

Extracts from 2007 Review

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Reflections on 2007

The Drug Court is now a well-established part of the criminal justice system of New South Wales. After nine years of operations at Parramatta, its procedures and community resources have been fine-tuned, and the court's record of long-term success clearly apparent.

Key statistical measures

It is very pleasing to note the continuing and increased ability of the Court to provide programs for women and for persons of Aboriginal or Torres Strait Islander identification. This year saw 31 women accepted on to the program, or 18.3% of the 169 participants who got the opportunity to commence a program with this Court.

The policy on selection of participants was amended in 2006 to increase the availability of programs for Aboriginal offenders, given sustained concern for the over-representation of Aboriginal persons in the criminal justice system. A total of 22, or 13%, of the 169 participants who started a program this year identified as Aboriginal or Torres Strait Islander.

The Drug Court measures the success of the program in a number of ways, and one important measure is whether a participant, applying the ordinary sentencing laws, can and should be released into the community at the end of his or her program. Of the 176 programs completed this year, a total of 78 (44.3%) participants received non-custodial outcomes at the end of their programs. Of those, 28 participants graduated and six were awarded certificates of achievement. That level of success is now a long-term trend, with the four-year average of non-custodial outcomes now 45%.

Policy review

The Drug Court is constantly seeking to improve its performance, to innovate, and to streamline its operations. Changes have been made this year to the rules regarding repeat access to the program, and to the enforcement of the rules surrounding drug testing. "Sunset clauses" have also been introduced, and the policy in relation to the consumption of alcohol by participants changed. Importantly, such changes are negotiated at program partner management meetings, and then published on the Court's website. Given the evolution of the program over time, the Court is committed to its policies and procedures being transparent and available to all, and to ensuring the published policies represent actual practice.

(a) Applications to return

After nine years of operation, it is inevitable that the Court is being asked to consider the acceptance onto program of persons who have previously had an opportunity to undertake a Drug Court program. Whilst the Court acknowledges that a drug-addicted person may need a number of episodes of treatment to achieve long-term recovery, as there are always limited program places available, preference is given to applicants who have not been Drug Court participants previously.

Policy 12 "*Selection of Participants*" has been amended to provide that an applicant who has previously been a Drug Court participant will not have access to a program if it is less than three years since final sentence was imposed in relation to the participant's last Drug Court program, or if it is less than three years since the completion of the non-parole period of any final sentence that was imposed, whichever is the later. There are a number of good reasons for this change in policy. It cannot be that a participant takes his or her program opportunity lightly, expecting to get another

referral to the Drug Court in the near future, should they re-offend. Secondly, and very importantly, the community and court teams cannot simply start a new positive therapeutic relationship with a person who has only recently failed to grasp their opportunity.

The policy in relation to persons who have previously been refused acceptance has also been amended. If a person has been found by the Court not to be an appropriate person for the program, given perhaps issues of violence and the risk they pose to the community, then they will not be considered afresh for two years after such a determination. Within two years the expense of additional psychiatric reports and court time cannot be justified.

(b) "Sunset Clauses"

Instead of listing a formal "potential to progress" hearing in relation to a participant who is not progressing as well as they should, the Court may form the preliminary view that, unless the participant can progress to the next phase of his or her Drug Court program soon, then the failure to meet that milestone will be taken as demonstrating a lack of potential to progress, and the participant's program is terminated on the "sunset" date. Importantly, the participant is actively involved in the negotiation of that "sunset" date, and there is constant focus on achieving this target over the ensuing weeks. This has the dual effect of empowering the participant to take control of their destiny, and reducing the cost and time of conducting formal potential to progress hearings.

(c) No alcohol clause

The court has, over a long period of time, included a "no alcohol" clause in the programs of particularly vulnerable participants. The possibility of using alcohol to excess, instead of illicit drug use, is a constant issue when treating drug-addicted persons. The policy in relation to alcohol has been amended to require all participants in the first phase of their Drug Court Program not to use alcohol at all, whilst continuing to require participants on phases 2 and 3 not to use alcohol in a manner that could interfere with their ability to fully participate in the program. The use of random breath tests by the registry and case managers has also been increased, so as to ensure compliance with the new policy.

