential participant to ascertain if there is a history of violence or violent conduct that might lead to the judge declining the potential participant a place on program,
- arranging for all other outstanding matters involving the participant to be called into the Drug Court, and
- monitoring a participant’s progress on the program and seeking the listing of matters for hearing pursuant to s10 (1)(b) of the Act (hearings as to potential to progress or risk of re-offending).

During 2008 ODPP solicitors screened the 262 applicants who were successful in obtaining a place in the Drug Court from the Drug Court ballot. A policy review was undertaken in the latter part of 2008 that introduced the “pre-screen” of ballot nominations. This issue was raised due to an increased number of persons being referred on offences that are ineligible under the Drug Court Act or applicants who had outstanding matters that would make them ineligible or unavailable for the Drug Court program.

Due to the finite number of applicants that can be taken each week, this procedure ensures the fairest chance for those applicants that had been referred on eligible offences. Although this has added another step to the roles of the ODPP solicitors and the Police Prosecutor prior to the ballot being run, it has been fully supported, and is viewed as the most appropriate way of addressing an unintended inequity that could arise under the random selection process.

From the successful applicants screened approximately 32 matters were listed for argument as to whether the participant was an appropriate person under the Act, and/or whether the Court should exercise its discretion under section 7A(2) and decline to convict and sentence under the Act. Additionally there were approximately 75 shorter hearings in respect of eligibility issues, including applicants referred on ineligible offences, applicants who were out-of-area, and persons considered not highly likely to receive full-time custodial sentences. This was a substantial increase from 2007, and it is anticipated that the “pre-screen” of the ballot will address this.

However, the majority of legal work carried out by solicitors at the Drug Court is sentence matters. These fall into 3 categories, namely initial sentences, further initial sentences and final sentences. In 2008 the Court dealt with 132 initial sentences. Included in this figure were approximately 40 initial sentences that were dealt with by the Drug Court exercising its District Court jurisdiction.

The second category of sentences is further initial sentences. These sentence hearings arise from either outstanding charges, referred to as pre-program offences, or on-program offences. In 2008 the Court dealt with approximately 85 further initial sentences. This figure decreased from 2007, due in part to the prompt referral of outstanding matters prior to Initial Sentence hearings. The majority of further initial sentence matters can be attributed to offences that have been linked to a participant via DNA or fingerprint analysis.

There were 151 final sentences given in 2008. Final sentences are required for all participants whose program may have come to end, either as a result of their successful completion of the program, self-termination, or after hearings under s.10 (1)(b) of the Act.

The ODPP also assists the Court in operational aspects. Consequently there were approximately 1000 mentions listed to ensure that all Drug Court participants had outstanding legal matters dealt with in a timely fashion.

Another aspect of the prosecutor's role is being a Drug Court team member. Once the defendant becomes a participant in a Drug Court program, the prosecution role, while representing the community's interests, is to assist and encourage the participant in his or her rehabilitation. The prosecutor participates in team meetings and in the discussion of appropriate rewards and sanctions. The prosecutor plays an active role in each participant's report back to the Court on their progress (there are about 150 report backs a week) and maintains a record of each participant's report backs. This record is formally presented to the Court on Final Sentence and at hearings pursuant to s 10(1)(b) of the Act.

The ODPP also has a specific monitoring role; essentially it is the ODPP solicitor's responsibility to represent the community's interests. This may require a submission to the Court that it would be appropriate to list a risk hearing if a participant appears to have returned to offending behaviour whilst on the program. Furthermore, the prosecutor is responsible for identifying which participants should be considered for termination, and notifying all interested parties, including Legal Aid, the case manager, and the treatment provider of the intention to discuss a participant's termination.

When the termination of a participant is discussed, the prosecutor provides to the team a chronology of the participant's performance while on the program which outlines the number of custodial sanctions imposed, results of urine tests and other relevant matters.

The prosecutor assumes a more traditional, adversarial role at this point, making submissions in relation to the question of whether or not a participant is unlikely to

make any further progress in the program or whether their further participation poses an unacceptable risk to the community that they may re-offend. There were 93 such hearings held in the year under review, of which 64 resulted in the termination of the participant's Drug Court program.

### **ODPP 2008 Progress**

Staffing levels for 2008 remained at two full-time solicitors and two part-time solicitors from the ODPP. The prosecutors at the Drug Court have played an important role in educating other ODPP lawyers about the workings of the Drug Court.

