

Submission
No 39

INQUIRY INTO DRUG AND ALCOHOL TREATMENT

Organisation: The Law Society of New South Wales

Date received: 7/03/2013



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: rbg 685771

6 March 2013

The Director
General Purpose Standing Committee No. 2
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Director,

Inquiry into Drug and Alcohol Treatment

The Law Society's Criminal Law Committee and Juvenile Justice Committee (Committees) are interested in the Standing Committee's inquiry into the effectiveness of current drug and alcohol policies with respect to deterrence, treatment and rehabilitation.

The Committees note that the majority of issues identified in the terms of reference are matters of health policy. The Committees' comments relate to diversionary and rehabilitative models within the criminal justice system, including the Magistrates Early Referral into Treatment program and the Drug Court. Early intervention programs and diversionary options that address drug and alcohol misuse have the potential to decrease the number of both adults and young people in the criminal justice system.

I trust the Committees' submission will be of assistance to the inquiry.

Yours sincerely,

John Dobson
President

Magistrates Early Referral into Treatment program

The Committees strongly support the Magistrates Early Referral into Treatment (MERIT) program as an effective pre-sentence diversionary program.

MERIT is a Local Court based diversionary program that targets adult defendants with illicit drug use problems who are motivated to undertake drug treatment. A small number of courts also offer Alcohol MERIT to defendants who have identified their principal substance abuse problem as alcohol. Defendants assessed as suitable for MERIT can undertake supervised treatment as part of their bail conditions.

Research by the Bureau of Crime Statistics and Research has shown that MERIT is having great success in reducing rates of reoffending.¹ The MERIT program receives a high level of judicial support and provides positive outcomes for both offenders and the community. The Committees consider that the demonstrated success of MERIT in reducing recidivist behaviour, and the associated benefits this creates for the community, justifies the allocation of substantial resources to the program.

MERIT for Aboriginal People

The Committees are concerned about the overrepresentation of Aboriginal people in the criminal justice system. The Committees endorse Recommendations 1-7 of the 2010 Aboriginal Health and Medical Research Council report *'Improving Aboriginal Participation in the MERIT program'* which include:

1. Where Aboriginal participation rates in MERIT are low and there are high rates of Aboriginal attendance at local courts, implement strategies to improve Aboriginal participation and retention, including those outlined in this report.
2. Revise the MERIT Policies and Procedures Manual to ensure it is inclusive of Aboriginal people, and policies are consistent with Aboriginal health policies. Ensure all new policies are created in consultation with Aboriginal organisations.
3. Strengthen efforts to recruit Aboriginal staff in MERIT. Approximately 20% of the local court demographic is Aboriginal people. For staffing levels to be equivalent to this proportion, approximately 15 Aboriginal people would need to be employed at 2009 staffing levels.
4. Explore the feasibility of trialling the MERIT program through an Aboriginal community controlled organisation/s as a method of ensuring a holistic, culturally appropriate and acceptable option for Aboriginal clients.
5. Broaden the eligibility criteria to allow flexibility in assessment for Aboriginal people to include alcohol-related offences. Consider past or current minor violence-related offences as inclusion criteria for MERIT, while remaining mindful of staff and community safety.
6. Continue to ensure that the MERIT program is expanded into areas with a high proportion of Aboriginal people, particularly in outer metropolitan Sydney and rural and regional areas.

¹ *'Magistrates Early Referral Into Treatment Program'*, Bureau of Crime Statistics and Research, Crime and Justice Bulletin, Number 131, July 2009, p11.

7. Fund a position whose role would be to maximise access to culturally appropriate MERIT services and improve linkages with Aboriginal services and community based programs.

MERIT for young people

MERIT is a successful model that could be adapted to suit the needs of juvenile offenders. One of the benefits of MERIT is that the defendant does not have to enter a plea of guilty in order to participate. Many young people spend time in custody on remand, often due to their inability to comply with bail conditions. Access to support offered by MERIT at an early stage of proceedings would help reduce breaches of bail and further offending, and would lessen the need for young people to be held in custody on remand.

MERIT for people with a cognitive impairment

The Committees also suggest that the MERIT Program Evaluation and Monitoring Group consider ways in which the MERIT program can be made more accessible to cognitively impaired defendants.