(d) Urinalysis testing

Admitted drug use by participants attracts the imposition of a sanction, however it is essentially regarded as a treatment issue, and dealt with in a therapeutic way. Unadmitted drug use, detected by urinalysis, is always dealt with in an entirely different manner, with the standard sanction being three days in custody. Unfortunately, some participants have sought to manipulate or tamper with the urinalysis testing regime, raising a significant honesty and trust issue.

In response to this, the Court has tightened and strengthened Policy 9: "*Drug and alcohol use by Participants*" in that regard. The published policy now notes that such behaviour is regarded as a very serious breach of program, and may result in program termination and a return to gaol. In the year under review, the programs of a number of participants were terminated on this ground.

Compulsory Drug Treatment Correctional Centre

The Court's new role in relation to the Compulsory Drug Treatment Correctional Centre Program was a significant feature of 2007, with the first offenders entering the Centre on 31 August 2006.

The legislation governing the program provides four statutory objectives:

- 1) To provide a comprehensive program of compulsory treatment and rehabilitation under judicial supervision.
- 2) To treat drug dependency, eliminate drug use while in the program, and reduce likelihood of relapse on release.
- 3) To prevent and reduce crime in relation to drug dependency.
- 4) To promote reintegration into the community.

The Program is delivered in 3 progressive stages:

Stage 1: Closed detention for a minimum of six months in full-time custody.

Stage 2: Semi-open detention for a minimum of six months in custody and with access to employment, education and social programs outside the Centre.

Stage 3: Community custody under the intensive supervision of Community Offenders Services and the Drug Court.

The Drug Court provides judicial supervision of the compulsory treatment and rehabilitation of the participant offenders, and has five principal roles in relation to the CDTCC:

- 1) The assessment of the legal eligibility and suitability of prisoners, and then making any Compulsory Drug Treatment Orders (CDTOs).
- 2) The approval and variation of Personal Plans for participants throughout their program.
- 3) The approval of either advancement or regression through the three stages of the program.
- 4) The revocation of Compulsory Drug Treatment Orders.
- 5) The consideration of parole for those within the CDTCC.

CDTCC program activity

There were 59 prisoners referred to the Drug Court during the year, and 32 were found to be eligible and suitable, with 17 found to be ineligible, and ten still being considered as at 31 December 2007. By the end of the year, there were 23 prisoners in Stage 1, 18 in Stage 2, and 1 in Stage 3.

The Drug Court made and published two important decisions in relation to the CDTCC. The first, *In the matter of David Sharp [2007] NSWDRGC 1*, dealt with the legislation concerning the revocation of a CDTO for violent behaviour in the Centre.

The second case concerned the question of eligibility when there was a prior court case for an offence involving the use of a firearm. The potential participant had been fined as a 15 year old for using an airgun in a public place. The Drug Court website www.lawlink.nsw.gov.au/drugcrt includes the judgments referred to, together with a number of other important decisions made since the inception of the court.

The Drug Court teams

Participants on the Drug Court program have often led appalling lives. Neglect and abuse may have commenced even before they were born to drug or alcohol addicted parents. Schooling has often been chaotic, with one participant having attended 17 schools. Even language is a problem – for example refugees from Indo-China may not only have a poor grasp of English, but also a very poor grasp of their original language, having perhaps spent many formative years in transit camps in a third country. Communication can be very difficult, as even an interpreter from their country of origin struggles to explain the complexity of legal issues in any language.

The court and community-based teams who work with our participants are a committed and quite exceptional group of people. They have great communication skills, and a remarkable ability to find avenues that lead to recovery. Such avenues may be poorly signposted, but by discerning a treatable mental health issue, finding emergency housing or dental services, going to a case conference with the Department of Community Services, or sitting with a sad and lonely man late at night; these actions can mark the beginning of a remarkable recovery from drug use, and an integration (not just a re-integration) into our lawful community.