During 2008 there were a number of solicitors from the Sydney and Western Sydney ODPP regional offices who volunteered assistance to the ODPP Drug Court team, and appeared in legal matters during peak times. This has been a practice for some years, and is viewed as a successful approach in educating and raising the profile of the work undertaken in this jurisdiction. Furthermore, memoranda in respect to important decisions, papers and advice in general to colleagues are all examples of the educational role the solicitors have undertaken this year.

## **NEW SOUTH WALES POLICE FORCE**

This year saw the development and implementation of the New South Wales Police Force Standard Operational Procedures for dealing with Drug Court Participants. This document provided operational police guidance and direction with how to deal with participants in a therapeutic jurisprudence environment. This complemented the Memorandum of Understanding between the New South Wales Police Force and the Adult Drug Court that was developed in 2007.

The main police prosecutor's functions have continued to expand to embrace this notion of therapeutic jurisprudence and include:

- To provide information regarding criminal records, prior offences and outstanding charges to the court. To take action in relation to having matters generated and brought before the court.
- To provide information from operational police about participants to the court
- To participate in team meetings, and in particular to put to the team any relevant material from arresting police, victims or family members of participants
- To liaise between participants, treatment providers, case managers and police officers regarding issues such as warrants, disposal of property held by police, and problems or complaints regarding individuals or particular areas of enforcement
- To liaise with local police commands regarding pro active efforts to execute warrants issued by the Drug Court and embrace the drug court concept
- To provide a 24 hour advice service to operational police
- To assist in policy matters concerning the court & the New South Wales Police Force.

This year saw the introduction of a "*pre-screening*" of defendants placed in the ballot. This involves the prosecutor screening *all* matters prior to the ballot being conducted. If there is obvious evidence that the person is not eligible for a Drug Court program the issue is now brought to the attention of Legal Aid and the court. The court can then remove the person from the ballot prior to it being conducted. This has ensured that an applicant who is clearly ineligible does not take up a position in the ballot.

In 2008 there was a decrease in the number of participants who remained outstanding on drug court warrants. There was an average of three participants remaining outstanding on drug court warrants at any one time. This decrease followed an increased emphasis on liaison between intelligence officers attached to Local Area Commands and the prosecutor.

There was also an increase of 13% in the number of arranged arrests and a 4% increase in the number of matters brought over from the local court (in the absence of the participant). These processes have assisted the court, the participant and the police in both maintaining records of charges and supporting the program commitments of the participant.

## **LEGAL AID COMMISSION OF NEW SOUTH WALES**

The Legal Aid branch of the Drug Court is staffed by four solicitors and an Administration Assistant. Three solicitors are allocated to the practice associated with the Drug Court, with a fourth solicitor who has carriage of the work relating to the Compulsory Drug Treatment Correction Centre. These solicitors benefit greatly from the experience of Teena Peters – Legal Aid’s Administration Assistant - who has been with the Drug Court for over eight years and who is fully conversant with the systems and processes of both Legal Aid and the Drug Court.

The therapeutic nature of the Drug Court requires Legal Aid solicitors who can adapt to a jurisdiction not within the traditional mainstream criminal defence framework. The very nature of the work involved with the Drug Court sees a solicitor working closely and intensively with a client over many months to years. Drug Court Solicitors cannot avoid at times becoming familiar with not only the client’s legal situation but also their personal circumstances. Such situations may include meeting extended family members and being aware of exciting personal occasions such as the birth of children. All of this has to be balanced with the traditional role of client and solicitor.

It is worth noting that the Drug Court does not suit the style of all solicitors. Solicitors need to be patient, resilient and at times tolerant with the many facets of the Drug Court setting. Solicitors also need to be able to work collaboratively where appropriate with other members of the Drug Court team.

In particular, the relationship between Legal Aid and ODPP/Police Prosecutor is one which is traditionally at arms length and adversarial. Within the Drug Court environment, attempts are made at all times to negotiate competing legal issues in an attempt to reduce the amount of legal argument to be determined by the Court. Both Defence and Prosecution work within their professional legal frameworks but focus on a therapeutic outcome while still adhering to the administration of justice.

### **Legal Aid in 2008**

Advances in technology and the tools available to investigating authorities have continued to see an impact on the Drug Court in matters arising from DNA and fingerprint evidence. It is noted that these advances have seen an increase in pre-program offending being brought before the Drug Court during a participant’s time on program. This results in a further initial sentence date being set with the possibility of the participant’s sentence being increased. This has generally allowed for participants to have all outstanding matters to be dealt with whilst they are on the Drug Court program.

