INDIGENOUS BAIL DIVERSION:
PROGRAM OPTIONS FOR INDIGENOUS OFFENDERS IN VICTORIA

REPORT COMPILED FOR THE DEPARTMENT OF JUSTICE (VICTORIA)

DRAFT

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FINDINGS AND RECOMMENDATIONS

Distribution by type of bail diversion program

General vs issue-specific programs

Across the States and Territories, we have identified a greater number of bail diversion programs focusing upon a specific issue than general programs. The issue-specific programs focus primarily upon illicit drug use; mental health; and, to a lesser extent, Indigenous offenders as a group (including within those diversion programs focusing upon substance abuse).

However, these issue-specific programs may also deal with a broad range of issues for offenders once they have been accepted onto a program, to differing degrees, in a similar fashion to a program such as CISP – but generally only of course with respect to a certain group of offenders (selected by narrower criteria).

Indigenous-specific/mainstream program

There are not many Indigenous-specific bail diversion or support programs across the jurisdictions. Indigenous-specific programs fall into two categories – those programs dealing with substance abuse and programs with a broader focus.

QIADP is the only one of the substance-abuse programs with a focus upon both alcohol and Indigenous offenders. However, nearly all other bail diversion programs with a focus upon alcohol have been developed, to different degrees, to specifically address alcohol use amongst Indigenous offenders.

There is only one Indigenous-specific illicit drug bail diversion program (which also deals with alcohol) – the Indigenous Diversion Program (WA). Significantly, all of the substance abuse-based bail diversion programs with some focus upon Indigenous offenders are targeted at particular Indigenous communities rather than being statewide.

Other programs, despite not being Indigenous-specific, indicate a particular focus upon Indigenous people. The bail support programs provide an example of this. Programs that are not Indigenous-specific may still have high rates of Indigenous participation, perhaps more likely to occur where the program is dealing with an issue of relevance to Indigenous people (such as alcohol or mental health).
Alcohol-specific programs

There are only six bail diversion or support programs with a significant or sole focus upon alcohol. Five of these concentrate to different degrees upon Indigenous alcohol use within particular Indigenous communities.

Indigenous offenders are less likely to access the greatest number of bail diversion programs in Australia – illicit-drug focused programs – due to the focus of such programs upon illicit drugs as a primary substance abuse issue. However, many of the other programs are able to address alcohol as an issue underlying offending behaviour, and Indigenous people will be able to access alcohol treatment and support unless they are otherwise excluded from the program by relevant criteria.

Key Principles

The following represent a set of key principles likely to increase Indigenous engagement with and participation in bail diversion programs which may be utilised in any further development of bail diversion options for Koories in Victoria (see Recommendation).

The more general a program is in terms of eligibility criteria, the less likely that those criteria will lead to disproportionate exclusion of Indigenous offenders. In particular, exclusionary criteria based on a history of offending or on offences of violence have been found to inhibit Indigenous access to bail diversion programs.

Key Principle 1

There should be no automatic exclusion for significant offending history or for offences of violence in Indigenous-focused bail diversion programs.

It may be preferable to incorporate an element of discretion into decision-making or to utilise a risk assessment tool to deal with such issues on an individualised basis in preference to automatic exclusion.

Failure to prioritise alcohol in diversionary programs (and the prioritising of illicit drugs in many bail diversion programs) has inhibited Indigenous access to bail diversion options.

Key Principle 2

Any bail support or diversion program for Indigenous people must incorporate a focus upon alcohol misuse - including through eligibility criteria - given the prevalence of alcohol as a substance misuse issue within Indigenous communities.
However, the focus upon alcohol use ought not to exclude treatment and support for other substances that might be of relevance to particular communities (including inhalants or cannabis).

The requirement in some programs (particularly those focused upon mental health or illicit drugs) that offenders plead guilty or otherwise acknowledge commission of an offence is not appropriate, given the voluntary nature and broader objectives of bail diversion programs. It may lead coercion into participation, as offenders plead guilty in order to access diversion.

Key Principle 3

In general, offenders should not be required to plead guilty or to indicate an intention to plead guilty in order to access bail diversion programs.

It may also be inappropriate to require an offender to admit the facts as alleged or to have to otherwise acknowledge their offending in order to participate in bail diversion programs.

Mental health issues and intellectual disability are prevalent within Indigenous communities, and there is a frequent correlation between Indigenous mental health and alcohol abuse issues. This ought to be taken into account in designing further bail diversion options for Indigenous people.

Key Principle 4

The ability to deal with a dual diagnosis of mental health and substance abuse issues is an essential component of any bail diversion program seeking to ensure maximum engagement with Indigenous offenders, given the frequent correlation of these issues within Indigenous communities.

A failure to take appropriate measures to provide for effective engagement with Indigenous offenders will impact upon Indigenous participation. Indigenous offenders may be more likely to decline an opportunity to participate in bail diversion or to drop out of programs where programs are not culturally relevant. There are a number of elements which might be incorporated into a program to increase engagement.

Key Principle 5
Program elements which may be beneficial in increasing engagement of Indigenous offenders include:

- employment of an Aboriginal caseworker and other staff;
- liaising more closely with Aboriginal agencies and communities and working within existing networks (including staff of the Koori Court or other Indigenous persons working with in courts, as well as Elders within Indigenous communities);
- development of culturally appropriate resources;
- improving staff skills and knowledge relevant to service delivery to Indigenous people;
- developing appropriate promotional material; and
- attempting to overcome barriers to participation, including in relation to transport difficulties by providing outreach or transport to Indigenous offenders.

The latter cross over into elements common to bail support programs. Providing bail support (as defined) may be appropriate as a component of bail diversion.

One way of increasing engagement with Indigenous communities is to target programs for implementation in areas (i) where there are sufficient numbers of Indigenous people to use the program and/or (ii) where there is an identified demand to utilise a program within specific communities. Targeting programs in this way increases accessibility to bail diversion for selected communities, as well as the Indigenous focus of the program in question.

Further, transporting a program out to the community in this way not only overcomes geographical barriers to access, but also emphasises the focus upon community. This approach may assist offenders to remain located nearer to family and community whilst participating in the program.

**Key Principle 6**

To improve Indigenous engagement with bail programs, it may be appropriate to consider a targeted implementation of any new or adapted initiative based on demand rather than providing such a program across all courts. This may mean implementing a program in areas where there is a sizeable Indigenous population (and a significant issue arising in relation to alcohol misuse, if this is the focus of the program).

Targeting may lead to a specific focus upon rural and remote locations, based on demographical distribution of Indigenous communities. Capacity building may be required in providing bail programs to Indigenous communities though, including at least by ensuring that local communities have resources necessary for
implementation of the program.

Further, any bail diversion program must be placed-based; that is developed and implemented in response to the particular needs and circumstances of the Indigenous communities who will access the program (preferably as identified by the communities themselves).

The type of intervention options available to Indigenous offenders participating in bail diversion will necessarily impact upon the program’s effectiveness in engaging such offenders. If an intervention is culturally inappropriate it may reduce the likely benefits of participation for Indigenous offenders and/or lead to reduced completion rates – although what is ‘appropriate’ may depend upon the individual offender in question and/or the relevant community.

**Key Principle 7**

A bail diversion or support program should be able to provide a range of intervention options to Indigenous participants (residential rehabilitation or rehabilitation at home; different service providers, for instance), rather than a single, standardised intervention option for all Indigenous participants.

However, *all* intervention options should be culturally appropriate for Indigenous offenders. Residential rehabilitation, for example, where imposed as a strict condition of bail diversion may not be appropriate for Indigenous offenders.

Focusing upon family and community in Indigenous bail diversion will improve the chances of successful completion of a program for Indigenous offenders and will mean that the program has relevance for the community as a whole (and is thus more likely to be supported). Examples include providing ‘cultural healing’ programs or building capacity of family and community to support an offender (for instance, by providing counselling to the spouse of an alcohol-dependent offender).

**Key Principle 8**

An emphasis ought to be placed in Indigenous-focussed bail diversion upon family and community, including upon building capacity within Indigenous communities to support the program and the offender.

Indigenous offenders are likely to need assistance with a wide range of issues - both as they impact upon their offending behaviour, but also as they underpin broader Indigenous social disadvantage. The latter might include unemployment and poor educational
attainment, for example. The period of bail diversion is necessarily limited, but because
it is short term there will be insufficient time to comprehensively tackle all issues
underpinning Indigenous disadvantage. Further support and assistance may be required
post-program, therefore.

**Key Principle 9**

A diversion program for Indigenous offenders ought to be able to deal with
offenders holistically; that is, to address the range of issues contributing to
offending and underpinning Indigenous social disadvantage more generally.

One approach to these issues may be to utilise brokerage arrangements.

Incorporating an aftercare component into a program may also benefit Indigenous
offenders.

Ensuring effective Indigenous community engagement with programs at a strategic level
will increase the sense of Indigenous ownership of a program and its relevance to
Indigenous people (and thus its effectiveness). This might entail establishing relevant
governance structures and mechanisms to enable such participation to occur.

**Key Principle 10**

Indigenous-focused bail diversion programs must ensure Indigenous
participation in governance structures and quality engagement (including at a
local level) with Indigenous communities through Indigenous participation in
planning, implementation and evaluation of programs.

Female Indigenous offenders have specific needs in terms of bail diversion, including
those that relate to their status as victims of violence and as mothers and carers. Bail
diversion programs do not appear to take these specific needs into account

**Key Principle 11**

Any bail diversion initiative ought to be adapted or adaptable to the specific needs
of Indigenous women.

The ability of any program to provide a bail diversion option to Indigenous offenders in
Victoria will be necessarily limited by the availability of its resources (including staff).
This may be the case with the ALO program as it presently operates. Failure to provide
adequate resources will be ‘setting a program up to fail’ in terms of the justice outcomes it is able to deliver to Indigenous people.

Further, the lack of clarity in terms of the respective roles of different Indigenous-specific initiatives within courts (including the Koori Court program) may lead to duplication of services, gaps in services and an overburdening of existing services.

**Key Principle 12**

Any Indigenous-specific initiative or program ought to be sufficiently resourced to ensure capacity to undertake work required.

It is important not to overstretch or simply reallocate existing resources (particularly those that already seek to work with Indigenous offenders such as the Koori Court) in expanding current programs and/or in developing new programs in an attempt to increase accessibility.

The bail diversion programs deal with non-compliance and non-completion of programs differently but in general do not attach a penalty to either. This may be appropriate.

Imposing a harsher sentence for non-completion than would have been received if an offender had not participated in a program may deter offenders from participating. Further, it is more likely to impact negatively upon Indigenous offenders, at least with respect to those programs where Indigenous completion rates are lower than non-Indigenous completion rates.

**Key Principle 13**

Failure to complete a bail diversion program ought not to lead to a prohibition from program participation on a later occasion or to an increased sentence.

A bail diversion program ought to be sufficiently flexible and have adequate resources to enable program requirements and procedure to be adapted dependent upon the level of offending and particular circumstances of offenders. Thus, closer supervision and more stringent bail conditions or program requirements may be required for higher-risk offenders.

There is insufficient quantitative or qualitative evaluation of Indigenous participation in mainstream bail diversion programs, particularly in terms of data relating to Indigenous completion of programs. There is also little available material analysing the effectiveness
of Indigenous-specific bail diversion programs for Indigenous people (particularly for Indigenous female offenders).

Further, benefit from bail diversion for Indigenous offenders may be derived without completion of a program, and thus purely qualitative analysis may not be the most useful approach to measuring program effectiveness for Indigenous participants.

**Key Principle 14**

Ongoing evaluation and review (with effective Indigenous input or control) is essential to ensure that any bail diversion program is engaging with Indigenous offenders.

Relevant data (including rates of completion) ought to be collected to enable this to occur, especially where a mainstream program is utilised to provide diversion to Indigenous offenders.

In evaluating a program targeted at Indigenous offenders, its effectiveness may be best measured on a qualitative and quantitative basis; that is, other than simply by reference to aggregate completion rates.

**RECOMMENDATION**

The bail diversion program options available to the Department may include (but may not be limited to):

(i) creating an Indigenous-specific program with a *general* focus

(ii) creating an Indigenous-specific program with a *specific* focus upon alcohol (like QIADP)

(iii) modifying existing programs (particularly CISP) to increase their ability to engage with Indigenous offenders.

*Creating an Indigenous-specific program with a specific focus upon alcohol*

An Indigenous-specific, alcohol-focussed bail diversion program is one option available to Koori Victorians. The Department has expressed an interest in QIADP as an Indigenous-specific program. QIADP also has a significant emphasis upon alcohol treatment.

Although QIADP, as noted, is working effectively within those communities where it is available, there is no indication that an *alcohol-specific* Indigenous bail diversion program would be of more benefit to Koories in Victoria than other types of programs. It
is clear that alcohol treatment and support must be available to Indigenous persons accessing bail diversion. However, it may not be necessary or appropriate to develop an alcohol-specific program. A general program without a focus upon alcohol (or another single issue) has some advantages for Indigenous offenders, most particularly in the flexibility that it affords offenders. Such a program may still be able to place some emphasis, as appropriate, upon alcohol treatment and support, including with particular reference to the needs of Indigenous offenders in this regard.

In the latter approach, the frequent and oft-cited connection between Indigenous offending and alcohol misuse may be dealt with without necessarily excluding those Indigenous offenders who present in court without a substance abuse issue or with a substance abuse issue not related to alcohol intake. As discussed, any bail diversion program targeting Indigenous offenders should be able to respond to the particular substance abuse issue arising within a community (as has occurred within the Indigenous Diversion Program in WA). Despite the predominance of alcohol, other substances (licit and illicit) may be the primary substance abuse issue for Indigenous offenders. It is not essential to exclude such substances abuse issues (as secondary to alcohol) in order to design a program of benefit for Indigenous people in Victoria, but placing a single emphasis upon alcohol may have this effect.

*Using general programs*

Development of Indigenous-focused process and content within a *general* program model may be the preferred option, in preference to an issue-specific program such as QIADP. This may mean developing an Indigenous-specific program with no focus upon a specific issue or further adapting a mainstream general program to Indigenous needs.

The advantage of developing an Indigenous-specific program rather than using a mainstream program is obviously the immediate and single focus of such an approach upon the needs of Indigenous offenders and communities. Programs such as QIADP, the Koori Bail Project, Barndimalgu Court or even CARRP are examples of this approach. However, the practical difficulties of developing and resourcing an Indigenous-specific program (available to as many Indigenous Victorians as possible) should be considered. A program such as the Koori Bail Project is operating at one location and is able to provide a more intensive level of assistance than, for instance, a more widely available service such as the Aboriginal Client Service Specialist program. To provide an Indigenous-specific program across Victoria, if it is to provide more intensive assistance, will require significant resourcing.

The Indigenous-specific or focused programs we have identified either focus upon alcohol use or are general in nature, but are commonly associated with particular communities (even if this is just at the pilot stage). Any Indigenous-specific program may therefore need to be targeted in this way, with particular reference to the needs of rural and regional Indigenous communities (including by ensuring that culturally responsive services and programs are available as part of such a program).
Adapting CISP

The most appropriate option may be to further expand an existing, broadly inclusive and adaptable program such as CISP. This will require less resource output in comparison to having to develop a new program.

Firstly, the Indigenous participation rate of CISP is approximately 9%. This indicates that the program has had some success to date in terms of engaging with Indigenous offenders, despite the comments we have made in relation to possible inadequate resources available to the ALO program. The rate of Indigenous custodial imprisonment in Victoria is around 6%. It is positive that CISP is able to engage with a higher percentage of Indigenous offenders than are presently being incarcerated in Victoria. It may be appropriate, therefore, to build on this success and to further extend CISP (rather than any of the other diversion programs in Victoria) to Indigenous offenders. Secondly, CISP appears for the most part to incorporate a number of key principles or elements outlined herein as likely to underpin effectiveness of an Indigenous-focused bail diversion program.

Thirdly, CISP already has in place an ALO program designed to increase access for and engagement with Indigenous offenders. One method of expanding CISP is to increase the availability of the ALO program to broaden access to diversion for a greater number of Koories. The ALO program may of course be expanded separate to CISP or any other program as a stand-alone Indigenous-specific initiative in adult and/or children’s courts similar to the ACSS in NSW. The Department may, however, consider that there are particular advantages to attaching the ALO program to the resources and established framework of a program such as CISP. Further, the advantage of focusing upon CISP as an existing program rather expanding further, significant resources upon developing an Indigenous-specific program would be that those resources could or should be fed back into ensuring adequate capacity for the ALO program to provide services as an expanded program, but remaining within CISP. Resourcing of the ALO program as it currently operates is an issue that perhaps needs further attention, but certainly any expansion will require resources commensurate with the scope of ALO work.

Fourthly, in terms of adapting QIADP, the program (or elements of it) may be best incorporated within CISP (linking in with the existing ALO program) in preference to the Department simply developing a new program somehow modeled on QIADP. As noted, the broader and inclusive approach of CISP (including in terms of eligibility criteria) may be preferred to the issue-specific focus of QIADP for Indigenous offenders. The eligibility criteria of CISP may be actually broader than those of QIADP, and CISP already appears to incorporate many of the positive elements of QIADP previously identified as beneficial for Indigenous offenders by the Department. The approach of a general program does not necessarily preclude a specific focus, as required, upon the needs and issues of special relevance to particular groups of offenders, including Indigenous offenders, as noted. Any further QIADP components likely to benefit Koories may be transferable to CISP, including the QIADP alcohol treatment model if evaluation indicates that this is working effectively to address alcohol misuse and
dependency for Indigenous people. In this sense, the QIADP model may operate as a subset of CISP, without having to substantially alter CISP eligibility criteria.

It may be appropriate, however, for any further adaptation of CISP to take place at least initially within adult courts rather than children’s courts. The Koori Intensive Bail Support Program already provides what appears to be an effective bail diversion option for young Koories, although its limitation in terms of number of offenders assisted is apparent. This program may also have potential for expansion to be available to a greater number of Indigenous young people, with reference to the principles set out herein, including those relating to resourcing and targeting of programs, although we note that it is a Department of Human Services (Vic) initiative. An expansion of the ALO or an ALO-type program into the Children’s Court is one option available to the Department in future.

**Recommendation**

The key principles set out at [10.2] herein ought to be considered in further developing bail diversion options for Indigenous offenders in Victoria.

In terms of specific program options, the Department should consider adapting the existing CISP program to provide greater opportunity for Koories to access effective bail diversion in Victoria, in preference to developing an alcohol or Indigenous-specific program.

- As part of this adaptation, the (CISP) ALO program may be expanded to increase program availability at a greater number of courts. The expansion of the ALO program might be targeted, perhaps in accordance with **Key Principle 6** [10.2]. Further, funds which might otherwise have been expended on development of a new bail diversion program may be utilised in ensuring that this expansion is resourced sufficiently in order to enable the needs of Koories to be effectively addressed.

- Positive elements of QIADP, as identified by the Department, may be incorporated within CISP, as part of its adaptation, as required in order to increase Indigenous engagement with the program. This may include the QIADP model of alcohol treatment and support, if evaluation indicates that the latter is working effectively to address alcohol misuse and dependency amongst Indigenous people.

- Further, the adaptation of CISP ought only to extend to adult courts, at least initially.
1 INTRODUCTION AND RESEARCH QUESTIONS

1.1 RESEARCH QUESTIONS AND AIMS

The Victorian Department of Justice has requested a report setting out key issues for consideration in development of bail diversion options for adult and young Koori offenders in Victoria. The Department has indicated that this report is to be utilised to assist stakeholders in determining the most effective way forward in developing such options.

The research conducted and set out herein has involved presenting information, in summary form, in relation to bail diversion and support models currently operating in each of the States and Territories. An analysis of programs and of relevant literature has then been conducted with a view to setting out key issues.

The aims of the research have been as follows:

1. Outline mainstream and Indigenous-specific bail diversionary programs in Australian states and territories.

2. Outline mainstream and Indigenous-specific bail support programs in Australian states and territories.

3. Consider the feasibility of adapting the QIADP for Victorian children’s and adult courts.

4. Consider whether alcohol specific programs provide the best focus for Indigenous clients rather than general programs, within the existing policy and program context in Victoria.

Some specific points should be made in terms of the objectives of our research.

The Aboriginal Justice Forum (VIC) has indicated a particular interest in potentially adapting the Queensland Indigenous Alcohol Diversion Program (QIADP) for implementation for diversion of both young persons and adults in Victoria. For this reason, QIADP is considered in some detail below. The AJF’s interest in QIADP is based upon a number of its attributes considered likely to be beneficial for Indigenous people in Victoria. QIADP:

- is Indigenous-specific;
- consists of a 20-week program;

1 The term ‘offender’ is used hereafter throughout the report to refer to those facing criminal charges (in the context of bail diversion), for convenience. However, we acknowledge that status of participants or eligible participants will vary dependent upon the target group of a particular program and eligibility criteria.
operates on a case management model;
- does not require the accused to plead guilty; AND
- has no ‘penalties’ or other negative outcomes attached to non-completion of the program, and its completion may mitigate sentence.

However, the focus of this report is not solely upon QIADP - nor in fact upon Indigenous-specific or alcohol-focused bail diversion programs. Whilst QIADP appears to be working effectively within the context in which it operates, it is important to consider the full range of programs currently in place across all the jurisdictions. An Indigenous-specific, alcohol-focused bail diversion program is only one option available to Koori Victorians. A number of the QIADP components identified as potentially beneficial for Koories are present in other diversionary and support programs, including non-Indigenous programs. Thus, both Indigenous-specific and mainstream current bail diversion and bail support programs in each State and Territory are considered below.

Further, whilst those programs with some specific focus upon alcohol use may be particularly relevant, given the link between Indigenous offending and alcohol use, the Department has indicated that one possible option may be to further adapt to Indigenous needs, or to utilise certain aspects of, a holistic/integrated model such as CISP in Victoria. The Department suggests that this may be in keeping with the current trend within criminal justice (as identified by the Department) towards general programs of this nature, and may be a preferred alternative to introduction of an alcohol-specific program such as QIADP. As we see it, this approach might entail either (i) creating an Indigenous-specific program with a general focus (rather than a focus upon alcohol) or (ii) modifying the existing CISP program to increase its ability to engage with Indigenous offenders.

There are only a very small number of bail programs with any significant focus upon alcohol treatment in Australia, and these are discussed in some detail below in addition to QIADP. There are, however, many more programs focussing upon illicit drugs treatment and support in diversion as a condition of bail, as well as drug courts providing drug treatment as a sentencing option. These initiatives are also discussed below. However, as generally they have not been effective for Indigenous offenders as a diversion option - for the most part because drug misuse is not as significant a concern for Indigenous people as alcohol misuse - we have dealt with them by way of discussion in terms of why they have not been able to engage well with Indigenous offenders rather than providing detail about the programs themselves.

Finally, the Department has asked that we consider the current justice diversion policy and program context in Victoria in this report. The Department seeks to avoid service duplication and to derive maximum benefit from existing court services and programs in increasing diversionary options for Indigenous offenders. For this reason, Victorian programs are included even where they do not constitute bail diversion or support.

1.2 REPORT STRUCTURE
The report deals with different types of bail diversion or support programs separately, rather than considering programs by jurisdiction. In most instances, for each type of program a brief summary of relevant programs is provided initially; then detail is provided in relation to specific programs; and, finally, general discussion is set out in relation to key issues arising with respect to the particular category of programs.

Victoria, however, is dealt with differently to the other jurisdictions. All programs within this jurisdiction are considered in a separate section. Programs such as deferred sentencing or the Criminal Justice Diversion Program (CJDP) were included in order to provide as broad a policy and program context for Victoria as possible, although they do not constitute bail diversion as defined.

Drug and alcohol diversion was also dealt with differently. There is no specific detail provided in relation to drug diversion programs and the reason for this is discussed as an introduction to the section. A summary of alcohol-specific or focussed bail diversion programs is provided; detail in relation to alcohol-specific or focussed programs; and finally broader discussion in relation to such programs. Specialised courts are also not dealt with in any detail as to program content, other than family violence offender diversion programs. Drug courts and Indigenous courts, in particular, are dealt with by way of broad discussion.

The key issues and principles identified throughout the report are then collated in a final conclusion, with particular reference to the Indigenous bail diversion options available in a Victorian context and along with a brief summary of distribution of bail diversion programs by type (general, issue-specific, alcohol-specific and Indigenous-specific), providing some indication of the approach to bail diversion taken across jurisdictions.

1.3 METHODOLOGY

The research was conducted in three stages, as follows.

(1) Initially, information was collated with respect to all bail support and diversionary programs in each jurisdiction. Web-based searches for relevant departmental and agency program material (including data) were conducted. Relevant material collected included program guidelines, fact sheets, policy frameworks (where relevant), and annual reports. Of particular interest were any available evaluations or reviews conducted in relation to the various programs, particularly where they contained some comment about Indigenous access to and completion of programs. These were available either on departmental /agency websites or through organisations external to departments/agencies (such as Law Reform Commissions).

(2) During the second stage of the research, representatives from relevant departments and agencies were contacted by phone and email, where possible (generally this involved program coordinators located at various courts and/or senior staff within Departments of justice, youth justice/community services,
or Attorneys-General). These representatives were asked to clarify and provide any further detail in relation to programs and to provide copies of any evaluations or reviews not otherwise publicly accessible. They were also asked for detail in relation to Indigenous participation/completion rates (where not otherwise available or where available but not current); any Indigenous-specific initiatives located within mainstream programs; and (where appropriate) to comment on any key factors contributing to the effectiveness of programs.

Finally, secondary sources (including any available academic or other commentary) were then collected in order to identify relevant issues.

1.4 ISSUES RELEVANT TO INDIGENOUS BAIL DIVERSION AND SUPPORT

Definition of bail diversion and bail support

As a first step, it is necessary to define what we mean when we refer to ‘bail diversion’ and ‘bail support’.

The notion of diversion is broad and it may occur at each stage of contact with the justice system. This report, however, concentrates on bail diversionary (and support) programs. In this report, ‘bail diversion’ programs share a common set of characteristics. They generally seek to assist the offender with underlying factors contributing to offending behaviour and thus to provide an opportunity for rehabilitation during the bail period. These programs thus represent a move away from police oversight of bail compliance and from the use of bail to ensure that the offender commits no further offences whilst on bail and that he/she attends courts to answer charges. The Magistrates Court Diversion Program – a bail diversion program in South Australia – for instance, uses an offender’s contact with the criminal justice system ‘as a vehicle for providing a treatment and support program designed to effect behavioural change’. Such an approach is fairly common throughout the bail diversion programs examined.

The programs we have identified are available to adults and/or young persons at a lower court level and at the pre-trial stage of proceedings. They may be pre- and/or post-plea and are voluntary, dealing with offences that can be heard summarily. Offenders are bailed to participate in some form of intervention (counselling, drug treatment, anger management programs, vocational training, for instance) following an assessment conducted by program staff as to suitability according to eligibility criteria. These criteria vary, but may refer to type of offences which might be included or be excluded in the program (the latter often being sexual and/or violent offences). Ongoing case management and monitoring provided by court and program staff once a person enters the program may occur or program staff may simply facilitate access to relevant services or programs. Upon completion of the relevant program after 4-6 months (in general), the offender returns to court and their sentence is mitigated, but non-completion does not
generally have any negative consequences. If the program is not completed, the matter will simply be remitted to the general court system.

Variations occur within the programs on many different levels, but these elements are almost always present. Such programs capitalise upon the period of bail and of bail decision-making as a time when the offender is at a ‘crisis point’; that is, the offender is aware that if they do not participate in the program in question they may well face a period of imprisonment, whilst participation will be likely to lead to a reduced sentence. This moment in time provides an opportunity for the court to divert an offender from further progression into the justice system.

Bail support programs, on the other hand, may be more limited in what they seek to achieve. Denning-Cotter has defined bail support programs as ‘designed to assist a person to successfully complete their bail period’. It is this focus that sets such programs apart from bail diversion. These programs aim to reduce re-offending during the bail period; to increase court appearance rates; and to provide magistrates and police with a reasonable alternative to remand or incarceration (and thus often seek to reduce remand rates) (Denning-Cotter 2008). Elements might include providing transport to an offender in order to ensure that they attend court appearances; arranging for accommodation for an offender so that they might access and successfully complete bail; or providing information to the offender in relation to their bail conditions and the bail process.

However, it is sometimes difficult to distinguish between diversion and support in a bail context. The Koori Bail Project in NSW, for example, facilitates access to a range of programs to persons seeking bail, advises the court on possible bail options for an offender, and also ensures that the offender in question and his/her family understand bail conditions to assist them in appearing in court (as required under bail undertakings). This appears to be a combination of both bail support and diversion. Indeed, some support programs go a little further than is usual and may constitute bail diversion. One way of comparing the two types of programs is to see bail diversion as seeking to deal with an individual’s offending-related problems (such as drug dependency) (or even problems associated with social disadvantage more broadly) other than simply as a means of addressing impediments to accessing or complying with bail.

**Diversion and Aboriginal People**

There has been a significant push towards using diversion (including bail diversion) within the criminal justice in recent years. This push has emanated from factors such as a lack of confidence in the criminal justice system; rising imprisonment rates; and an increasing awareness of social problems (such family violence, mental health issues and homelessness) and their relationship with offending.

Diversion can be conceptualised as both a point of removal from the continuum of normal criminal justice interventions, as well as being a particular set of programs which are utilised in place of traditional criminal justice interventions. Diversion can take place at a number of different stages within the criminal justice system - from the time when
Diversion must be seen as a particularly relevant and important alternative for Indigenous offenders, given the disproportionately high rates of Indigenous incarceration (including remand) in every jurisdiction. Indigenous people in Victoria are remanded at a much higher rate than non-Indigenous Victorians. Based on data available in 2003-05, Indigenous offenders were remanded at nearly 15 times the rate of the general Victorian population, with the Hume and Loddon-Mallee regions having rates of 25.2 and 16.9 respectively (Jones 2006: 21). Further, between 1999-00 and 2002-03, the proportion of Indigenous people in Victoria on remand increased from 50% to 61%. Between 2002-03 and 2004-05, Indigenous persons were 23% more likely to be remanded in Victoria compared to others (VLRC: 168). Anecdotally, Indigenous offenders are less likely to comply with bail than non-Indigenous offenders, and this again reinforces judicial reluctance to grant bail, even with conditions (Jones 2006: 21-2).

Despite the disproportionate rates of remand for Indigenous people, they are diverted at every stage in the criminal justice system at significantly lower rates than non-Indigenous offenders. In literature and evaluations, a number of factors are identified as contributing to the low participation rate of Indigenous people in diversion options generally. These will be discussed in further detail below, where relevant. These factors include the following:

- Indigenous people are less likely to make any admission to police;
- Indigenous people are more likely to have multiple charges;
- Indigenous people are more likely to have prior convictions (especially for offences of violence) leading to exclusion;
- Indigenous people are more likely to have substance abuse issues which fall outside eligibility criteria for a relevant program (such as alcohol or inhalant issues);
- Indigenous people are more likely to have a co-existing mental illness which excludes them from participation;
- Indigenous people may be more likely to reside in rural and remote locations where diversion options are not available (Joudo 2007; see also Urbis Keys Young 2003; AIHW 2008).

Significantly, there is not a significant body of literature available providing comprehensive detail in relation to best practice for Indigenous people in the area of bail diversion. Only some of the programs referred to below have considered and analysed how best to engage with Indigenous offenders. Thus whilst it is possible to locate, through evaluations in particular, key success factors for diversion and bail diversion in general (such as relationship building that occurs between Magistrates and offenders
during ongoing review of progress; immediate assistance provided to offenders post-release and upon entering a program, *inter alia*, these factors are not always relevant to considering how a program might engage more effectively with *Indigenous* offenders.

Drawing upon available material, however, it is possible to identify key factors likely to improve or to inhibit Indigenous offender participation in bail support and diversion. These factors are set out in greater detail throughout the report. Certainly, as a primary consideration, in ensuring that diversion options are able to best meet the needs of Indigenous offenders there must be an emphasis upon self-determination and empowerment rather than dependency. A number of other important key principles which ought to underpin Indigenous diversion may be identified as follows:

- a holistic view of Indigenous health and wellbeing
- meaningful, not tokenistic involvement of Aboriginal people
- the involvement of family and community rather than a focus upon the individual
- an emphasis upon Indigenous culture, heritage and law
- assistance with establishing and strengthening relationships, utilising Indigenous people as mentors and role models (Cunneen 2001).

The Department’s Indigenous Issues Unit has prepared a Background Paper on diversion of Indigenous offenders, suggesting a number of components which ought to be present in any quality program of this nature, including the following:

- multiple components, including risk-reducing and culture-specific elements;
- moderate to intensive support, monitoring or community-based supervision;
- flexibility to incorporate the individual’s needs and risk;
- ability to meet the community’s requirement for safety and the statutory obligations of the court;
- a strong focus upon effective service integration (of families, courts, police and community agencies); and
- a combination of mainstream and Indigenous-specific approaches to law (Jones 2006: 23).

These have been borne in mind (and will be drawn out below, where relevant) in completing our research and final report, as have the following elements identified by the Indigenous Issues Unit as essential to Indigenous justice initiatives:

- holistic in the way that they approach the needs of the individual and through inclusion of family and community;
- adequately resourced Indigenous staff;
- adequate funding;
- processes to enable effective interagency collaboration;
- based on best practice principles;
- culturally appropriate in its process and content;
- adapted or adaptable to gender and age groups;
- promotes Indigenous self-determination and empowerment, ensuring Indigenous community ownership and control; and
- effective processes for evaluation and monitoring (Jones 2006: 36-37).

**Indigenous offenders and alcohol consumption**

The strong connection between offending and alcohol intake for Indigenous people in particular must be considered in developing Indigenous-focussed bail diversion initiatives.

Indigenous people throughout Australia are most likely to be using alcohol, inhalants and cannabis at problematic levels. In particular, whilst illicit drug use by Indigenous people is more common in metropolitan areas than elsewhere, Indigenous offending is most often related to alcohol misuse rather than illicit drugs (as well as illicit use of other licit substances such as inhalants) (Joudo 2008: 27). Two and a half times more Indigenous adult male prisoners than their non-Indigenous counterparts, for instance, had used alcohol at the time of arrest or commission of an offence (Putt 2005).

Alcohol intake is linked to offending in both non-Indigenous and Indigenous communities, but this intake is more likely to be hazardous and harmful for Indigenous people, and this may increase the link between offending and alcohol for Indigenous offenders. (Success Works 2009: 10ff). Alcohol may be connected to offending in a number of ways. It may underpin family violence offences; an inability to comply with bail conditions (resulting in further convictions and custody); and the drinking of alcohol in public rather than private spaces (resulting in police intervention), for instance (Jones 2006: 8-9) (see also Department of Justice (Vic) 2005: 265).

**Diversion and Indigenous women**

Indigenous bail diversion options must consider the particular circumstances of Indigenous women. This may require accommodations within the program to incorporate the specific needs of Indigenous women, as well as ensuring that the program does not indirectly inhibit access or effective engagement with Indigenous women. As noted above, any Indigenous justice initiative ought to be adapted or adaptable to Indigenous women (Jones 2006).

The programs we have identified within this report do not appear to make specific provision for Indigenous women, on the information available to us. This is an indication that more needs to be done in this area to respond to the specific needs of Indigenous women.

A number of points must be borne in mind in ensuring that any bail diversion option is inclusive of the needs of female Indigenous offenders, as follows:

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2 There is some reference to transitional housing for women and children in the CREDIT/Bail Support program in Victoria.
- the primary parenting role of women;
- a need to mitigate the risk for women associated with their financial dependence upon men;
- high rates of the victimisation of Indigenous women in relation to family violence. This relates to ensuring that any diversion programs available to perpetrators of family violence take into account the serious risk of ongoing violence Indigenous women face as well as the very real possibility that Indigenous women participating in any diversion program may require specific assistance in relation to any ongoing threat of violence (including through providing them with a safe place to live);
- the dual disadvantage of Indigenous women on both gender and racial grounds; and
- Aboriginal women offenders perform poorly when compared with non-Aboriginal women and Aboriginal/non-Aboriginal men on indicators of disadvantage (relating to health, education, income, housing, *inter alia*), and will therefore in most instances require more intensive assistance within diversion options (Jones 2006: 11).

**Indigenous people, mental health and diversion**

Indigenous-focused diversion ought to be able to address a dual diagnosis of mental health and substance abuse issues. Whilst there is a well-known connection between these issues (along with intellectual impairment), particularly in the context of offending behaviour, the prevalence of both issues in Indigenous communities is particularly high.