Two aspects of this program are truly remarkable: Firstly, to see how government and non-government agencies can work together in constructive and innovative ways. Secondly, to work in an environment where, despite the constant and necessary changeover of legal, counselling and caseworker personnel, there is a continuing culture of commitment and focus on real outcomes for both the community and a group of sometimes difficult, sometimes engaging, but definitely disadvantaged serious offenders.

It is a rare honour and a privilege indeed to work with the Drug Court teams in the registry, in the courtroom, and in the community.

Statistical Overview

2007 activity

| Program entry | Persons |
|--------------------------------------|----------------|
| Placed in ballot | 307 |
| Accepted after ballot | 237 |
| Not entered into Program | 70 |
| Awaiting Initial Drug Court Sentence | 5 |

| Program progression | Participants |
|--|---------------------|
| Participants who entered Phase 1 in 2007 | 169 |
| Participants who progressed to Phase 2 in 2007 | 91 |
| Participants who progressed to Phase 3 in 2007 | 45 |
| Phase 1 participants as at 31/12/07 | 78 |
| Phase 2 participants as at 31/12/07 | 59 |
| Phase 3 participants as at 31/12/07 | 26 |
| Participants on program as at 31/12/07 | 163 |

| Court Determinations | Participants |
|--|---------------------|
| Terminated after "potential to progress" hearing | 25 |
| Terminated after "risk to community" hearing | 30 |
| Retained after "Potential to progress" or "risk" hearing | 36 |

| Programs Completed | Participants |
|---------------------------|---------------------|
| Graduated | 28 |
| Substantial Compliance | 6 |
| Non Custody | 44 |
| Total Non custody | 78 |
| Custody | 98 |
| Total completions | 176 |

In the almost nine years of program operation to 31 December 2007, 1548 offenders had commenced Drug Court programs. There were 163 offenders undertaking Drug Court programs at that date and 1334 finalised cases. Of the remaining 51, nine were deceased and 42 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, 44.3% of participants received non-custodial outcomes, and the long-term trend stands at 45%.

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

| Year | Program entrants | Sentenced program completers | Non Custody (Graduates)* | Custody | % Non Custody |
|------|------------------|------------------------------|--------------------------|---------|---------------|
| 2003 | 182 | 191 | 63 (29) | 128 | 33.5% |
| 2004 | 142 | 133 | 62 (20) | 71 | 46.6% |
| 2005 | 165 | 150 | 74 (36) | 76 | 49.3% |
| 2006 | 164 | 155 | 62 (33) | 93 | 40.0% |
| 2007 | 169 | 176 | 78 (28) | 98 | 44.3% |

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

Evaluation

The Bureau of Crime Statistics and Research evaluated the first nineteen months of operation of the Drug Court in 2002. The evaluation considered the cost-effectiveness of the program in comparison with gaol, as well as assessing the health and social functioning of participants.

The key finding of the cost-effectiveness evaluation was that 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.

Those participants who remained on the Drug Court program showed clear and sustained evidence of improvement in their health and social functioning. Participants on the program were generally very satisfied with it. Stakeholder interviews also indicated general satisfaction with the program.

The Drug Court of NSW has invited the Bureau of Crime Statistics and Research to undertake a second evaluation to consider the program's performance in the period since the first evaluation was completed. This is due to be completed in 2008.

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200th Graduate Acknowledged by Attorney General

Attorney General and Minister for Justice the Hon. John Hatzistergos visited the Drug Court on 15 May 2007, watching the Court in operation and attending the Drug Court's ceremony to commemorate the 200th graduate of the program.

The Drug Court has a ceremony to celebrate the achievements of each program graduate. The ceremony involves presentation of a formal certificate of achievement to the program graduate, followed by an informal lunch with program partners, graduates and their families. The ceremony is a tangible acknowledgement that it is not easy to achieve the program's graduation standards, and that those participants who do so are worthy of special praise.

It was particularly pleasing to have the Attorney present to hear the stories of four graduates who had made significant changes to their lives while on program. Court staff took the opportunity to discuss the importance of interagency collaboration with the Attorney and his staff, and highlight how each partner agency fulfils different responsibilities within the participant's case plan.



Attorney General John Hatzistergos (centre) with Judge Dive and the Drug Court team