The MERIT program ensures that the court process has a rehabilitative component for eligible adult defendants who present at a participating Local Court and who have a demonstrable drug or alcohol problem. People with a cognitive impairment often fall into this category and could benefit from participation in the MERIT program.

The Committees note that in order to be deemed eligible to participate in the MERIT program a defendant must:

- be suitable for release on bail;
- be an adult with a demonstrable illicit drug or alcohol problem;
- be willing to consent to a treatment program;
- not be involved in current or pending charges related to serious violence or sexual assault, or matters that will be heard in the District Court;
- be deemed suitable for treatment and have a treatable problem; and
- be approved to participate in the program by the Magistrate.

Acceptance into the program is conditional on the defendant being assessed as suitable by the MERIT caseworker and the Magistrate, and the defendant remaining committed to volunteering for the program. The determination of an appropriate treatment module is a matter solely within the discretion of the MERIT caseworker. While a defendant with a cognitive impairment may be considered both eligible and suitable, they may not ultimately be accepted into the MERIT program as a result of perceived literacy requirements for treatment.

The Committees support changing the way the MERIT program is structured and delivered so that more offenders with a cognitive impairment may participate in, and benefit from, the program. For instance, having a less literacy based method of treatment and a more verbal and narrative based method of treatment would not be an unreasonable variation to the MERIT program.

The Committees submit that:

- the prevention or reduction of offending behaviour is very important both for the protection of the community and to meet the needs of defendants with a cognitive impairment;

- the objects, principles and applications of principles in the *Disability Services Act 1993* should apply to services for defendants with a cognitive impairment;
- there should be established within the MERIT program, a team of caseworkers with specialist capacity in assessing and meeting the drug and alcohol treatment needs of defendants with a cognitive impairment;
- a significant level of funding should be made available for the MERIT program to flexibly meet the needs of defendants with a cognitive impairment.

MERIT for people with a mental illness

The prevalence of defendants who present with a dual diagnosis² highlights the importance of diversionary programs accommodating people with both mental health and substance disorders.

The Committees' recommendations in relation to people with a cognitive impairment are equally applicable to defendants with a mental illness.

To expand MERIT to include defendants with a cognitive impairment or mental illness and young offenders will require a massive injection of resources. The Committees consider that the demonstrated success of MERIT in reducing recidivist behaviour, particularly in light of the strong link between drug and alcohol abuse and crime, justifies the allocation of substantial resources to the program.

Drug Court of NSW

The use of prohibited drugs by members of the public is a major health problem as well as a criminal justice problem. The Drug Court aims to treat health issues as well as justice and social issues for these people, to prevent them causing harm to the community by committing offences as a result of their drug dependencies. Many of the offenders the Drug Court deals with have serious issues that would otherwise see them continue to offend in the community. Imprisonment has often failed to deter them from committing crime.

Section 3 of the *Drug Court Act 1998* sets out the objectives the Drug Court seeks to achieve. These are:

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

Studies by the NSW Bureau of Crime Statistics and Research have found that the Drug Court program is more cost-effective than prison in reducing drug-related crime.³ Evaluations of the Drug Court demonstrate that the intensive use of justice system

² 'Measuring mental health in criminology research: Lessons from the Drug Use Monitoring in Australia program', Forsythe, AIC Reports, Technical and Background Paper 54, p4.

³ 'Intensive judicial supervision and drug court outcomes: Interim findings from a randomised controlled trial', Bureau of Crime Statistics and Research, Crime and Justice Bulletin, Number 152 November 2011; 'The NSW Drug Court: A re-evaluation of its effectiveness', Bureau of Crime Statistics and Research, Crime and Justice Bulletin, Number 121, September 2008; 'New South Wales Drug Court evaluation: Cost effectiveness', Bureau of Crime Statistics and Research 2002.

resources in the community, and the evaluation and monitoring of an offender who gets treatment for drug dependency, is effective in changing lives and is evidence based. The Committees support the expansion of the Drug Court beyond the current catchment areas, which would require substantial resourcing. Expanding the Drug Court will help to ensure that a greater number of drug-dependent offenders are offered the most appropriate treatment and rehabilitation which will assist in reducing recidivism. The Committees also support reasonable adjustments to the Drug Court program so that is more accessible to people with cognitive impairments.