The rates of cognitive impairment in Indigenous communities, in particular, due to poverty and related health problems is discussed elsewhere (Simpson & Sotiri: 6). It is also acknowledged that there are difficulties in identifying this impairment in Indigenous people, where any problems may be attributed to drug and alcohol use and/or cultural barriers in communication (Simpson & Sotiri: 11). The link between substances and mental health is discussed in the evaluation of the Indigenous Diversion Program (IDP) in Western Australia. The IDP provides drug (and other substance) diversion to Indigenous people in the Kimberley. IDP community stakeholders saw the prevalence of drug-related mental health problems (including drug induced psychosis) as an ‘epidemic’ (Crime Research Centre 2007).

Thus, no Indigenous-focused bail diversion program should exclude an individual from accessing the program on the basis of a dual diagnosis.

**Legislative Provisions**

The programs set out below operate within different types of frameworks or sometimes with no formalised framework at all. In some instances, programs operate on the basis of a practice direction, program guidelines, or otherwise. In other instances, there is specific legislative provision (generally within bail or sentencing legislation) providing for
diversion and/or indicating how participation or non-compliance might be taken into account at sentencing or in relation to bail, for instance. Some examples follow.

- In NSW a court may impose as a condition of bail participation in an intervention program under s. 36A of the Bail Act 1978. Under s 346 of the Criminal Procedure Act 1986 (NSW) an intervention program is defined as a declared intervention program (such as circle sentencing, conferences, and a traffic intervention diversion program).

- Section 9(2)(o) of the Penalties and Sentences Act 1992 (Victoris) provides that a court sentencing an offender must have regard to the offender’s successful completion of a rehabilitation, treatment or other intervention program.

- In Queensland, a court may impose a bail condition requiring an accused to participate in a prescribed program under s 11(4) of the Bail Act (Qld). The Bail (Prescribed Programs) Regulation 2006 (Qld) refers to specific programs such as the Homeless Persons Court Diversion Program, Cairns Alcohol Remand and Rehabilitation Program and QIADP.

- Section 21B of the Bail Act 1985 (SA) deals with intervention programs. A court may impose a condition of bail that the accused undertakes an intervention program. Such a program is defined under s 3 to be a program that provides supervised treatment, rehabilitation, behaviour management and/or access to support services designed ‘to address behavioural problems (including problem gambling), substance abuse or mental impairment’.

Both formal and more informal approaches have their respective advantages and disadvantages for offenders. The Western Australian Law Reform Commission has advocated for formal amendment of existing legislation to guide diversion practice. Relevant legislative provisions might refer to objectives of the program(s); criteria; procedures; and other matters (WA LRC: 181ff). Legislating for diversion in this way may lead to greater consistency and increased awareness within courts and the judiciary of diversion as an option for offenders. However, having sufficient flexibility within a program to enable it to arise from within, and change in response to the needs of a particular community (which has occurred, for example, with the Geraldton Alternative Sentencing Regime in Western Australia) is also beneficial.

It is clear, however, that any specific policy, practice and legislative framework will impact in real terms upon individuals as they come into contact with the justice system.
2. VICTORIA

Summary of Programs

Victoria currently has two Indigenous-specific programs - an Aboriginal Liaison Officer (ALO) program for adult offenders and the Koori Youth Bail Intensive Support program in the Children’s Court. The ALO program constitutes an Indigenous-focussed initiative within a general bail diversion program – the Court Integrated Services Program (CISP). The ALO will supervise an Indigenous offender on bail and within this role facilitate access to relevant services, as well as assisting the court and offender at bail hearings [2.1]. The Koori Intensive Bail Support Program provides intensive bail (and deferred sentence) support to a limited number of young Indigenous offenders who are more entrenched within the criminal justice system. It deals with a range of issues through case management and facilitation of diversion to relevant services and programs, and it has an emphasis upon family and community support [2.2].

In terms of mainstream bail diversion programs, there are two programs currently operating in Victoria. The Court Integrated Services Program (CISP) is a diversion model without a focus upon a single issue (such as drug dependency or mental health) and is able to divert offenders with a more significant offending history and/or those facing charges for moderately to more serious offences to relevant services/programs. It currently operates in only three locations within Victoria, but is accessible through any Victorian Magistrates Court. With its broad focus, CISP may increase access to diversion for offenders in Victoria. It has some focus upon Indigenous offenders through provision of the ALO program and an Indigenous participation rate of 9% [2.3]. The Youth Court Advice Service (YACAS) diverts young people aged 18-20 years and is provided by the Department of Human Services, Youth Justice. YACAS provides advice to court in making bail determinations, and may supervise bail or deferred sentences [2.8].

Victoria also has an illicit drug-based diversion program - CREDIT/Bail Support Program - with a different, less holistic focus than CISP. Available in more courts than CISP and targeting both lower and higher levels of offending and substance abuse problems, it emphasises bail compliance and participation in drug treatment. It also has comparatively low Indigenous participation rates, attributable in part to its eligibility criteria restricting access to illicit drug users [2.4]. The development of the Rural Outreach Diversion Workers (RODW) program is intended to assist offenders with drug use problems outside metropolitan Melbourne in a similar way to CREDIT. RODW has low Indigenous participation rates [2.5].

In 2010, the Mental Health List program will be introduced into the Melbourne Magistrates Court for offenders with mental health issues. It will operate as a combination of bail diversion and a form of diversion similar to that offered by the Criminal Justice Diversion Program (CJDP). In some instances, as occurs in CJDP, offenders may thus not be required to return to court to be sentenced at the completion of
a 3-12 month period of participation. It is expected that the ALO program will be utilised for Indigenous offenders within the List [2.11].

The Criminal Justice Diversion Program (CJDP) is not a bail-based diversion program. Individuals participating in the CJDP are generally first time offenders and are given 12 months in which to undertake specific tasks under a diversion plan (such as attending counselling). It is governed by section 128A of the Magistrates' Court Act 1989. There are no Indigenous participation rates available for the program [2.6]. Deferred sentencing is a further option in both the Children’s and Magistrates Courts but it is not bail based. Offenders are able to have their sentence deferred for up to six months to enable them to participate in treatment and other programs [2.10]. The Mental Health Court Liaison Service (MHCLS) also specifically assists CISP participants with mental health issues by facilitating access to relevant services and undertaking assessments of offenders for court, but is not a bail diversion program. It will work with the ALO for Indigenous offenders [2.7].

The only bail support program located in Victoria is the Central After Hours Assessment and Bail Placement Service (CAHABPS), a statewide service available after hours to young persons aged 10-18 years at the point of time when police are making a bail determination. The service will assist an offender to access bail; provide information about bail; and facilitate access to relevant support services and accommodation. Department of Human Services Koori workers may assist with Indigenous offenders, and 15% of clients have been identified as Indigenous (2.9)

2.1 Aboriginal Liaison Officer

The Aboriginal Liaison Officer (ALO) program set up under the Victorian Aboriginal Justice Agreement in 2002 is now affiliated with CISP and operates from the Melbourne Magistrates Court but is statewide (usually as a telephone service). An ALO from Melbourne is able to provide advice to case managers in courts other than Melbourne. The Program staff consist of a Coordinator and one ALO.

The ALO aims to address the over representation of Indigenous people in the justice system by assisting Indigenous defendants when they enter the court system. The program helps Aboriginal people to ‘maximise their chances of rehabilitation through culturally appropriate and sensitive intervention’. 3

The expected tasks of the ALO staff include:

- providing advice to Indigenous defendants (and their families) who come in to contact with the court;
- providing access to services for Indigenous defendants;

3 ALO information on Magistrates Court website: http://www.magistratescourt.vic.gov.au/wps/wcm/connect/Magistrates+Court/Home/Court+Support+Services/MAGISTRATES+/-+Aboriginal+Liaison+Officer+Program
- providing advice and reporting to Magistrates and relevant court staff in relation to an appropriate course of action for Indigenous defendants (including for bail matters);
- liaising with local Aboriginal communities to inform them of the court process;
- raising awareness within the criminal justice system of cross-cultural issues;
- and consulting, negotiating and liaising with government and non-government organisations to co-ordinate service delivery and to promote knowledge of issues relating to Aboriginal persons.

The ALO role in relation to bail hearings includes advising about cultural issues and available support services for a particular defendant. An Indigenous accused may also be bailed to supervision by the ALO, and the ALO will then organise appropriate services for the accused person (including counselling, accommodation and health care).

The VLRC suggests in its 2007 review of bail that the benefits of the ALO program is that staff are able to ‘develop strong working relationships with service providers, especially those who cater specifically for Indigenous people. They have good access to Indigenous-specific accommodation and services’, although it appears that this program does most of its work at Melbourne Magistrates Court so is somewhat limited (VLRC 2007: 156). The VLRC has praised the work of the ALO program, indicating that it provides support for Indigenous people on bail and, through provision of information on the ‘culturally specific needs of Indigenous Australians’, courts are assisted to ‘assess the risks posed by an accused when making a bail decision and to set culturally appropriate bail conditions. In particular, the ability to bail accused people on the condition that they follow the instructions of the ALO helps to ensure they are linked with culturally appropriate services and monitored in a sensitive way’. The Magistrates Court in its submission to the VLRC indicated that ALOs should be present in rural and regional areas, and the Victorian Aboriginal Legal Service (VALS) has also suggested that ALOs should be present in every Victorian court (VLRC 2007: 173-4).

The Commission has also discussed the role of Koori Court Officers in bail matters, and the cross-over of the work of these Officers and those involved in the ALO program. The VLRC noted the difficulty that ALOs have in supervising bail in regional areas and suggested that Koori Court Officers, who had established networks in their respective regions with service providers and others, might be able to assist Indigenous persons on bail. However, where time did not permit Koori Court Officers to take on further work, an ALO should be employed (VLRC 2007: 174).

In 2007/08, the ALO program assisted 203 persons (Magistrates Court (Vic): 71).

2.2 Koori Intensive Bail Support Program

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The Koori Intensive Bail Support Program is an initiative of the Victorian Aboriginal Justice Agreement, targeting overrepresentation of Indigenous youth on remand. It provides a supervised bail option to Indigenous young people. It has been trialled from July 2009 at the Melbourne Children’s Court to provide outreach support for six young Aboriginal people at any one time for the period of bail imposed by the court or on a deferred sentence from the Children’s Court (Department of Human Services (Vic) 2009).

The objectives of this program are to:
• strengthen community-based alternatives to custody for young Aboriginal people and to divert them from more serious contact with the criminal justice system;
• minimise the risk for young Aboriginal people of re-offending or breaching conditions whilst on court-ordered bail; and
• reduce the likelihood of young Aboriginal people being placed on a Youth Justice custodial remand order.

The program will be available to individuals not subject to any other Youth Justice order at risk of immediate custodial remand or continued remand and at high risk of breaching bail or re-offending. The Children’s Court or Children’s Koori Court undertakes referrals and suitability for participation will be assessed by the youth justice court advice worker or the Koori intensive bail support practitioner, based in part on the willingness of the young person to work within the program’s conditions. A Cultural Support Plan will also be completed during assessment.

The program aims to reduce the risk of re-offending by:
• providing intensive support specifically directed to the individual needs of the client;
• providing bail supervision plans tailored to meet the identified risk factors and behavioural, social and cultural needs of the client;
• using innovative approaches to work with clients, their families, other agencies and communities to address the risk factors that contribute to offending behaviour and bolster protective factors that encourage a positive lifestyle;
• (re)-connecting the young person to their community and supporting them to engage in educational, employment, recreational and community activities (Department of Human Services (2009)).

If suitable to participate, an intensive outreach approach is utilised in working with the individual and their family in relation to accommodation, education, health and recreation needs, with provision of relevant support services. The Koori intensive bail support practitioner will be involved in direct outreach, developing family support, working on

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5 The purpose of the Aboriginal cultural support plan (ACSP) is to ensure that young Koori people in the youth justice system have access to Koori workers and other cultural supports. It generally involves gathering information in relation to the young person’s Aboriginal community group with which they identify; identifying contacts to support cultural links; identifying ways to maintain ongoing cultural links for a young person’s community; and collecting significant family information.
community development, and developing linkages with culturally appropriate or Indigenous-specific services. A brokerage fund will also enable individuals to access external services or programs, including professional services relating to drug and alcohol use, cultural wellbeing, health or mental health issues, and individual and/or family counselling; tutoring or other training services; support for recreational activities; and support to encourage school attendance. Where the individual no longer requires such intensive assistance (particularly where bail is imposed for a longer period), family and community may offer the majority of support to the young person.

The young person may be required to attend court regularly, and progress reports are prepared for this purpose. If the young person breaches conditions of the bail order, the Koori intensive bail support practitioner must advise police within 24 hours and bail may be revoked by the court.

The VLRC recommended that Koori Court Officers attached to Koori Children’s Courts in Victoria ought to fill the gaps left by the limited application of this Intensive Program by operating as ALO workers, and/or where not available (where their workload does not permit extra commitments or the court in question is not incorporated with a Koori Court) an ALO should be employed. All Indigenous children in Victoria, it argued, ought to have access to bail support or supervision (VLRC 2007).

2.3 Court Integrated Services Program (CISP)

The Court Integrated Services Program (CISP) commenced in 2006 as a three-year pilot diversionary program in Melbourne, Sunshine and Latrobe Valley Courts. Dependent upon outcomes contained in the program’s final evaluation in 2009, CISP may be further expanded.

CISP was developed as part of the Victorian Attorney General’s Justice Statement (2004), directed towards addressing the offending behaviours of recidivist offenders who are mentally ill, intellectually disabled, drug-dependent or homeless, inter alia. CISP, broadly, aims to ‘address the over-representation in the criminal justice system of people from backgrounds of disadvantage and marginalisation’ who are at moderate to high-risk of offending. It seeks to reduce re-offending by ensuring that relevant services and support is provided and to make the community safer (Magistrates Court (Vic) 2008: 63). It is also intended to ‘consolidate and build upon’ initiatives such as the CREDIT/Bail Support and Drug Court programs.

CISP is ‘guided by the principles of therapeutic jurisprudence, modelled within a problem-solving courts framework and enhanced by the ‘what works’ in offender

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6 Department of Justice, (2005) Court Integrated Services Program
7 ibid
8 ibid
rehabilitation literature and the ‘good lives’ theoretical model’. Its mandate has been to find ‘more creative ways of addressing the sources of offending behaviour, as a matter of fairness to…disadvantaged groups, but also to improve community safety by reducing re-offending’.

Briefly, CISP offers a multi-disciplinary, team-based approach to the assessment and referral to treatment of defendants. According to the Department of Justice in Victoria,

…the key characteristic of the model is the bringing of the support services together to work in a much more integrated, coordinated, team based approach that deals with the defendant from a holistic perspective.

Its stated aims include providing short-term assistance prior to sentencing for defendants in relation to health and social issues underlying criminal offending (such as drug and alcohol dependency, homelessness, mental health, disability) and in response to the specific needs of Koori defendants and young offenders. Further aims include working on causes of offending through individualised case management for up to four months; providing priority access to treatment and community support services; and reducing the likelihood of re-offending.

CISP offers the following:
• an actuarial screening and assessment process;
• targeted intervention which accords with the level of risk of re-offending and the client’s needs;
• provision of quality advice to the magistracy to facilitate optimal pre-sentencing and sentencing outcomes;
• case monitoring and case management where appropriate; and
• consistent data collection to facilitate evaluation.

To enter the program, a defendant is able to refer themselves or a referral may be made by prosecutors or police, lawyers, the Office of the Public Advocate, the judiciary, court staff, relevant support services or family/friends. Participants may access the program from any Victorian Magistrates Court, including the Family Violence Division.

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9 ibid. See also Courts and Programs Development Unit, Department of Justice, (2006) Service Delivery Model for the Court Integrated Services Program, Department of Justice
10 Magistrates Court of Victoria, Court Integrated Services Program (Brochure), available at: http://www.magistratescourt.vic.gov.au/wps/wcm/connect/Magistrates+Court/Home/Court+Support+Services/MAGISTRATES+-+CISP+brochure+-+publication
See also Indigenous Brochure (CISP)
11 It aims to reduce re-offending by 15% by 2008-09: (Magistrates Court (Vic) 2005)
12 CISP is available only to those appearing in the Magistrates Court, but may include as participants those whose charges would ultimately be dealt with in the County Court. Participants may also come from a civil or intervention order matter (Magistrates Court (Vic) 2008: 64)).
individual in question will then be assessed by CISP staff who will consider the risk of offending and causes of offending. A report will be prepared for court, and if the defendant is assessed as moderate to high risk, the Magistrate will make a decision as to eligibility.

To be eligible to participate, the individual in question must be charged with an offence and (in theory) appear before the Court on summons or bail (but many are assessed whilst in custody) (WA LRC: 162). He/she must also be likely to offend again, based on their criminal history or the pattern of current offending. Although there is no specific type or seriousness of offence underpinning eligibility, the CISP Program Manager has indicated that many of the program’s participants would not have been released on bail if they had not been assessed as suitable to participate in CISP. He/she must also have drug and alcohol dependency and misuse issues; a disability; or inadequate financial, social or economic supports contributing to offending. Further, the matter must ‘warrant intervention to reduce risk and to address needs’. There is no necessity to enter a plea prior to participating, and participation is not dependent on an intention to plead guilty, but the defendant must consent to participation. Participants cannot access the program unless charges are laid at a CISP operating court.

If accepted into the program, the individual enters CISP on bail and an individualised treatment/support plan guides compliance with the program. If the offender was in custody prior to being accepted onto the program, the CISP staff work to ensure that the offender is released from custody with sufficient support. For example, program staff will, if necessary, organise temporary accommodation; pay for methadone; liaise with Centrelink to assist the offender to obtain crisis payments; and provide food and travel vouchers (WA LRC: 162).

CISP case managers (mostly Department of Justice staff) are located at courts at which the program operates and work with offenders on relevant issues in accordance with their support plan (although some external agencies case manage on particular issues such as housing). Brokered access to drug and alcohol treatment, and to services relating to housing, mental health, and Acquired Brain Injury-related needs is offered. Some individuals participating in CISP (low risk offenders usually) are simply referred to relevant services and support and have no further involvement with CISP staff, whilst others undergo intermediate or intensive case management. CISP also has service level agreements and protocols (to enable effective communication between service providers and case managers) with Forensicare (see Mental Health Court Liaison Service below), Youth Justice and Corrections Victoria.

There is some discretion in relation to whether a participant returns to court on a regular basis for review. Generally, participants appear before a Magistrate once a month during program participation, with the Magistrate relying upon reports prepared as to progress.

13 Although the Western Australian Law Reform Commission points out that if an offence is so serious that the individual is not eligible for bail, they would obviously be excluded.
According to the CISP Program Manager, the participant is not always able to appear before the same Magistrate, but many magistrates manage to maintain an interest in cases in which they have been involved despite this (WA LRC: 163). Upon completion of the program, if the defendant pleads or is found guilty, a final report will be prepared by CISP staff to be presented to court during sentencing. Offenders will then generally be given a suspended or community-based sentence (with effective transition processes now in place to enable ‘handover’ between CISP and community corrections staff of a particular case). Significantly, CISP participants are not able to participate in the program a second time unless charged with new offences.

Since inception, CISP has consistently received about 200 referrals per month, and 60% of those (approximately) are accepted into the program (WA LRC: 161). Indigenous clients of the program are assisted through the ALO program (see above) and by Koori Court Officers at Latrobe Valley Court (VLRC: 175). For the 2007/08 period, 2046 persons were referred to CISP and of these 1792 were assessed, 1283 were accepted and 509 were not accepted (Magistrates Court (Vic) 2008: 71).

The program appears to be having some success, assisting offenders who might otherwise face incarceration and enabling them to ultimately receive reduced sentences (WA LRC: 163). According to the Western Australian Law Reform Commission, pre-plea programs such as CISP are beneficial in that they may ‘take advantage of the ‘crisis’ point of arrest: for some offenders this is the optimal time to intervene’ (WA LRC: 162).

CISP is currently being independently evaluated. The CISP evaluators have indicated that the program is not focused so much on reducing remand rates, but on providing therapeutic and social support intervention (and thus contributing to reduced re-offending) and associated goals. Reduced re-offending will be achieved in this context not through control or monitoring, but ‘indirectly by the achievement of therapeutic and social support outcomes’. Thus, CISP ought to be ‘judged primarily on its capacity to resolve or improve defendants’ social and personal problems – noted as an ambitious task for any justice program. The evaluators outline the challenges that CISP faces, as follows.

High risk offenders commonly exhibit multiple forms of personal and social disadvantage which interact in complex ways. Some forms of disadvantage, such as mental illness, acquired brain injury or the lack of social support resulting from family breakdown, can be managed but are difficult to change. Even where change is possible, the degree of disadvantage faced by defendants is frequently such that it requires medium or long-term engagement with support or treatment services in order to achieve meaningful, lasting change.

In the case of a pre-trial program like CISP, the limited duration of a client’s engagement with the program is likely to limit the impact of interventions. Thus, a critical element for CISP will be the managed transition from CISP to longer-term engagement with post-

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14 Information collated by evaluators and provided by email by Department of Justice (Vic).
CISP support or therapeutic services. The success of CISP will need to be judged not only on the changes arising directly from interventions delivered in the pre-trial phase, but also on the effectiveness of the defendant’s transition to post-trial support or therapeutic services. While the multi-disciplinary nature of the CISP service teams provides a basis for managing service integration while clients are within the program, the challenge is to ensure that services continue to be delivered in an integrated manner after the client’s transition to post-CISP services.

Figures provided suggest that 9% of participants are Indigenous (with no statistics available on completion rates); and that 65% of participants present with an alcohol misuse issue.  

2.4 CREDIT/Bail Support Program

This program originated in 2004 with the merger by the Magistrates Court of the Court Referral and Evaluation for Drug Intervention and Treatment Program (CREDIT) and Bail Support Program. CREDIT was piloted in 1998 as one of the earliest court intervention programs in Australia in the Melbourne Magistrates Court and diverts drug dependent individuals to treatment as a condition of bail. The Bail Support Program (BSP) aimed to increase the likelihood of defendants being granted bail by providing support services relating to accommodation, disability support, anger management and job training, *inter alia*. In combination, the CREDIT/Bail Support Program (CBS) aims to increase the likelihood of a defendant being granted bail and of successfully completing a bail period.

The CBS is located at Ballarat, Broadmeadows, Dandenong, Frankston, Heidelberg, Moorabbin and Ringwood Magistrates Court, with CREDIT outreach at Bendigo Magistrates Court (with CISP operating at Melbourne, Latrobe Valley and Melbourne in lieu of CBS). The objectives of CBS are as follows:

- to provide access to accommodation, welfare, legal and other community-based supports;
- to monitor and support the program’s clients for a period of three-four months;
- to minimise harm to the client and the community by addressing the client’s substance abuse-related issues;
- to provide early treatment and access to drug treatment/rehabilitation programs; and
- to reduce the risk of client re-offending.

Further, CBS seeks to achieve the following outcomes:

- successful completion of bail by individuals who would otherwise be on remand;
- reduction in decisions to remand based on lack of accommodation, treatment or support in the community;
- successful placement in drug treatment/rehabilitation programs; and
- long term reduction in offending behaviour.

Telephone conversation, Mark Longmuir, Senior Project Officer, Court and Tribunals Unit, Department of Justice (VIC), 7 September 2009.
CBS is for adults (and some young people) with differing levels of drug use – specifically, first time to more serious/longer term offenders who are willing to address their illicit drug problem by engaging in treatment. Initially, those charged with violent offences were ineligible to participate in the program but following evaluation of CREDIT in 2004 (see below) there is now some discretion in this regard, dependent upon the outcome of relevant case individualised assessment. Persons with alcohol dependency issues are not eligible unless they also have an illicit drug problem. Generally, CBS participants have had a ‘long history of homelessness or unsafe housing, several years of illicit drug use and a high level of social, economic and health disadvantage’ (Magistrates Court (Vic) 2008: 66).

Referral to assessment is available to any defendant eligible to be bailed and may be made by a Magistrate, police (soon after arrest), lawyers, a court nominee, or family members or through self-referral. A plea is not required. Once an assessment has been completed, the magistrate will decide whether to accept a person onto the program by bailing them with a condition to comply with the program.

Throughout the duration of the program there may be at least one review before the court for the participant, with the magistrate providing necessary encouragement. Participants are expected to work within the conditions imposed under CBS and to regularly report to their case manager. Services offered to those participating include assessment, treatment and support, with follow up for up to four months; case management (including liaison with court); brokered treatment through Community Offenders Advice and Treatment Service (COATS) for detoxification, rehabilitation and drug and alcohol counselling; referral to short term crisis accommodation; referral to pharmacotherapies and to outreach services for those requiring intensive support; referral to employment/training programs; and/or material support (such as food vouchers, court date reminders/diaries). CBS has access to 20 houses to accommodate participants on a short-term basis (with ten properties now available for women and children) (VLRC: 193) and assistance is offered to find longer-term accommodation. Upon completion of CBS, a report is finalised for the court to be taken into account to mitigate sentence under general sentencing principles. Non-completion ought not to be used against a defendant.

An evaluation was completed in 2004 in relation to CREDIT prior to its merger with the Bail Support Program (Alberti et al. 2004). The evaluation indicated that CREDIT participants were males aged 20-29 in most cases, with ‘significant offending histories’ and with over 76% using heroin. According to the evaluation, as at September 2003, 80% of all participants had been successful in completing the program and 92% of those completing the program were given a non-custodial sentence, thus indicating that CREDIT ‘reduces the likelihood of a sentence involving incarceration’ (Alberti 2004: 12). Stakeholder feedback was also very positive, but almost ‘universally’ stakeholders indicated that alcohol dependent persons ought to be eligible to participate. Significantly,

16 Agencies involved include social services organisations such as St Vincent de Paul; government agencies (Victoria Police, Department of Human Services); Legal Aid; and community health centres.
only 2.4% of participants identified themselves as Aboriginal, 0.8% as ATSI and 0.2% as Torres Strait Islander (King 2004: 65).

Factors seen to be contributing to success included the speed with which participants move into treatment, the ‘all-round flexibility of the program’, the brokering of services to assist in completion of bail, assistance in accessing services immediately upon release from custody (such as Centrelink’s emergency payment or food vouchers), the work of case managers in establishing a relationship with participants, and the availability of transitional housing (Magistrates Court (Vic): 66; Alberti 2004:13). Criticisms of the program have suggested that it is culturally inappropriate for Koori defendants, that lack of staff causes delay and prolongs remand periods, that some Magistrates and police officers are reluctant to utilise the program, and that demand exceeds supply (VLRC: 193).

2.5 Rural Outreach Diversion Worker (RODW)

The Rural Outreach Diversion Worker (RODW) provides a service to persons appearing in rural courts without access to CREDIT. At the time of its commencement in 2003, the program was implemented in 20 auspicing organisations in rural and regional Victoria.

The RODW provides a link between the community, police, courts and the drug treatment service system and is primarily targeted towards young offenders aged below 25 years. The target group is offenders who are apprehended for a non-drug related offence and thus not eligible to receive a caution and to participate in the pre-court Drug Diversion Program, but whose drug use is a clear factor in their criminality.

Persons may referred through the Magistrate, police, lawyers, or juvenile justice, for instance, or through teachers or family members. The person will then be assessed as to suitability in relation to health, accommodation and other support needs. They will participate by way of an individualised treatment plan, and drug treatment will be provided by the Community Offenders’ Advice and Treatment Service (COATS) and through other services, as appropriate. Progress is reported to court.

Indigenous participation is recorded as being between 2% (Joudo: 77) to 3.8% (AIHW 2008: 80). Difficulties in the program included having to work with limited services available in rural areas, including public housing, for instance; dealing with inadequate resources and support; having to do outreach over a large geographical area (but considered essential due to transportation issues for participants); and delivering drug treatment whilst working within a small community (raising issues of confidentiality, for example) (Porter Orchard & Associates 2005).

2.6 Criminal Justice Diversion Program (CJDP)

The Criminal Justice Diversion Program (CJDP) was piloted in 1997 at Broadmeadows Magistrates Court as a collaborative project between Victoria Police and the Magistrates Court of Victoria. It now operates in all Magistrates Courts in Victoria, following formal
evaluation and review in 2000, and is available to both adult and young offenders. It is not a bail diversion program.

CJDP aims to prevent the entry into the criminal justice system of first time offenders, offenders who are charged with committing relatively minor offences, or low risk defendants unlikely to be incarcerated. Participants are diverted by agreeing to comply with conditions requiring them, for instance, to donate money to a particular project, perform voluntary work, compensate or apologise to the victim, attend counselling and/or treatment or comply with any other condition.

The stated benefits of CJDP are as follows. The program:
• ensures that restitution is made to the victim of the offence if appropriate;
• ensures the victim receives an apology if appropriate;
• reduces the likelihood of re-offending;
• assists offenders to avoid an accessible criminal record;
• assists in the provision of rehabilitation services to the offender;
• increases the use of community resources to provide counselling and treatment services; and
• assists local community projects with voluntary work and donations (Alberti 2004: 4).

CJDP is governed by section 128A of the Magistrates’ Court Act 1989 and is not a bail-based diversion program. Persons may enter the program through summons or bail. Section 128A(2) provides that a court may adjourn relevant proceedings for a period not exceeding 12 months to enable the defendant to participate in and complete the diversionary program. Police, prosecutors, lawyers, Magistrates or other court staff may refer a defendant to the program, or the defendant may self-refer.

To be eligible, the defendant must be charged with a summary offence (not subject to a minimum or fixed sentence or penalty (with the exception of loss of demerit points)), and there must be sufficient evidence to gain a conviction. Further, prior convictions may be taken into account by the court in deciding on eligibility and certain factors may automatically exclude a defendant from participating (such as driving under the influence of alcohol or drugs). The defendant must also acknowledge responsibility for the offence in court, but this does not constitute a formal plea of guilt, and, most importantly, they must consent to participate. Finally, the court must deem it appropriate for the defendant to participate in CJDP.

Once the prosecutor files a Diversion Notice (indicating their consent to diversion), the Magistrate will then need to also deem the defendant suitable to participate. A Diversion Coordinator will assess the defendant’s circumstances in order to advise the Magistrate of

possible options for the defendant at an open hearing. The Magistrate will assess suitability for participation and develop an appropriate diversion plan at this time, undertaking consultation with any victim of the alleged offence. The charges are adjourned (and bail discharged if the defendant has been on bail) whilst the defendant participates in CJDP, and upon successful completion of the program the charges are dismissed and the matter recorded as if the defendant had been cautioned. Thus, the participant has no formal criminal record. If the plan is not completed, the charges are heard as if the diversion had never taken place and if the defendant proceeds to sentencing, the Magistrate is required to consider the extent to which the defendant complied with the diversion program (s 128A (5)).

In an evaluation completed in 2004, the program was assessed as working successfully, based on the high completion and low recidivism rates, as well as comments by all stakeholders, including victims - although the program was apparently difficult to access without legal aid representation (Alberti 2004). According to the evaluation, approximately 6% of all incoming criminal cases were being referred to CJDP; with males aged 17-29 constituting 48.8% of referrals over a two-year period (2001-2003), and over 90% being first time offenders. From November 2000 to September 2003, 94% of diversions were successfully completed (with no conviction recorded), and the majority of diversions were completed after 91 to 240 days (Alberti: 6-7).

Factors contributing to success included the flexibility of the program (specifically, the content of diversion orders/plans) and its legislative basis. Further, less than 7% of diversion participants had offended within 12 months of exiting the program (compared with 17.5% of a comparison group) (VAGO: 51). In 2006-07, the program facilitated access to counselling/treatment for alcohol use for 110 participants (compared with 189 to drug counselling/treatment; 343 to defensive driving courses; and 11 for gambling out of 1249 offender referrals in this period) (VAGO: 52).

More recently, the Sentencing Advisory Council (Victoria) indicated that over 91% of participants completed the program (based on 2006-07 figures) (Sentencing Advisory Council: 3). Diversion plans constituted 7.2% of all dispositions in the Magistrates court during this period (the third most common disposition). The use of diversion plans differed according to gender, age and offence type. The most common offences in the diversion population were property offences (35.6%) and traffic offences (21.7%). Proportionally, diversion plans were more likely to be imposed upon males aged 17 to 19 years (17.4%), defendants aged 65 years or older (16.1%) and female defendants (11.0%); whilst 71.2% of the diversion population were males (with 59.4% defendants aged 17 to 29). The Council indicated that the use of a broad range of conditions in the CJDP serves to ‘fulfil purposes such as punishment and denunciation’, and the ‘fact that participation in the program does not result in a criminal record can have a significant rehabilitative effect’.

2.7 Community Forensic Mental Health Court Liaison Service (MHCLS)
The MHCLS is a court-based assessment and advice service rather than a diversionary program. It is provided by Forensicare, the Victorian Institute of Forensic Mental Health, and funded by the Department of Human Services. It commenced operation in 1994 at Melbourne Magistrates Court, but now operates at Ringwood, Heidelberg, Dandenong, Frankston, Broadmeadows and Sunshine Magistrates Courts. It is due to also start up at Moorabbin Magistrates Court. There are also some part-time, rural services provided at Geelong, Shepparton, Bendigo, Ballarat and Latrobe Valley Magistrates Courts by local area mental health services.

It appears to operate along similar lines to that of the Statewide Court and Community Liaison Service in NSW. Mental health professionals within MHCLS conduct assessments for people who are identified as having a mental illness, which may become relevant to (a) bail and sentencing and (b) decisions as to whether a person may be eligible/suitable for CISP. MHCLS workers collaborate with CISP workers – sharing information about clients (given that they have access to different types of information), and comparing clinical impressions. MHCLS also refers clients to adult health services, private psychiatrists and psychologists, and GPs. They also collaborate, specifically, with the ALO worker when assisting Indigenous clients. MHCLS does not supervise defendants.

2.8 Youth Justice (previously Adult) Court Advice Service (YACAS)

The YACAS is a statewide program aimed at diverting young people aged 18-20 years from the criminal justice system and is provided by the Department of Human Services, Youth Justice. It commenced at Melbourne Magistrates Court in 1998, and serves the Magistrates, County and Supreme Courts and the Court of Appeal as well as the Children’s Courts in Victoria. Referral may be through lawyers, the judiciary and magistracy, regional Youth Justice units, CISP, family, or community agencies or through self-referral.

YACAS undertakes a number of tasks, including liaising with CISP officers, judges and legal and court personnel in relation to appropriate strategies to assist young people with complex needs, providing progress reports in terms of young people on bail (or deferred sentence) (Magistrates Court (Vic) 2008: 67) and advice to the court when considering bail (including providing information on relevant services that might be made available to defendants).

Supervised bail is an option under YACAS, with the YACAS worker collaborating with the court in providing case management of individuals on supervised bail or deferral of sentence orders, which may include undertaking drug and alcohol counselling and abstaining from these substances, psychiatric intervention, urine screening, job skills assistance, anger management courses and family support programs and coordination of services and advice for young people with multiple needs. There is some indication that participation in bail supervision under the program will increase the likelihood of

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18 Email, Paula Verity, Psychologist, MHCLS (Forensicare), 20 and 25 August 2009
receiving a Youth Training Centre order or a non-custodial order than an adult custodial sentence (VLRC: 124).

The Victorian Auditor General assessed YACAS (with respect to very specific terms of reference) in 2008 (along with other diversion initiatives for young people). The assessment notes that Magistrates had suggested that it might be more helpful for young people if they were able to access supervised bail programs at an earlier stage through police referral rather than through court referral (VAGO 2008: 3).

2.9 Central After Hours Assessment and Bail Placement Service (CAHABPS) 19

CAHABPS is a Department of Human Services initiative, commencing as a pilot in Melbourne in 1994 and expanding to regional Victoria in 1997. It was developed in response to the large numbers of children remanded in custody by bail justices after hours (VLRC: 123).

CAHABPS provides a statewide, after-hours service for young offenders aged 10-18 years of age where police and/or a bail justice are considering remanding the individual in question and/or in instances where bail accommodation is required. 20 Police considering remand of a young person after hours must contact CAHABPS in certain instances and others (including the young person themselves, parents/guardians, carers or community sector organisations) are also able to contact CAHABPS directly for assistance. In some cases, police may contact the service where they are considering granting an individual bail but require assistance in locating accommodation.

The service operates in metropolitan and regional regions around Victoria. Workers will generally attend at police stations in metropolitan areas to assist and in rural and remote areas a CAHABPS volunteer or juvenile justice worker may either attend at the station or conduct a telephone assessment. The assessment will take into account the nature of the alleged offences, the manner in which children present and their attitude, the risk to any accommodation provider, and how any identified risks might be minimised or contained through appropriate bail conditions. The CAHABPS worker will undertake an assessment of the young person in question and will advise accordingly in relation to suitability for bail placement. The young person will also be able to access support and information in relation to bail and court processes through the CAHABPS worker, assistance with finding bail accommodation, and referral to additional youth and family support services. CAHABPS doesn’t have funding to provide accommodation, but the bail support officer works with the young person to negotiate with family/friends to find suitable accommodation.