In 2008 Legal Aid has been able to liaise with the State Debt Recovery Office on behalf of participants and assisted in not only a regular payment regime being implemented, but for direct debit arrangements from Centrelink payments. As a result of this arrangement, a number of current participants and Drug Court graduates have significantly reduced their outstanding fines and had their driving licences reinstated.

The Drug Court's ability to hear applications to quash Habitual Traffic Offender Declarations pursuant to S. 202(1) of the *Road Transport (General) Act 2005*, provides participants of the Drug Court program a further reward if there is success on the Drug Court program. The Drug Court's ability to quash Habitual Traffic Offender Declarations has seen participants achieving a substantial reduction in their total disqualification period where the Drug Court has found it appropriate to quash the Habitual Traffic Offender Declarations.



**DEPARTMENT OF CORRECTIVE SERVICES**  
**COMMUNITY OFFENDER SERVICES**

The Department of Corrective Services (DCS) Drug Court Teams are committed to a multi disciplinary and collaborative approach to the case management and treatment of Drug Court participants.

The DCS Drug Court Teams consist of case managers that monitor compliance with each participant's treatment and case management plans, thus promoting the participant's re-integration into the community.

A re-structure within DCS during 2008 allowed DCS case managers to deal exclusively with Drug Court participants. Previously case managers also supervised offenders in home detention. This increased continuity of case management benefits participants, who can now have the same case manager from the commencement to the completion of their order, and has facilitated a closer working relationship between case managers and other Drug Court staff.

The re-structure offers greater opportunity to motivate participants to remain fully engaged in drug treatment and to comply with the conditions of their Drug Court Order. More collaborative case management has also led to the early identification and prompt response to high-risk situations in order to minimise harm to the participant and the community.

One major challenge for DCS is the safe and secure accommodation of Drug Court participants. Accommodation options are generally limited and at times problematic. Accommodation options are always assessed by DCS to ensure they will be conducive to the participant's recovery from addiction. This includes determining the safety and wellbeing of co-residents and the level of risk to the community if the participant is released to that accommodation. This may involve background checks on participants, co-residents and associates, and child protection and AVO checks. Case managers also work with co-residents where necessary to better manage risk factors associated with the participant.

Case managers regularly arrange case conferences with external statutory and non government agencies such as Department of Community Services, Department of Housing, State Debt Recovery, TAFE and employment agencies in order to fully implement the case plan and advocate for lifestyle and integration needs of the participants.

Case managers also provide regular progress reports, Pre-Sentence Reports, Continuing Care Plans, Potential to Progress Reports and Accommodation Assessments to the Drug Court through the Drug Court Co-ordinator.

In 2008 the following reports were provided:

- Pre-Sentence Reports 20
- Continuing Care Plans 43
- Potential to Progress Reports 71
- Accommodation Assessments 192

## **HEALTH SERVICES**

### **Assessment and treatment planning**

Justice Health provides the initial assessment of program referrals for drug dependency, and is responsible for initiating and co-ordinating the drug treatment of clients once they have been found to be eligible to participate in the Drug Court Program. Assessment and treatment planning is undertaken by 1.2 FTE Clinical Nurse Consultants based at the Drug Court.

In 2008 there was 220 initial assessments for drug dependency, and 132 participants were released onto treatment plans. During 2008 65 treatment reviews were completed.

### **Custodial treatment**

Justice Health operates dedicated Drug Court Units in the Metropolitan Remand and Reception Centre (MRRC) (12 beds) and Mulawa Correctional Centre for Women (8 to 10 beds). These two units are staffed by 4.5 Registered Nurses based in the MRRC. A full time Department of Corrective Services Drug and Alcohol worker provides counselling and support to men serving sanctions at a 14 bed dedicated facility within Parramatta Gaol.

In 2007 the Mulawa Drug Court Unit was relocated during a general gaol refurbishment. Our experience of working within this Unit in 2008 is that the Unit is now better equipped and supervised, but sharing space with other prisoners who have recently entered custody adds to the complexity of working with our female participants.

The MRRC Drug Court Unit is well managed by permanent Corrective Services staff, and these officers add to the smooth running of this Unit. The officers provide reports to the Court when inmates have shown exemplary behaviour, and of course report serious negative behaviour. This strong and consistent interagency collaboration helps prepare the participant for release and program participation.

### **Psychiatric services**

Psychiatrists assess all participants on program entry, and assess referrals facing a "section 7A(2) Hearing" to determine their propensity to violence and other dangerous behaviour and therefore their appropriateness for a Drug Court program.

