

Drug Court Overview

Drug courts were established in Australia a decade after the world's first drug court was formed in Florida (USA) in 1989: New South Wales established a drug court in 1999 and was followed by South Australia, Western Australia and Queensland in 2000, and Victoria in 2002.¹ After abolishing its drug court in 2012 Queensland is planning to establish a new one (see below). In the Australian Capital Territory, legislation to establish a drug court will be introduced in the first half of 2019.²

1. Drug Court Rationale

Imprisonment is not an effective means of deterring drug use among offenders with severe drug problems or of rehabilitating them: rather than addressing underlying problems, which can include deep-seated psychological, emotional, behavioural, as well as contingent situational problems, imprisoned drug dependent offenders endure a revolving door of excessive drug use, offending, and incarceration.³ The level of disadvantage borne by drug dependent offenders is suggested by the high unemployment rate (78%) among Victorian drug court entrants.⁴

Dependent and near-dependent use of alcohol and illicit substances is substantially higher among offenders than among the general population⁵ and drug use is known to exacerbate criminal behaviour.⁶ A study of drug use among sentenced offenders found six out of ten reported regular illicit drug use within the preceding six months and the prevalence was highest among property and fraud offenders.⁷ Nor should the role of alcohol be overlooked as Australian research has shown over one third (38%) of prison entrants reported levels of alcohol consumption that rendered them high-risk for alcohol-related harm or active alcohol use disorders.⁸

Drug courts are a form of diversion from the criminal justice system for offenders whose criminal behaviour was triggered by or was related to drug dependence and who would otherwise be sentenced to a term in prison.⁹ The work of drug courts is based on the view that substance dependence is a chronic, relapsing health disorder rather than a moral or behavioural issue and that the prospect of avoiding a term of imprisonment may motivate a substance dependent offender to make a commitment to drug treatment in lieu of incarceration.¹⁰

Drug courts are reserved for those people who are considered high risk for continued offending due to their use of alcohol and/or other substances. Drug courts are often described as drawing on the 'therapeutic jurisprudence' model in which the law is utilised as a therapeutic agent to improve the health and wellbeing of those who are affected by the law and are in need of such help.¹¹

1.1 Participation

Participation in a drug court is voluntary. Criteria for entry usually requires an offender with a serious drug dependency to plead guilty to an offence that would otherwise result in a custodial sentence, have a record free of violence and agree to participate.¹² However, in their report to the Queensland government in 2016, Freiberg et al recommended that a history of violence should not necessarily exclude a potential participant.¹³

Participants are obliged to accept an order to undertake an extended course of drug treatment under the supervision of the court. A drug court entails collaboration between the presiding officer or magistrate and representatives from interested agencies that usually encompass drug treatment, legal aid, corrections and police.¹⁴ The participant appears before the court regularly to enable the presiding officer, supported by the broader team, to monitor the offender's progress. If the participant fails to comply with the conditions, they can be returned to the correctional system to serve the sentence from which they were diverted.

As participants are required to plead guilty it can be argued that some element of coercion is involved; therefore, it is important that participants are fully informed about all aspects of the program, the potential consequences of participation, including a guilty plea, and of alternative access to assistance within the prison system.¹⁵

2. The Drug Court of Victoria

The work of the Drug Court of Victoria (DCV) has been subject to a formal evaluation.¹⁶ The DCV has two formal aims: to improve the health and well-being of participants, and to reduce the severity and frequency of reoffending.¹⁷ It targets high risk individuals who have an extensive criminal history related to drug dependency, which usually occasions a record of multiple imprisonments. The program is of two years duration and is divided into three phases: Stabilisation, Consolidation and Reintegration. Under the conditions of a Drug Treatment Order (DTO) participants are required to submit to detoxification, drug treatment, drug testing, medical, psychological and psychiatric examinations if and whenever required.

Under the DCV program a Drug Treatment Order (DTO) consists of two parts: 'the treatment and supervision part', and 'the custodial part'. Under the custodial part the offender is sentenced to imprisonment for two years, though imprisonment is not activated, and the offender serves the sentence in the community while they undertake treatment and supervision.¹⁸ If the offender fails to comply with the required conditions, the DTO is cancelled and the offender serves a prison sentence.

Between July 2010 and June 2013, 130 participants accepted a Drug Treatment Order and were admitted to the first phase. Just over half (n=70) reached the second phase and 22% (n=29) completed the final phase.¹⁹ A comparison was

made by the Department of Justice between a cohort of 61 graduates of the DCV between 2006 and 2012 and an (admittedly imperfect) 'Control' group of 61 people who had been imprisoned for two years for similar offences. It found the reoffending rate over both 12-month and 24-month periods was substantially lower for DCV graduates than the Control group and while both cohorts had reductions in the seriousness of subsequent offences, the DCV graduates performed better than the 'Control' cohort on that indicator²⁰. DCV participants showed improvements in health and wellbeing with lower levels of medical risk, psychiatric risk and alcohol and drug risk and while they remained on the program participants who reached phases two or three experienced improved family relationships and stable housing.²¹

KPMG concluded that the DCV was cost effective, improved the health and wellbeing of participants and reduced recidivism among graduates: it recommended the program be extended to other parts of the state where the incidence of drug related offending was high.²²