CAHABPS is a mainstream program but it also offers a service for young Aboriginal people. CAHABPS inform the regional youth justice units when they have attended the police station after hours. The regions will contact their Koori workers if the young

20 During business hours, police will contact the local regional youth justice unit.
person is Aboriginal. In 2004, 67% assessed by CAHABPS were male and 15% were Indigenous (VLRC: 123).

2.10 Deferred Sentencing

Deferred Sentencing commenced in 2000 in all Victorian Magistrates Courts and is available for persons aged 17 – 25 years. The relevant provision for this initiative is s 83A of the Sentencing Act (Vic).

The Magistrates Court can defer sentence for up to six months where the offender has pleaded guilty. The accused person is bailed for this period of time, with conditions referring them to relevant treatment where drug use is a predominant issue, for instance. Compliance will be taken into account at sentencing.

According to statistical information provided by the Australian Institute for Health and Welfare, Indigenous participation in deferred sentencing is recorded at 0% (AIHW 2008: 80).

2.11 Mental Health List

The Mental Health List will commence as a pilot program in the Melbourne Magistrates' Court in early 2010. It will assist defendants who have mental health issues or other forms of cognitive impairment that is connected with their alleged offending (most specifically, those with serious mental illness, acquired brain injury or moderate intellectual disability).

Defendants will not be expected to enter a plea in order to participate, as this will occur upon completion of the program. Those charged with offences of serious violence or of a serious sexual nature will be excluded. Other likely criteria may include having a mental illness or cognitive impairment that has contributed to the alleged offending, having some functional impairment resulting from the mental illness or cognitive impairment, and being able to benefit from what the List has to offer.

It is also expected that participation in the program will range somewhere between 3-12 months, and involve a problem-oriented court process with assessment and input by clinicians and support provided by case managers. In some instances, those participating will have the opportunity to have all charges dropped and no conviction recorded if they are able to complete a relevant period of participation (and they will not be required to return to court after this period) (similar to the CJDP above). For others, it is expected that upon completion of a period of participation, they will return to court for (reduced) sentencing.

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21 Email, Yvonne Luke, Acting Manager, Youth Services & Youth Justice, Department of Human Services (Vic), 24 August 2009
22 The information on this initiative was provided by Glen Rutter, Senior Policy Officer, Courts and Tribunals Unit, Department of Justice (VIC) by email, 4 & 7 September 2009
The program will be linked with CISP, with those defendants who might otherwise be eligible to participate in CISP working with the court/professionals through the Mental Health List, where appropriate. Although not Koori-specific, the ALO will be called upon to assist, it is hoped, on an ‘as needs basis’ and staff will undergo relevant cultural awareness training. Further, there is currently some consideration in relation to whether it might be worthwhile investigating options for purchasing in expertise regarding clinical assessment of Koori participants on an as needs basis.

2.12 DISCUSSION - VICTORIA

The discussion below is directed towards raising key issues that arise in relation to existing programs in Victoria, with particular reference to program elements or principles underpinning program process and content likely to be of benefit to Indigenous offenders.

Eligibility criteria

Bail diversion programs are generally targeted in some way at particular groups of persons, some being more inclusive than others in this regard. Often, offenders will be assessed in terms of suitability for a program by reference to particular criteria. These might include type of offence; whether an offender lives within the jurisdiction of the court or in a location where treatment and support services are available; or the existence and extent of a particular problem such as drug or alcohol dependency, mental health, or homelessness. There are often specific exclusions for offenders with a history of violent or sexual offending and/or if currently charged with such offences (including family violence); with psychological issues; or who are not willing to plead guilty, *inter alia*.

These exclusion and inclusion criteria may appear neutral on their face, and there may well be justification for such criteria. Excluding violent offenders is one means of ensuring the safety of program and court staff in their interaction with participants in a diversion program (as well as managing any risk of harm to the community), for instance. Criteria target the program at a relevant group of offenders, with particular reference to those most likely to benefit from a particular program. However, these criteria may disproportionately inhibit Indigenous offenders’ ability to access programs.

The criteria that probably present the greatest hurdle in this regard for Indigenous offenders are:

- exclusion criteria on the basis of the history of offending;
- exclusion criteria for current charges in relation to offences of violence and/or convictions for the same; and
- where a program has prioritised intervention in illicit drug problems over alcohol treatment and support (or otherwise excludes alcohol misuse as an issue).
Evaluations of the Magistrates Early Referral into Treatment (MERIT) drug diversion program in NSW indicated that Indigenous offenders were being assessed as suitable to participate in the program, but were ultimately not being accepted into the program due to the exclusion of certain offences of violence and the exclusion of alcohol as a primary drug issue.

The issue of exclusion of alcohol as a primary substance abuse issue is dealt with in more detail below. In terms of exclusion for violent offending, Indigenous people may be more likely to have a history of offences against the person (including assault police and domestic violence). (Cain 2006; see also Auditor General 2009). Indigenous offenders are more likely in general to be facing charges or to have convictions for offences of violence (including for family violence), often linked to alcohol intake. The Crime Research Centre discussed this in the context of evaluating the Indigenous Diversion Program in the Kimberley. This program excluded alcohol as a primary substance abuse issue. The evaluation noted that this exclusion ‘overlooks the realities of life in Aboriginal communities where alcohol is a serious issue’ (Crime Research Centre 2007). The Australian Institute of Health and Welfare identified these same criteria as disproportionately impacting Indigenous participation rates in a recent evaluation of drug diversion-based initiatives in rural and remote Australia (AIHW 2008). Exclusion based on criminal history (including prior incarceration) may also inhibit access for Indigenous people (Joudo 2008). The disproportionate contact Indigenous persons have with the criminal justice system and the likelihood that they will have already spent time in prison will lead to more significant criminal histories.

Some programs are more inclusive than others, and will have limited exclusion criteria and broad inclusion criteria. In Victoria, the CISP model is an example of a program that is broadly inclusive. It is directed at ‘people from backgrounds of disadvantage and marginalisation’ who are at moderate to high-risk of offending. The criteria reflect this position. The offender need only present with either a disability; substance dependency or misuse issue; or inadequate financial and other supports, but the relevant factor(s) must contribute to the severity or frequency of offending and there must be sufficient risk of re-offending. There is no stated exclusion for offences of violence or of a sexual nature, and alcohol problems are included, and indeed are evident in 65% of cases dealt with by the program. There are a number of possible sources for referral to CISP, and it is accessible through any court (though located in only three locations).

By comparison, CBS is a more targeted program in that offenders must have an illicit drug problem in order to participate and the services/programs to which participants are subsequently referred reflect this focus. This is less likely to be of assistance and relevance to Indigenous people due to the preferring of illicit drugs over alcohol. The low participation of Indigenous offenders in the program to date (2.4%) is likely to be an indication of this. However, it should be noted that this program has modified its initial exclusion of those with a history of offences of violence. It is now discretionary whether or not such a history leads to exclusion.
Further, although the CJDP has been evaluated as a successful program in terms of reducing re-offending and its high completion rates, its eligibility criteria includes exclusion of persons on the basis of prior convictions. This reflects the nature of the group targeted for inclusion in CJDP. The program is specifically aimed at first time offenders (over 90% of participants in 2001-2003), offences of a minor nature, or offenders unlikely to be incarcerated. Its objective is to prevent entry into the criminal justice system, rather than diverting persons into treatment or services who are already more firmly entrenched within the system. Whilst there are no CJDP statistics available in relation to Indigenous participation, Indigenous offenders are less likely to access this program because they are more likely to have a criminal history and/or be facing a term of imprisonment.

This summary raises a number of points. Firstly, a general program such as CISP with wide eligibility criteria is able to potentially include a greater number of offenders, including Indigenous offenders. The Geraldton Alternative Sentencing Regime (WA) (see below), a general program like CISP, has been evaluated as effective in engaging with Indigenous people for this reason, as well as due to its inclusion of alcohol as a focus.

Secondly, consideration should be given to the impact that any exclusionary criteria may have upon Indigenous persons, with particular reference to criteria based on level of prior offending and/or offences of violence. Rather than automatically excluding groups of persons on the basis of a significant criminal history or offences of violence it may be appropriate to provide for some discretion in this regard, as occurs in CBS. Individualised risk assessment with appropriate screening tools may be preferable to automatic exclusion, as occurs in CREDIT (NSW), for instance (see below). QIADP excludes offences of and offenders with prior convictions for serious sexual or personal violence, but appears to exercise some degree of discretion by considering the offender’s history of violent offending during the assessment process.

There should be no automatic exclusion for significant offending history, or a history including offences of violence (unless perhaps limited to a particular category of violent offences), in Indigenous-focussed bail diversion programs.

It is preferable to incorporate an element of discretion into decision-making or to utilise a risk assessment tool to deal with such issues on an individualised basis in preference to automatic exclusion.

**Pleading guilty**

The CJDP requirement that an offender acknowledge their offending in order to be eligible to participate may also preclude Indigenous participation in the program. Neither the CREDIT/Bail Support nor the CISP programs require a plea of guilty prior to entry to the program. Programs vary in this respect. Many of the drug diversion and mental
health programs require offenders to plead guilty or to indicate an intention to plead guilty; admit the facts as alleged; to acknowledge offending in the case before the court; or to not contest the charges.

There is some suggestion that pleading guilty is a first step towards acknowledging the harm that a particular issue is causing (in the context of offending). This is the approach taken in drug court initiatives. On the other hand, it might also be suggested that the issue of whether one is guilty is separate to any assessment as to treatment and support required (see discussion in MERIT (NSW) below). Further, requiring a plea of guilt (or similar) may coerce individuals into admission in order that they may access the program and thereby avoid a term of imprisonment. The voluntary nature of bail diversion programs means that offenders ought not, even indirectly, to be coerced into participation (although see AIHW (2008) and discussion suggesting that these programs are by their nature coercive). For this reason, offenders are often key participants in the development of individualised treatment or intervention plans as part of program process, and generally must be willing to participate in order to be accepted onto the program.

Requiring an admission or plea may also place Indigenous offenders at a disadvantage, as Indigenous offenders may be less likely to make admissions (Urbis Keys Young 2003). This issue was identified in an evaluation of the Indigenous Diversion Program (Crime Research Centre 2007) (see further below). Other evidence suggests that Indigenous offenders are more likely to be coerced into making admissions.

In general, offenders should not be required to plead guilty or to indicate an intention to plead guilty. It may also be inappropriate to require an offender to admit the facts as alleged or to have to otherwise acknowledge their offending in order to participate in diversion programs.

Resourcing issues

There are significant benefits of an Indigenous-specific initiative such as the ALO program, as noted above. One option for the Department is to adapt CISP to ensure greater access to the program for Indigenous offenders by expanding the ALO program. It has been suggested that the ALO or an ALO-type program should be available in every court, including the Children’s Court and the Koori Children’s Court and it may be reasonable to expand the program to a greater number of courts. There is already some suggestion that the ALO program may be utilised in future for the forthcoming Mental Health List diversion program. This might occur with the program maintaining its connection to CISP or otherwise, and may extend to the Children’s Court if appropriate. However, the expansion might have to be targeted at particular courts, rather than available in every court, perhaps with reference to areas with larger Indigenous populations and/or higher remand rates for Indigenous persons.
The issue of adequate resourcing of such an initiative (current or future) is important. Currently, on the information available to us, only two ALO program staff members are required to provide a statewide liaison service, including through a telephone service for some offenders. ALO staff are also required to supervise bail in individual cases and take on a more strategic role. In the last year, the ALO program assisted a relatively large number of offenders (although the level of assistance provided in each case is not clear).

Providing a single coordinator and liaison officer for all Victorian courts within the ALO program or otherwise inadequately resourcing such an initiative is likely to impact upon effectiveness. In considering any expansion of the ALO program, a commitment to sufficient resourcing (particularly in relation to staffing) is essential in order to ensure that the program is able to achieve its intended outcomes.

This principle is applicable to development of any Indigenous-focused program or initiative in the context of bail diversion. The ability of any program to provide a bail diversion option to Indigenous offenders in Victoria will be necessarily limited by the availability of resources (including staff). Programs ought only to operate within their capacity in order to ensure success. Any Indigenous-specific initiative such as the ALO program ought to be sufficiently resourced to ensure genuine capacity to undertake work required.

**Relationship between Indigenous initiatives – Koori Court**

A further issue arising concerns the relationship between the Koori Court and the ALO program. At least in LaTrobe Valley it appears that Koori Court Officers provide ALO-type assistance in lieu of ALO program staff. The Victorian Law Reform Commission has discussed at various points in their review of bail the potential role for Koori Court Officers (including in the Koori Children’s Court) in filling gaps within the ALO program or the utilisation of Koori Court Officers even in preference to ALO staff in some areas.

However, utilising Koori Court staff to provide assistance in relation to bail may be simply overstretching resources previously committed to the Koori Court (as well as giving rise to more complex issues relating to the appropriateness of the Koori Court program to deal with bail issues (see below)). This issue arises in other jurisdictions and is discussed below (see Specialist Courts – Indigenous Courts).

It may be appropriate for any ALO program to utilise networks developed by Koori Court staff (especially connections established with Koori-specific, local services). Otherwise utilising Koori Court resources may not be an adequate solution to the issue of Indigenous access to bail diversion. This is an issue for stakeholders to consider. Certainly further clarification is required in relation to the division of the Koori Court and ALO programs with respect to bail. The lack of clarity in the relationship between different Indigenous-specific initiatives within courts may lead to duplication of services, gaps in services and an overburdening of existing services.
Any Indigenous-specific initiative or program ought to be sufficiently resourced to ensure capacity to undertake work required, as well as maximum accessibility for all Indigenous offenders, including young offenders and those in rural and regional Victoria.

It is important, however, not to overstretch or simply reallocate existing resources in expanding current programs and/or in developing new programs in an attempt to increase accessibility.

*Family and community in Indigenous-specific initiatives*

The focus upon community and family, including building of capacity, is very important in any bail diversion program directed towards engaging and assisting Indigenous offenders. This is in keeping with important principles of empowerment and self-determination. The Aboriginal Health & Medical Research Council has developed principles which should underpin best practice in the area of service provision to Indigenous offenders accessing diversion, and suggests that family and community must be a focus, including through family-centred counselling and drawing upon family and community support to assist an offender (see below in discussion relating to MERIT) (Auditor General 2009).

The Koori Youth Supervised Bail Program incorporates a number of elements likely to benefit Indigenous offenders. Of particular note is its focus upon family and community. Other Indigenous-specific initiatives (including QIADP and the Koori Bail Project (NSW)) emphasise family and community (see below). Rather than dealing only with the young person, the Koori Youth Supervised Bail program specifically provides for intensive support to be withdrawn at a certain point, where appropriate, to enable family and community to provide relevant support to the young person and seeks to (re)-connect the young person with community. In its provision of outreach services (thus attempting to overcome barriers to access for Indigenous communities), it aims to improve the capacity of the family to offer this support. In creating links between Indigenous-specific or culturally appropriate service providers it is also building capacity within the community (as well as ensuring that offenders are able to access services that are relevant to them and thus increasing the effectiveness of the program and its likely outcomes).

Capacity building is dealt with in greater detail below. In brief, whilst there is potential for family and community to offer an offender support, capacity building may be required to enable this to occur. The emphasis upon family and community is considered in relation to the Indigenous Diversion Program in remote Western Australia below. The evaluation of the program noted that family needed to be further incorporated into interventions. Spouses may require counselling along with the offender in question, and are thus assisted to support the offender.

*An emphasis ought to be placed in Indigenous-focussed bail diversion upon family and*
community, including building capacity within Indigenous communities.

Holistic approach to offending

The benefit for Indigenous offenders of a general program is that it must tackle a broad range of social issues. CISP, for instance, is aimed at addressing the disadvantage and marginalisation of offenders. In contrast, there is some focus within CBS upon broader welfare issues but it appears to be more as ‘substance-abuse related issues’ rather than as factors contributing to the personal and social disadvantage of an offender (as they are in CISP).

Whilst offending is often linked to issues such as homelessness, mental health, cognitive and other disability, poverty and substance abuse these connections are compounded for Indigenous offenders. Those participating in Cairns Alcohol Remand and Rehabilitation Program in Queensland, for instance, are predominantly Aboriginal and Torres Strait Islander; have low literacy and communication issues; are welfare dependent; have low self-worth; and have mental health problems (as well as substance abuse issues) (see below). A diversion program targeted at Indigenous offenders should therefore be able to intervene in relation to a broad range of issues, providing an integrated, holistic approach to offending. It should thus address, where possible, factors contributing to offending but also those which underpin broader social disadvantage (within the time frame allowed). This may entail responding to issues which are not directly related to the offence in question (quite often a requirement of bail diversion programs). The Koori Youth Supervised Bail Program, for instance, uses a range of specialised external services through a brokerage arrangement, thus providing access to culturally appropriate programs such as cultural healing programs and services relating to drug and alcohol issues, but also in relation to a number of issues such as schooling.

It is of course possible to have an issue-specific program such as QIADP (focussing on alcohol) that deals with a broad range of issues. A program with a single focus upon alcohol dependency as a criterion for access to services and intervention may be able to provide specialised and expert referral, treatment and support for alcoholics. This is obviously positive for Indigenous offenders. Mental health and intellectual disability programs often have a separate list or court with a designated Magistrate, allowing for specialisation. However, the latter may still be provided within a general program such as CISP, with brokerage arrangements, for instance, with the added advantage of wide enough criteria to enable a diverse target group of offenders to access the program. Brokerage may work effectively. It has been evaluated as a key success factor in CBS, although not with reference to Indigenous offenders (Magistrates Court (Vic) 2007: 66). It is present in a great number of bail diversion programs. The flexibility that brokerage

23 The substantial correlation between these factors for young Indigenous offenders is discussed in HREOC 2008: 34. See also Department of Justice (Vic) 2005 for discussion of the need to tackle underlying issues.
would allow is likely to increase access to the program for people with a range of issues, rather than perhaps limiting access to a single issue such as alcohol abuse.

There may, thus, be no disadvantage to utilising a general program such as CISP to address Indigenous alcohol substance abuse issues alongside other problems offenders face. It may be more beneficial to develop an Indigenous-specific diversion program which is broad in its scope (rather than alcohol-specific), but which will be able to effectively address the issue of Indigenous alcohol misuse/dependency and/or to ensure that a program with a general focus, such as CISP, has a sufficient emphasis upon and/or expertise in dealing with Indigenous alcohol misuse (and other relevant substance misuse) as it occurs within the context of Indigenous offending.

A diversion program for Indigenous offenders ought also to be able to deal with offenders holistically; that is, to tackle the range of issues contributing to offending and underpinning Indigenous social disadvantage more generally. One approach may be to utilise brokerage arrangements.

Any diversion program targeting Indigenous offenders should be broad enough in scope to be able to address the issue of Indigenous alcohol dependency or misuse, but need not necessarily be alcohol-specific.

**Evaluation**

Programs may be evaluated as working effectively in terms of reducing re-offending or completion rates. This may be attributable to factors such as program flexibility, provision of assistance immediately upon release from custody or relationship building that occurs between case managers and program participants, as is the case with CBS in Victoria (Alberti 2004; Magistrates Court (Vic) 2008).

However, there may be little statistical or analytical information available about Indigenous participation within programs. But there is no significant, comprehensive analysis in relation to Indigenous participation in the programs and factors likely to improve Indigenous access to and/or completion of programs.

This difficulty presents itself in other jurisdictions. In a study of Indigenous drug diversion initiatives, Joudo has noted the difficulty in trying to locate rates of Indigenous participation in relevant programs, due in part to the fact that such data had not been collected by agencies/departments (Joudo 2007; see also Urbis Keys Young 2003). This may or may not be the case in Victoria, however it should be noted that such data is necessary in order to ensure that initiatives are working effectively for Indigenous people.

The lack of evaluative material in relation to Indigenous bail diversion makes it difficult to analyse the effectiveness of programs for Indigenous offenders. It is important, in the context of developing an Indigenous-specific initiative, that processes of evaluation and
Ongoing evaluation and review (with effective Indigenous input or control) is essential to ensure that any bail diversion program is engaging with Indigenous offenders. Data ought to be collected to enable such processes to be completed, especially where a mainstream program is utilised to provide diversion to Indigenous offenders.

3 BAIL DIVERSION – MENTAL AND INTELLECTUAL IMPAIRMENT

Summary of Programs

The Homeless Persons Court Diversion Program/Special Circumstances List (SCL) are Queensland initiatives directed towards diversion of adult homeless persons (also with mental health or cognitive or other disabilities in the case of the SCL) away from the criminal justice system and from incarceration (including incarceration through non-payment of fines). The charges in question generally involve public order offences and the offender must plead guilty. Offences of violence or of a sexual nature are excluded. The program provides assessment, advice to the court in relation to the offender, and advice and facilitation of relevant referrals to services (including drug and alcohol treatment) for the offender. Sentence is mitigated upon completion. The SCL has an Indigenous participation rate of 33%. [3.1].

The Intellectual Disability Diversion Program in Western Australia focuses on offenders with an intellectual disability (as narrowly defined) rather than mental health issues. The offence must be triable summarily and the offender must plead guilty. Sexual offences are not excluded. The program is similar to the Queensland initiative, but is more intensive as offenders must comply with the directions of the program coordinator for the six months of participation and attend meetings with the coordinator. The coordinator draws up a program plan for the offender, provides referral assistance and liaises with service providers throughout. Sentencing will be mitigated upon completion, and there is provision made in some instances for ongoing support through the making of orders. The Indigenous participation rate is 19%, and 50% of participants have substance abuse issues [3.2].

The Magistrates Court Diversion Program in South Australia, operating under legislative provision, diverts those with a ‘mental impairment’ (broadly defined and including mental/intellectual impairment), along with those with substance abuse issues if a secondary issue to the impairment. Significantly, summary or minor indictable offences such as sexual assault and assault, drug offences and public order offences are all included, *inter alia*, but a risk assessment (in terms of safety to program staff) is conducted prior to being accepted and the offences must relate to the impairment. The offender must not contest the charges, although does not have to plead guilty. The
program addresses a range of issues for the offender through an individualised treatment plan and will be referred to relevant services whilst on bail for six months, with regular court reviews of progress. The Indigenous participation rate is 7% [3.3].

The Mental Health Diversion List in Tasmania works with adult offenders with mental or intellectual impairment as a result of mental illness (as defined) and charged with an offence triable summarily (excluding offences of family violence or of a sexual nature). The offender must plead guilty or admit responsibility for the offence. The program involves a multi-disciplinary team at assessment and other stages, and a range of issues are dealt with (including housing, health and employment, *inter alia*). The program is relatively short (4-8 weeks); and regular attendance at court for review is required within this period. Sentencing is mitigated upon completion [3.4].

In NSW, Justice Health operates a court liaison service in targeted Children’s Courts. Individuals are assessed in terms of mental health, and where appropriate, charges will be deferred to enable the young person to participate in a supervised bail arrangement. Indigenous participation rates are between 20.6% and 60% [3.5].

### 3.1 Homeless Persons Court Diversion Program/Special Circumstances List

*Homeless Persons Court Diversion Program*

The Homeless Persons Court Diversion Program (HPCDP) was initiated in 2006 and operated as a pilot until the end of 2007 at Brisbane Magistrates Court. It is based on a program that was run by Legal Aid in Queensland in early 2005, which was concerned with the homeless and their contact with the criminal justice system. Such persons were often repeatedly charged over time with public order or nuisance offences.  

HPCDP seeks to ‘help people make significant changes in their lives and reduce their encounters with the judicial system’.  

The specific aims of the program are as follows:

- to support homeless people charged with public order offences through the court process;
- to divert homeless people from the criminal justice system and instead enable them to access other services which will address accommodation, health and other needs which may contribute to offending behaviour;
- to reduce the number of fines being issued against people who have little or no capacity to pay fines;
- to reduce the risk of imprisonment for homeless people through fine default and ongoing offending; and
- to collect relevant data.  

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24 For discussion, see Legal Aid Queensland (2005) *Homelessness and Street Offences Project*, Brisbane QLD

Participation is voluntary, and the Mental Health Court Liaison Officer, lawyers (including ATSILS), DPP, relevant community organisations, and Magistrates may refer persons to the program or defendants may self-refer. They must be homeless; pleading guilty or not contesting the charges; facing charges for public order offences and/or related policing offences OR procedural offences such as failing to appear in court or breaching bail in circumstances related to public order offences. Having a criminal history or prior participation does not lead to automatic exclusion from the program. However, those charged with sexual or serious violent offences; appearing on drug offences where they may be eligible to participate in a drug diversion program; or if under 17 years will not be eligible.  

Those on the program must agree to an assessment as to eligibility by the Homeless Persons Court Liaison Officer, which will also involve the Liaison Officer looking into appropriate support services for the defendant. The Liaison Officer liaises between the court and the homeless defendant to ensure that consideration is given to the defendant’s personal circumstances and that the court exercises its discretion appropriately. The Magistrate will take the assessment into account when determining bail and an order may then be made for the defendant to participate in the program. The Liaison officer then assists homeless defendants to understand the court requirements and to access appropriate services including crisis accommodation, mental and other health services, drug and alcohol treatment, counselling, life skills programs, homelessness services and welfare agencies and acts as a point of contact for the court, the defendant’s lawyer, prosecutor, and Community Corrections (QPILCH: 5). Sentence should be mitigated following completion of the program.

From 1 May 2006 to 28 March 2008, the HPCDP made 207 referrals to accommodation, health and other services.  

Special Circumstances List

The Special Circumstances List (SCL) began as a pilot in 2006 as part of the HPCDP but has a more specific focus. This initiative is directed at diverting persons with impaired capacity due to mental illness/intellectual disability/cognitive impairment and who are homeless, as well as being charged with public-order offences. The program is aimed at ‘dealing with the impaired capacity of disadvantaged people to comply with public order legislation by initially disposing of their cases in a more appropriate and constructive manner’ (Walsh 2007: 226).

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26 Taken from QPILCH, *Homeless Persons Legal Clinic: Submission in response to the Australian Government’s Green Paper on Homelessness*, 4  
27 Homeless Persons Court Diversion Program Fact Sheet  
Once before a court and if deemed suitable, the matter in question is adjourned to the Special Circumstances Court. At the Special Circumstances Court, the matter is adjourned to enable participation in relevant programs and it is then returned to court at a later date for sentencing following completion. It is both pre-plea (bail based) and post-plea (sentencing based) oriented.

To be eligible to participate, an individual must be over 17 years of age; homeless; 29 and suffering from impaired decision-making capacity (due to mental health issues, intellectual disability, or brain/neurological disorder). They must also be charged with an ‘eligible offence’ (excluding serious drug offences, and offences of a serious violence or sexual nature; and including offences relating to public order such as failing to appear, begging, public nuisance, public drunkenness or failing to properly dispose of a syringe) (Walsh 2007). Further, they must plead guilty and not contest the charges in question.

Walsh has conducted a study of the SCL between August and October 2006, and observes that of 52 cases dealt with under the program during this period, 40% of persons identified as female and 33% as Indigenous (Walsh 2007). Further, 48% of those appearing had a diagnosed mental illness or intellectual impairment. Other statistics provided by Walsh relate to level of homelessness, income sources, age, and type of offence. The most common penalties imposed by the SCL were bonds (31%) and referrals to social services (31%). Notably, Walsh observed similar cases in the general arrest court (also involving persons with considerable levels of disadvantage due to indigeneity, homelessness and mental illness/intellectual impairment) and found that half had been fined and fines imposed upon homeless persons (or persons at risk of homelessness) were higher on average than those imposed on other individuals. She concludes that sentences ‘being imposed by the special circumstances court seem to be more appropriate to the population group in question’ and ‘much more likely to have the effect of addressing the underlying causes of their offending behaviour, thereby preventing recidivism’. Further, the SCL is ‘meeting the aims set for it’ (Walsh: 233).

As at March 2008, there had been 621 referrals to the program with 348 being accepted. Of these, 20% were intellectually disabled, 44% had mental health issues and 3% had acquired brain injury. Further, over half had alcohol or drug abuse issues (WA LRC: 104).

The HPCDP initiative was awarded a Human Rights and Justice Award in 2008 as part of the Disability Action Week (QPILCH: 5).

### 3.2 Intellectual Disability Diversion Program (WA)

The IDDP was established as a pilot and is now permanently funded by the Department of Corrective Services, following evaluation in 2004 (Zapelli & Mellor 2004). It was originally a collaborative initiative of this Department and the Disability Services

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29 Homelessness in this context includes living in boarding houses or shelters and/or having no shelter at all.
Commission. It is directed towards reducing recidivism amongst intellectually disabled offenders (rather than individuals with mental health problems); reducing rates of imprisonment by diversion; and improving the justice system’s response to intellectually disabled offenders.

The program sits once a week at the Perth Magistrates Court with a dedicated Magistrate, hearing up to 10 matters per sitting. There is also an IDDP coordinator (to case manage, assess and report) and support officer (to assist with monitoring). Initially, a specialist lawyer was provided by Legal Aid within the program, but duty solicitors and others (including ALS lawyers) now provide representation.

To be eligible to participate, offenders must have an intellectual disability requiring ‘level 3’ services from the Disability Services Commission (DSC). They must meet the strict psychiatric diagnostic criteria used by the DSC for intellectual disability. There are difficulties associated with the partnership with the DSC. The strict DSC criteria (that the person has an IQ of less than 70, has deficits in adaptive behaviour, and that the disability has occurred before the individual turned 18) exclude some who might otherwise benefit from the program. Participants include Aboriginal people who have suffered an acquired brain injury from petrol or solvent abuse, but sometimes such persons are deemed ineligible as they are not able to prove that the injury was sustained prior to turning 18. A further criterion is that the charge must be triable summarily (generally); the offender must plead guilty; and must also volunteer to participate. Offences of a sexual nature are not excluded, although ultimately they may be heard in the District Court, where participation in the program ought to be taken into account at sentencing.

Upon referral (by anyone), the individual is assessed by the IDDP Coordinator, including where necessary a psychological assessment of intellectual disability, and if accepted, an appropriate program plan is developed by the Coordinator, with family, the defendant and service providers. The offender is then bailed, on the basis of this assessment, on condition that they comply with the directions of the Coordinator. The Coordinator will facilitate access to a range of relevant services (such as housing and disability services). Meetings between the Coordinator (who is also liaising with service providers) and defendant take place once a week, and the defendant will also be required to attend court to discuss progress during the period of participation. If a defendant is not complying with the program conditions, they may be sent to the Magistrate ‘for encouragement’, but will be taken off the program at the Magistrate’s discretion for serious breaches or further offending (depending in part upon the original offence(s) which brought them before the court).

30 Telephone contact, Magistrate Paul Heaney, Magistrates Court (SA), 2 September 2009.
31 ibid
32 ibid
The program takes approximately 6 months, and upon completion, the Magistrate congratulates the offender and passes sentence, but may take into account in sentencing the need for ongoing support in particular cases and thus order a Conditional Release Order or Community Based Order ensuring that the defendant continues to receive such support.

Numbers of participants are not high, but those who participate will in almost 50% of cases have drug or alcohol problems along with their intellectual disability and approximately 25% have comorbid mental health problems (WA LRC: 105). The rate of Indigenous participation is 19% (Joudo: 77).

3.3 Magistrates Court Diversion Program (SA)

This was the first mental health diversion program in Australia, commencing in the Adelaide Magistrates Court in 1999. It originally operated on the basis of bail and sentencing legislation rather than through any provision specific to the program itself. In 2005, s 19C of the Criminal Law (Sentencing) Act 1988 (SA) was enacted to grant Magistrates power to deal with a mentally impaired offender who had participated in the program. The provision indicates that offenders found guilty of a summary or minor indictable offence may be released without conviction/penalty if:

- they suffer from a mental impairment which has led to the offence in question;
- they have completed or are ‘participating to a satisfactory extent’ in an intervention program
- they recognise that they suffer from the impairment and are making a ‘conscientious attempt to overcome behavioural problems associated with it’; and
- release under this provision would not ‘involve an unacceptable risk to the safety of a particular person or the community’.

The charge may be dismissed ‘at any time before the matter has been finally determined’ if satisfied as set out above. In making a determination under the provision the court may ‘act on the basis of information that it considers reliable without regard to the rules of evidence’; and may consider the interests of any victims or possible victims.

The program was evaluated in 2001 and then funded on an ongoing basis (Hunter & McCrostie 2001). It now operates in five metropolitan and five regional Magistrates courts, on a weekly basis at Adelaide Magistrates Court, monthly at metropolitan courts and bimonthly at regional courts (Courts Administration Authority (SA) 2008: 26). The program consists of a manager, administrative officer, specialist staff (including clinical advisors and liaison officers). They are all located in Adelaide and travelling as appropriate to attend relevant courts (WA LRC: 100).

The program aims to provide assistance to the courts in identification and management of persons with mental impairment; to ensure effective interventions for persons

33 ibid
34 The WA LRC reported in 2008 that since 2003, 112 offenders had been through the program (WA LRC: 105)
participating in the program to address their support/treatment needs and to prevent further offending behaviour; and to facilitate the involvement of a broad range of treatment/service providers in addressing the needs of people with mental impairment, *inter alia* (Skrzypiec et al. 2004: 14). Broadly, it is directed towards ensuring ‘that people with a mental impairment who come before the court have access to appropriate interventions that will assist in addressing their offending behaviour’, or using their contact with the criminal justice system ‘as a vehicle for providing a treatment and support program designed to effect behavioural change’.

Those with mental impairment facing court for a summary or minor indictable offence related to their mental impairment and including assault, threatening behaviour, non-aggravated sexual assault, robbery, retail theft, fraud, property damage, drug offences, driving offences and public order offences may participate (Skrzypiec: 29). They must consent to participate and need not plead guilty but ought not to be contesting the charges. ‘Mental impairment’ includes those with a mental illness, intellectual disability, brain injury, neurological disorder (including dementia) or a personality disorder. Persons with a substance related disorder may be accepted onto the program if the disorder is a secondary diagnosis alongside a mental/intellectual impairment. In 2007-08, mental illness was the most likely catalyst for acceptance onto the program, and the most common diagnoses were for major depressive illness, schizophrenia, and personality disorder (Courts Administration Authority: 27). The Western Australian Law Reform Commission indicates that this program ‘captures’ the largest offender population of all similar programs in Australia.

Persons are referred, generally, at the time of charging and are then assessed (including in relation to their willingness to participate). Magistrates, police officers, lawyers, guardians and others may refer, along with the defendant him/herself. The initial assessment involves consideration of any impairment, relevant treatment needs, and benefits of participation. The defendant will be interviewed and previous medical records and criminal records perused. There is generally some form of risk assessment conducted in order to ascertain any risks to the safety of service providers. If the individual is accepted, their matter is adjourned and an intervention plan is set up, with the assistance of service providers, designed to address mental impairment and broader social issues (such as homelessness and/or drug and alcohol addiction). If they are already in treatment, they will be encouraged to continue. If not already in treatment, the individual will be referred to relevant services and programs. The Magistrate then makes a final assessment as to eligibility and if the defendant is accepted, the matter is adjourned for six months and the defendant is bailed to participate in the program.

The program Liaison staff monitor, and present information on, progress to the court and failure to participate as required may mean withdrawal from the program. The defendant returns to court every two months, with the program’s clinical advisor present.

The program will generally take 4-6 months to complete, and upon completion the charges are withdrawn or (more often) sentence will be mitigated based on progress (but failure to complete the program ought not to affect sentence). In most cases, defendants
are given a good behaviour bond. Sentences have increased in severity over time as the criteria for eligibility has broadened, bringing in different types of offences which may not generally be appropriate for diversion (such as driving offences (attracting mandatory sentences) and restraining order offences) (Courts Administration Authority: 27). The Western Australian Law Reform Commission observed in November 2007 that dismissals under s 19C, suspended sentences with lengthy good behaviour bonds and supervision orders with treatment, program attendance and counselling conditions were all imposed (WA LRC: 101).

The program was evaluated in 2004 and found to be reducing the incidence and nature of offending amongst its target client group (Skrzypiec). Two thirds had not offended in their first post-program year and just over three quarters of the participants became non-offenders or were charged with a smaller number of incidents post-program. Further, a higher proportion of ‘serious’ pre-program offenders did not offend in that first post-program year. A number of factors appeared to be connected with post-program offending, and these included any current substance abuse/dependency; dual mental impairment diagnosis; and a substance abuse disorder (constituting only 1% of participants in 2007-08) (Courts Administration Authority: 26). It was noted that those with a substance related disorder seemed to benefit most from any intervention relating to ‘living arrangements and daily functioning’. Other factors likely to contribute to success included the need to:-

• set clear limits for, and be prepared to remove clients from the program if non-compliant;
• establish better assessment tools;
• prioritise program plan components (and linking a more serious court response to non-compliance with higher priority components as well); and
• ensure requirements for compliance correspond to the level of disability or mental impairment.