Justice Health provides a weekly psychiatric outpatient clinic, which operates from the Drug Court registry. The clinic is well utilised and has high patient satisfaction. The clinic contributes strongly to both program outcomes, by supporting participants to successfully complete their program, and program participation, by allowing some offenders with psychiatric conditions to participate in the program rather than face a conventional sentence.

## Drug treatment

Sydney South West and Sydney West Area Health Services provide counselling, group programs and pharmacotherapy treatment for Drug Court participants. They provide referral to a range of primary and specialist health services as required. The Court receives regular reports from Area Health Services regarding each participant's progress and compliance with treatment.

A range of rehabilitation programs, supported accommodation and a variety of medical and counselling services are utilised to develop the most highly suitable treatment plan for each individual participant. Participants, family, cultural and holistic needs are recognised.

Many Non-Government Organisations (NGOs) have been involved since the start of the Drug Court and Justice Health is very grateful for their collaboration and continued provision of excellent treatment.

For the first time Adele House has taken participants with dual diagnosis. Such participants required liaison with Coffs Harbour Mental Health Service, and to date they have been very successful in their rehabilitation. Given that the alternative for these offenders with dual diagnosis will be a lengthy custodial sentence, it is particularly satisfying when an effective treatment plan can be developed and delivered.

### Treatment modalities for active participants as at 31/12/2008

	Community Based	Residential Rehabilitation	Supported Accommodation
<b>Abstinence</b>	33	7	2
<b>Methadone</b>	55	2	14
<b>Buprenorphine</b>	24	-	6

As at 31/12/2008, 71% of all participants were on pharmacotherapy maintenance treatment (methadone or buprenorphine). This represents a significant increase since 2000 when 45% of participants were on maintenance treatment.

## Residential services

Residential services delivered through the non-government sector and funded by NSW Health are a key component of the Drug Court program. These services may be residential rehabilitation services, or supported accommodation services delivered under a therapeutic model. The Court receives regular reports from residential service providers regarding each participant's progress and compliance with treatment. More than a third of Drug Court participants use residential services at some stage in their Drug Court program, and the Drug Court uses around 30 residential beds at any one time.

## **DRUG COURT URINALYSIS PROGRAM**

The Drug Court is responsible for systematic urinalysis for all participants. Supervised urine samples are taken from all participants as per Drug Court policy and analysed by the PALM laboratory in North Ryde. Urinalysis results are usually provided to the Court within three days, and testing results are discussed with the client at report backs to the Court.

Generally, participants are to be tested:

- During phase one - a minimum of three times per week on a pre-programmed basis with no more than two days between tests
- During phases two and three - a minimum of two times per week, within a maximum of three days between tests
- During the final four weeks of phase three - three times per week as for phase one.

The Drug Court has also established permanent and regular drug testing arrangements at both Liverpool and Penrith Probation and Parole District Offices.

## **COMPULSORY DRUG TREATMENT CORRECTIONAL CENTRE PROGRAM**

The Compulsory Drug Treatment Correctional Centre (CDTCC) program provides drug treatment and rehabilitation to convicted male prisoners who have repeatedly committed crime to support their drug dependence.

The program is unique in Australia. It is an interagency pilot project between the Department of Corrective Services, Justice Health and the NSW Drug Court.

The program has three stages: Stage 1 involves secure detention for at least six months to address physical and mental health needs and complete therapeutic programs; Stage 2 involves semi-open detention with community access for at least six months with access to education, employment and social programs; and Stage 3 requires supervised community custody with conditions. The program ends either through parole or program revocation.

Stages 1 and 2 are based in a standalone 70 bed Compulsory Drug Treatment Correctional Centre based in Parklea. The Centre delivers an evidence-based Criminal Conduct and Substance Abuse program aimed at reducing both offending and drug use. The Drug Court provides ongoing judicial supervision throughout the sentence and determines whether participants are to be progressed, regressed or revoked based upon remaining drug-free and engaging in programs. It also acts as the parole authority for program participants.

In Stage 1 the Judge approves the Personal Plan which details drug treatment and rehabilitation and presents the Community Supervision Order at the Centre regarding progression to Stage 2.

Throughout Stage 2, the Judge receives weekly update reports regarding individual progress, and sees each participant fortnightly in the final three months of semi-open detention. In Stage 3, the Judge generally meets with each participant fortnightly throughout the remainder of the sentence (although the level of supervision may decline as the result of ongoing achievements).

The Centre opened in September 2006. In 2008, 65 prisoners were referred to the program and 38 prisoners commenced CDTCC programs.

The program is being evaluated by the NSW Bureau of Crime Statistics and Research and the final report is due to Parliament in February 2010.