2.1 Cost

A report on the Drug Court in Victoria for the period 2010/11-2012/13 found the annual cost was around \$1.6m and the cost per client was \$26,000, for 60 offenders. This calculation does not include costing for the magistrate's salary or court accommodation as they were not charged to the Drug Court.²³ The DCV costing was higher than the (estimated) cost for the NSW Drug Court at \$24,000 per participant, although it compared favourably to the total cost of the alternative sentence of two years imprisonment in Victoria which was estimated at \$197,000 per participant.²⁴ KPMG calculated an annual saving to the Victorian criminal justice budget of \$3.77 million due to lower numbers of 'prison days' due to the drug court operation and subsequent lower rate of recidivism.²⁵ A review of the West Australian drug court in 2006 reported a per individual cost of \$16,211 compared to an annual cost of incarceration of \$93,075: while a community order was less expensive at \$7310 per annum the review concluded the saved cost of averted crime justified the operation of the drug court.²⁶

3. Abolition of the Queensland drug court

A drug court system that operated from 2000 until 2012 was abolished by the government in Queensland due to concern over its overall cost and its cost-effectiveness. The total cost of the drug court, which operated in five locations, was \$14.4 million per annum while the cost per graduate was \$400,000.²⁷ These costs were high relative to the cost analysis for drug courts in other jurisdictions reported in 2.1. Having decided to reinstate a drug court, the current Queensland government commissioned an international review of drug courts to inform the development of a new system.²⁸

4. Drug Court Best Practice

Best practice standards for the establishment and operation of drug courts are regularly updated by the National Association of Drug Court Professionals which represents drug court practitioners, subject matter experts, researchers and state and federal policymakers in the United States.²⁹ The latest update for Standards 1-5 was published in 2018³⁰ and for Standards 6-10 in 2015.³¹

4.1 Standard 1: Target Population

Eligibility and exclusion criteria for the Drug Court are predicated on empirical evidence indicating which types of offenders can be treated safely and effectively in Drug Courts. Candidates are evaluated for admission to the Drug Court using evidence-based assessment tools and procedures.

4.2 Standard 2: Equity and Inclusion

Individuals who have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other individuals to participate and succeed in the Drug Court.

4.3 Standard 3: Roles and Responsibilities of the Judge

The drug court judge stays abreast of current law and research on best practices in drug court, participates regularly in team meetings, interacts frequently and respectfully with participants and gives due consideration to the input of other team members.

4.4 Standard 4: Incentives, Sanctions and Therapeutic Adjustments

Consequences for participants' behaviour are predictable, fair, consistent and administered in accordance with evidence-based principles of effective behaviour modification.

4.5 Standard 5: Substance Abuse Disorder Treatment

Participants receive substance abuse treatment based on a standardised assessment of their treatment needs. Substance abuse treatment is not provided to reward desired behaviours, punish infractions or to serve other non-clinically indicated goals. Treatment providers are trained and supervised to deliver a continuum of evidence based interventions that are documented in treatment manuals.

4.6 Standard 6: Complementary Treatment and Social Services

Participants receive complementary treatment and social services for conditions that co-occur with substance abuse and are likely to interfere with their compliance in drug court, increase criminal recidivism or diminish treatment gains.

4.7 Standard 7: Drug and Alcohol Testing

Drug and alcohol testing provides an accurate, timely and comprehensive assessment of unauthorised substance use through participants' enrolment in the drug court.

4.8 Standard 8: Multidisciplinary Team

A dedicated multi-disciplinary team of professionals manages the day to day operations of the drug court, including reviewing participant progress during the pre-court staff meetings and status hearings, contributing observations and recommendations within team members' respective areas of expertise and delivering or overseeing the delivery of legal, treatment and supervision services.

4.9 Standard 9: Census and caseloads

The drug court serves as many eligible individuals as practicable while maintaining continuous fidelity to best practice standards.

4.10 Standard 10: Monitoring and Evaluation

The drug court routinely monitors its adherence to best practice standards and employs scientifically valid and reliable procedures to evaluate its effectiveness.

References

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² Williams E. ACT's first ever drug and alcohol court to open this year: Ramsay. *Canberra Times* 29 January 2019. www.canberratimes.com.au

³ KPMG, 2014. Evaluation of the Drug Court of Victoria. Final Report. Melbourne: Magistrates' Court of Victoria.

⁴ KPMG, 2014.

⁵ Australia Institute of Health and Welfare. 2015. The health of Australia's prisoners. Canberra: AIHW.

⁶ Cappa, 2006. 2006 The social, political and theoretical context of drug courts. *Monash University Law Review* 32: 1; 145-176.

⁷ Cappa, 2006.

⁸ Australian Institute of Health and Welfare 2016. Alcohol and other drug treatment services in Australia 2014–15 state and territory summaries. Canberra: AIHW.

⁹ Cappa 2006.

¹⁰ Cappa, 2006.

¹¹ Cappa, 2006.

¹² Cappa, 2006.

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- ¹³ Freiberg et al, 2016
- ¹⁴ Cappa, 2006
- ¹⁵ Freiberg et al, 2016.
- ¹⁶ KPMG, 2014.
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- ²⁶ Freiberg et al, 2016.
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- ²⁸ Freiberg et al, 2016.
- ²⁹ Cappa, 2006.
- ³⁰ National Association of Drug Court Professionals. 2018. Adult Drug Court Best Practice Standards. Volume II Text Revision. Virginia: NADCP
- ³¹ National Association of Drug Court Professionals. 2015. Adult Drug Court Best Practice Standards. Volume II. Virginia: NADCP.