The Courts Administration Authority suggests that in 2007-08, 298 males and 145 females were referred to the program; 184 males and 98 females were then accepted; and 149 males and 65 females completed the program (a total of 214 completing the program out of 443 referred). Indigenous participation rates in 2007-08 were as follows: 15 referred, 25 assessed, 10 accepted, and 10 completing the program. For 2006-07, there were 40 Indigenous people referred, 32 assessed, 18 accepted, and 14 completing the program (Courts Administration Authority: 26). Indigenous rates of participation constitute around 7% (Joudo: 77).

3.4 Mental Health Diversion List (TAS)

The Mental Health Diversion List (MHDL) commenced in 2007 at Hobart Magistrates Court as a pilot program with the Deputy Chief Magistrate presiding, in response to the large numbers of persons with mental illness appearing in court (often for relatively
minor offences and as repeat offenders, and in part due to an increase in the use of drugs and alcohol by persons with mental illness). 

The program is aimed at assisting adults to address their mental health issues and needs (as they relate to offending) and to thereby reduce offending behaviour. It operates by diverting relevant persons onto a specialist list (about 500 a year) and utilises provisions of the Bail Act 1994 and Sentencing Act 1997 to impose conditions or treatment plans upon participants. It generally sits once per month and has two dedicated Magistrates.

Referrals may come from lawyers, prosecutors/police, Magistrates, Forensic Mental Health Court Liaison Officers, case managers/service providers, or any one else ‘with a genuine interest in the defendant’s welfare’ (including the defendant him/herself) (Magistrates Court (Tas) 2007). Eligibility criteria require that the participant be an adult with impaired mental or intellectual functioning as a result of ‘mental illness’, as defined within the s. 4 of the Mental Health Act, and that they have been charged with a summary offence (or indictable offence triable summarily and excluding offences of a sexual or family violence nature). The defendant is also required to plead guilty or admit responsibility for the offence in question, and must enter the program voluntarily.

Once referred, a Forensic Mental Health Court Liaison Officer (FMHCLO) will assess the individual. If accepted, the defendant will have his/her matter adjourned for 4-8 weeks, with bail conditions to, for instance, obey the reasonable instructions of the officers from the Forensic Mental Health Services or to submit to drug and/or alcohol testing. A detailed Treatment Plan will also be drawn up. Agencies involved at this stage may be GPs; family members; Mental Health and Disability Services; Police, Justice and Correctional Agencies; Mental Health Tribunal; Alcohol and Drug Services; and psychologists and counsellors. A multi-disciplinary approach is required – dealing with employment, housing, and health issues, inter alia.

The offender will be required to attend court at regular intervals (usually once per month) for review. The FMHCLO will work alongside the defendant and liaise with service providers throughout, and also with the prosecution and defence at pre-court sittings. When the period of bail comes to an end, the facts are read (without contest), a progress report is presented (with any provisions for ongoing treatment recommended therein), and the defendant may also speak with the Magistrate, if appropriate. The Magistrate

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36 They are required to have a dual diagnosis – if diagnosed with intellectual disability or acquired brain injury, they must also have a diagnosis of mental illness (Newett & Stojecevski 2009: 18)

will then take into account the defendant’s compliance with bail order conditions; their level of engagement with providers and others involved; and their progress in terms of mental health issues. The defendant is sentenced, as usual, under s 7 of the Sentencing Act, but will be likely to receive a reduced sentence.

MHDL was independently evaluated in 2009, with a recommendation that it continue to operate (although with improved synergy with other court diversion programs in Tasmania) (Newett & Stojcevski 2009). The evaluation report indicated that 137 defendants, aged 19 to 70 years of age, had been referred to the program (mostly by lawyers of (Forensic) Mental Health Service Officers), and of these 112 had been accepted onto the program. Further, 88 participants had completed the program and 24 were still participating. A number (25) had been removed due to ineligibility and non-compliance, for instance. Most commonly, participants were diagnosed with schizophrenia, then bi-polar disorder and depression.

Stakeholders indicated that the program was working effectively, on the whole, including to improve coordination between justice and health agencies, and that it was ‘a positive development that is providing participants with the opportunity to engage in treatment and avoid (inappropriate) incarceration’. Success factors included pre-court meetings prior to each sitting and the fact that MHDL court liaison officers were employees of the Department of Health and Human Services rather than of the court, allowing them ‘to have more influence in the health care and service sector…(and to) access better treatment services for MHDL participants and in a timelier manner’. Of the 52 MHDL individuals who completed the program before November 2008, 82.7% had committed an offence in the six months prior to their participation compared with just 7.7% in the six months post-participation. Furthermore, 78.8% of these participants had reduced their offending level post-participation.

3.5 Adolescent Health Court and Community Team (NSW)

Justice Health in NSW (a government agency responsible for health care provision to adults and juveniles in custody) operates a court liaison service in targeted Children’s Courts in NSW. The service for juveniles commenced in 2006 at Cobham Children’s Court in an area of Western Sydney with a high Indigenous population (Blacktown local government area), but has since expanded to Parramatta Children’s Court, Campbelltown, Bidura, Wyong and Woy-Woy Children’s Courts. Plans are underway to further expand this service to Sutherland, Port Kembla and Broadmeadow Children’s Courts. 38

Where mental health is identified as an issue for young persons appearing before the court a Justice Health mental health practitioner will undertake a mental health assessment of the individual. If there are mental health issues, as suspected, a report recommending both custodial and non-custodial treatment options will be prepared by the

38 Email, Julie Carter, Service Director, Adolescent Health, Justice Health (NSW), 8 September 2009
Justice Health clinician for the court. The Magistrate will consider the recommendations made, with a greater likelihood at this point that the juvenile will be diverted to community-based services rather than detention (HREOC 2008: 56). If diverted, charges will be dismissed or deferred, pending participation in a supervised bail arrangement. The Justice health clinician has no involvement or cannot make recommendations as to bail or other legal mandates. This deferral apparently motivates the juvenile to ‘make changes to avoid further consequences’ as well as providing them with an opportunity for intensive support. In some instances, particularly where there is evidence of conditions such as borderline intellectual disability or Aspergers syndrome, the Department of Disability, Ageing and Home Care (DADHC) may need to follow up on relevant action.

At October 2006, 60% of juveniles going through the Court Liaison Scheme (and a complementary initiative not relevant for our purposes – community clinics) were Indigenous. Those involved in the program have engaged with the Indigenous community by consulting with Elders and community members in developing the program and by establishing strong links with family and the Aboriginal legal and medical services. Further, in 2006 an Indigenous mental health trainee was employed as part of the program, with support for that worker to complete relevant university-level training. The role of the trainee will be to undertake casework, but to also engage with the Indigenous community and ‘build the organisational capacity to address Indigenous issues’ (HREOC 2008: 57). Justice Health indicates that from 1 Jan 09 to date, 20.6% of young people referred to the Adolescent Health Court and Community Team are Aboriginal. 39

This program is very similar to the NSW Statewide Community and Court Liaison Service (SCCLS), also operated by Justice Health. SCCLS is not strictly speaking a bail diversion program in that it operates quite differently to other programs referred to herein. Offenders are diverted under specific provisions within the Mental Health (Forensic Provisions) Act 1990 (NSW) to community-based mental health facilities, inter alia. Charges are at that time dismissed. They are not required to complete a particular program which will then be taken into account at sentencing, as is required in the other bail diversion programs set out herein.

DISCUSSION – MENTAL IMPAIRMENT

All of the above programs engage with persons with a mental and/or intellectual impairment (along with alcohol or drug issues) and follow a fairly similar procedure in so doing.

It is worth noting that some of the programs have fairly high rates of Indigenous participation, particularly the Queensland SCL, the IDDP in Western Australia and the NSW Adolescent Health Court and Community Team. The latter is reported as having up to 60% Indigenous participation. The Queensland HPCDP also has a relatively high rate of female participation at 40%, but no information is available indicating what

39 ibid
proportion of female participants are also Indigenous. These are issue-specific, mainstream programs which appear for the most part to be engaging relatively effectively with Indigenous offenders (based on available statistics).

This may be because these programs are relevant to Indigenous offenders due to the prevalence of mental or intellectual impairment for Indigenous offenders, or because they have somehow adapted a mainstream (although specialised) program to Indigenous people. The NSW initiative has emphasised community consultation at the development stage, community development and culturally appropriate service delivery (through employment of an Indigenous trainee), as well as increasing the organisational capacity to address Indigenous issues. It is also located (perhaps deliberately) in areas where there are larger Indigenous populations and one can assume higher rates therefore of Indigenous contact with the Children’s Court. These aspects of the initiative are positive. There is no other detail provided in relation to Indigenous initiatives within these mainstream programs.

The programs vary in terms of the offences they specify to enable access or to exclude, but are for the most part fairly inclusive in this regard. The Magistrates Court Diversion program in South Australia has the broadest ambit in this regard and the Queensland programs the narrowest. Unusually for bail diversion programs, the South Australian program includes offences of sexual assault (as does the IDDP), assault and family violence. The Queensland programs, on the other hand, are very specific in the range of (minor) offences with which it can deal and sexual or violent offenses are excluded.

Significantly for Indigenous people, the programs have also not identified substance abuse as an exclusionary factor, in recognition of the frequent correlation between this issue and mental health or intellectual disability (see Introduction above). The IDDP participants have a dual diagnosis of intellectual disability and substance abuse problems in 50% of cases, for example. This is appropriate, and particularly important for Indigenous offenders given the link between substance abuse, mental and intellectual impairment and offending for Indigenous people. The best practice principles in bail diversion developed by the Aboriginal Health & Medical Research Council in 2009 (discussed below in relation to MERIT) include ensuring that mental health is a priority in any diversionary intervention (Auditor General 2009).

In all cases, however, the offender generally must plead guilty or otherwise acknowledge commission of the offence in question in order to participate. Despite this, in some instances rates of Indigenous participation are quite high, as noted above.

The ability to deal with dual diagnosis mental health and substance abuse issues is an essential component of any bail program seeking to assist Indigenous offenders, given the frequent correlation between these issues within Indigenous communities.
4  BAIL DIVERSION - DRUG & ALCOHOL FOCUS

There are only a handful of alcohol-focussed programs, although alcohol misuse is dealt with in many bail diversion programs as a secondary issue. The only bail diversion program specifically focussing on both alcohol and Indigenous offenders is QIADP and this is dealt with below as an Indigenous-specific bail diversion program alongside the Indigenous Diversion Program. The bail diversion programs dealing with alcohol misuse discussed in this section were generally formulated in part or for the most part in order to address Indigenous offenders’ alcohol use in particular locations, but they are not Indigenous-specific. In NSW, they have arisen as part of a drug diversion program.

There are however numerous programs diverting offenders with significant drug problems across the States and Territories. Drug diversion programs have in general failed to engage effectively with Indigenous offenders, for the most part due to their focus upon illicit rather than licit drugs. Persons who have problems with alcohol may still be assisted through the programs, but illicit drug use must constitute their primary substance abuse issue. This is likely to reduce the relevance of such programs to Indigenous people and to impact upon Indigenous participation rates as noted in brief above in the context of eligibility criteria.

On this basis, we are not required to consider illicit drug diversion programs in detail (but see the Indigenous Diversion Program (IDP) in Western Australia below). We have dealt with these programs only in relation to key points arising in relation to Indigenous participation in bail diversion programs. We discuss the NSW Magistrates Early Referral into Treatment (MERIT) program more comprehensively for two reasons; firstly, it has introduced bail diversion programs with a focus upon alcohol, and secondly, there have been a number of useful evaluations and reviews conducted in relation to this program which discuss barriers to participation for Indigenous people.

4.1  Drug Diversion Programs

Many drug diversion programs have been developed under the Commonwealth Illicit Drug Diversion Initiative (IDDI), part of the Commonwealth Government’s National Illicit Drugs Strategy. These programs exist in all jurisdictions at various points of contact with the justice system, from pre-arrest to post-sentence. So, for instance, Police may divert those found in possession of small amounts of cannabis or other illicit drugs where there the offender does not have a significant history of drug-related offending. This will mean that the offender pays a fine, attends an educational workshop, or undergoes short-term treatment as an alternative to facing court. Examples of this level of diversion include the Cannabis Cautioning Program in Victoria or the Illicit Drug Pre-Court Diversion in the Northern Territory. Courts may also divert offenders into treatment programs. Examples of this type of program include the CBS in Victoria; the Court Mandated Diversion Program in Tasmania; or the Court Assessment and Referral Drug Scheme (CARDS) in South
Australia. At a sentencing level, Drug Courts also exist in a number of jurisdictions, but these will be discussed below (see Speciality Courts).

As at 2006, Joudo identified 13 drug diversion programs at a police level and 22 at a court level (although these are not all bail based (Joudo 2008). They divert a significant number of offenders around Australia. In 2005/06, there were 24,804 diversions under police IDDI-funded diversions and 7,872 diversions under IDDI court diversion programs (AIHW 2008: x-xi).

These programs do not accept offenders whose primary issue is related to alcohol. The programs’ emphasis is upon a significant drug problem, the offender’s willingness to tackle the problem, and being assessed as suitable for treatment. However, it has been reported during the course of our research and also discussed in available literature that some of the drug-specific diversion programs are admitting offenders for treatment of alcohol as a primary substance issue despite the restrictions imposed by eligibility criteria (see discussion in relation to MERIT and IDP below). Some programs are apparently assessing individuals on the basis of their willingness to participate in a program rather than by reference to a primary substance abuse issue (Joudo). The formal exclusion of alcohol as a primary substance abuse issue, however, remains and arrangements such as those permitting its inclusion as a primary issue are perhaps too inconsistent (across and within programs) to guarantee greater Indigenous participation. Some of the drug-specific programs (IDP and MERIT) are using existing models for drug diversion and converting them on a more formal basis for use with alcohol dependent offenders, including with some focus upon Indigenous people, quite successfully. These programs are discussed below, along with other modifications to existing programs introduced to increase Indigenous participation and completion of relevant programs.

Our research has located only four bail diversion programs which either focus specifically on alcohol or elevate alcohol abuse to the same level as drug use in interventions – the Court Alcohol and Drug Assessment Scheme (CADAS) in South Australia; Cairns Alcohol Remand and Rehabilitation Program (CARRP) in Cairns, Queensland; and the three MERIT initiatives in NSW (Rural Alcohol Diversion (RAD), MERIT at Wilcannia and Broken Hill, and Wellington Options). This lack of focus upon alcohol problems in diversion must be due, in part, to the emphasis within IDDI programs upon illicit drug use. Research also suggests that alcohol-specific programs require significant resources to deal with the numbers and needs of alcohol-dependent offenders or offenders misusing alcohol, and this may deter development of such programs. Other problems include the frequent correlation between alcohol-based offending and violence, and thus the potential compromise to the safety of program staff, and the complex issues that arise in imposing some program requirements (such as residential rehabilitation) upon those who have a problem with a legal substance as opposed to an illicit drug (WA LRC).

There has been disquiet expressed about the lack of alcohol-focused diversion programs in Australia, often raised by those working within illicit drug diversion programs such as Magistrates and clinicians (see Barnes &Poletti 30; Martire & Larney 2009; Crime
Firstly, the focus upon illicit drugs may not be justified, given the significant and well-documented link between alcohol use and offending and the greater prevalence of problem drinking compared with illicit drug use (see King 2006; Putt 2005; WA LRC). Secondly, based on the strong connection between Indigenous offending and alcohol, excluding alcohol as a focus from the comparatively large number of drug diversion programs in the different States and Territories will inevitably lead to reduced opportunities for Indigenous offenders to access diversion (see findings in Borzycki & Willis 2005, for instance). Some Indigenous people do have significant problems with cannabis or other licit substances, but the predominant substance abuse issue for Indigenous people relates to alcohol misuse. This is further discussed below.

4.2 Programs with focus upon alcohol

Summary of programs

The Cairns Alcohol Remand and Rehabilitation Program is aimed at diverting ‘street people’ in Cairns into treatment. It is different to other bail diversion programs. Offenders, for instance, are remanded in custody to undergo assessment rather than bailed for this purpose; and strict bail conditions are imposed requiring the offender to reside at residential rehabilitation facilities. Its participants are predominantly Indigenous. Significantly, the program was developed and operates as a collaboration between the court and Indigenous service providers [4.2.1].

MERIT diverts adult offenders with a drug problem into treatment. Eligibility is based on exclusion of offences of violence or of a sexual nature; being deemed suitable for drug treatment; and residing in an area where treatment is available. No plea is required. The issue of Aboriginal participation has been considered more comprehensively in relation to MERIT than has occurred with many other diversion programs. In part in response to low Indigenous participation, MERIT has now developed three initiatives in rural NSW designed to address alcohol use as a primary substance abuse issue through an initiative implemented at Wilcannia and Broken Hill [4.2.2]; Rural Alcohol Diversion Program (RAD) in Orange and Bathurst [4.2.3]; and Wellington Options near Dubbo [4.2.4]. RAD and the Wilcannia/Broken Hill initiatives have a specific focus upon alcohol use but are otherwise identical to MERIT in terms of procedure. Wellington Options is a longer program than most diversion programs (12 months), and addresses both drug and/or alcohol use for young persons as well as adults. All of the programs have a focus upon substance abuse and treatment and some limited focus upon broader welfare issues. Indigenous participation rates differ between the three programs. Wellington Options, for instance, has a rate of 8.3% whilst MERIT has a rate of 13% in areas other than rural/remote and 42.9% in rural/remote areas. The Attorney General’s Department (NSW) intends to introduce an alcohol-specific diversionary program similar to RAD in a NSW metropolitan area in the next two years. There is also some suggestion that the three alcohol-focused programs within MERIT will be amalgamated in future.
The Court Alcohol and Drug Assessment Scheme in South Australia (CADAS) diverts young people and adults charged with alcohol or drug-related offences. There are no offences that lead to exclusion, but otherwise this program is broadly similar to other diversion programs in terms of procedure. However, the program requires that any non-compliance is reported immediately to the Magistrate’s associate – instilling ‘confidence’ in the process. It has an Indigenous participation rate of 17% and has employed an Aboriginal Liaison Officer whom Indigenous offenders may choose to engage with and has close links with Indigenous service providers [4.2.5].

4.2.1 Cairns Alcohol Remand and Rehabilitation Program (Qld)

The Cairns Alcohol Remand and Rehabilitation Program (CARRP) is a sentencing-based diversion scheme, which arose to respond to ‘street people’ in Cairns (mostly homeless, Aboriginal and Torres Strait Islander and alcohol dependent persons) who were repeatedly coming before the courts to answer charges of public drunkenness and disorderly conduct and being given short periods of imprisonment, but continuing to offend upon release.

In 2003, the Cairns Police Prosecutions, local government representatives, and the Magistracy worked with the local Aboriginal legal service to develop an initiative to address this cycle of offending, with an emphasis upon rehabilitation otherwise unavailable to the offenders in question due to relatively short length of their sentences. A program was designed in association with the local Indigenous alcohol health service - Aboriginal and Islander Alcohol Relief Services (AIARS) - and relevant protocols put in place by police and the Department of Justice. The program was initiated with no additional funding – stakeholders simply expanded existing parameters to incorporate the program. CAARP now operates at Cairns and Mareeba (just outside Cairns), and is coordinated by AIARS.

CAARP aims to give homeless people an opportunity to address alcohol induced, offending behaviour. Generally, those participating are of ATSI background; have low literacy and communication issues; are welfare dependent; have low self-worth; and have mental health problems (as well as substance abuse issues). Referrals come from the Cairns Magistrates Court, Cairns Prosecutions, or the local ALS.

CARRP consists of three parts:
• assessment (two day remand in watchhouse, where an assessment is made);
• detoxification (one month remand to reside at one of three residential rehabilitation facilities (run by AIARS) on strict bail conditions); and
• rehabilitation (three month rehabilitation and reintegration course subject to a probation order in lieu of imprisonment).

40 Information provided by email from Kerryn Lunn, Registrar, Cairns Magistrates Court, 4 September 2009.
41 ibid
When a ‘persistent offender’ is brought before the Court to plead guilty to an alcohol-related offence, the Magistrate determines eligibility based on any history of habitual patterns and constancy of vagrancy type offences and the likelihood of a custodial sentencing being imposed. If the offender consents to participate, he/she will be remanded in custody for 24 hours to enable an assessment to be undertaken by a relevant service provider, including AIARS, inter alia. Dependent upon their recommendation, the offender may be placed on the program for up to one month initially. Relevant individual treatment plans are managed by the Program Coordinator, nursing staff, a welfare officer, counsellor and hostel manager. External agencies may also assist in an integral, holistic treatment approach.

Once bailed to participate, conditions might require that the defendant is only released to an authorised representative of the relevant service provider and must reside at a particular rehabilitation facility. If bail is breached, the offender may be sentenced in relation to the original charge. After the initial bail period, the service provider will recommend whether a further period of bail is required to enable the defendant to continue to participate.

In the first nine months of operation, 17 CARRP residents accessed the program, 14 completed one month of bail, 8 self-discharged, and 9 completed the three-month program. Although the program is not limited to Indigenous participants, the overwhelming majority of participants to date have been Indigenous people. The program has demonstrated success by providing culturally appropriate treatment to such persons, and there has been a possibility of expansion to other urban centres. Statistics provided suggest that the rate of re-offending has been reduced by 60% through the program and that although 40% have re-offended the frequency and nature of the offending has been reduced. Anecdotally, there is evidence that participants have returned to their communities, enrolled in educational programs and found stable accommodation (Queensland Magistrates Court 2008: 66).

4.2.2 MERIT (Wilcannia and Broken Hill) (NSW)

The Attorney General’s Department is in the process of amalgamating the following three NSW programs (in [4.2.2]-[4.2.3]). Each of them, to varying degrees, has some specific focus upon alcohol diversion. As noted above, we include detail about MERIT although it is a drug diversion program as it has attempted to incorporate alcohol use and dependency in a more formal sense than other such schemes and to work more effectively with Indigenous offenders.

The MERIT (Magistrates Early Referral into Treatment) program in New South Wales is a voluntary pre-sentencing scheme for early referral of people charged with criminal

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42 ibid
43 ibid
44 Telephone conversation with Karen Patterson, Senior Policy Officer, NSW Department of Justice & Attorney General, 21 August 2009
offences who are motivated to engage in treatment and rehabilitation for drug use
problems. MERIT commenced in Lismore in 2000, and now operates in 61 courts across
NSW, diverting offenders with a drug problem into treatment. It excludes alcohol as the
primary presenting problem, due to restrictions on eligibility imposed as a condition of its
funding, and this results in lower Indigenous participation. However, there has been
opportunity to develop the guidelines and criteria for admission to include those whose
offending more specifically relates to alcohol.

MERIT eligibility criteria include that the offender is an adult; not involved in offences
related to significant violence or sexual assault; deemed suitable for drug treatment and
has a treatable problem; approved to participate in the program by the Magistrate; willing
to give informed consent to participate in a drug treatment program; and resides where
able to participate in treatment programs as required. No plea of guilt is required so that
drug problems can be treated ‘in isolation’ from legal matters (Cain 2006). Referrals to
the program come from Magistrates, NSW Police, Probation and Parole, the Legal Aid
Commission, solicitors and private legal practitioners, family, friends and defendants
themselves. Persons may also ‘self refer’ or be referred by family or friends. Courts
work in tandem with Area Health Services to undertake an initial assessment as to
suitability of defendants (considering drug use behaviour, problems and history; the
individual’s social situation; legal issues; associated medical problems, including mental
health; and motivation for change). The clinical staff prepare a report for the Court and a
decision is made as to whether the individual ought to be accepted onto the program. If
accepted, participation is part of a Bail Order. Relevant referrals are made to services
providing treatment. Participants may be removed for non-compliance and bail
withdrawn for commission of further offences/failing to appear. Sentence should be
mitigated upon completion.

As is the case with many illicit drug diversion initiatives, there are real issues relating to
Indigenous rates of participation/completion in MERIT. An early evaluation of the
MERIT program in Lismore found that 16% of participants were Indigenous. There were
no differences by Indigenous status between those accepted onto the program, and those
who either did not attend, were considered ineligible, or declined the program. However,
Aboriginal participants were significantly less likely to complete the program than non-
Indigenous participants (36% Indigenous completion compared to 54% non-Indigenous
completion rate) (Passey 2003:20). The report recommended implementing strategies to
better meet the needs of Aboriginal participants including: employment of an Aboriginal
caseworker; liaising more closely with Aboriginal agencies and communities;
development of culturally appropriate resources; and relevant staff training (Passey 2003:
xii).

The NSW Attorney Generals Department specifically considered Aboriginal participation
in MERIT in 2006 (Cain 2006). Of 6216 persons referred to MERIT in NSW between 2
July 2000 and 31 October 2004, 13.7% (853) were Indigenous. Other statistics indicated
that Aboriginal persons were less likely than non-Aboriginal participants to be accepted
into MERIT once assessed as eligible and suitable and to complete the program, although
they are referred to the program at the same or a greater rate than non-Aboriginal persons.
This non-acceptance is attributed to factors such as the exclusion of certain offences of violence, given that Aboriginal people may be more likely to have a history of offences against the person (including assault police and domestic violence); and to the exclusion of alcohol as a primary drug issue (Cain 2006).

Once on the program, intervention is not always culturally appropriate. Non-completion may be due, in part, to more Aboriginal people (almost 50%) being placed into residential treatment compared to non-Aboriginal people (18%), according to the evaluation. Whilst this may simply ‘express the needs of drug users, their families and communities to protect the interests of all parties, especially the family victims of drug abuse and domestic violence’ by removing drug users to residential facilities, it is also more likely to reduce Aboriginal completion rates. Aboriginal people may leave residential treatment if separated from family, community, and culture and residential treatment is more onerous in compliance terms. Issues also arose in relation to adequate resourcing in rural and remote areas of both court-based programs and drug and alcohol treatment (including to ensure that individualised treatment is available). This is likely to impact adversely upon Aboriginal people due to location of the Aboriginal communities outside metropolitan locations. Where treatment services exist they are not always culturally appropriate, and Magistrates travelling to regional areas may not be aware of all available options.

The NSW Auditor General completed a more recent evaluation of Aboriginal participation in MERIT in 2009 (Auditor General 2009). The report indicated that in 2007-08, only 273 Aboriginal defendants had participated in MERIT out of 19,000 Aboriginal defendants before Local Courts; 169 of all the 1253 who completed MERIT during this period were Aboriginal. These figures were attributed, in part, to the fact that those whose primary presenting problem was alcohol and who had committed offences of serious violence were excluded, impacting disproportionately upon Aboriginal people. Other issues included the difficulty of engaging with Aboriginal people, with Aboriginal defendants less likely to accept a referral to MERIT than non-Aboriginal people; and the lack of availability of the program at courts located in areas with high Aboriginal populations. However, the report also indicates that if service delivery can be improved, Aboriginal participation/completion rates will also improve.

A number of recommendations were made, including that eligibility criteria focus upon suitability for release on bail and clients with a demonstrable alcohol or drug problem (with comparisons drawn to eligibility criteria of CISP and CREDIT/Bail Support Program in Victoria and to RAD); that culturally appropriate promotional material be developed for Aboriginal communities (so that Aboriginal Client Court Specialists and Aboriginal Community Justice Group Coordinators might be aware of the program); and that a database of Aboriginal services be developed by the Department of Health (as is available to the ALO in Victoria); inter alia.

The best practice principles for Indigenous-focussed diversion in this area, developed recently by the Audit Office in collaboration with the Aboriginal Health & Medical
Research Council (April 2009), are set out in the report (and are modelled on Cunneen 2001). They are as follows:

- culturally relevant program options – one treatment model may not be suited to all Aboriginal clients;
- service provision with sensitivity to Aboriginal cultural practices, identity and history;
- involvement of families, partners or significant support people in treatment where appropriate;
- services including staff trained in family-centred counselling and support specific to Aboriginal people;
- provision of a range of mental health services to address issues of co-morbidity; and
- minimise transport issues by providing appointments at locations other than the MERIT office; providing staff with access to vehicles, and reimbursing client transport costs.

Interestingly, in 2007/08 an Aboriginal Health & Medical Research Council initiative was developed (based on these best practice principles), aimed at developing and delivering a new service delivery model for Indigenous offenders, and implemented within 7 MERIT teams. The model focused upon improvements that address the specific needs of Aboriginal defendants and on factors designed to improve completion rates. Implementation of this model increased completion for Aboriginal people by 16%. More detail about this initiative is due to be released shortly.

Significantly, MERIT now assists individuals with alcohol-dependency and abuse issues at Wilcannia and Broken Hill - areas with significant Aboriginal populations, and rates of Indigenous participation in MERIT on the basis of alcohol dependency/misuse are relatively high due to this particular initiative (see below). Relevant initiatives in these locations include the mobility of MERIT teams to address barriers to participation due to lack of transport. More than 90 % of Wilcannia defendants are Aboriginal defendants and many have no access to transport, public or private. The Broken Hill MERIT caseworker does home visits to Wilcannia and is also developing links with local health and community services so that sessions may be conducted in alternate locations (Auditor General: 38).

Further, in other areas, those with alcohol dependency are not excluded altogether. Alcoholism may be treated as a secondary issue (with illicit drug use being the primary issue) or, if deemed appropriate, we are told, anecdotally, that a magistrate may accept an individual on the program with alcohol dependency as a significant or even primary issue but, for the purpose of complying with program guidelines, the individual’s cannabis use will be noted as a primary issue in order to ensure that they receive treatment for their alcohol use issues. This occurs with other programs.

45 See Local Court Practice Note No. 5 of 2002 for process http://www.lawlink.nsw.gov.au/lawlink/local_courts/l_l_localcourts.nsf/vwFiles/PRACTICE%20NOTE%205%20of%202001.pdf/$file/PRACTICE%20NOTE%205%20of%202001.pdf
46 Telephone conversation with Karen Patterson, Senior Policy Officer, NSW Department of Justice & Attorney General, 21 August 2009
MERIT has a 42.9% Indigenous participation rate in rural/remote locations and 13.1% in other areas (AIHW 2008: 80).

4.2.3 Rural Alcohol Diversion Program (RAD) (NSW)

The Rural Alcohol Diversion Program (RAD) commenced operation as a pilot at Orange Local Court in December 2004 and was subsequently expanded to Bathurst Local Court in May 2005. The program continues to operate only in these two rural areas. It is basically identical to the Magistrates Early Referral Into Treatment (MERIT) Program but works with adults with alcohol abuse or dependence problems and offers participants access to alcohol treatment (rather than drug treatment) as a condition of bail. It has served to test the MERIT model in terms of its effectiveness in treating alcohol issues. At its two locations, MERIT operates alongside RAD and focuses upon drug treatment for drug users.

Referrals to RAD come from Magistrates, legal representatives, or police or through self-referral, and participation is voluntary. To be eligible to participate in RAD, the participant must firstly be eligible for bail; should have a demonstrable alcohol problem, be deemed suitable for alcohol treatment and have a treatable problem; and be approved to participate by the Magistrate. Further, offences dealt with under the program must be relatively minor, and matters involving significant violence or sexual assault (or defendants who have matters pending relating to such offences) are excluded from the program, as are matters that will be heard in the District Court. Notably, the offences with which the defendant has been charged need not be related to his/her alcohol use. The participant must be willing to participate, and it is not necessary that a guilty plea be entered by the participant prior to participating, in order to ensure that defendants may ‘focus on treating their alcohol abuse or dependence problems in isolation from their legal matters’.

Once deemed eligible, the participant works closely with case managers on an individualised alcohol treatment plan for a period of 3 months. Treatment might include detoxification, pharmacotherapies, residential rehabilitation, individual and group counselling, case management (as noted), and welfare support and assistance (optional). Whilst on bail, the participant must work within their treatment plan (with support from

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47 Telephone conversation, Lee Lombardi, 24 August 2009 (in relation to Western Australian drug-based bail diversion programs).
48 Telephone conversation with Karen Patterson, Senior Policy Officer, NSW Department of Justice & Attorney General, 21 August 2009
50 RAD Fact Sheet; see also http://www.lawlink.nsw.gov.au/lawlink//cpd/merit.nsf/pages/merit_rad
their RAD Caseworker), abide by bail conditions and conditions of their RAD undertaking, and regularly attend court for a review of progress. The matter will return to court in instances where a participant fails to attend any two consecutive scheduled appointments, commits further offences, or does not comply with bail conditions. Further offences whilst participating may result in loss of bail and withdrawal from RAD. Upon completion of the program, a RAD Caseworker’s final report on progress will be provided to the court. Sentence should be mitigated but if the participant does not complete the program, there are no punitive measures imposed. The participant may be involved in aftercare services after completion.

During 2008, 138 defendants were referred to the program, 88 were accepted (with 9 still under assessment), and as at 31 December 2008, 64 defendants had successfully completed the program (with 22 still in treatment) (Local Court (NSW) 2008: 28-9).

Further, RAD appears to be more successful than MERIT in identifying those individuals with a substance abuse issue for the first time (i.e. prior to any previous such identification and/or treatment) – indicating that the program is working effectively to identify alcohol abuse and to then treat it. 51 The Department of Attorney General intends to introduce an alcohol-specific diversionary program similar to RAD in a NSW metropolitan area in the next two years. 52

The RAD program was evaluated in 2007 and it was found that it had a higher completion rate than MERIT (76% compared with 63% (ARTD Consultants). The program was working effectively – those who had completed their participation had reduced their alcohol consumption and had improved their health and well-being. As a result, family relationships, self-esteem, motivation and other areas had improved. Stakeholders reported satisfaction with the program, but suggested that a single diversion program combining MERIT and RAD was required. Otherwise, RAD appeared to fill a significant gap in terms of treatment/diversion in these two localities. As noted above, there is some indication from the Department that these three initiatives (Wilcannia/Broken Hill, RAD and Wellington Options (below)) will be amalgamated in future). Approximately 40% of RAD participants are Indigenous (Joudo 2008) or two in five (ARTD Consultants 2007).

Key success factors included flexible service delivery (such as individualised case plans; sensitivity to Aboriginal cultural background); confidence in and knowledge of court staff and solicitors in the program through ongoing networking and regular court attendance by program staff (leading to increased referrals); appropriately trained and experienced program staff; and relatively well resourced communities (in terms of available support services). It was suggested that the program ought to be expanded to other, smaller communities where alcohol abuse was a significant issue and that young offenders ought also to be included. In terms of increasing Aboriginal access and completion, suggestions included employment of an Aboriginal caseworker or liaison

51 Telephone conversation with Karen Patterson, Senior Policy Officer, NSW Department of Justice & Attorney General, 21 August 2009
52 ibid
officer; more effective engagement with local Elders to enable consultation on cultural appropriateness of the program; allowing Aboriginal people to have more than one opportunity to participate (regardless of whether they had previously completed the program or not); and giving them a longer period of intensive support.

The National Drug and Alcohol Centre assisted in preparation of an analysis of MERIT/RAD with respect to principle drug of use (Martire & Larney 2009). The analysis noted that there are very few alcohol-specific or focussed diversionary schemes, despite alcohol misuse constituting a serious problem in the community. The analysis also indicated that those who had been accepted for alcohol and cannabis use (rather than use of other illicit drugs) were more likely to complete the program, and that the MERIT diversion model had proved to be effective in dealing with those with alcohol problems. In terms of Indigenous participation, according to the analysis MERIT accepted over 6000 participants and RAD accepted over 200 people between 2004-2008. Interestingly, although RAD may have been initiated in Bathurst and Orange in part in response to alcohol issues in relevant Aboriginal communities, the analysis found that the rate of Indigenous participation (for those diverted on the basis of alcohol misuse/dependency) was higher within MERIT (53% of all alcohol dependent participants) than in RAD (29%). This is attributed to the high numbers of Aboriginal people residing at Wilcannia and Broken Hill.

4.2.4 Wellington Options Program (NSW)

The Wellington Options Program commenced in 2001 and is based in the Wellington local court only. It was introduced along with MERIT and mirrors that program, but assists both adult and juvenile defendants (resident in Wellington (including the local Aboriginal community)) (whilst MERIT is available to adults only) with drug and/or alcohol issues. This shift in policy apparently came about (and was pushed by the community and/or community representatives) as the Wellington locality had particular problems in relation to youth offending and the local Indigenous community’s use of alcohol. The program offers drug/alcohol treatment, and includes assessment and a tailored case management service to offenders and families for up to 12 months (c.f. MERIT). Services include counselling, rehabilitation and referral to detoxification. The rate of Indigenous participation in Wellington Options is 8.3% (AIHW 2008).

4.2.5 Court Alcohol and Drug Assessment Service (ACT)

ACT provides the Court Alcohol and Drug Assessment Service (CADAS) as a pre-sentencing treatment option for young and adult offenders charged with alcohol and other drug-related offences, assisting around 250 clients per year. The program commenced in 2000 in the Magistrates Court and 2002 in the Children’s Court (and also operates in the Supreme Court), and is apparently modelled on the Victorian CREDIT program. It is an initiative of a partnership between the Alcohol and Drug Program within ACT Health and

33 Telephone conversation with Karen Patterson, Senior Policy Officer, NSW Department of Justice & Attorney General, 21 August 2009
the ACT Court system. There is no legislative basis for the program, but a Practice Direction exists to loosely guide operation.

CADAS sits alongside a number of other diversionary programs focussing on substance abuse, but is able to concentrate to a greater extent than the other programs upon alcohol (rather than illicit drugs) due to the fact that it was implemented prior to the IDDI. The relevant funding, therefore, does not cover treatment of those participating in the program on the basis of their alcohol misuse/dependency, but service providers offer treatment regardless. 54 Those with a primary illicit drug issue may be referred to drug-specific diversion programs in the ACT such as Police Early Diversion (PED) or Treatment Referral Panel (TRP). 55

CADAS aims to ‘provide an intervention in the individual’s offending and AOD using behaviours, in order to reduce the harms to the individual and to the community.’ Its objectives are as follows:
• to provide drug treatment for offenders, by making assessment and appropriate treatment available immediately upon appearing in Court. This is an ‘early intervention’ in terms of court appearances (not necessarily in terms of an offenders history of offending or drug use);
• to develop a commitment to treatment by the drug dependent offender;
• to divert drug using offenders from further involvement in the criminal justice system through drug treatment programs;
• to reduce the risk of further offending to support their drug use; and
• to broaden the Magistrate’s options (ACT Health n.d.).

Its expected outcomes, as set out in the program’s policies, are:
• a reduction in criminal behaviours (especially during the bail period);
• engagement of offenders in alcohol and other drug interventions/treatment; and
• a reduction in alcohol and other drug use by offenders (Morgan Disney 2003: 19).

Magistrates, lawyers, Youth Justice, and the defendant him/herself may refer. Referrals come through court rather than police, but any stakeholder can petition the court for a CADAS assessment (including police and prosecutors). Significantly, there are no exclusion criteria and thus offences of violence or drug trafficking, for example, do not lead to exclusion as is often the case in other similar programs.

Where the defendant consents to participate, the CADAS clinician, who is located at the Court, provides an immediate assessment, and recommends an appropriate treatment plan. Assessment is based on any previous Corrective Services reports, Mental Health reports, court files, and information provided by the defendant. It includes consideration of physical and mental health issues and factors likely to impact upon compliance (such as family support and prior offending). The Magistrate will determine later that day

54 Email, Kate Gardner, Manager, Diversion Service, Alcohol and Drug Program, ACT Health, 3 September 2009
55 Telephone conversation, Kate Gardner, Manager, Diversion Service, 4 September 2009
whether the offender is to be released on bail to comply with the treatment plan and to be subject to CADAS supervision. The position taken by CADAS is that persons ought not to be bailed to reside at a detoxification or rehabilitation facility, and this is apparently ‘accepted practice’ now (ACT Health). If able to participate, the individual is referred to internal and external service providers for treatment, and the CADAS clinician monitors attendance and reports outcomes to the Court. An initial return date of three weeks is set, and then a final appearance will include sentencing.

Non-compliance is reported immediately to the Magistrates’ associate, rather than waiting for the next court date. This is seen as ‘critical in the utilisation of CADAS – the Court now has confidence in the process, because they know that all outcomes are immediately reported’ (ACT Health). Non-compliance may ultimately affect sentencing – but perhaps only by way of re-issuing a CADAS order or (if the non-compliance is more serious) it may lead to refusal of any further treatment opportunities.

CADAS was evaluated in 2003, with indications that it was working effectively to provide an important early intervention in terms of both the offending behaviour and the court process; to increase participants’ awareness of treatment options and incentives for engagement in treatment; and to increase the potential for participants to call for support during a relapse or when at risk of relapsing. It had also been an important intervention to participants whilst on bail (Morgan Disney 2003: 41). It appeared to increase participant’s commitment to treatment and anecdotal and qualitative data suggested that frequency and nature of offending were improved as a result of CADAS participation. CADAS was also seen to be assisting high risk individuals, with 60% of clients aged between 16 and 30; 12% of Indigenous background; and 15% assessed as having a dual diagnosis or co-morbidity of mental health and drug and alcohol issues. The report thus recommended that the intended implementation of a mental health forensic worker be seen as high priority, and that this worker collaborate closely with CADAS staff. The report also recommended that more be done in terms of developing a strategy to increase Indigenous access to the program.

Joudo has assessed the Indigenous participation rate at around 17% (Joudo: 77). In 2005/06, 35 assessments were for Indigenous persons out of a total of 195 assessments; and the primary drugs of concern for Indigenous people were cannabis and alcohol. Both Indigenous participants and other participants were referred most commonly to counselling and residential rehabilitation. In 2006/07, 63 out of a total of 304 assessments involved Indigenous persons, with 27 of the 63 Indigenous assessments treated for alcohol as a primary drug of concern. More recently, in 2007/08, 210 persons were referred to CADAS and 198 assessed. Further, 79 cases in this period involved alcohol as the primary drug of concern (with 40 for heroin, 37 for cannabis, and 35 for amphetamines). In 2006/07, there were 262 assessment orders; 256 assessments

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56 Data provided by Kate Gardner, Manager, Diversion Service, Alcohol and Drug Program, ACT Health, 4 September 2009
57 ibid
58 ibid
completed; 221 recommended for treatment; 111 engaged in a treatment plan; and 43 completed treatment plans. 59

ACT was also funded for an Aboriginal Liaison Officer (ALO) to support the alcohol and drug programs in this jurisdiction. The ALO works as an outreach position assisting with clients of CADAS wherever they are located/through relevant services, including through the Aboriginal medical service and other service providers. When an Indigenous client of CADAS is identified, they are offered the option to work with the ALO. 60 The ALO also supports other alcohol and drug sector services in working with Indigenous clients.61 There are a number of Indigenous-specific service providers with whom CADAS (and the ALO) work such as Gugan Gulwan Youth Aboriginal Corporation and Winnunga Nimmityjah Aboriginal Health Services (ACT) Inc. (and respective mental health and drug/alcohol workers). CADAS and the ALO also work closely with Ngambra Circle Sentencing Court to organise and implement treatment plans for offenders

4.3 DISCUSSION – DRUG AND ALCOHOL BAIL DIVERSION

Dealing with substances relevant to Indigenous communities

As noted, there are only two Indigenous-specific bail diversion programs dealing with substance abuse: the Indigenous Diversion Program (IDP) (WA) and QIADP (Qld) - both dealt with below. The Cairns Alcohol Remand and Rehabilitation Program (CARRP) deals predominantly, rather than solely, with Indigenous offenders although its focus upon Indigenous needs is very strong. However, a number of mainstream programs are attempting to incorporate Indigenous needs in the context of bail diversion.

It is evident that in order to effectively work with Indigenous offenders, there ought to be some particular focus on alcohol treatment and support. Eligibility criteria ought to reflect this focus, including by not excluding those who identify alcohol misuse as a primary substance abuse issue, but also more generally by, perhaps, including alcohol as a significant issue even where it is not specifically linked to offending behaviour. It may be that other substances ought also be part of the focus of an Indigenous-focused bail diversion program where arising as a problem for Indigenous offenders, including cannabis and/or volatile substances (as occurs in the Geraldton Alternative Sentencing Regime in Western Australia (see below) and see also the IDP (WA)).

Any bail support or diversion program for Indigenous people must incorporate a focus upon alcohol misuse, given the prevalence of alcohol as a substance misuse issue within Indigenous communities. Other substances might also need to be dealt with,

59 ibid

60 Email, Kate Gardner, Manager, Diversion Service, Alcohol and Drug Program, ACT Health, 3 September 2009

61 ibid
according to the particular need of relevant communities (including inhalants or cannabis).

**Improving Indigenous engagement – key factors**

On the basis of the evaluative material set out above, along with exclusionary criteria related to alcohol misuse and violent or prior offending (discussed above), other factors to be overcome in order to improve Indigenous participation in bail diversion, include the following:

(a) failure to engage effectively with Indigenous communities, leading Indigenous offenders (once accepted onto a program) to decline an opportunity to participate and also to fail to complete a program;

(b) the location of Indigenous persons in rural and remote locations, where there is likely to be poor access to bail diversion and support programs and/or to relevant and culturally appropriate treatment or service options available as part of any diversion program.

Programs that are not Indigenous-specific are being adapted to increase Indigenous engagement with bail diversion options, including by address these two factors inhibiting effective participation.

The MERIT programs discussed above, for example, have taken a drug-based, widely available, mainstream diversion program and used this existing model to tackle Indigenous alcohol use and/or young persons’ drug and alcohol use (with Wellington Options). Other than shifting a focus to include alcohol, each of the alcohol-focussed MERIT programs has been implemented in rural locations with sizeable Indigenous populations. The local communities had been identified (at least in the case of RAD and Wellington Options) as also having significant issues in relation to alcohol, and as well-resourced communities in terms of available support services (in Orange and Bathurst). Apparently 53% of the MERIT participants in Wilcannia/Broken Hill being supported in relation to alcohol are Indigenous, attributed to the large number of Indigenous people residing in these areas.

There is not a significant amount of detail available in terms of what other modifications have been made to improve Indigenous access to and completion of the programs. RAD has apparently demonstrated its flexibility by displaying ‘sensitivity to the cultural background of Indigenous participants’ (with no further information provided). The Wilcannia/Broken Hill initiative seeks to overcome barriers to access for local Indigenous people caused by a lack of transport by providing home visits and working on conducting sessions at more convenient locations. However, there is indication that attempts have been made to improve service delivery for Indigenous people through the 2007/08 trial of a new delivery model. Although we do not have specific detail about the model used, we do know that it was based on the Aboriginal Health & Medical Research
Council best practice principles referred to above, and largely based on the principles identified in our Introduction (see above, and Cunneen 2001).

These examples raise a number of important points, as follows.

**Engaging with Indigenous communities – key elements**

Firstly, it is possible to take a mainstream program and adapt it to meet the needs of Indigenous offenders by ensuring criteria are not disproportionately inhibiting access for Indigenous people and by considering a relevant service delivery model. Other than increasing the focus on alcohol in treatment and support, a number of factors are identified in the evaluative and other material above that may be used in adapting a mainstream program to ensure greater engagement with Indigenous people. These factors, however, may in some instances also be applicable to effective development of an Indigenous-specific program:

- employment of an Aboriginal caseworker and other staff;
- liaising more closely with Aboriginal agencies and communities and working within existing networks (including staff of the Koori Court or other Indigenous persons working with in courts, and Elders within Indigenous communities);
- development of culturally appropriate resources;
- improving staff skills and knowledge relevant to service delivery to Indigenous people;
- developing appropriate promotional material; and
- attempting to overcome barriers to participation, including in relation to transport difficulties by providing outreach or transport to Indigenous offenders.

Many of the programs seeking to work with Indigenous offenders and communities have adopted these particular elements, as is evident in the summaries provided in this report. CADAS, for instance, utilises an Aboriginal Liaison Officer, outreach services (including through Indigenous legal and medical services), and a focus upon Indigenous service providers (see also CREDIT (NSW); MHCLS (Vic), *inter alia*).

In adapting existing programs or developing an Indigenous-specific program, elements likely to increase Indigenous engagement in bail diversion and support programs include:

- employment of Indigenous staff, including caseworkers;
- networking with Indigenous communities, Elders, and Indigenous staff located in the Koori and other courts, and Indigenous service providers (including Indigenous legal services);
- training court and program staff to work with Indigenous people
- distribution of culturally appropriate promotional material
- attempting to overcome specific barriers to participation
- ensuring culturally appropriate resources, including services and interventions available
Secondly, as noted, the geographical location of many Indigenous people and communities in rural and remote areas means that they are less likely to access diversion programs unless the latter are widely available. In a 2001 census, Indigenous people represented 2.4% of the Australian population, but only 1.1% of total Australian population living in major cities; 2.3% in inner regional locations; 5.3% in outer regional; 12/3% in remote; and 45.3% in very remote locations (AIHW 2007). The level of risky alcohol consumption also increases in rural and remote locations (AIHW 2008: 35).

The location of relevant programs may lead (deliberately in many instances) to an Indigenous-focus, simply on the basis of demographics of those able to access the program in a particular region or jurisdiction (as has occurred with the Northern Territory Alcohol Court with its 92% rate of Indigenous participation (see below)). One effective method of increasing Indigenous access to programs is thus to target the program for adaptation or to develop an Indigenous-specific program for implementation in areas where there are sufficient numbers of Indigenous people and a demand to utilise the program. This may not be solely in rural and remote areas, of course, but may also be a useful approach in terms of targeting programs in metropolitan or larger regional locations.

This is what has occurred in the Kimberley region of Western Australia with the Indigenous Diversion Program. The IDP was initiated in Broome and Carnarvon to overcome barriers for Indigenous people in accessing diversion programs. The Department of Attorney General in Western Australia has effectively taken an illicit drug diversion program out to Indigenous communities to increase Indigenous participation rates in diversion programs and to increase the availability of culturally appropriate diversion options in regional Western Australia (DotAG 2006). It has selected its locations carefully to enable it to service Indigenous populations, but has also shifted its focus (informally) to include licit drug misuse alongside illicit drug use. The program is working effectively, with an 80% completion rate (see further below). CARRP and QIADP have taken a similar approach.

Thus, although it may not be practically feasible to implement specialised Indigenous diversionary programs in every location outside larger regional or metropolitan areas, it may be possible to select targeted locations (including in rural locations) with larger Indigenous populations. This provides some measure of equity in terms of access. However, capacity building may be required, including by ensuring that relevant treatment, health and other services are available in such locations (see discussion below in relation to QIADP).

As noted, this process may be further refined by using programs to respond, as appropriate, to the needs of a particular community in preference to simply placing
programs in areas with large Indigenous populations. The Koori Bail Project in NSW was developed in response to the identification by local Indigenous community members for a strategy to combat high rates of non-compliance with bail and refusal of bail in Bourke, for example (see below). CARRP was developed, similarly, in response to an identified need to respond to the homeless, Aboriginal and Torres Strait Islander people in Cairns who had become disconnected from community and had serious alcohol-related problems.

To improve Indigenous access to bail programs, it may be appropriate to consider a targeted implementation of any new or adapted initiative based on demand rather than providing such a program across all courts; that is, implementing a program in areas where there is a sizeable Indigenous population (and a significant issue arising in relation to alcohol misuse, if this is the focus of the bail program) and/or in response to needs as identified by the local Indigenous community.

Range of intervention options

Thirdly, the MERIT evaluation has indicated that intervention options available to offenders once participating in a program may impact upon the program’s effectiveness for Indigenous offenders.

As noted above, Indigenous participants in the MERIT program were 10% less likely to complete the program and this was attributed to different treatment types provided to Indigenous and non-Indigenous participants; that is, the prevalence of using residential rehabilitation for Indigenous people impacted negatively on their ability to complete the program. It is suggested in the MERIT evaluation that Indigenous people need to remain connected with family and community and may find compliance with such an onerous condition difficult. The CADAS program specifically rejects bailing to reside at a residential or detoxification facility on the other hand (although not in an Indigenous context). However, Indigenous offenders participating in CADAS are commonly referred to this option according to statistical information available.

In contrast, CARRP is a good example of a program that is working successfully with Indigenous offenders although it has a strong focus on residential rehabilitation and strict bail conditions to ensure compliance in this regard. The evaluation of the IDP program in Western Australia (see below) also indicated that family may be legitimating drinking patterns of offenders, and in this instance, and for repeat/problem offenders, residential programs were effective (Crime Research Centre 2007). Thus, residential rehabilitation may not work in some programs, but may be effective in others. It may depend upon particular communities and individuals.

As indicated above in the context of MERIT, options must be made available that are mindful of Indigenous culture. But Indigenous people should be provided with genuine alternatives – one treatment model may not be suited to all Indigenous participants; or a
particular Indigenous-service provider may not be appropriate to an individual but may work well with another.

A bail diversion or support program should be able to provide a range of intervention options to Indigenous participants (residential rehabilitation or rehabilitation at home; different service providers, for instance), rather than a single, standardised intervention option for application to all.

Intervention options should be culturally appropriate. Residential rehabilitation where imposed as a strict condition of bail diversion may not be appropriate for Indigenous offenders.

5 BAIL DIVERSION – GENERAL FOCUS

Summary of programs

The Court Referral of Eligible Defendants into Treatment (CREDIT) program is similar to CISP. It does not have a focus on any particular issue underpinning offending or social disadvantage and has broad inclusion criteria, with referral to appropriate treatment and support, including for alcohol misuse. It currently is being piloted at only two locations – a metropolitan and a rural location. Offenders participate under an individualised intervention plan and ought not to be penalised for non-completion of the program. Some offenders are likely to access CREDIT (NSW) without having to participate as a condition of bail, in response to concerns about net widening. Attempts are being made to engage with Indigenous communities in CREDIT through Indigenous membership of the CREDIT steering committee and through close collaboration with an Aboriginal Justice Group Coordinator in working with clients [5.1].

The Geraldton Alternative Sentencing Regime (GASR) in Western Australia has been very effective in engaging with the local Indigenous community and successful in terms of Indigenous participation and completion rates. It operates for both young people and adults pleading or found guilty. Those with ‘physical or psychological problems’ are ineligible. It deals a range of issues, including significant drug, alcohol and volatile substance misuse, gambling, and family violence issues (where these related to offending). Although it is not Indigenous-specific, is has a relatively high rate of Indigenous participation at 40%. It has two streams – enabling it to target intervention according to the level of offending and incapacity. For high-risk offenders, it is highly interventionist (and thus resource intensive) – with weekly court appearances and reporting to community corrections or juvenile justice agencies, for instance. Non-compliance may result in a period of custody [5.2].

Forum Sentencing in NSW is available to 18-25 year olds likely to face a period of imprisonment. If they are willing to plead guilty, they may be referred to a community conference (with their victim present, if appropriate). The conference gives rise to an
intervention plan, which may require the offender to apologise to the victim, undertake community work or to pay reparation to the victim [5.3]

5.1 Court Referral of Eligible Defendants into Treatment (CREDIT) (NSW)

NSW introduced a CREDIT program at Tamworth and Burwood Local Courts in August 2009. The program will run as a trial for a period of two years, to be expanded dependent upon evaluation outcomes. It is similar to MERIT, but addresses a much broader range of issues and is not based specifically upon diversion to drug/alcohol treatment. In this way, it avoids duplication of existing services and will refer relevant persons to MERIT if illicit drug use is a primary concern.

CREDIT is based on an approach that builds partnerships between agencies to ‘better integrate social, welfare and health services for offenders into the court process’, inter alia (Department of Attorney General (NSW) 2009). It is broadly aimed at reducing re-offending by encouraging offenders to engage in education, treatment or rehabilitation programs and by assisting them to receive social welfare support. It is also directed at contributing to the quality of decision-making in courts by providing information in relation to the offender’s rehabilitation efforts and needs (Department of Attorney General).

Lawyers, police, Magistrates and others may refer individuals, and the individual may also self-refer between the time of charging and of entering a plea. The program seeks to avoid excluding by way of restricted eligibility criteria. Issues relating to substance abuse, mental health, intellectual disability, gambling, unstable housing, poor employment history and prospects will all be dealt with under CREDIT where indirectly or directly related to offending. The offender need only indicate motivation to address relevant problems, and reside in an area where treatment and other services (as agreed) are available. Sexual offences are also excluded. Intervention may involve financial counsellors, mental health services, educational course providers, detoxification, residential rehabilitation, or counselling, inter alia.

Upon referral, the defendant meets with the CREDIT caseworker (of which there are two – one at Burwood and one at Tamworth). The caseworker will conduct a brief assessment in terms of eligibility and it is the caseworker generally making a decision as to whether the individual in question should participate in CREDIT, although the Magistrate may also make this decision at any time during the course of a matter. The matter will come before the court, and will be adjourned for two to three weeks. During this time, a formal assessment will be undertaken by the caseworker as well as a screening by police, using an actuarial – based, risk-focused screening tool. An individual intervention plan is then drawn up, and is referred to relevant services and programs. Participants are able to access services and treatment after completing the program, if required.

There is a great deal of flexibility in how the court will deal with defendants and their referral onto the program. Intervention must correspond with the particular
circumstances of an individual. Although participation may constitute a condition of bail, the Tamworth Magistrate has already indicated that they prefer not to bail people to participate, raising concerns about having to breach defendants on bail for non-compliance. Thus, if a person ceases to participate appropriately on the program, they will not be breached. Apparently this also occurs under MERIT. Participation may also be used as a sentencing option.

The Attorney General’s Department has indicated that this program has far fewer resources than the CISP program in Victoria (see below) – having only two caseworkers at this point and referring individuals to external sources for more intensive assistance – but is not dissimilar to that program. Significantly, it may be able to assist persons with alcohol dependency issues who might now be excluded under MERIT. In terms of assisting Indigenous persons, the program staff are building close ties with Aboriginal legal and medical services through the latter’s membership on CREDIT steering committees in both Burwood and Tamworth. In Tamworth, the CREDIT caseworker has a close working relationship with the local Aboriginal Justice Group Coordinator, who will be able to assist with clients (although this is not expected of the Coordinator and is beyond the formal parameters of his/her role as part of the Justice Group). 62

5.2 Geraldton Alternative Sentencing Regime (WA)

GASR commenced in 2001 on the instigation of the local Magistrate (King), originally to deal only with illicit drug issues. It operates in the Geraldton Magistrates Court and the Geraldton Children’s Court (and some offenders awaiting sentencing at the District Court) and assists persons in court facing problems relating to drug, alcohol and volatile substance misuse; domestic violence (see below under Family Violence Courts); gambling; and financial strife. It relies upon the Sentencing Act 1995 (WA), whereby sentencing is deferred for a period of time (up to six months) and the defendant is placed on bail to enable them to participate in GASR.

The program utilises a team-based, multi-disciplinary approach to case management of defendants. There are two streams within GASR – a court supervision regime and a brief intervention regime. The first lasts for between 4-6 months, is directed towards diverting more serious offenders and is more intensive. There are regular case management meetings and judicial monitoring under this stream. Offenders report to community corrections or juvenile justice and appear in court (weekly) and must also participate in a range of relevant programs. The case management team consists of a Magistrate, prosecutor, community corrections or juvenile justice officer, and a lawyer (generally from Legal Aid or the Aboriginal Legal Service). The team discusses a range of issues, including the individual’s treatment needs and level of compliance. The brief intervention regime does not use the same level of judicial monitoring as the court supervision regime and is for defendants facing less serious charges.

62 Telephone conversation, Geetha Varughese, Senior Policy Officer and Manager, CREDIT, Attorney Generals Department NSW, 26th August 2009
GASR is targeting high-risk offenders in many instances. In order to participate in the intensive regime, only a ‘significant’ alcohol or drug problem or other ‘offending related problem’ is required, unless the individual has some ‘physical or psychological problems that would preclude participation’ (WA LRC: 160). Generally, it is utilised only after a plea is entered (or in some instances if the individual has been found guilty), but where there is an offending related problem that indicates the presence of a ‘real risk of offending’, participation may take place pre-plea. The individual, once accepted onto the program, is involved in decision-making in relation to program requirements; is able to communicate directly with the Magistrate, and, upon completion, is personally congratulated by the Magistrate and applauded. The offender will be sentenced upon completion of the program, usually with sentence mitigated by completion (resulting in community-based sentences or suspended sentences) (WA LRC: 160). However, if the defendant does not comply with the program, they may be arrested and placed in custody until the next court date to enable them to ‘reflect on the situation, on the future and realise what is the endpoint of offending’ (Geraldton Magistrates Court 2005: 15). The Magistrate will early on indicate to the defendant the likely sentence upon completion or non-completion of the program, providing a ‘powerful motivating factor for rehabilitation’.

The program was positively evaluated in 2004, indicating, for example, that 50% of participants who had completed the intensive stream had not re-offended after the program; 70% of participants completed the program; and 80% of participants felt that their physical and mental wellbeing had improved as a result of participation (Cant et al 2004). There were concerns raised, however, in relation to the level of protection afforded to families of perpetrators of family violence during the selection of participants; to resourcing of the program; and to the reliance placed upon a single Magistrate to run the program.

The relatively high rate of Indigenous participation (40%) (Joudo: 77) is attributed to demographic factors; involvement of local Aboriginal service providers (such as the ALS); and fairly broad eligibility criteria (including alcohol issues, for instance, of particular relevance to Indigenous persons in court) (King 2006: 7). However, perhaps due to the introduction of the Barndimalgu Court (see below) and the relocation of the founding Magistrate, participation rates have faltered. In 2008, there were only two participants in the program, and at present there are no participants (WA LRC: 158-9). The Department of Justice (WA) has indicated that with a change in Magistrate at the end of 2009 it is quite possible that the program may be re-invigorated and increase the intake of participants. 63

### 5.3 Forum Sentencing (NSW)

63 Email, Steve Ford, Regional Manager, Geraldton Court, Magistrates Court, Department of Attorney General, 31 August 2009
Forum Sentencing (previously known as the Community Conferencing for Young Adults Pilot Program) commenced in 2005 in Liverpool and in northern NSW on a regional court circuit. Briefly, the program provides diversion either as a deferred sentence or on bail to participate in community conferencing. An intervention plan may be drawn up at conference requiring the offender to apologise or make financial reparation to the victim, undertake community work or address underlying factors contributing to offender (such as substance abuse treatment).

To be eligible to participate, offenders need to be between 18 and 24 years of age; to plead or be found guilty; be facing the likelihood of a prison sentence; and be prepared to participate. The offence should be triable summarily, and a prior history of offending (drug importation and firearm offences, for instance) may exclude an offender. An assessment will be undertaken for those offenders who fit within these criteria. This assessment is undertaken by the Program Administrator, and will be based upon a willingness to participate and whether the offender accepts the facts and has an understanding of the process involved, *inter alia*. The relationship between the victim and offender will also be taken into account.

5.4 DISCUSSION – GENERAL PROGRAMS

These programs are broadly similar to CISP in that they have general inclusion criteria and thus enable offenders to access support and treatment services for a range of issues, including alcohol dependency/misuse. This is a positive aspect of general programs such these (see discussion above in relation to CISP) and likely to benefit Indigenous offenders.

Further, both programs, although mainstream, have adapted themselves to ensure greater Indigenous participation. Indigenous membership of the steering committee for CREDIT (NSW) and the collaboration with the ACJG Coordinator are two examples of how this might be done, although the latter initiative is not based on any formal arrangement and has the potential to over-stretch ACJG resources. The GASR appears to have included in its criteria offences to reflect the offending patterns of the local Indigenous community (such as alcohol and volatile substance misuse), and this along with collaboration with Indigenous service providers (including ALS lawyers) has been identified as underpinning the success of the program in terms of its engagement with Indigenous offenders.

*Dealing with non-compliance and non-completion*

Person may not have to participate in CREDIT as a condition of bail. The Attorney General’s Department in NSW has indicated that MERIT is similarly flexible in its approach. Where this occurs, programs are not, strictly speaking, operating as bail diversion.

The decision to not use bail conditions to enable participation arises due to concerns about having to breach persons for non-compliance simply because they are unable to
comply with program requirements, rather than because they have otherwise breached protective or other bail conditions. An offender has entered into bail diversion on a voluntary basis, and thus ought not to be penalised for difficulties encountered during participation, it is argued in this context. This could be a particularly relevant consideration for Indigenous offenders where there may be a greater likelihood of non-compliance (or non-completion) with requirements of a program, including in instances where the program fails to adequately engage with these offenders.

The Western Australian Law Reform Commission has considered the issue of net widening in the context of bail diversion, and suggested that persons should be required to participate in programs as a condition of bail in those instances where they would only be eligible for bail with conditions. For those who would not require bail and/or bail with conditions, it is inappropriate to require that they participate in bail diversion as a condition of bail. This principle may not be so applicable to Indigenous offenders as they are less likely in general to be eligible for bail or bail without conditions.

Consideration must be given to how non-compliance and non-completion will be dealt with under bail diversion directed towards Indigenous offenders. Programs deal differently with the issue of non-compliance. In some instances, no action may be taken, unless the breach of program requirements (and thus of a bail condition to comply with those requirements) is particularly serious or repeated on a number of occasions. The program staff and/or Magistrate exercises discretion, as appropriate. On other occasions, program staff are required to immediately advise court staff or police of any breach. Some programs, such as GASR (see below) are stricter than others in this regard. The Magistrates Court Diversion Program (SA) operates on the basis that it is beneficial for offenders if clear limits are set (in terms of compliance) and that everyone involved sees that program staff are willing to act in response to offenders who step outside such limits and to remove clients from the program if non-compliant. The CADAS program requires reporting of non-compliance to the Magistrate immediately that it occurs in order to instil confidence in procedure.

GASR, in contrast to CREDIT (NSW), is highly interventionist – involving the justice system in close supervision of the offender (including by requiring regular reporting to community corrections or juvenile justice and regular court appearances) for the duration of the program and imposing a period of custody for non-compliance. In terms of non-completion, most of the programs set out in this report indicate that failure to complete a program in its entirety is not likely to penalise the offender in any way, including by way of an increased sentence. In some instances, offenders are able to attempt completion on more than one occasion. QIADP has a positive attitude to non-completion or non-compliance, seeing relapses or non-completion as just part of the process and acknowledging the steps offenders have taken to address their offending behaviour and

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64 Police policies and practices and the legal consequences of a breach of bail vary across jurisdictions. In NSW, for example, a breach of bail can result in bail refusal for any future criminal matters.
underlying factors. Thus, offenders will not be remanded in custody for relapses or non-completion (as occurs with GASR).

The GASR approach may well be justified on the basis that the program is often accepting serious, high-risk offenders (and deals with offences of family violence). The program only appears to automatically screen for psychological or physical impairment. A broadly inclusive program such as GASR may require provision for greater supervision of offenders and/or more onerous requirements. It may need to attach more serious consequences to non-compliance, particularly where the safety of victims must be ensured. GASR has, in effect, created two streams within the one program and adapts program requirements according to level of offending and circumstances of the offender. The more risk associated with an offender, the more onerous the program may need to be for the offender. This is discussed in some detail below in the context of family violence offender bail diversion (see Specialist Courts – Family Violence below).

Where programs, including general programs, avoid automatically excluding persons on the basis of prior offending or for offences of violence or sexual assault, the program needs to manage the (greater) associated risk, including to victims of (family) violence. This is discussed in relation to the Indigenous Diversion Program in Western Australia below. There is concern expressed in relation to the latter program that admitting those with violent histories and alcohol problems (often co-related) may be inappropriate. As noted briefly in our introduction, although in the context of programs for female Indigenous offenders, programs must take into account the safety of (Indigenous) victims of family violence. This is an important element of working effectively with all in Indigenous communities.

A bail diversion program ought to be sufficiently flexible and have adequate resources to enable program requirements and procedure to adapt to the level of offending and particular circumstances of offenders.

Closer supervision and more stringent bail conditions or program requirements may be required for higher-risk offenders.

It is also suggested that Indigenous offenders should have more than one opportunity to participate in a diversion program and should not excluded on the basis of a previous, unsuccessful attempt to complete a program.

Failure to complete a bail diversion program ought not to lead to a prohibition from participation on a later occasion.

6 BAIL DIVERSION – OTHER
6.1 Traffic Offender Intervention Program (NSW)  

The Traffic Offender Intervention Program (TOIP) is a Local Court based program targeting offenders who have pleaded guilty to, or been found guilty of, a traffic offence. The goal of the program is to provide offenders with the information and skills necessary to develop positive attitudes towards driving and to develop safer driving behaviours. TOIP is currently run in over 55 locations in NSW and five different course providers deliver the programs. The largest provider is PCYC NSW who covers over 50 locations in NSW.

On application by the defendant, the defendant’s legal representative, or the Court’s own motion, Magistrates can make a referral to an approved traffic course provider. The matter is then adjourned for sentencing to allow for participation in the program.

The Criminal Procedure Amendment (Traffic Offender Intervention Program) Regulation 2007 came into force in March 2007. The legislation provides a ‘legislative framework for the referral of offenders to programs, a foundation for anti-corruption measures, and has initiated the process of addressing concerns about equity and availability of courses.’ In addition, the TOIPs Operating Guidelines provide information for course providers on how to apply to become an approved course provider under the Regulation. The NSW Attorney General’s Department convened a Forum of all TOIPs providers in late 2008 to further the aims of regulation. This includes the opportunity to share resources and improve quality, effectiveness and consistency in course content and delivery. One of the issues that was discussed was the possibility of evaluation in the future. As the programs were unregulated until recently it lead to considerable variation not only in the contents of the courses but also the level of information that was being recorded by each course provider. One of the outcomes of the Forum held in 2008 was to consider the possibility of collecting consistent data across all locations to allow an evaluation of these programs to occur.

There are currently no Indigenous specific initiatives within the program.

7 BAIL SUPPORT PROGRAMS

Summary of programs

The Conditional Bail Support and Youth Bail Accommodation Service programs appear to work together to assist young people with bail in Queensland. The Conditional Bail Support program seeks to reduce remand rates, to assist young people to access and to

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65 Information provided by email, Geetha Varughese, Senior Policy Officer and Manager, CREDIT, Crime Prevention Division, NSW Attorney General’s Department, 11 September 2009
66 The information provided in this section is limited due to the lack of information available and/or made available by persons contacted as part of our research.
comply with bail. Offenders participate in the program as a condition of bail, and interventions provided whilst on the program relate to broader social needs as well as to issues immediately relevant to complying with bail. Levels of support provided will depend upon the needs of the young person. The rate of Indigenous participation may be as high as 48% [7.1]. The Youth Bail Accommodation Service is solely focussed upon addressing difficulties with accessing appropriate accommodation in order to be eligible for or comply with bail. There is some specific focus upon Indigenous youth [7.2].

The Intensive Bail Supervision program (NSW) is also directed towards reducing remand of young people unable to meet bail conditions. Its target group is similar to that of the Conditional Bail Support program and there is also some specific focus upon Indigenous youth. The assistance offered includes remand interventions (to ensure that young people are bailed rather than remanded); a weekend bail assistance and support service (similar to CAHABPS in Victoria); bail supervision and support (which might extend to alcohol and drug treatment); and a forthcoming Bail Assistance Hotline. Brokerage is used throughout. [7.3]

The Supervised and Regional Supervised Bail Programs (WA) seeks to ensure that young offenders have access to a responsible adult, as required in this jurisdiction in order to be eligible for bail. Bail coordinators or liaison officers work with the young person to locate, and/or may take on the role of, a responsible adult if necessary. There are particular initiatives for Indigenous youth residing in regional and remote locations, including through Indigenous-managed bail facilities [7.4]. The Bail Assessment and Supervision Program in the Northern Territory involves assessment as to bail options and supervision by Probation and Parole officers of a Bail Order [7.5].

7.1 Conditional Bail Support (Qld)

The Conditional Bail Program commenced in 1994 and is coordinated by the Department of Communities. It aims to reduce numbers of young people (10-17 years of age) on remand by assisting young people who are unlikely to comply with bail and therefore are unlikely to be eligible for bail, providing intensive support to combat this non-compliance and to reduce re-offending. The program targets those who have a history of failure to appear; may be facing charges for an indictable offence and are remanded in custody; have breached a community-based order; may risk being placed in custody pending a pre-sentence report; require intensive support; or are recidivist offenders (Joudo: 56).

When a prosecutor opposes bail, the court may consider placing a defendant on the program as a condition of bail and this decision will be informed by a report prepared by Departmental officers. The young person must consent to participate and to follow the lawful instructions of officers. Whilst on the program, the young person will undertake activities related to their educational, vocational and social needs. Although it does not deal with accommodation issues, the program works in collaboration with the Bail Accommodation Service (see below). And offender will be assigned a youth worker (including, where appropriate and possible, an after hours worker) who will support both
the young person and the young person’s family to comply with bail conditions. Levels of intervention vary, depending on the circumstances of the young person. In some instances, where it is deemed appropriate, young people are encouraged to apply to the court to have him/herself removed from the program, and to continue on bail unassisted. In other instances, where a young person has a significant child protection history or an intellectual disability, more intensive and ongoing support is required. Such persons are ‘more likely to fall between the gaps of other programs and also have a heightened need to avoid exposure to the custodial environment because of their vulnerability’ (Venables & Rutledge 2003). Where a young person is failing to comply with the program conditions, they must be reported to police or crown prosecutors. It is then up to the latter to instigate breach proceedings, but the department continues to offer support throughout.

In 2002-03, a survey of 293 young people who had completed the program was completed (Venables & Rutledge). At any one time, 75 to 83 young people were on the program. The majority of participants were 16 years of age; 48% identified as Indigenous, and half were on the program for 1-6 months. For the 2002-03 period, 60% completed the program and 40% were breached; and of the 174 successful completions during this time, 5% had their charges withdrawn; 11.4% were released on self-bail; and 77.6% received community-based sentences (probation, good behaviour orders, community service, or conditional release orders). Only 4.3% were given a detention order. For Indigenous youth during this period, 139 had completed the program (57.6% were successful and 42.4% were breached); and of the successful participants, 5% had their charges withdrawn and 11.25% were released on self-bail. Further, 80% received a community-based order and 4.6% were incarcerated.

Thus, whilst Indigenous young people have a slightly lower successful completion rate than non-Indigenous participants, they have ‘almost identical successful outcomes to non-Indigenous young people in terms of sentencing and exiting the program because of improved circumstances’. However, some concern has been expressed in relation to the low Indigenous representation on the program compared with non-Indigenous rates.

7.2 Youth Bail Accommodation Service (Qld)

The focus of this program is upon providing young people with accommodation options and support in maintaining accommodation in order to increasing their chances of avoiding remand and of complying with bail. Young people in existing accommodation will be supported to maintain stable accommodation and new placements will be facilitated for those who have been granted bail by the courts and who require additional assistance to meet bail conditions. It has a specific focus on Indigenous young people (in Townsville, Mt Isa and Cairns) and does not actually provide the accommodation but assists with accessing and maintaining accommodation.

The Service provides the following:
- assessment of individual circumstances of young people and identification of support and accommodation needs during bail;
• assistance to young people to maintain suitable accommodation arrangements through direct intensive support, practical support and/or access to other community resources;
• information, advice and/or referral and practical support to the families of young people to assist them to maintain suitable accommodation arrangements; and
• pre-sentence and pre-placement advice, including cultural advice to the Youth Justice Service Centres about young people who have been charged with offences.

Assistance from or participation in the program does not form part of bail conditions, and it is used only as a last resort to avoid net-widening; that is, when young people are unlikely to be granted bail on their own undertaking (Polk 2003).

7.3 Intensive Bail Supervision (NSW) 67

This Department of Juvenile Justice program was introduced in 2007 and is aimed at decreasing the population of young people on remand who are unable to meet their bail conditions. It employs a number of Bail/Remand Juvenile Justice Officers in different regions in NSW. The program is particularly targeted at young people appearing in the Children’s Court under 14 years of age and of Indigenous background with significant criminogenic needs; young people presently remanded in custody; or young people who are at ‘significant risk’ of being remanded in custody due to a lack of or unstable accommodation or otherwise in need of support in the community.

The program aims to provide practical diversionary support as well as being a more cost-effective alternative to custody through the following strategies:
- remand interventions;
- weekend bail assistance and bail support service;
- bail supervision and support service;
- brokerage services.

(i) Remand interventions involves community-based staff working with young people, court officials, police and other service providers to ensure that where appropriate, young people who would otherwise be remanded into the agency’s custody or those already remand ed into custody can receive bail and be managed within the community pending any court appearance/outcome.

(ii) Weekend Bail Assistance and Bail Support consists of provision of a weekend bail service in key locations throughout the state and through provision in selected cases of ongoing support to young people who would otherwise be considered an unacceptable risk by courts to be granted bail.

(iii) Bail Supervision and Support Bail entails supervision by community based departmental staff of a young offender on bail with conditions within a supportive program. Supports provided may relate to accommodation or other

67 This information is based on material provided by Cathy Bracken, A/Manager Operations, Department of Juvenile Justice (NSW), 18 September 2009
services such as alcohol and drug treatment. This is all designed to ensure that they meet their bail conditions.

(iv) Brokerage in the context of this program involves purchasing accommodation, transport and other community-based support services to maximise the opportunity for young people to remain in the community whilst on bail and thus to contribute to lowering the risks of re-offending. There is some focus upon Indigenous needs. Providing accommodation through brokerage to Indigenous offenders, for instance, means that they are able to be on bail within the community. Brokerage is used in preference to bail hostels for Indigenous offenders. Brokerage funding also covers payment for temporary rental accommodation, bail subsidy payments to approved carers and refuges, and purchase of additional services to meet specific placement and individual requirements including mental health and Alcohol and Other Drug (AOD) services.

Further, the Department has been funded to establish an after hours placement service similar to CAHABPS in Victoria. The Bail Assistance Line (Bail Hotline) will aim to reduce the increasing numbers of young people being held in custody pending a court outcome (remand) that could be supervised on bail. The Department has indicated that it sees ‘the period between arrest and sentencing (as) a unique window of opportunity for the agency to intervene effectively with the co-operation of other agencies in order to divert young people from unnecessary incarceration.’

7.4 Supervised and Regional Supervised Bail Program (WA)

The Western Australian Bail Act provides that a young person may only be released on bail where a responsible person signs an undertaking. This provision makes it particularly difficult for Indigenous young people to be bailed, as discussed by the WA Law Reform Commission (WA LRC: 194).

The Supervised Bail Program assists young people when they are not able to locate a responsible adult to sign a bail undertaking. In Perth, bail coordinators or liaison officers work at the Children's Court and at Rangeview Remand Centre (for juveniles) to assist with locating a responsible adult. The bail coordinator can sometimes act as a responsible adult, though only when there is no one else is available, and the young person will then reside at an approved location such as a hostel. The bail coordinator will also assist young people to comply with bail conditions. In rural areas local juvenile justice officers provide this service. The rate of Indigenous participation is 18% (Joudo: 77).

68 See Bail Act 1982 (WA) Sch 1, Pt C, cl 2(2). It is possible for a 17-year-old to be released on his or her own personal undertaking provided that he or she is of sufficient maturity to live independently.
69 Go to: http://www.correctiveservices.wa.gov.au/_files/supervised_bail.pdf
In 2007/08, the Rangeview Remand Centre placed 604 young people on the program. The program aims to ‘limit the removal of young offenders from regional communities’, and operates within the Regional Youth Justice Strategy which is directed towards increasing the likelihood of young offenders successfully completing bail whilst remaining in the community/district. In 2007/08, 608 placements were completed, and 59% of those placed on the program were Indigenous. Most participants were placed with family or extended family, but others were placed within supported accommodation or therapeutic intervention services (Department of Corrective Services (WA)).

No further information provided.

**Regional Supervised Bail Program (WA)**

In regional and remote locations, the Supervised Bail Program has been working with Aboriginal communities to assist young Aboriginal people with respect to bail. In 2000, the Kimberley Supervised Bail Program commenced, in response to concerns relating to transporting young offenders to be remanded in Perth. The Banana Well juvenile bail facility was set up to accommodate young people without a responsible adult who would otherwise be remanded in custody. The Banana Well facility was operated by the local Indigenous community, and provided accommodation, supervision and care to the offenders - offering them an opportunity to remain in their community.

There have been three such programs initiated since 2000, offering community-based bail facilities for young people. The Banana Well (near Broome) and the Bell Springs (Kununarra) programs were withdrawn in 2004. In 2006/07, 405 (of a total of 521 placements) were metropolitan placements. There were 24 Goldfields-Esperance and 8 Kimberley placements during this time (Department of Corrective Services (WA)).

No further information provided.

**7.5 Bail Assessment and Supervision (NT)**

The court requests a bail assessment to be carried out to ascertain if there are any options for an offender on bail (ie investigations with family, relatives, friends, Youth Refuges, etc). The court may request a Probation and Parole Officer to supervise a bail order and to administer any conditions of that order (eg residence, counselling/treatment, curfew).

No further information provided.

**7.6 DISCUSSION – BAIL SUPPORT**

As noted above, it is often difficult to distinguish between bail support and diversion. Efforts to address issues such as housing or alcohol use may be related to assisting the young person to complete their bail period successfully as well as to tackling underlying issues contributing to offending and broader social disadvantage.
Some of the above programs are clearly based in bail support rather than diversion. The Youth Bail Accommodation Service in Queensland, for instance, is limited to ensuring that a young person is able to access appropriate accommodation in order to avoid remand and/or breaches. Others such as the Conditional Bail Support program in Queensland or the NSW initiative are more diversionary in nature - particularly where they are offering a range of services to young people on bail directed towards addressing vocational, family and other issues. However, it is their stated emphasis upon combating those aforementioned barriers and to reducing remand rates that leads to their categorisation as bail support programs (see Denning-Cotter: 4-5).

In broad terms, problems identified within bail support programs, particularly for young people, include:

- a lack of programs for young Indigenous people;
- insufficient programs and services available to young people on bail support programs, particularly in rural and remote areas;
- inadequate responses to the complexity of the bail requirements generally imposed upon young people; or
- a failure to deal with the three barriers to accessing/complying with bail (see below) (Denning-Cotter).

All of these programs are particularly directed in some way towards assisting young persons to access and comply with bail (although they may do more in some instances), and focus on the three areas most commonly presenting as barriers for young people in terms of bail compliance and refusal – stable accommodation, finding a responsible adult/guardian and/or providing access to after hours support (Denning-Cotter). The programs sometimes target more than one of these issues (such as the Regional Supervised Bail program providing accommodation and a ‘responsible adult’). They also sometimes deal with an offender in a more holistic sense (and thus border on bail diversion rather than support – where, for instance, offenders undertake programs relevant to underlying issues such as alcohol dependency whilst on conditional bail).

Each of the programs also has a specific focus upon Indigenous young people and in some cases Indigenous young people in rural and remote areas. This is clearly positive. Other than by targeting programs to relevant Indigenous communities (through, for example, employment of rural juvenile justice officers and/or development of bail facilities in remote Western Australia), there is little information provided in terms of how these programs are adapted to engage with Indigenous communities and offenders.

Denning-Cotter has set out a list of best practice principles in relation to bail support, drawn from available literature, as follows:

- Programs should be voluntary in recognition of the unconvicted status of the individual in question.
- The most effective programs (in terms of reducing re-offending) offer support and treatment rather than monitoring and supervision.
- Programs ought to be ‘holistic’ in addressing an individual’s needs; that is, strategies for intervention and support might address a range of issues.
- Coordination and integration between relevant services and systems is required.
- Programs must be place-based; that is, adapted to the specific context and community in which they are to operate.

If we define bail support as initiatives designed to improve access to and compliance with bail, bail diversion programs in many respects are already undertaking bail support but go further. Bail diversion programs need to ensure that barriers to eligibility for bail are overcome, and appear to be doing so where they deal with accommodation needs, for instance, and otherwise and in a broader sense increase access to bail. Some of the bail diversion programs have specifically incorporated into practice initiatives which are more like bail support than bail diversion (as defined). Within the Koori Bail Project, for instance, family and support people are contacted to attend court for the offender’s bail hearing to ensure that he/she has support and that support people are aware of relevant bail conditions. The program also involves filling in bail cards for offenders and their families and recording the bail conditions and court dates to help to ensure that bail is not breached. Other programs overcome lack of transport to ensure that offenders are able to attend court and/or program appointments.

These sorts of initiatives might also be useful in other bail diversion programs, depending upon the nature of the program and how it is currently operating, although the distinctive objectives of bail support and bail diversion must be borne in mind.

<table>
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<th>It may be necessary to incorporate certain elements of bail support programs within bail diversion programs, as appropriate. This might include providing transport to program or court appointments, for instance.</th>
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8. **INDIGENOUS SPECIFIC BAIL DIVERSION AND SUPPORT PROGRAMS**

**Summary of Programs**

QIADP aims to improve Indigenous health and to reduce Indigenous rates of contact with the criminal justice and child protection systems. In this sense, contact with the justice system provides an opportunity to engage with Indigenous offenders in relation to problematic alcohol use and a range of other factors (including social functioning, parenting, education) as well as to reduce offending. This is reflected in the type of interventions provided under QIADP, with a focus upon alcohol treatment but with other services or programs provided. QIADP operates in three locations in regional Queensland, also providing outreach to three remote communities. It has a detailed governance structure and operates as a cross-portfolio strategy to tackle Indigenous
offending and social disadvantage – with bodies at state and local level consisting of
governmental and non-governmental Indigenous and non-Indigenous representatives, and
with some division between clinical and other issues. There is an emphasis upon
Indigenous community involvement in program development, procedure and evaluation.

To participate, offenders must be charged with offences related to alcohol use (including
breaches of domestic violence orders), but generally offences (either current or previous)
of serious personal or sexual violence are excluded. The offender need not plead guilty.
Offenders may undertake intensive detoxification prior to full assessment, but once on
the program complete two stages – Intensive Treatment and Rehabilitation and Recovery.
Significantly, offenders are offered the opportunity to participate in an Aftercare
component (of 6-12 months) if requiring ongoing support post-program completion [8.1].

There are two NSW Indigenous-specific initiatives. The Aboriginal Client Service
Specialist workers in 17 NSW Local Courts assist by providing information to offenders
in relation to the bail process and bail conditions, as well as by providing relevant
referrals [8.2]. The Koori Bail Project in Bourke involves Aboriginal Community Justice
Group coordination of the provision of culturally appropriate advice to the court in
making determinations in relation to bail for Indigenous offenders. The project has some
bail support elements too [8.3].

The Indigenous Diversion Program is a bail-based drug diversion program for lower level
offenders who plead guilty in remote Western Australia. Diversion to drug (and alcohol)
treatment is provided. It has a focus upon capacity building for Indigenous communities,
service providers and Magistrates. The completion rate is high (80%), suggesting that the
program is working well with Indigenous offenders [8.4].

There are other Indigenous-focused family violence initiatives (see below under
Specialist Courts).

8.1 Queensland Indigenous Alcohol Diversion Program

The Queensland Indigenous Alcohol Diversion Program (QIADP) commenced as a three-
year pilot program in 2007.

Policy context

QIADP was developed as part of the Government’s cross-portfolio Queensland Drug
types of drug use, but concerns around Indigenous alcohol use were specifically noted. It
was suggested that although Indigenous people are more likely than non-Indigenous
people to abstain from drinking alcohol (40% of the Indigenous population compared
with 20% of the non-Indigenous population), 81% of Indigenous drinkers usually
consumed alcohol ‘in a risky manner’. Thus, half of all Indigenous adults were thought
to be drinking in ways that ‘jeopardise their health’, compared with only one third of the
general population. Further, alcohol-related deaths of Indigenous people in some communities were over 21 times the general Queensland rate.

Indigenous alcohol and drug use and development of ‘innovative criminal justice approaches’ to tackle the issue of drug and alcohol misuse were two key action areas (of seven in total) to be prioritised as part of the Strategy. With respect to the latter, a key initiative was implementation of an ‘Indigenous alcohol diversion program to divert defendants charged with alcohol-related offences to treatment and case management in order to reduce alcohol-related harm to the individual and the community’.

Development and expected benefits

QIADP was subsequently introduced in 2007 to operate at three locations – Cairns (with outreach to Yarrabah), Townsville (with outreach to Worrabinda) and Rockhampton (with outreach to Palm Island). QIADP is a voluntary treatment program directed to rehabilitating Indigenous people who are alcohol-dependent or are high-risk drinkers. Its overall objective is to improve Indigenous health and to reduce the number of Indigenous persons involved in the criminal justice and child protection systems. It is defined as follows in the Magistrate’s Court Protocol No. 2 of 2008 under which QIADP operates:

5. The program provides for early referral for assessment and treatment of defendants who are eligible for bail, who are motivated and volunteer to engage in treatment and rehabilitation for their alcohol problems, and who otherwise meet the eligibility criteria to participate in the program.

6. The program brings together the health, justice and law enforcement systems with the focus on the reduction of criminally offending behaviour by Indigenous defendants associated with alcohol use and the reduction of Indigenous over-representation in the criminal justice system.

It is available to (i) Indigenous defendants charged with offences relating to alcohol use and (ii) Indigenous parents whose alcohol use has caused them to become involved in the child protection system. It thus has both a criminal justice (contributing 80% of participants (or 40 places in Townsville; 32 in Cairns; and 32 in Rockhampton)) and a child protection stream (contributing 20% (or 10 places in Townsville; 8 in Cairns; and 8 in Rockhampton)).

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70 The Queensland Government has allocated $36.4 million to the program, including $26 million from the Department of Health for alcohol diversion treatment and support, and $4.5 million from the Department of Communities for supported accommodation (Media Release: Minister for Communities, Disability Services, ATSIP, Multicultural Affairs, Seniors and Youth, 21st February 2008)
The expected outcomes and benefits of QIADP (referring to both the criminal justice and child protection streams), as set out in the QIADP Policy and Procedure Manual (2007) (the QIADP Manual), include the following:

- improved family life, such as enhanced parenting skills and reunification of families;
- improved personal health and social functioning of participants leading to a reduced demand for health services;
- more appropriate sentencing of offenders based on information acquired during their participation in the program;
- ongoing support and assistance for successful participants in areas such as education, employment, accommodation and health;
- cost effective initiative within the justice system; and
- reduced numbers of re-offenders, and a significant reduction in the seriousness and frequency of re-offending by successful participants.

**QIADP governance structure**

QIADP tackles Indigenous alcohol misuse through a whole-of-government approach, with a number of agencies involved in the pilot project.

In terms of governance, according to the QIADP Manual, an Interdepartmental Committee (IDC) has a coordinating role at state level with respect to QIADP. The Department of Justice and Attorney – General (DJAG) (Qld) chairs the IDC, with IDC membership consisting of representatives from a range of government departments (including Corrective Services; Queensland Police Service (QPS); Queensland Health (QH); and the Departments of Housing, Premier and Cabinet, and of Communities). A further state level body, the Statewide Treatment Reference Group (STRG), is led by QH, and is responsible for developing and monitoring operational level treatment policies and for setting clinical standards for assessment and management of QIADP participants, inter alia.

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72 The QIADP State Interdepartmental Committee (IDC) (see below) developed the QIADP Manual, which guides implementation of the QIADP. It was developed utilising information gathered in relation to similar pilot programs, government reports dealing with Indigenous alcohol use, best practice evidence for delivery of alcohol diversion programs, and feedback received from stakeholder consultations held in the pilot regions in 2007, the latter facilitated by Queensland Aboriginal and Islander Health Council (QAIHC).
A similar two-tiered structure exists at the local level. In each of the three QIADP locations, Local Reference Groups exist to advise the state-level IDC on local issues and to also respond to state-wide issues; to monitor implementation; and to identify strategies designed to overcome any barriers to QIADP implementation. Membership of the Local Reference Groups includes representatives from government and non-government agencies, including Community Justice Groups (CJGs) and Indigenous service-providers, and is not remunerated. Local Treatment Reference Groups, with membership from each or any agency involved in treatment or aftercare under QIADP, deal with local operational issues around treatment and case management options for individual participants. There is also provision for development of local stakeholder agreements in pilot sites.

**Whole of government approach**

A number of agencies work together in implementing QIADP, but with some variability depending on the stream in which they are involved. For the criminal justice stream relevant agencies include Queensland Health (QH); Queensland Aboriginal and Islander Health Council (QAIHC); Queensland Police Service (QPS); Magistrates and court staff; legal practitioners (including Aboriginal and Torres Strait Islander Services (ATSILS)); and Community Justice Groups (CJGs). Each agency has a specific responsibility for implementing relevant procedure, as detailed within the *QIADP Manual*.

There is a some focus upon Indigenous participation both in planning, implementation and evaluation processes, but also through mechanisms such as working with and utilising Indigenous service providers; employment of ATSI program workers; and including CJGs in an individual’s case assessment and monitoring processes (see below).

**Process**

The criminal justice stream of QIADP operates as a bail-based diversion program either at the pre-plea or post-plea stage of proceedings. Depending on eligibility under general bail provisions set out in the *Bail Act 1980 (Qld)*, a defendant may be released on bail to participate in QIADP under s 11(4) of that Act, which provides as follows:

> Without limiting a court’s power to impose a condition on bail under another provision of this section, a Magistrates Court may impose on the bail a condition that the defendant participate in a program prescribed under a regulation, after having regard to—

- (a) the nature of the offence; and
- (b) the circumstances of the defendant, including any benefit the defendant may derive by participating in the program; and
- (c) the public interest.

Eligibility criteria specific to QIADP is set out in the *QIADP Manual* and in the Magistrate’s Court Protocol No. 2 of 2008 (and originally in Protocol No. 1 of 2007). According to those criteria, the defendant must be an Aboriginal or Torres Strait Islander person; an adult aged 17 years or above and not eligible to be dealt with as a child under
the Juvenile Justice Act 1992; and must have a demonstrable alcohol problem (although other drug problems may be an associated or secondary problem). Participants involved in the program to date have been young men because of the difficulties in engaging with or assisting offenders with more entrenched alcohol problems. The offence for which the defendant is charged must be able to be dealt with summarily (and generally precludes offences where there are allegations of serious personal or sexual violence or instances where there are convictions for the same) and must also relate to the defendant’s use of alcohol (such as liquor offences, drink driving, breach of domestic violence orders, minor assault and property offences). A clinical assessment by QH as well as consideration of the defendant’s history of violence and of safety issues (for the community and QIADP providers) will be undertaken in assessing suitability (see below). Further, the defendant must be appearing before a Magistrate at court at one of the three pilot locations and also reside in an area where participation in relevant programs/treatment is possible. Importantly, the individual in question must agree to participate in the program.

The QIADP process is set out in the QIADP Manual but contains a degree of flexibility, a factor contributing to its success (see below). Under the program, the QIADP treatment team works closely with local treatment and support service providers to offer support which includes detoxification and pharmacotherapies; residential rehabilitation; individual and group counselling; case management; cultural healing and culturally responsive programs; parenting programs; and welfare support and assistance.

There are four stages in the treatment available to participants – detoxification, intensive treatment, rehabilitation/recovery and aftercare.

To enter QIADP, an individual may be nominated by family members, police, legal practitioners, Magistrates or may self-nominate. According to the QIADP Manual, initial referral to QIADP is likely to be by QPS officers at the time of charging (or later by ATSILS). Once the matter is before the court, the Magistrate will stand it down for initial clinical assessment, if appropriate, to determine suitability to participate in QIADP. A QH QIADP Assessment Officer (nurse) will carry out any initial assessment (Suitability Court report) considering the extent of alcohol misuse by the defendant and/or willingness to address this misuse.

The matter is then returned back to court, and, where appropriate, it will continue to a full assessment with the defendant on bail if the Magistrates deems this an appropriate course of action. In making a decision in relation to full assessment, the Magistrate will take into account party or CJG submissions (pursuant to s 16(2)(e) of the Bail Act), or any other relevant facts and circumstances specified in s 11(4). Full assessment allows for a

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73 Telephone conversation, Alex Dawia, Regional Adviser, Community Justice Group, 25 September 2009
74 QAIHC Brochure
more comprehensive examination of the defendant’s circumstances, including his/her level of alcohol misuse and readiness to change and will be undertaken by the QIADP Assessment team, treatment service providers and an available CJG representative. A participant may be required to undergo medically-supervised detoxification prior to full assessment. Detoxification may take 7 to 10 days in a hospital, residential treatment facility, or at home with support from the QIADP team. More generally, supported accommodation and/or residential rehabilitation may be available in the participant’s home, hospital or a rehabilitation facility, probably during the second stage of QIADP rather than the first stage. Full assessment will be carried out after detoxification.

An Individual Treatment Plan will be drawn up during this assessment and may include residential rehabilitation, medically supervised withdrawal, individual counselling or drink driver education, for example. An assessment report is prepared for the court outlining factors such as the defendant’s suitability for treatment, the nature of the defendant’s alcohol use, any CJG recommendations, and relevant treatment needs. If the defendant and Magistrate accept the Treatment Plan, the individual is then granted bail subject to relevant conditions, including that the defendant is to participate in the QIADP, with requirements to report as specified to their QH QIADP Case Manager. They are likely to be bailed to live either at supported accommodation (where they are not supported in their endeavours by family members or require a high degree of support) or at a fixed address (Osborne 2007).

The participant then enters into the Intensive Treatment Phase of QIADP. This stage of QIADP, lasting for approximately 8-10 weeks, focuses upon stabilising the defendant ‘physically, emotionally, psychologically and socially in order to address the participant’s alcohol use’. The QIADP Case Manager will coordinate the various programs and services provided to the participant, with a focus upon counselling at this point. The participant will also have to report to court for review at intervals as determined by the Magistrate (at least every six weeks). The QH QIADP Case Manager will provide progress reports to the court for this purpose.

The next stage of QIADP, the Rehabilitation and Recovery Phase, lasting 8-10 weeks, seeks to address significant factors linking the individual’s alcohol use and their offending behaviour. There is a focus upon relevant programs, including programs such as ‘Cultural Healing’, ‘Ending Family Violence’ or ‘Anger Management’. During this stage, the QIADP Case Manager will begin liaising with the QH Aftercare Coordinator in relation to transitioning the defendant into the Aftercare stage of QIADP.

If the participant completes the program (approximately 20 weeks after commencement), the exit process begins. As part of this, he/she is no longer subject to a bail condition to participate in QIADP under s 11(4) of the Bail Act. The QIADP Case Manager will produce a final written report including details of the participant’s achievements and the extent of his/her rehabilitation. The participant will be asked to enter a plea, if they have not already, and the matter will then proceed to sentencing if the defendant is pleading or found guilty. Any sentence passed will need to take into account successful completion of the program (under s 9(2)(o) of the Penalties and Sentences Act 1992). However,
failure to complete the voluntary program ought not to affect sentence. The Aftercare component is available if requested by participants, offering further assistance with health, housing, employment, housing, and education/training needs. Community-based workers provide services at this stage, and relevant support is available for approximately 6-12 months.

The participant is required to undertake the alcohol treatment program as detailed in their individual treatment plan, abide by all conditions of the treatment program, and appear before the Magistrate as specified. However, if the defendant decides not to continue with the program at any stage during the program, the criminal charges are simply remitted back to court to be dealt with in accordance with law. According to Osborne, a Magistrate involved in the program, the Court should ‘recognise, in a positive way, the fact that (an individual was) willing to enter the program’ even where they do not finish it, and they ‘should be encouraged to pursue treatment options’ (Osborne 2007).

There are specific procedures set out in the QIADP Manual to be followed where there is non-compliance of conditions of the individual’s treatment plan or bail conditions, with such matters being reported to the QPS QIADP Coordinator or QH QIADP Case Manager, in certain instances, to ultimately be dealt with by the court. Significantly, participants do not commit an offence under s 29 of the Bail Act if they breach the condition of their bail requiring them to complete the program. The participant’s bail cannot be revoked simply on the basis that they do not wish to continue with the program, fail to complete the program or breach a relevant condition (s. 30(6)), but the court may remove the condition that they participate in the program. If the Magistrate does vary or revoke bail and in effect thus removes the defendant from the QIADP, the criminal matter will then proceed in the normal way.

Evaluation

During implementation of QIADP, ongoing, independent evaluation has been conducted, with a final report due in late 2009 at the end of the three-year pilot period. The evaluators produced a QIADP Formative Evaluation Report in January 2009, concluding that after eighteen months of operation QIADP appeared to be operating with ‘some success’ (Success Works 2009).

Effectiveness in this context was demonstrated by the graduation of a number of QIADP participants but also, ‘and more importantly’ by the fact that ‘participating in QIADP had completely transformed the lives’ of some participants. 75 The evaluators note that measuring success only by way of aggregate program completion rates is not sufficient in this context. QIADP is able to deliver good outcomes for clients, regardless of whether they are able to complete the full treatment regime of 20 weeks, according to the evaluation. It appears to be offering to participants an opportunity to re-connect with community regardless of whether they completed treatment and to at least take an initial

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75 This is reiterated by those working within the program; telephone conversation, Alex Gawia, Regional Advisor, Community Justice Group, 25 September 2009
step towards dealing with alcohol addiction. Indeed, non-completion of QIADP or
relapses are being seen as ‘part of the recovery process’ rather than failure and
participants are provided with more than one opportunity to take part in the program.

The Evaluation Report refers to five key success factors for QIADP, including that all
stakeholders appeared to ‘own’ QIADP (1) and that the Magistrate took a personal
interest in the welfare of clients (2). In this regard, clients are motivated to participate in
treatment through fear of incarceration but have also been encouraged by regular contact
with a Magistrate who was ‘taking a personal interest’ in their life. Osborne relates how
he is not robed during QIADP court sessions, and refers to participants on a first name
basis (Osborne 2007). The importance of judicial support to the success of the program
is noted by CJG representatives working within the program. 76 Initially, strained
relationships were evident during rapid rollout in each of the three locations. Problems
occurred with the relationship between government agencies due, in some instances, to
lack of clarity in terms of respective roles and the different time frames each agency took
to become fully operational with regards to QIADP. Relations between government
agencies and Indigenous organisations /communities also encountered difficulties.
However, participation in the governance structures and good informal networks meant
that relationships between government agencies, and between government agencies
and Indigenous NGOs had apparently been strengthened, contributing to the overall success
of the QIADP (3).

Significantly, the frequent utilisation in QIADP of high-quality Indigenous support
services was a key component in the success of program (4). The evaluators suggest that
‘cultural healing’ and re-connection begins for participants upon entering into a
relationship with these services. Significantly, QIADP had served to strengthen
connections between Indigenous NGOs and both non-Indigenous NGOs and government
- a connection seen as essential to the success of the program. This approach to service
 provision, according to the evaluators, ensured a culturally appropriate service,
strengthened informal networks, and encouraged Indigenous ownership of the project.
Integrated case management by various agencies has been praised by those involved in
the project. 77 Further, the QAIHC had provided strong leadership at a local level and
had played a pivotal role in the success to date of the QIADP (5). The evaluators
criticised the decision to not refund the QAIHC and suggested that this organization
ought to be involved at a strategic, decision-making level of the initiative.

As well as good client outcomes, quality of culturally appropriate care, and motivation of
clients being so strong, other specific elements within QIADP working most effectively
included the following. During the early stages of QIADP, ATSILS was not sufficiently
engaged in the program and this affected referral rates. However, once this situation was
rectified, referral rates have increased. QPS has also worked hard to increase referrals by
streamlining relevant processes (such as colour coding relevant files at the time of
charging). Pre-court meetings (where court staff, Magistrates, QH and QPS staff discuss

76 ibid
77 ibid
future clients’ eligibility for QIADP) contribute to streamlining court processes and also provide an important opportunity for relationship building between stakeholders. The strong emphasis upon family is also an important factor, including for instance in ensuring that treatment is provided in the family home. Where there is violence in an offender’s home, they may be located at an extended family member’s home in preference to a facility, for example.  

Difficulties encountered and points of concern raised in the evaluation were as follows:

- The evaluators suggest that the lack of effective engagement with the three discrete Indigenous communities is the most serious challenge for QIADP, and is attributed to poor community consultation processes during roll out, a lack of local services, and inadequate community representation within the QIADP governance structure. Effective relationships and localising of the program is so important to QIADP, and thus the difficulties arising with respect to the outreach communities needs to be rectified with some urgency.

- The evaluators question whether the program ought to be screening out participants with the least chance of success (those older clients, for instance, with entrenched homelessness or alcoholism). Given the relatively short time frame of intervention under QIADP, it is important to consider whether it is realistic to expect the program to tackle the most difficult of cases.

- There is a lack of overall leadership within QIADP, with the Department of Communities apparently responsible at a local level and the DJAG at a more central level. There is ‘no one agency or individual with an overall perspective or sense of ownership of the whole initiative’.

- There needs to be further clarity with respect to what community capacity building is required under QIADP, and who might be responsible for coordinating this aspect of the program. Does it entail improving infrastructure and competency of Indigenous service providers or, more broadly, assisting Indigenous communities (however defined) to tackle the issue of substance abuse? The latter point is raised by Osborne,

  The best opportunity participants have in their endeavours to change after they have been on the program will come at that time when their community… is able to introduce measures which are effective to resist the culture of excessive alcohol consumption, and those measures are supported by elders, police, health, community workers and the court.

- There is a possibility of net widening occurring as part of QIADP, but the evaluators did not deal with this issue in any detail.

\[78\] ibid
More procedural issues of some concern included the need to ensure better program
throughput as clients are becoming stuck at either the assessment or intensive treatment
stages, perhaps attributable to the fact that the program only really got underway in late
2007-early 2008; the need to further develop the after-care component and to clarify
content of the second stage of the program; and the currently time-consuming nature of
assessment (adopted from the Q-MERIT initiative).

As at 6 June 2008 there had been 228 offenders referred to the program, with 64 at that
time participating at various stages of the program and 10 who had finished the required
20 weeks. There were also 13 dedicated QH QIADP staff, and 20 QIADP staff from the
NGO sector. QH had at that time undertaken about 130 screenings, and 88 people had
been bailed into the program (Queensland Government 2008). As at December 2008,
there had been 41 graduates and a total of 381 referrals since 2 July 2007.

8.2 Court Aboriginal Client Service Specialists (NSW)

The ACSS will assist with referral to services and explanation of bail conditions. They
generally have a key role explaining the outcome of court processes including bail.
There are currently 17 ACSS positions in NSW. Although similar, the ACSS initiative
is different to the ALO program in Victoria in a number of ways. The ACSS initiative is
more ad hoc and less focussed in its approach, rather than being placed within a
particular program such as CISP.

8.3 Koori Bail Project (NSW)

In 2007, Bourke was ranked second in NSW in terms of breach of bail. The Bourke
Aboriginal Community Justice Group (ACJG) therefore sought to address bail related
issues (such as Aboriginal non-compliance with conditions or high rates of refusal for
Aboriginal people) as a priority in their Aboriginal Community Justice Plan. A project
has been designed which incorporates the involvement of respected Aboriginal
community members in bail processes. Local Aboriginal Community Justice Groups
(ACJG) and community members will be involved in the project by providing advice to
the Magistrate and Registrar on possible strategies to assist the defendant to meet their
bail conditions and by facilitating support for the defendant to enable them to comply
with those conditions.

The Koori Bail Project aims to:

- reduce breaches of bail by providing the court with informed local advice on
  appropriate options for bail conditions;
- ensure defendants and their families understand bail conditions and their
  responsibility to comply with these conditions; and

79 Email Liz West, Manager, Aboriginal Programs Unit, NSW Department of Attorney
General, 7 September 2009
80 ibid
- link defendants to community support, treatment services and counselling to reduce the likelihood of defendants breaching their bail conditions.  

To be eligible to participate, a juvenile or adult defendant must be:
• eligible for bail;
• agree to participate;
• a member of the Bourke Aboriginal community and
• appearing in Bourke Local Court.

A defendant is able to seek an ACJG Bail Report if:
- bail has been refused and the defendant is therefore in custody;
- bail has been granted but the defendant can’t meet relevant bail conditions and is remanded in custody;
- or when the defendant seeks a review of any existing bail conditions.

If in custody, the defendant’s legal representative may raise the possibility of a Bail Report in court and the Magistrate or Registrar, if they consider the defendant suitable, may then refer the case to Aboriginal Programs court staff for the purpose of preparing the Report. However, the defendant may request a Report through Aboriginal Court Programs staff directly and in this instance, the Magistrate/Registrar will not need to conduct an initial assessment as to suitability. If the preparation of a Report is considered by the Magistrate/Registrar, the Magistrate/Registrar will need to consider eligibility for bail; whether the defendant will require conditions on bail; and whether a Report would be of assistance in determining any bail conditions.

As part of the project, ACJG Bail Panels will be established to assist with preparation of the Bail Report, with two volunteer Aboriginal Elders on the Panel drawn from the community (as endorsed by the ACJG) and offered relevant training. Members of the local ACJG are also invited to participate. However, the ACJG Coordinator is responsible for organising and convening the Panel. The Coordinator’s role is to contact the defendant and his/her lawyer; oversee selection of community members for the Panel; and ensuring that there are no conflicts of interest. If the ACJG Coordinator is not available, the Aboriginal Client Service Specialist (ACSS) or Circle Sentencing Project Officer may assist. Aboriginal Courts program staff collaborate, in a sense, on the project. These staff include the ACJG Coordinator, ACSS staff and Circle Sentencing staff. The Department has indicated that they will work as a team on the Bail Project and Circle Sentencing, although they will have a ‘primary role with their own projects’. Persons participating in the Bail Project may ultimately request to go to Circle Sentencing.

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81 Email, Lee Towney, A/Senior Aboriginal Programs Officer, Attorney Generals Department (NSW), 24 August 2009. The following information is drawn, in part, from a powerpoint presentation on the project forwarded by Lee Towney by email on 24 August 2009.

82 Email Liz West, Manager, Aboriginal Programs Unit, NSW Department of Attorney General, 7 September 2009
If a Bail Report is sought and the defendant is in custody, all attempts are made to complete the Report on the day of the bail hearing. At the Panel, the individual in question will discuss their circumstances and may attend with their lawyer or Juvenile Justice Officer, where appropriate. The Panel will take into account any relevant cultural considerations (such as family obligations), accommodation options, available community support and support services, the safety and other needs of any victim, and the particular needs and circumstances of the defendant in question (such as regular commitments to training or employment programs, to a local sporting team or Aboriginal community organisation). The Report will generally contain three recommendations in relation to possible options for the defendant with respect to bail.

The Report is then provided to the court by Aboriginal court staff for consideration in setting conditions. The defendant will have to consent to the Report prior to providing to the court only where the request for the Report has been made by the defendant directly to the ACJG Coordinator. In other cases, the defendant’s consent will not be sought.

To support defendants to meet their bail conditions, the following action is also taken:

• family and support people will be contacted by Aboriginal Programs court staff and asked to attend court for the bail hearing to ensure that the defendant has support and that support people are aware of the bail conditions;
• Aboriginal Programs court staff will fill in bail cards for defendants and their families, recording the bail conditions and court dates in plain language and court staff will explain the conditions to defendants and their families; and
• Aboriginal Programs court staff will assist defendants through referral to services linked to bail conditions. Relevant programs/services might include anger management counselling, drug and alcohol rehabilitation, men’s groups, PCYC, and mental health service providers.  

The project was to be piloted in Bourke in late August 2009, with an intention to expand the project to other communities with an Aboriginal Community Justice Group.

8.4 Indigenous Diversion Program (WA)

The Indigenous Diversion Program (IDP) in Western Australia is an early diversion program funded by the IDDI initiative. The IDP is really an Indigenous-specific version of the Pre-Sentence Opportunity Program (POP) (WA).

The IDP was initiated in Broome and Carnarvon in 2004 and seeks specifically to overcome barriers for Indigenous people in accessing diversion programs. It aims to increase Indigenous participation rates in diversion programs; increase the number of Indigenous persons trained to work with program clients; increase the availability of culturally appropriate diversion options in regional Western Australia; implement Indigenous prevention and early intervention strategies within regional Western

[83] Information provided by Liz West, email 7 September 2009
Australia; and form links between Indigenous person, local treatment providers, support services and Magistrates (DotAG 2006: 38).

Magistrates refer an individual to the IDP project officer, who will then assess him/her as to suitability for the program. It targets first offenders or those who have an insubstantial offending history, who have not committed serious offences of violence or of a sexual nature or drug trafficking, and who are likely to receive a fine or community based order for the offences in question. The program is voluntary, but the offender must plead guilty. Eligible offenders are assessed and then linked up with relevant service providers. If placed on the program, they are remanded for six to eight weeks to participate in treatment and completion is taken into account at sentencing. Their progress is monitored during treatment, and is reported to court. Offenders are able to access continuing treatment post-program.

Although it is a drug-specific program, it is reported, anecdotally, that those with alcohol misuse issues are also admitted to participate in the program (as are Indigenous people using volatile substances (Joudo 2008)). This claim is supported by statistics – in 2005/06, for nearly 85% of IDP participants, alcohol was the principal ‘drug of concern’. For the same period, 35% of POP (a non-Indigenous program) participants used alcohol as a principal drug (Crime Research Centre 2007).

The evaluation of IDP conducted by the Crime Research Centre indicated that use of illicit drugs in the Kimberley is rising and an issue of concern (Crime Research Centre 2007). Whilst alcohol abuse along with family violence is reported as ‘endemic’ and obvious in this region, the use of cannabis in particular is more hidden due to its illicit nature.

The evaluation also reports that major concerns of justice stakeholders of the IDP related to the exclusionary criteria based on a history of violence and the need to plead guilty; the lack of emphasis upon family in interventions (for instance, spouses of drinkers may also require counselling); and the absence of throughcare. Concerns were expressed in relation to the access to the program of offenders with problems in relation to both family violence and alcohol. Some thought that the Magistrate had been too lenient in allowing such persons onto the program. Treatment stakeholders raised the issue of lack of services in remote locations (meaning that there were few options for offenders and that sometimes offenders were remanded for lengthy periods due to unavailability of services) and the short length of the program, particularly given the distances needing to be covered to attend on participants. Community members emphasised the importance of supporting and strengthening culture in any program and suggested that the program should be combined with other justice initiatives (including Aboriginal Court).

The program appears to be successful in retaining Indigenous participants for the duration of the program. Once Indigenous people are placed on the program, 80% completed it (Joudo).

8.5 DISCUSSION - INDIGENOUS-SPECIFIC BAIL PROGRAMS
An important first point to make is that QIADP is very much context-based. It has developed effectively as a whole-of-government initiative within the specific framework of Queensland strategic drug policy. The QIADP emphasis upon localisation of the program has meant that it responds to the particular needs and circumstances of the communities in the three regional areas it seeks to engage with. This must obviously be borne in mind in seeking to adapt the program, or in borrowing elements of any of the programs identified within this report, for use with Indigenous communities in Victoria.

Any bail program must be placed-based; that is developed and implemented in response to the particular needs and circumstances of the Indigenous communities (preferably as identified by the communities themselves) who will access the program.

The Department is interested in perhaps adapting the QIADP model for implementation in Victorian adult and children’s courts. The elements of QIADP which are seen as potentially beneficial to Koories are as follows:

- it is Indigenous-specific,
- consists of a 20-week program,
- operates on a case management model,
- does not require the accused to plead guilty,
- has no ‘penalties’ or other negative outcomes attached to non-completion of the program, and
- its completion may mitigate sentence.

It is clear that these elements are found in a range of different bail diversion programs. They may contribute to the effectiveness of programs for Indigenous people.

As an Indigenous-specific program, QIADP has been developed in response to ATSI needs and culture. Developing a program intended to be Indigenous-specific from the start rather than accommodating Indigenous needs within a mainstream program provides an advantage, in this sense. This initial focus has led to the program incorporating a number of elements identified in this report as likely to contribute to the effectiveness of the program for Indigenous offenders. These factors include the following:

(i) There is a strong emphasis upon alcohol misuse and responses to the same. This may be explained on the basis that QIADP arose as part of a response to drug use in Queensland (through the Queensland Drug Strategy) and to the perceived significance of the issue for Indigenous offenders in Queensland. Thus the program is targeted at, and specialises in, alcohol-dependent offenders or high-risk drinkers and upon alcohol treatment, with a number of discrete phases. The emphasis upon developing specialised clinical treatment
for alcoholics is reflected in the establishment of a State and Local Treatment Reference Groups to discuss best practice in this area, *inter alia*. Due to the link between Indigenous offending (and other social disadvantage) and alcohol abuse, this is obviously a positive aspect to the program.

(ii) However, the program is also able to deal with offenders in a holistic sense in a similar way to CISP, with the identification of an alcohol issue leading to case management of a range of interventions dealing with different problems. Significantly, the program has two streams, focusing on child protection as well as criminal justice, and this no doubt has influenced its content. Its overall aim is thus to improve Indigenous health alongside reducing rates of contact with the criminal and child protection systems. The broad focus is represented in the cross-portfolio responsibilities for the program; the breadth of programs and services available to offenders under the criminal justice stream; and its stated outcomes and benefits including improved family life, health and social functioning.

(iii) Program eligibility criteria are relatively broad, incorporating family violence rather than excluding it (although offences of serious violence or sexual violence are excluded). There appears to be some discretion in relation to violent offending. There is no particular offence type underpinning eligibility, but offending must be related to alcohol misuse.

(iv) The program uses Indigenous-specific or culturally responsive intervention programs and services. The evaluation of QIADP indicates that the frequent reliance upon high-quality Indigenous support services has been crucial to the success of the program, encouraging Indigenous ownership of the program, and that ‘cultural healing’ really commences once an offender commences working with such services.

(v) The program provides outreach services both by preferring supervised detoxification and rehabilitation within the offender’s home and also by seeking to ensure access to the program to remote ATSI communities.

(vi) The approach of the program is to encourage offenders to complete, but if that is not possible non-completion or relapses do not lead to penalty. Attempting the program is seen as an important first step in terms of dealing with addiction.

(vii) The relationship that a Magistrate is able to build with participants over time, and the use of a different court setting for the program works well for offenders; suggesting that a designated Magistrate and/or court or list may be useful in a bail program designed for Indigenous offenders.

*Principles related to Indigenous participation in and ownership of programs*
There is also, significantly, an emphasis upon ATSI participation at a procedural level. The program employs ATSI caseworkers and Community Justice Group members provide input into assessments (and Indigenous service providers are utilised, as noted above), for instance. On a more strategic level, the multi-tiered QIADP governance structure is being used to engage with Indigenous people and to thus hopefully bolster the effectiveness of the program. The QIADP State Interdepartmental Committee used feedback from stakeholder consultations in the pilot locations to develop the QIADP Manual, for instance. Indigenous representatives from NGOs and elsewhere are participating in an ongoing way within this structure and thus participate in implementation and monitoring of the program. At a more grassroots level, the structure also facilitates discussion and consideration of issues of relevance to local communities. The QIADP evaluation has noted the benefits of such arrangements, including that Indigenous people have a sense of ownership of the program and that capacity is being built for Indigenous communities, and for Indigenous and non-Indigenous agencies (including government) through the development of effective relationships.

These governance arrangements have been developed within a specific context and thus may not be usefully adapted in other locations. However, the principles underpinning them are relevant in any context. Research has suggested that Indigenous participation rates in diversion programs is likely to be impacted negatively by inadequate consultation with Indigenous communities and organisations, the latter giving rise to a lack of ownership of programs by Indigenous people (Urbis Keys Young 2003). Principles likely to improve the quality of bail programs for Indigenous people include:

- quality engagement with Indigenous communities will contribute to the effectiveness of the program and thus to positive outcomes for Indigenous people;
- Indigenous people, including at a local level, ought to be participating in program planning, implementation and evaluation processes;
- capacity building is required in building relationships between Indigenous and non-Indigenous program stakeholders.

Indigenous-focussed bail diversion and support programs must ensure Indigenous participation in governance structures and quality engagement (including at a local level) with Indigenous communities through Indigenous participation in planning, implementation and evaluation of programs.

**Capacity building**

Capacity building may be relevant in a number of ways. Firstly, some measure of capacity building may be required to ensure that locations where programs are situated are able to provide relevant services. This issue is briefly raised above in relation to the targeting of programs to rural and remote locations, and the need to ensure that appropriate services are available in such locations. In this instance, offenders must reside or be willing to reside within an area where treatment is available in order to
access QIADP. The greater the availability of treatment services, the greater the access for Indigenous people to QIADP.

Secondly, capacity building may be related to broader community development, as identified by Indigenous communities involved in IDP in Western Australia (Crime Research Centre 2007). Other than providing services in local communities or developing skills and networks for Indigenous agencies and service providers, the QIADP evaluators question whether the program should be doing more to ensure that once an offender has finished with the program there are measures in place within the community to ensure that the ‘culture of excessive alcohol consumption’ can be resisted. Any bail diversion or support program is necessarily limited by the period of bail, and thus can only do so much. For this reason, there is some question in relation to whether offenders with more entrenched problems (in relation to alcohol and other issues) ought to be able to access QIADP, but also how the community might be engaged to be part of a longer term solution. The Barndimalgu Court in Western Australia is discussed below as a Family Violence Court (see below – Specialist Courts). This Court has a family violence perpetrator program for offenders, but also is part of a broader strategy to tackle this issue within the local Indigenous communities. Community education about family violence is part of the project, as is provision of mens’ healing centres. These represent possible community development initiatives.

Capacity building may be required in providing bail programs to Indigenous communities through, including at least by ensuring that local communities have resources necessary for implementation of the program.

*Throughcare*

In this context, the provision within QIADP of community-based, aftercare support of a holistic nature (in the areas of education, employment, housing, health and accommodation, for example) is a positive step.

There are not many programs providing effective transition to longer term, holistic support post-program completion. The benefits of doing so are discussed above in relation to CISP, particularly for a program seeking to address underlying factors or problems associated with disadvantage more generally. Ongoing assistance is likely to be required in order to effectively deal with such matters. Some programs provide this, but many do not. This was identified as an issue in relation to the IDP (WA), for instance.

Ongoing assistance and support, or at least effective transition to agencies and programs able to provide such assistance, may be an element that should be incorporated into bail-programs for Koories.
Indigenous offenders may benefit from inclusion of an aftercare component providing support upon completion of a program.

**Evaluation**

The evaluators have raised some questions in relation to how outcomes of a program such as QIADP ought to be measured, a discussion that is similar to that of CISP evaluators (above). They suggest that it is important to measure the success of QIADP other than simply by way of rates of completion. QIADP participants apparently report that their lives are being ‘transformed’ by the program, regardless of whether they are able to complete the full program. It provides an opportunity to reconnect with community and to begin to deal with alcohol addiction. These are important outcomes, regardless of whether the program was completed by a particular individual.

This approach to measuring effectiveness is relevant to any program that seeks to address broader social disadvantage and any underlying factors contributing to offending (including mental health or homelessness).

In evaluating a program targeted at Indigenous offenders, its effectiveness may be best measured on a qualitative and quantitative basis; that is, other than simply by reference to aggregate completion rates.

**Other Indigenous-specific programs**

Notably, the QIADP, Koori Bail Project and IDP initiatives are all focused upon specific locations and communities. The Koori Bail Project is an example of extending existing resources (both the Aboriginal Community Justice Groups, but also through reliance upon Aboriginal Programs staff (such as circle sentencing staff or Aboriginal Client Service Specialist program staff)). This raises the issue of adequate resourcing, noted above in the context of the Victorian ALO program. Interestingly, the program also provides for broader community input into bail decision-making through the Bail Panel it convenes. This appears to be a positive initiative.

The difficulty with specialised programs, including Indigenous-specific programs, is in providing the program on an equitable basis to all Indigenous communities, regardless of their location. It may be that the only way to provide an Indigenous-specific program (in preference to adapting a more generally accessible program) is to focus on particular locations as QIADP has done, at least during a trial period. The ACSS program is able to assist in a considerable number of locations but provides comparatively limited assistance in relation to bail. It is a bail support rather than a bail diversion program – assisting Indigenous persons to comply with bail. Perhaps the broader the scope of a program (in terms of locations), the more limited may be its role (based on available resources).
9. SPECIALIST COURTS

The following detail is provided in relation to

- family violence programs and courts;
- Indigenous courts; and
- drug courts.

Our discussion relating to family violence programs (including those that sit within family violence courts) is more comprehensive as the programs identified below are all bail-based diversionary programs and thus relevant to our research.

The Indigenous courts and drug courts do not have a specific bail diversion component, but are discussed below in order to draw out key points raised above; that is, in brief, (i) the interaction between Indigenous-focused bail diversion or support programs and other Indigenous-focused court initiatives and (ii) the participation of Indigenous offenders in drug-based diversion.

9.1 FAMILY VIOLENCE COURTS

There are a number of rehabilitation/treatment programs for perpetrators of family violence in various jurisdictions. Not all of these programs fall within the parameters of our research.

We discuss bail-based offender programs in South Australia and Western Australia below. These programs involve offenders participating in relevant programs under supervision (on bail), with participation likely to reduce sentence for family violence offences. They operate as part of specialist family violence courts in Western Australia, but in South Australia the program is located within general courts. Tasmania will also be introducing a bail-based, Defendant Service Worker for family violence defendants in 2010.

In other jurisdictions there are options to provide ‘treatment’ to family violence offenders as a sentencing option, but these are not bail based and so will not be dealt with. See for instance, the Tasmanian Safe at Home strategy (Family Violence Offender Intervention Program) (also NSW and the ACT). Further discussion is to be found in Stewart, J (2005) Specialist Domestic/Family Violence Courts within the Australian Context, Issues Paper 10, Australian Domestic & Family Violence Clearinghouse, 29 & 33


84 See for instance, the Tasmanian Safe at Home strategy (Family Violence Offender Intervention Program) (also NSW and the ACT). Further discussion is to be found in Stewart, J (2005) Specialist Domestic/Family Violence Courts within the Australian Context, Issues Paper 10, Australian Domestic & Family Violence Clearinghouse, 29 & 33

South Australia

South Australia operates two family violence programs/services, incorporating specific programs for men subject to applications for protection orders and to charges for family violence offences. Thus there is a civil and criminal component to the programs.

The Central and Northern Violence Intervention Programs were introduced following the development of a Family Violence Court at the Adelaide Magistrates Court in 1999. The CVIP and the NVIP are broadly similar in nature, although operate in different localities and are auspiced by different organisations. The CVIP is located in central metropolitan Adelaide and is auspiced by the Salvation Army; 85 and the NVIP is located in Elizabeth, in the north of metropolitan Adelaide, and is auspiced by the Northern Metropolitan Community Health Service. 86

Both services have a coordinator, and workers for women, children and men; they work with correctional services to case manage family violence court matters; and refer offenders to Stopping Violence Groups, with women and children also able to participate by commenting in court on the extent of behavioural change of the offender post-program.

To be eligible to participate in relevant programs, an offender must acknowledge past violence and abuse; acknowledge that this behaviour is problematic to himself and others; and indicate that he wishes to change his behaviour. 87 The individual in question is placed on bail to enable a court worker to conduct an assessment as to suitability. If able to participate, bail conditions include supervision by the court worker along with participation in the 12-week program. The case in question is suspended until such time as the program is completed, at which time the matter is finalised.

Failure to adhere to conditions of bail can result in a breach report being forwarded to the court and Prosecution Services. The Program workers provide reports on progress and non-compliance (and can actually institute proceedings for the latter); as well as pre-sentence reports and reports in terms of relevant bail conditions, if required. There are set criteria available to them to be used in evaluating progress.

Western Australia

Family Violence Courts (WA) (including Joondalup)

A two-year pilot Family Violence Court commenced in Joondalup, 25 kms outside Perth, in 1999. Through an interagency approach, the program aimed to improve the criminal

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85 Go to: http://www.salvationarmy.org.au/SALV/LANDING/pc=PC_60235
87 Go to Courts Administration Website: http://www.courts.sa.gov.au/courts/magistrates/index_cvip.html
justice response to family violence, to support victims and to ensure their safety; to reduce family violence in the Joondalup area; and to hold offenders accountable (Department of Justice (WA) 2002: 1).

Where police came across any relevant family violence matter, the case would be referred to the Court. If the defendant pleaded not guilty, the matter was shifted back to the regular court system. Once an offender pleaded guilty, they were eligible to be assessed to participate in the relevant program with monitoring by a case management team and Magistrate. The offender would be released on bail for assessment by the Community Corrections officer, who acted as surety for the offender.

The offender, if ultimately accepted onto the program, was bailed for three months initially. Their progress was reviewed at three months, and if progress was deemed to be inadequate at that time, they would be sentenced. Otherwise, they were again bailed to participate for a further three months, and upon completion of the total 6 months, progress would be taken into account at sentencing (as reported by Community Corrections). A likely sentence was a fine or a spent conviction (WA LRC: 132). Throughout, the offender and the victim were monitored and case managed by the case management team.

The Court model was positively evaluated in 2000-2001 as a ‘qualified success’, with some particular reference to case management resulting in better-informed decision-making and to the identification of high-risk perpetrators and victims (WA LRC: 86). The Joondalup Family Violence Court still operates, although with some modifications to its original form (see below).

After evaluation, the Joondalup model was utilised to develop further Family Violence Courts in the metropolitan area. There are now six Family Violence Courts in Western Australia located in regional and metropolitan areas (in the latter as a specialist list within the general courts system). The Courts offer a perpetrator program aimed at addressing underlying factors contributing to family violence offending. The perpetrators programs (and other services) are designed for both Aboriginal and non-Aboriginal offenders, with specific focus upon program development appropriate to Aboriginal needs, given that the expansion initiative has been funded under a scheme to reduce Aboriginal imprisonment (Walsh & Ruthven 2007: 1). Since the metropolitan expansion commenced, 148 offenders had been referred for assessment (22 Aboriginal); 55 had been accepted into the perpetrator program (13 Aboriginal); and 27 had completed the program (WA LRC: 133).

In these Family Violence Courts, the majority of work undertaken revolves around case management of offenders on programs. There are 24 offender places in each court (8 for Aboriginal offenders). Referral to the program takes place either when police bail a person to appear in the Family Violence Court or once they are referred to the Court upon pleading guilty in the Magistrates Court.
To be eligible to participate in the program, the offender must have been charged with a family violence related offence and must plead guilty (and must admit the police statement of material facts) or be found guilty at trial (in some instances) and be willing to participate (WA LRC: 134). If a defendant pleads not guilty, the Family Violence Court will not hear the matter.

Upon pleading guilty and otherwise satisfying eligibility criteria, the defendant is assessed as to suitability. A Community Justice Services (CJS) officer (from the Department of Corrective Services), as part of the integrated case management team which also includes the perpetrator program provider, assesses the individual to ascertain their willingness to change their behaviour and (through standardised tests and consultation with the victim) the level of risk of harm to any victim or the community posed by the individual. There must be a ‘reasonable prospect’ that the victim will be safe whilst the offender is bailed, based on consideration of the offender’s criminal history, the nature and severity of the circumstances of the offence before the court in this instance, current bail conditions and the offender’s compliance with them, any existing restraining order and compliance with the order, current contact between victim and offender, and the victim’s current living arrangements (WA LRC: 134). Any mental health and/or drug and alcohol issues with the potential to affect progress will also be considered. If such issues are not currently being managed, the individual will not be suitable to participate (WA LRC: 135).

In order for the assessment to be completed, the offender will be bailed with conditions designed to ensure the safety of the victim and to ensure cooperation with the assessment process, usually for a four-week period. The matter is then returned to court. If assessed as suitable to participate, sentencing is deferred to enable the offender to participate in a relevant family violence perpetrators’ program and the case management process under an individualised case management plan, with relevant bail conditions imposed and existing protective conditions retained. They will initially be bailed to participate for a period of three months. During this time, offenders attend weekly two-hourly group meetings and other programs/services as required (including, for instance, Aboriginal-specific counselling and drug and alcohol services) (WA LRC: 135). As part of the model, a Case Management Team meets weekly to discuss cases, including any review of management plans for victims and offenders, re-offending matters, and referrals. The Magistrate and lawyers are not involved. The Team involves a range of agencies and service providers, including the perpetrator program provider and Community Justice Officer.

The Court will review progress half way through completion of the program (3 months), and if there has been no progress at this time (dependent upon relevant circumstances), the individual will be sentenced accordingly. A report prepared by the community corrections officer, based on information provided by the case management team, is provided at this time. If the offender ultimately completes the program after six months they will probably be given a non-custodial sentence if their progress is of a sufficient level. This is similar to the Joonaldup model. A pre-sentence report is prepared for sentencing purposes, including any victim input. If they have not completed the program,
a community-based sentence with a condition that the program be completed may be ordered.

There have been a number of approaches taken to try to engage Aboriginal offenders. The project has developed a Family Violence Court Aboriginal Reference Group. This Group advises on public education strategies; recruitment of staff; and relevant programs. An Aboriginal Project Officer and other Aboriginal staff have been recruited (or there have been serious attempts made to recruit Aboriginal staff), and there has been work done on developing an Aboriginal-specific perpetrator program and on providing cultural awareness training for Court staff (Walsh & Ruthven). However, there appears to be challenges in this context. In May 2008, there were only five Aboriginal offenders involved in the program in Rockhampton, despite the demographics of the area (WA LRC: 152).

According to the Department of Attorney General (WA), 137 men were referred for assessment to participate in a Family Violence Court criminal case management program in 2007/08; 77 of these were accepted into a program and 31 have completed a program. Preliminary data from the Joondalup Family Violence Court indicates that of the men who successfully completed the therapeutic program, 87.5% did not re-offend with family violence (Department of Attorney General (WA) (2008): 16).

**Barndimalgu Court**

The first regional Family Violence Court (Barndimalgu Court) was opened at Geraldton. It is part of the Geraldton Family and Domestic Violence Project (commencing in 2005), an initiative of the Department of Attorney General (WA), Department of Corrective Services, and the Geraldton Aboriginal community (through a local reference group) aimed at addressing over-representation of Indigenous people in Western Australia (including for family and domestic violence-related offences).

In broad terms, the Project aims to:

- develop a culturally-appropriate court-based model that meets the needs of the Geraldton Aboriginal community in reducing family and domestic violence;

- work with the Geraldton Aboriginal community to explore offender case management and through-care approaches for appropriate prison diversion strategies; delivery of suitable and effective programs that are culturally sound (such as domestic violence offender programs, counseling, and drug and alcohol programs); the management of perpetrators through community-based initiatives; the provision of victim and family support; and the prevention of family and domestic violence; and

- develop a model to inform future planning and development of subsequent regionally-focussed family violence projects (Department of Attorney General (WA) n.d).
The Barndimalgu Court hears criminal charges against Aboriginal defendants relating to family violence, with relevant treatment/behavioural programs offered prior to sentencing. The Department of the Attorney General operates the Court, with offender programs provided by the Department of Corrective Services.

The Court operates as a round table, with Aboriginal court advisors (local Elders) and justices of the peace, an Aboriginal police prosecutor, the offender, the lawyer, a senior community corrections officer, and Magistrate present. It involves participation by all parties and their families and support from a case management team (including a case manager, Aboriginal reference group members, Police Prosecutor and Officer in Charge of domestic violence, legal aid, and victims services) (Department of Attorney General (WA) n.d.).

The Magistrate, community corrections officer, prosecutor, lawyer, or the offender can refer/self-refer. Once an offender pleads guilty, the case management team determines what actions may be taken to address the offending (including referral to services addressing homelessness and other issues). The likely sentence to be imposed without participation in any programs is indicated. The individual is bailed for assessment as to suitability to participate in relevant programs, with protective and other conditions (including those relating to alcohol use (such as urine testing)) imposed.

To be eligible, the offender must be facing a period of imprisonment for family violence offending; must plead guilty, be willing to participate, and be deemed suitable by the community corrections officer. Those with serious drug and alcohol issues may participate. If assessed by community corrections as suitable, they will be placed on the program and attend court every fortnight for progress to be reviewed. The offender attends a family violence program adapted from a program of that nature developed in the Northern Territory for Indigenous people, and other programs (including drug and alcohol counselling). They will also be linked to other services. There is no victim representative at court, with the hope that this will encourage the offender to be ‘up front and honest in meetings’, but victims are offered support formally outside the court process itself.

Significantly, as the program is able to impose a Pre-Sentence Order of up to 2 years (compared with the other Family Violence Courts, where sentencing may only be deferred for up to six months under the Sentencing Act), participants may be involved in the program for a considerable length of time. Upon completion, the participant is likely to receive a conditional release order or other community-based sentence (WA LRC: 136).

It is suggested by the Magistrate involved in the program that it is working effectively, with good compliance rates and offenders ‘motivated by what the Barndimalgu Court could offer them; for example, help with alcohol and drug problems, relationship issues and practical concerns like getting a job and a drivers licence’ (WA LRC: 136).
As noted, the Court is only one part of a broader strategy to address Aboriginal family violence in this area. Incorporated in the project is development of public education on this issue; community-based support for victims of family violence and management of offenders/potential offenders (including through provision of an Aboriginal mens’ time out centre, for instance), *inter alia* (WA LRC: 136). It is seen as effective in engaging Aboriginal offenders, especially when compared with the Joondalup Court (WA LRC: 152).

**Tasmania**

Tasmania has recently piloted the Defendant Support Workers (DSW) initiative on its East Coast, apparently borrowing from a similar initiative in Victoria. The trial was successful, and it is anticipated that this initiative will be introduced as part of Tasmania’s *Safe at Home* family violence strategy in 2010.  

The task of the DSW will be to assess all high-risk defendants, irrespective of whether they were in the civil or criminal court; to develop an individual management plan; and to assist them to access community-based services. Those in the criminal court could be mandated to engage with the DSW via a bail order, and those in the civil system would need to make a civil understanding to engage.

Specifically, DSW staff will be required to:
- assist family violence perpetrators to understand and adhere to the conditions of their Family Violence Order;
- in consultation with family violence perpetrators, assess criminogenic and welfare needs; develop, implement and review case management plans; and make referrals to appropriate intervention and/or support programs;
- liaise with representatives from other government agencies and community-based organisations for the purpose of obtaining information relevant to the assessment and case management of family violence perpetrators;
- provide group and/or individual counselling to family violence perpetrators as required;
- identify, research, develop and provide resources to meet the needs of family violence perpetrators and develop service linkages that improve community responsiveness these needs
- liaise with local service providers (including the victim support worker) to develop more appropriate and coordinated responses to family violence and the management of any risk that a perpetrator might pose; and
- participate in case management meetings with relevant government and non-government service providers in order to manage risk and safety issues for family violence perpetrators.

**9.2 FAMILY VIOLENCE COURTS - DISCUSSION**

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88 Email, Robyn Yaxley, Department of Justice, Tasmania, 7 September 2009

89 ibid
There are some similar elements between these programs and other bail programs referred to above. The Tasmanian Defendant Support Workers program provides an assessment, advisory and liaison role in a similar way to other bail programs, for instance.

However, these programs are also different in important respects, and this impacts upon their content and gives rise to some important issues specific to the issue of family violence, some of which may not be relevant to our discussion. The latter may include, for example, whether family violence offender diversion programs ought to be available to respondents to civil matters (as occurs in South Australia, for instance) or only to defendants in criminal matters.

The objectives of such programs reflect the issue with which they are dealing. The Joondalup Family Violence program seeks to ensure victim safety and to hold offenders accountable, as well as to reduce family violence, for instance. The Western Australian Law Reform Commission has suggested that family violence perpetrator programs are different to other diversion programs as they are directed not so much towards (judicially supervised) rehabilitation of offenders but to supervising offenders over a period of time to ensure victim safety; and as part of a strategy to increase conviction rates and to combat the prevalence of matters being dismissed for lack of evidence or withdrawn (WA LRC: 10).

Such programs must also be adapted to the complexities arising in the context of family violence (including Indigenous family violence). Firstly, programs must consider and ensure the safety of the victim to a much greater extent than commonly occurs with respect to other categories of offending or programs. Whilst the programs may still seek to alter offending behaviour, it would obviously not be appropriate if this occurs at the expense of the victim. Thus, assessment and other procedure (including procedures relating to non-compliance with program requirements) will need to incorporate careful consideration of victim safety, including of any risk arising as a result of mental health and/or drug and alcohol issues. Both the Indigenous Diversion Program (WA) and the GASR (WA) have been criticised for inadequately protecting Indigenous victims by failing to screen out offenders of family violence with alcohol problems. The Barndimalgu court does not exclude for mental health or alcohol issues, but attempts to manage these and other issues during intervention. It may be necessary to impose restraining orders or protective bail conditions (prohibiting contact with the victim, for instance) upon offenders participating in family violence programs, too. Further, case management and other processes will need to incorporate the victim’s needs alongside those of the offender. These are examples of how the issue of victim safety might be managed in such programs.

Secondly, the emphasis upon offender accountability means that in these programs it may be appropriate that the offender is required to acknowledge their offending, admit the facts and/or plead guilty (and even be mandated to participate).
Other issues relate to how to effectively engage with Indigenous communities. With the prevalence of Indigenous family violence, it would be beneficial in some respects if bail diversion were able to tackle such an issue, bearing in mind the issues raised above. Some of the programs above do so, including QIADP. In attempting to engage with Indigenous people, the Western Australian programs have established an Aboriginal Reference Group, created Indigenous-designated places upon programs, employed Indigenous program staff and sought to develop Indigenous-specific ending family violence programs for Indigenous participants. These are not proving to be particularly effective. The Barndimalgu initiative has been more effective, but is similar to other Indigenous-focussed initiatives (such as QIADP) in that it has been designed from the start with the needs of the Geraldton Indigenous communities in mind and is part of a broader family violence strategy. Its focus upon community participation and development, a holistic approach to offending, and use of culturally appropriate initiatives such as mens’ healing centre are all program elements likely to contribute to effective Indigenous engagement with the program.

9.3 INDIGENOUS COURTS

Aboriginal-specific court initiatives have been established in virtually all states and territories over recent years (except Tasmania).

These initiatives operate either as a separate Indigenous court or as Indigenous circle sentencing, depending on the jurisdiction. Indigenous courts operate in Victoria (Koori Courts); Northern Territory (Community Court); South Australia (Nunga Court); Queensland (Murri Court); and Western Australia (Indigenous Community Court). In NSW and the ACT, circle sentencing is provided in place of Indigenous courts.

These initiatives are aimed at providing more appropriate sentencing options to the court, and also at reducing over-representation of Indigenous people, seeking to ‘build key elements of Aboriginal law into the sentencing process, such as elevating the role of Elders, tailoring the sentence to the needs of the community, and enabling a direct community response to the offender’ (Jones 2006).

Their objectives may be similar to those of bail diversion or support programs aimed at engaging with Indigenous offenders (although operating within a sentencing rather than a bail context). Circle sentencing in NSW, for instance, has been directed towards the following:

- to include members of Aboriginal communities in the sentencing process;
- to increase the confidence of Aboriginal communities in the sentencing process;
- to reduce barriers between Aboriginal communities and the courts;
- to provide more appropriate sentencing options for Aboriginal offenders;
- to provide effective support to victims of offences by Aboriginal offenders;
- to provide for the greater participation of Aboriginal offenders and their victims in the sentencing process;
- to increase the awareness of Aboriginal offenders of the consequences of their
offences on their victims and the Aboriginal communities to which they belong; and
- to reduce recidivism in Aboriginal communities (Potas et al 2003:4).

However, the distinction based within the different contexts of sentencing and of bail is a significant one and a few points might be made in this regard, with a specific focus upon Victoria.

In the discussion above relating to the ALO program in Victoria, we have suggested that there is a need to clarify the relationship between a program such as the ALO program attached to mainstream courts and of those working with an Indigenous-specific court program. This clarification might assist in ensuring that existing resources are not overstretched and that further resources are provided, as required, in order to ensure that the best possible justice outcomes are available to Indigenous people in Victoria.

**Koori Courts and bail**

The Koori Court is currently located at Bairnsdale, Broadmeadows, Latrobe Valley, Mildura, Shepparton, Swan Hill and Warrnambool Magistrates' Courts; and Children’s Koori Courts are located in Melbourne and Mildura. CISP operates at LaTrobe, Sunshine and Melbourne Courts, and the ALO program is located in Melbourne but is available to CISP participants throughout Victoria.

The Victorian Law Reform Commission considered this issue in its review of bail in Victoria. The Victorian Aboriginal Legal Service, in its submission to the Commission’s review suggested that the Koori Court ought to deal with bail decision-making along with sentencing, as it would assist the court to make culturally appropriate bail conditions, conditions would be more ‘meaningful’ to an offender, the Indigenous community would be empowered, and there would be more incentive to comply due to the oversight of bail by Elders/respected persons (VLRC: 131). However, the 2006 review of the Koori Court pilot recommended against an extension of this nature on the basis that bail decision-making was ‘too complex’ and might render the Court ‘adversarial’, pitting ‘community against community’ - contrary to its founding objectives and principles (Harris 2006: 67-68; VLRC 2007: 130-31). A specific but significant difficulty identified with such an approach includes the time generally taken to convene Koori Court matters and the delay that this may cause to persons awaiting a bail decision (VLRC 2007: 129).

We understand that the Department is not considering utilising the existing Koori Court program to formally or comprehensively work with Kooris in relation to bail diversion (see discussion below). However, Koori Court Officers are apparently assisting Indigenous offenders with bail, although not as part of the decision-making role of the Koori Court itself. As this is not formally part of their role, any assistance is therefore provided on a fairly *ad hoc* basis. In some instances they work with Indigenous people by linking them with support services (whilst on bail) and/or may (rarely) supervise an Indigenous person on bail. In Broadmeadows the court has apparently bailed a person to follow the lawful directions of the Koori Court officer (VLRC 2007). The VLRC
recommended that a Koori Court Officer (in both adult and children’s Koori Courts) may, in some instances, be able to take on bail support or supervision to fill those gaps present in the work that the ALO program undertakes.

This issue of duplication of services and/or filling gaps in services provided by different Indigenous justice initiatives has been raised in other jurisdictions. The Koori Bail Project just introduced in Bourke in NSW, for example, provides for Aboriginal Client Service Specialists or Circle Sentencing staff to take on the role assigned to the Aboriginal Community Justice Group Coordinator within the Project when the latter is not available. Further, currently in NSW, once an offender has completed participation in the Koori Bail Project they may be referred to circle sentencing. However, the NSW Attorney General’s Department has indicated that there may be some possibility that the Koori Bail Project and Circle Sentencing may collaborate further and in a more formal sense in future, depending upon the progress of the Bail Project. Further, during evaluation of the IDP in Western Australia, the community called for an amalgamation or extension of the program with initiatives such as an Aboriginal Court or Community Justice Group (Crime Research Centre 2007).

The respective roles of Koori Court staff and staff involved in Indigenous focussed court initiatives must be clarified, as noted above in the context of CISP, to avoid overstretching of existing resources and to provide the most effective service to Indigenous offenders. If further resources are required within a particular program to ensure that existing gaps in service are filled, this should be provided. It may be appropriate, however, for staff from different initiative to share relevant networks as a resource.

The Koori Courts may assist with drug and alcohol referrals. Koori Alcohol and Drug Diversion Workers (KADW) commenced in Koori Courts in 2004. Once a Magistrate refers a matter, the KADW assesses the offender and develops an appropriate treatment plan to address drug and alcohol issues. The KADW facilitates referral to treatment services, as well as reporting on progress to the Court. Treatment is offered through both Indigenous and non-Indigenous service providers. The Court will take into account at sentencing participation in the program. Eligibility to participate is based on having pleaded guilty, demonstrating an intention to take responsibility for his/her actions, and having elected to go to the Koori Court (AIHW 2008). It may be that a program such as the ALO program or any other Indigenous focussed program developed in Victoria might be able to utilise existing networks established by KADWs in various regions.

Further clarification is required in terms of the respective roles of Koori Court program staff and staff involved in any other Indigenous focussed programs in Victoria (including

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90 Email, Bradley, Delaney, Senior Aboriginal Programs Officer, Aboriginal Programs Unit, NSW Department of Justice and Attorney General, 20 August 2009. Further, the Aboriginal Community Justice Coordinator collaborates with CREDIT staff in NSW in providing referrals, again on an ad hoc basis.
the ALO program). If further resources are required within a particular program to ensure that existing gaps in service are filled, this should be provided.

A possible option for collaboration might be to ensure effective processes for the sharing of networks developed by the Koori Court and the ALO or similar programs.

9.4 DRUG/ALCOHOL COURTS

Drug Courts were first introduced in the late 1990s, beginning with the NSW Drug Court at Parramatta. Drug Courts now operate (for adults and young persons in some instances) in Victoria, NSW, Queensland, Western Australia, and South Australia. The Northern Territory has an Alcohol Court, and NSW has a Youth Drug and Alcohol Court. ⁹¹

Drug court features

Drug Courts share a number of common features, as follows.

Drug Courts work with offenders who have a drug (and/or alcohol) problem and who are willing to address this problem through participation in the program. They must also live within a specified area (usually within the jurisdiction of the Court). The offender should plead guilty to the offence in question. It is thought that this encourages offenders to confront their addiction and it is also assumed that having any contested matters outstanding may interfere with the intensive work required in participating in the program (WA LRC: 55).

Drug Courts almost always target offenders facing imprisonment, given that an objective of drug court initiatives is to reduce imprisonment rates - working with serial, drug-dependent offenders and/or those charged with moderate to serious offences by deferring sentence for a period of time to enable treatment to be completed. Exclusionary criteria will often include offences and/or outstanding charges of a sexual and/or violent nature; offences of drug trafficking or other serious drug offences; any history of serious offending; and prior (or current) imprisonment of over 12 months. There is also some exclusion of those with serious mental health issues.

Drug Courts usually involve a three-tiered process, with participants initially attending court and counselling weekly and submitting to urine testing more frequently and subsequently moving onto less intensive supervision. Offenders will be working within an individualised treatment plan and may undertake detoxification; anger management, educational, vocational or other programs; and assessment of a medical or psychological nature; and may also be subjected to compulsory drug or alcohol testing.

⁹¹ Tasmania has the Court Mandated Diversion Program which is not a Drug Court, but operates as a post-plea sentencing option.
The Courts generally have a Drug Court team attached to them (consisting of judicial officers, program staff, prosecutors and defence lawyers, as well as service providers) to monitor progress (including during regular team meetings) and to encourage the offender. Further, in most instances, the Court does not remove a person from the program for non-compliance, dependent upon the particular circumstances. Participation is likely to lead to a reduced sentence such as community based orders and suspended sentences (particularly upon completion, but in some instances any progress will also be taken into account despite non-completion).

Evaluation indicates that drug courts have a significant effect upon re-offending rates (see Corlett E et al 2005; Lind 2002 (NSW Drug Court evaluation); Makkai & Veraar 2003 (Queensland Drug Court evaluation)). In South Australia, for instance, a 2005 evaluation found that 80% of those who had completed the drug court program recorded lower offending levels than prior to the program (Corlett, Skrzypiec & Hunter 2005).  

Indigenous participation

There are some Indigenous-focused initiatives within drug courts. The Adelaide Drug Court, for instance, has introduced an Aboriginal-specific initiative. There are five case managers designated to work with Indigenous participants and an Aboriginal organization is available to assist Indigenous offenders with housing and other issues. The Perth Court has a dedicated Indigenous offender list, with a more appropriate court setting. Indigenous drug and alcohol workers, and Aboriginal community members sitting alongside the Magistrate to contribute as appropriate to proceedings. The Drug and Alcohol Office has also funded four Aboriginal Diversion Service Officers in metropolitan locations in an attempt to improve Indigenous accessibility to and participation in the program.

Despite the development of these and similar initiatives in other jurisdictions, drug courts have relatively low Aboriginal participation rates. NSW has a Drug Court and a Youth Drug and Alcohol Court. The Youth Court deals with those aged 14-18 years of age with either a drug and alcohol problem. Within the 18 months from January 2000 to June 2001, only 9% of those remaining on the program within the adult Drug Court for at least three months were Indigenous (Joudo: 60). Victoria has an adult and children’s court drug court program. In 2005-06, Indigenous participation in the Victorian Children’s Court Drug Court Clinic was 20% (AIHW 2008: 80). The Queensland Drug Court, which has some focus upon Indigenous offenders, has an Indigenous participation rate of 8% (Payne 2005).

Alcohol as a primary issue

92 There are relatively high non-completion rates for the Courts also recorded, however. During the first 17 months of operation of the NSW Drug Court, 42.5% of participants were terminated for non-compliance (Briscoe 2000: 17), and in Queensland, between 2000 and 2006 approximately 53% of participants did not complete the program (Payne 2008: xi).
As noted above, Aboriginal people are more likely to have alcohol-dependency (or even solvent-misuse) issues rather than illicit drug problems, and will therefore inevitably participate to a lesser extent than non-Aboriginal offenders in drug-focussed diversion programs such as drug courts. For example, in relation to the New South Wales Drug Court, Taplin found that Aboriginal offenders were disproportionately excluded from entry into the program because of previous offending histories and previous offences of violence (Taplin 2002).

However, there is some focus upon alcohol in a number of drug courts. The Victorian Drug Court allows alcohol-dependent offenders to participate, but they participate at much lower numbers than drug-dependent offenders. As at 6 December 2007, 63 offenders were subject to a Drug Treatment Order; five were participating in the drug court program for alcohol dependency; and four for drug and alcohol misuse (WA LRC: 73). The range of justifications for excluding alcohol-related offending in drug diversion programs, including drug courts, are noted above.

The Alcohol Court in the Northern Territory, however, has a 92% rate of Indigenous participation (Joudo: 77). The Northern Territory Alcohol Court commenced operation in 2006 and was established by the Alcohol Court Act (NT) 2005. Whilst it is based on the NT CREDIT program and Drug Courts around Australia it is focused upon alcohol use. It operates in Darwin and Alice Springs for those residing in or willing to take part in treatment in these centres. The Alcohol Court is empowered to deal with offenders who are alcohol dependent and to make alcohol intervention and prohibition orders for this purpose, the latter being similar to or based in bail diversion.

In terms of eligibility for a prohibition order, the offender in question must be alcohol dependent and likely to benefit from withdrawal or a reduction in the consumption of alcohol. Further, the order must be necessary to protect the offender from severe harm or from causing a serious risk to the health and safety of other people. Severe harm refers to physical or neurological harm, or significant deterioration or damage to the person’s mental condition as a result of regular or excessive alcohol consumption. The offender need not consent to the order, but there is no penalty for a breach of the order (but it may constitute a breach of bail, leading to revocation of bail). In assessing an offender for suitability, relevant considerations will include previous protective custody, the offender’s criminal history and whether alcohol was a contributing factor to the commission of other offences. Whilst those who have problems with other substances may also participate, alcohol is the primary focus of the Court.

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The high rate of Indigenous participation in the Court is likely to be due to its location and to its focus upon alcohol as a substance, rather than any Indigenous-specific initiatives operating within the Court. There is no available evaluative material produced in relation to the Court to date which may provide some information in this regard. As noted above, targeting Indigenous-specific or focussed programs to Indigenous communities through selecting particular locations based on demographics and ensuring that programs are able to effectively respond to the substance abuse issue of relevance to Indigenous communities is likely to improve Indigenous engagement with the program in question.

Factors inhibiting Indigenous participation

Factors other than the focus upon alcohol are inhibiting access. In Western Australia, during the initial phase of the Perth Drug Court 90% of offenders participating were non-Aboriginal (WA LRC: 72). Low participation was attributed to lack of Aboriginal-specific treatment programs and to low referral rates from the Aboriginal Legal Service (Crime Research Centre 2003: 152, 174). In South Australia, as at September 2006 almost 10% of participants (to date) were Indigenous. This was lower than the 25% participation rate expected, and attributed to some negative experiences initially for Indigenous offenders in the program, inadequate consultation with Indigenous communities, and a lack of awareness within Indigenous communities of the Court (Joudo: 64).

The Perth Drug Court was reviewed in 2006 by the Department of Attorney General in Western Australia. This review recommended that more work was required to improve Indigenous access to the various programs attached to the Court. Only 3% of the 250 persons accepted onto the program from 4 December 2000 to 31 December 2003 were Indigenous (DotAG (WA) 2006: 18). As at November 2002, although the Court was seen to be contributing to reduced reoffending, only 8% of participants in the Court were Indigenous, and this was seen to be attributable, in part, to the onerous nature of the conditions imposed (Crime Research Centre 2003). Other factors contributing to this low rate have been identified as including as a relevant factor in terms of eligibility Indigenous offenders’ history of offending (leading to exclusion); inadequate engagement with Aboriginal Legal Services; and a lack of Indigenous-specific treatment and detoxification services (Crime Research Centre 2003).

This brief summary simply adds additional weight to the discussion and recommendations set out above in relation to bail diversion and support in terms of factors likely to inhibit or increase Indigenous engagement with diversion initiatives. They may be summarised as follows:

- a lack of culturally appropriate services available to participants;
- inadequate consultation with communities;

94 We have also not been provided with any further information about the Court by the Department of Justice (NT).
- lack of community awareness of programs;
- eligibility focussing upon illicit drugs rather than alcohol;
- not suitable due to offending history
- inadequate engagement with Indigenous service providers (Aboriginal legal services).

10. CONCLUSION - FINDINGS AND RECOMMENDATIONS

In this report, we have provided information about mainstream and Indigenous-specific bail diversion and support programs currently available to offenders in each jurisdiction. In doing so, we have drawn out a number of issues and key principles arising in the context of Indigenous bail diversion, highlighting the latter above where most likely to have some positive impact upon the effectiveness of bail diversion to engage with Indigenous offenders.

In our conclusion, we present our findings as follows:

- a brief summary of the distribution of general and issue-specific bail diversion programs; of alcohol-specific bail diversion programs; and of Indigenous-specific bail diversion programs [10.1]; and
- a final presentation of key principles likely to underpin best practice within Indigenous bail diversion programs [10.2].

We then make a single recommendation suggesting program options we consider to be the most appropriate in terms of increasing Koori access to and engagement with bail diversion programs in Victoria, based on these key principles and on consideration of the current Victorian court-based diversion program framework [10.3].

10.1 FINDINGS - APPROACH TO BAIL DIVERSION ACROSS PROGRAM TYPE

A comparison across type of bail diversion program is provided in this section. We have considered program type as follows:

- general vs specific bail diversion and support programs
- Indigenous-specific programs
- alcohol-specific programs

As well as providing a summary of the range of programs identified by program type above, the different categories have been selected on the basis of their relevance to the research questions raised by the Department; in particular, whether there may be some benefit, if feasible, in adapting an Indigenous-specific, alcohol-focused program such as QIADP in Victoria in preference to utilising a general bail diversion program model in adapted form.
It must be noted that here has been little evaluation of the different approaches taken to
categories of bail diversion and how this might impact upon Indigenous offenders. A
preference for a particular approach to bail diversion across jurisdictions, therefore, does
not necessarily indicate that this is the most effective way of engaging with Indigenous
offenders.

**General or issue specific programs**

The Department has identified a recent preference for general bail diversion programs as
opposed to issue-specific programs (that is, programs with eligibility criteria and
interventions targeted at a particular issue or type of offender/offending).

Across the States and Territories, we have identified a greater number of bail diversion
programs focusing upon a specific issue than general programs. The issue-specific
programs focus primarily upon illicit drug use; mental health; and, to a lesser extent,
Indigenous offenders as a group (including within those diversion programs focusing
upon substance abuse). There are three programs outside Victoria identified as ‘general
programs’ – GASR, CREDIT (NSW) and Forum Sentencing (although Forum
Sentencing (NSW) may not be bail diversion (as defined above)); that is, programs with
expansive eligibility criteria and a broad target group similar to the CISP model.

However, a number of issue-specific programs may specify type of offender, offence or
problem issue (such as alcohol dependency) but address, to varying degrees, a broader
range of issues either directly related to offending (such as homelessness) or to social
disadvantage more generally (such as employment or health issues). The latter appears
less likely to occur in substance abuse-related diversion programs than elsewhere.

| The approach of the different jurisdictions has commonly been to tie programs to particular issues, especially illicit drugs (based largely on the focus and funding provided by the Commonwealth). However, these issue-specific programs may also deal with a broad range of issues for offenders once they have been accepted onto a program to differing degrees in a similar fashion to a program such as CISP – but generally only of course with respect to a certain group of offenders (selected by narrower criteria). |

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**Indigenous-specific programs**

There are only six Indigenous-specific programs identified within the different categories of bail diversion and support programs (including Victoria). QIADP is the only one of these programs with a focus upon both alcohol and Indigenous offenders. However, all other bail diversion programs with a focus upon alcohol (other than CADAS) have been developed, to different degrees, to specifically address alcohol use amongst Indigenous offenders.
There is only one Indigenous-specific illicit drug bail diversion program (which also deals with alcohol) – the Indigenous Diversion Program (WA). Significantly, all of the substance abuse-based bail diversion programs with some focus upon Indigenous offenders (CARRP, MERIT initiatives, QIADP and IDP) are targeted at particular Indigenous communities rather than being statewide.

The Indigenous-specific programs not dealing primarily with substance abuse – Koori Youth Intensive Bail Support; Koori Bail Project; ALO; and ACSS - are more general in scope rather than issue-specific. They range in terms of the type of assistance and interventions they are able to provide. The Aboriginal Client Service Specialist in NSW provides ad hoc general advice and support on an as-needs basis, for instance, and is not attached to any particular program or target group, whilst the Koori Intensive Bail Support Program offers more intensive supervision to Indigenous young people to Indigenous young people at higher risk of offending and of incarceration. One of the Indigenous-specific programs – the Koori Bail Project (NSW) – is operating (currently) in a single location in response to the particular issues identified within the Indigenous community at Bourke.

Other programs, despite not being Indigenous-specific, indicate a particular focus upon Indigenous people. The bail support programs provide an example of this, as do GASR and CARRP. Programs that are not Indigenous-specific may still have high rates of Indigenous participation (such as the Special Circumstances List), perhaps more likely to occur where the program is dealing with an issue of relevance to Indigenous people (such as alcohol or mental health).

Focus upon alcohol

There are only six bail diversion or support programs with a specific focus upon alcohol treatment in Australia – CARRP, CADAS, the three MERIT initiatives (although Wellington Options focuses upon drugs too) and QIADP. All of these programs (except CADAS) are targeted to at least some extent at particular Indigenous communities.
As alcohol is likely to be the predominant substance abuse issue for Indigenous people, the lack of alcohol focus in bail diversion impacts upon the accessibility and relevance of bail diversion options for Indigenous offenders. A considerable number of the programs, however, are able to address alcohol misuse or dependency even if they are dealing with a different issue such as mental health or are general in nature (such as CISP or GASR). The lack of focus upon alcohol is therefore more of a problem, and a significant problem for Indigenous people, where a program either offers participants no assistance with alcohol misuse (which is rare) or, in particular, where a program excludes alcohol as a primary substance abuse issue (as most of the illicit drug-focused programs do) or otherwise excludes persons with an alcohol dependency or misuse problem. Illicit drug bail diversion programs constitute the most common bail diversion programs in Australia, but Indigenous participation to most of these programs is inhibited on the basis that alcohol is a secondary substance abuse issue. This is a matter of some concern.

There are only six bail diversion or support programs with a significant or sole focus upon alcohol. Five of these concentrate to different degrees upon Indigenous alcohol use within particular Indigenous communities.

Indigenous offenders are less likely to access the greatest number of bail diversion programs in Australia – illicit-drug focused programs – due to the focus of such programs upon illicit drugs as a primary substance abuse issue. However, many of the other programs are able to address alcohol as an issue underlying offending behaviour, and Indigenous people will be able to access alcohol treatment and support unless they are otherwise excluded from the program by relevant criteria.

10.2 FINDINGS – KEY PRINCIPLES

In presenting information about current programs, we have identified a number of significant issues arising in relation to Indigenous bail diversion and support programs. From these issues we have identified key principles we consider likely to contribute to the effectiveness of Indigenous-focused bail diversion programs. Those principles are highlighted within the Discussion set out at the end of each section above, and are presented in their final form below.

These principles (and related issues) may be applied in considering how best to provide effective bail diversion options to Indigenous Victorians (see Recommendation in [10.3] below).

10.2.1 Access to programs

Eligibility criteria – prior history and violent offending

Indigenous people are not always able to participate in bail diversion programs due to program criteria which may lead to disproportionate exclusion of Indigenous offenders.
Research indicates that certain eligibility criteria are more likely to inhibit Indigenous access to bail diversion programs, despite such criteria appearing neutral in application. Those criteria are:

- exclusion criteria on the basis of the history of offending;
- exclusion criteria for current charges in relation to offences of violence and/or convictions for the same; and
- prioritisation of illicit drug problems over alcohol treatment and support (or otherwise excluding alcohol misuse as an issue).

Consideration should therefore be given to the impact that any exclusionary criteria of a program may have upon Indigenous persons. Rather than automatically excluding groups of persons on the basis of a significant criminal history or offences of violence, it may be appropriate to provide for some discretion to consider cases on an individual basis [2.12].

Some programs are more inclusive than others, with limited exclusion criteria and wide inclusion criteria (such as CISP or GASR). It is reasonable to suggest that, broadly speaking, the more general a program is in terms of eligibility criteria, the less likely that its criteria will lead to disproportionate exclusion of Indigenous offenders (see [2.12]).

However, the more inclusive the program, the more resources will be required for careful assessment of individuals as to suitability in the absence of automatic exclusion of offenders (on the basis of risk to safety, for example). Whilst the flexibility of broader criteria has significant benefits, where assessment indicates that the offender poses a significant risk of harm to the safety of a victim (particularly in cases of serious, ongoing family violence) or to those working with offenders within the program, exclusions may be necessary. This has been discussed in the context of GASR and IDP, where family violence offenders were being accepted into the program, inappropriately [5.4; see also discussion in 9.2].

**Key Principle 1**

There should be no automatic exclusion for significant offending history or for offences of violence in Indigenous-focussed bail diversion programs.

It may be preferable to incorporate an element of discretion into decision-making or to utilise a risk assessment tool to deal with such issues on an individualised basis in preference to automatic exclusion.

**Eligibility criteria – alcohol misuse and dependency**

There has been some recognition that failure to prioritise alcohol in diversionary programs (and the prioritising of illicit drugs in many bail diversion programs) has inhibited Indigenous access to bail diversion options. Bail diversion initiatives such as
MERIT in Wilcannia/Broken Hill have boosted Indigenous participation rates by focussing upon alcohol in bail diversion (as well as targeting particular communities). Eligibility criteria should not lead to the exclusion of those with a primary substance abuse issue relating to alcohol, and bail diversion programs must be able to address the issue of concern for the Indigenous community it targets [4.1.6].

**Key Principle 2**

Any bail support or diversion program for Indigenous people must incorporate a focus upon alcohol misuse - including through eligibility criteria - given the prevalence of alcohol as a substance misuse issue within Indigenous communities.

However, the focus upon alcohol use ought not to exclude treatment and support for other substances that might be of relevance to particular communities (including inhalants or cannabis).

**Eligibility criteria – pleading guilty**

Some programs require an offender to plead guilty (or to otherwise acknowledge commission of an offence) in order to access a program. This approach is particularly prevalent in bail diversion programs dealing with mental health and drug use. It may lead to coercion into admission, as offenders plead guilty in order to access programs. This is not in general appropriate for bail diversion programs [2.12].

**Key Principle 3**

In general, offenders should not be required to plead guilty or to indicate an intention to plead guilty in order to access bail diversion programs.

It may also be inappropriate to require an offender to admit the facts as alleged or to have to otherwise acknowledge their offending in order to participate in bail diversion programs.

**Eligibility criteria – mental health**

The prevalence of mental health and intellectual disability within Indigenous communities, attributable to a range of factors (including poverty and levels of serious substance abuse), is well documented. Most of the bail diversion programs identified above do not exclude persons on the basis of a dual diagnosis of mental health and alcohol dependency or misuse issues (including the programs specifically targeting mental health and intellectual impairment). A program such as GASR is perhaps an
exception – with its exclusion of offenders based on ‘physical or psychological problems’.

An exclusion from bail diversion on the basis of a dual diagnosis is not appropriate for Indigenous offenders, and is likely to inhibit access to diversion for a significant number of Indigenous offenders [3.6].

### Key Principle 4

The ability to deal with a dual diagnosis of mental health and substance abuse issues is an essential component of any bail diversion program seeking to ensure maximum engagement with Indigenous offenders, given the frequent correlation of these issues within Indigenous communities.

### 10.2.2 Engaging with Indigenous offenders and communities

**Key elements to increase engagement**

A failure to take appropriate measures to provide for effective engagement with Indigenous offenders will impact upon Indigenous participation. Indigenous offenders may be more likely to decline acceptance onto a bail diversion program or to drop out of programs where programs are not culturally relevant.

Certain program elements may be utilised to increase Indigenous engagement with a program. These might be used in either adapting a mainstream program or in developing an Indigenous-specific program. A number of mainstream programs have utilised one or other of these elements or identified them as important (as do some Indigenous-specific programs) in adapting the program to increase the program’s focus upon Indigenous needs. CADAS and QIADP, as examples of both Indigenous-specific and mainstream programs, both use Indigenous staff and service providers [4.3].

As part of effective engagement, it may also be necessary to incorporate certain elements of bail support programs within bail diversion programs, as appropriate, in order to overcome barriers to bail compliance. This might include providing information about bail processes or reminders about court dates, for example [7].

### Key Principle 5

Program elements which may be beneficial in increasing engagement of Indigenous offenders include:

- employment of an Aboriginal caseworker and other staff;
- liaising more closely with Aboriginal agencies and communities and working...
within existing networks (including staff of the Koori Court or other Indigenous persons working with in courts, and Elders within Indigenous communities);  
- development of culturally appropriate resources;  
- improving staff skills and knowledge relevant to service delivery to Indigenous people;  
- developing appropriate promotional material; and  
- attempting to overcome barriers to participation, including in relation to transport difficulties by providing outreach or transport to Indigenous offenders.

The latter cross over into elements common to bail support programs. Providing bail support (as defined) may be appropriate as a component of bail diversion.

Targeting of programs

One way of increasing engagement with Indigenous communities is to target programs for implementation in areas (i) where there are sufficient numbers of Indigenous people to use the program and/or (ii) where there is an identified demand to utilise a program within specific communities (particularly where identified by the local Indigenous community, as occurred in Bourke with the Koori Bail Project). A number of bail diversion programs have been implemented in this way (such as CARRP or the MERIT initiatives). This has increased accessibility to bail diversion for those communities and the Indigenous focus of the program in question.

The programs that have taken this approach have been implemented outside metropolitan areas. The IDP, for example, has taken an illicit drug diversion program out to more remote Indigenous communities to increase both Indigenous participation rates in diversion programs and the availability of culturally appropriate diversion options in regional Western Australia.

Access to bail diversion programs may be reduced in locations outside metropolitan or larger regional areas. As Indigenous populations increase as a percentage of local populations the more remote the location, this means that a barrier to access for Indigenous people may be their relative isolation. Thus implementing programs in rural and remote locations may increase Indigenous access in a targeted way. However, the need to build capacity, including in relation to provision of relevant services and programs available to diversion program participants, must be borne in mind [8.5].

A further point is that transporting a program out to the community in this way not only overcomes geographical barriers to access, but also emphasises the focus upon community, as it may assist offenders to remain located nearer to family and community during participation (see below: Key Principle 7).
Key Principle 6

To improve Indigenous engagement with bail programs, it may be appropriate to consider a targeted implementation of any new or adapted initiative based on demand rather than providing such a program across all courts. This may mean implementing a program in areas where there is a sizeable Indigenous population (and a significant issue arising in relation to alcohol misuse, if this is the focus of the program).

Targeting may lead to a specific focus upon rural and remote locations, based on demographical distribution of Indigenous communities. Capacity building may be required in providing bail programs to Indigenous communities though, including at least by ensuring that local communities have resources necessary for implementation of the program.

Further, any bail diversion program must be placed-based; that is developed and implemented in response to the particular needs and circumstances of the Indigenous communities who will access the program (preferably as identified by the communities themselves).

Culturally responsive intervention options

It is necessary to ensure that any program interventions that are provided to offenders are culturally responsive. The type of intervention options available to Indigenous offenders will necessarily impact upon the program’s effectiveness in engaging such offenders.

This has been discussed in relation to residential rehabilitation, which was seen as an overly onerous and culturally inappropriate intervention for Indigenous participants in MERIT because it dislocated offenders from family and community. However, other programs (such as the IDP) have found that residential rehabilitation works effectively.

This indicates that a range of intervention options should be provided to offenders, including being able to access more than one Indigenous service provider in a particular community, so that the individual’s particular needs and circumstances might be taken into account. Such an approach will increase the likely benefit for any Indigenous offender in participating in the program in question. There is thus really no single ‘best’ intervention option for all Indigenous offenders across programs, regions and jurisdictions [4.3].

Key Principle 7

A bail diversion or support program should be able to provide a range of intervention options to Indigenous participants (residential rehabilitation or rehabilitation at home; different service providers, for instance), rather than a
single, standardised intervention option for all Indigenous participants.

However, *all* intervention options should be culturally appropriate for Indigenous offenders. Residential rehabilitation, for example, where imposed as a strict condition of bail diversion may not be appropriate for Indigenous offenders.

**Focus upon family and community**

There must be a focus upon community and family, in keeping with Indigenous cultural priorities, in any bail diversion program directed towards engaging and assisting Indigenous offenders [2.12].

This focus may be realized through improving the capacity of family members to support an offender during diversion (as occurs in the Koori Youth Supervised Bail Program); through providing ‘cultural healing programs’ and Indigenous-specific services; or through enabling the offender to stay physically connected with his/her community during the period of diversion. The latter occurs through use of community-based bail facilities in the Regional Supervised Bail Program (WA) or through the use of home-based residential rehabilitation rather than rehabilitation in facilities outside community and away from family, for example.

Initiatives such as these will improve the chances of successful completion of a program for Indigenous offenders and will mean that the program has relevance for the community as a whole (and is thus more likely to be supported).

**Key Principle 8**

An emphasis ought to be placed in Indigenous-focused bail diversion upon family and community, including upon building capacity within Indigenous communities to support the program and the offender.

**Holistic approach to offending**

Many of the bail diversion programs recognise the connection between a range of issues and offending behaviour (such as homelessness, illicit drug dependency, and mental health). Poverty and broad social disadvantage within Indigenous communities may, however, lead to greater complexity for Indigenous offenders in terms of the problem issues needing to be addressed through any intervention. Indigenous bail diversion programs should thus be able to deal in an integrated and holistic manner with a wide range of issues – both those directly related to offending and those underpinning social disadvantage. The latter might include issues such as unemployment and poor
educational attainment. In this context, a brokerage arrangement would allow for specialisation in different areas within a single program [2.12].

Further, provision of ongoing, community-based support to Indigenous people after completion of a program (and/or establishing effective processes of transition of offenders to providers who might provide such support) is likely to be a positive element of any Indigenous-focused bail diversion program, given that the objective of such a program ought to be on transforming lives in a holistic sense. The latter requires longer-term intervention than may be provided by short-term diversion strategies [8.4].

Key Principle 9

A diversion program for Indigenous offenders ought to be able to deal with offenders holistically; that is, to address the range of issues contributing to offending and underpinning Indigenous social disadvantage more generally.

One approach to these issues may be to utilise brokerage arrangements to allow for specialisation in different areas within a single program.

Incorporating an aftercare component into a program may also benefit Indigenous offenders.

Strategic-level engagement with communities

At a broader strategic level, Indigenous people should be consulted during development, implementation and review of bail diversion programs. In order to ensure a sense of program ownership for Indigenous communities and to increase the quality of engagement by a program with Indigenous offenders (and thus its effectiveness), genuine participation of Indigenous organisations, service providers and communities is required through program steering committees, similar governance structures or other mechanisms [8.4].

Key Principle 10

Indigenous-focused bail diversion programs must ensure Indigenous participation in governance structures and quality engagement (including at a local level) with Indigenous communities through Indigenous participation in planning, implementation and evaluation of programs.

10.2.3 Indigenous women
Indigenous bail diversion options must consider the particular circumstances of Indigenous women. This may require accommodations within the program to address the specific needs of Indigenous women, as well as ensuring that the program does not indirectly or unintentionally inhibit access or effective engagement with Indigenous women. Those needs may relate to their role as mothers or as victims of family violence [Introduction; see also discussion in 9.2].

**Key Principle 11**

Any bail diversion initiative ought to be adapted or adaptable to the specific needs of Indigenous women.

### 10.2.4 Resourcing programs

A commitment to sufficient resourcing (particularly in relation to staffing) is essential in order to ensure that a bail diversion program is able to achieve its intended outcomes as they relate to Indigenous offenders.

The ability of any program to provide a bail diversion option to Indigenous offenders in Victoria will be necessarily limited by the availability of its resources (including staff). Any Indigenous-specific initiative such as the ALO program ought to be sufficiently resourced to ensure genuine capacity to undertake work required. The ALO program as it currently operates appears under-resourced for the work that it is required to undertake. Programs ought only to operate within their capacity.

The lack of clarity in the relationship between different Indigenous-specific initiatives within courts in different jurisdictions may lead to duplication of services, gaps in services and an overburdening of existing services. Further clarification is required in terms of the respective roles of Koori Court program staff and staff involved in any other Indigenous-focussed programs in Victoria (including the ALO program). If a program requires further resources to ensure that existing gaps in service are filled this should be provided [2.12, 9.3].

**Key Principle 12**

Any Indigenous-specific initiative or program ought to be sufficiently resourced to ensure capacity to undertake work required.

It is important not to overstretch or simply reallocate existing resources (particularly those that already seek to work with Indigenous offenders such as the Koori Court) in expanding current programs and/or in developing new programs in an attempt to increase accessibility.
10.2.5 Dealing with non-compliance and non-completion

The programs deal with non-compliance and non-completion of programs differently - but in general, do not attach a penalty to either. A flexible approach to offenders may be appropriate however. Interventions, supervision, and program requirements (as well as procedure for non-compliance with requirements) ought to be adaptable to be commensurate with the level of risk the offender poses.

Non-completion of bail diversion programs should not generally lead to a harsher sentence than the offender might have received if they had not participated. This would deter offenders from participating. An approach such as this may be more likely to impact negatively upon Indigenous offenders, at least in those programs where Indigenous completion rates are lower than non-Indigenous completion rates [5.4].

### Key Principle 13

Failure to complete a bail diversion program ought not to lead to a prohibition from program participation on a later occasion or to an increased sentence.

A bail diversion program ought to be sufficiently flexible and have adequate resources to enable program requirements and procedure to be adapted dependent upon the level of offending and particular circumstances of offenders. Thus, closer supervision and more stringent bail conditions or program requirements may be required for higher-risk offenders.

10.2.6 Evaluation processes

There is insufficient quantitative or qualitative evaluation of Indigenous participation in mainstream bail diversion programs, particularly in terms of data relating to Indigenous completion of programs. There is also little available material analysing the effectiveness of Indigenous-specific bail diversion programs for Indigenous people; in particular, evaluative material dealing specifically with participation and outcomes for Indigenous women in this area.

This situation should be rectified. It is important, in the context of developing an Indigenous-specific initiative, that processes of evaluation and review (with Indigenous input) are mandated and that they are used to guide implementation and effectiveness of a particular initiative [2.12].

Further, effectiveness of bail diversion for Indigenous offenders ought not to measured solely on the basis of rates of completion. Benefit from bail diversion for Indigenous offenders may be derived without completion of the program [8.5].
Key Principle 14

Ongoing evaluation and review (with effective Indigenous input or control) is essential to ensure that any bail diversion program is engaging with Indigenous offenders.

Relevant data (including rates of completion) ought to be collected to enable this to occur, especially where a mainstream program is utilised to provide diversion to Indigenous offenders.

In evaluating a program targeted at Indigenous offenders, its effectiveness may be best measured on a qualitative and quantitative basis; that is, other than simply by reference to aggregate completion rates.

10.3 RECOMMENDATION

We have been asked to consider, in brief, possible options for expanding Indigenous bail diversion in Victoria. These options may include (but may not be limited to):

(iv) creating an Indigenous-specific program with a general focus

(v) creating an Indigenous-specific program with a specific focus upon alcohol (like QIADP)

(vi) modifying existing programs (particularly CISP) to increase their ability to engage with Indigenous offenders.

Creating an Indigenous-specific program with a specific focus upon alcohol

An Indigenous-specific, alcohol-focussed bail diversion program is one option available to Koori Victorians. The Department has expressed an interest in QIADP as an Indigenous-specific program. QIADP also has a significant emphasis upon alcohol treatment.

Although QIADP, as noted, is working effectively within those communities where it is available, there is no indication that an alcohol-specific Indigenous bail diversion program would be of more benefit to Koories in Victoria than other types of programs. It is clear that alcohol treatment and support must be available to Indigenous persons accessing bail diversion. However, it may not be necessary or appropriate to develop an alcohol-specific program. A general program without a focus upon alcohol (or another single issue) has some advantages for Indigenous offenders, most particularly in the flexibility that it affords offenders. Such a program may still be able to place some
emphasis, as appropriate, upon alcohol treatment and support, including with particular reference to the needs of Indigenous offenders in this regard.

In the latter approach, the frequent and oft-cited connection between Indigenous offending and alcohol misuse may be dealt with without necessarily excluding those Indigenous offenders who present in court without a substance abuse issue or with a substance abuse issue not related to alcohol intake. As discussed, any bail diversion program targeting Indigenous offenders should be able to respond to the particular substance abuse issue arising within a community (as has occurred within the Indigenous Diversion Program in WA). Despite the predominance of alcohol, other substances (licit and illicit) may be the primary substance abuse issue for Indigenous offenders. It is not essential to exclude such substances abuse issues (as secondary to alcohol) in order to design a program of benefit for Indigenous people in Victoria, but placing a single emphasis upon alcohol may have this effect.

Using general programs

Development of Indigenous-focused process and content within a general program model may be the preferred option, in preference to an issue-specific program such as QIADP. This may mean developing an Indigenous-specific program with no focus upon a specific issue or further adapting a mainstream general program to Indigenous needs.

There advantage of developing an Indigenous-specific program rather than using a mainstream program is obviously the immediate and single focus of such an approach upon the needs of Indigenous offenders and communities. Programs such as QIADP, the Koori Bail Project, Barndimalgu Court or even CARRP are examples of this approach. However, the practical difficulties of developing and resourcing an Indigenous-specific program (available to as many Indigenous Victorians as possible) should be considered. A program such as the Koori Bail Project is operating at one location and is able to provide a more intensive level of assistance than, for instance, a more widely available service such as the Aboriginal Client Service Specialist program. To provide an Indigenous-specific program across Victoria, if it is to provide more intensive assistance, will require significant resourcing.

The Indigenous-specific or focused programs we have identified either focus upon alcohol use or are general in nature, but are commonly associated with particular communities (even if this is just at the pilot stage). Any Indigenous-specific program may therefore need to be targeted in this way, with particular reference to the needs of rural and regional Indigenous communities (including by ensuring that culturally responsive services and programs are available as part of such a program).

Adapting CISP

The most appropriate option may be to further expand an existing, broadly inclusive and adaptable program such as CISP. This will require less resource output in comparison to having to develop a new program.
Firstly, the Indigenous participation rate of CISP is approximately 9%. This indicates that the program has had some success to date in terms of engaging with Indigenous offenders, despite the comments we have made in relation to possible inadequate resources available to the ALO program. The rate of Indigenous custodial imprisonment in Victoria is around 6%. It is positive that CISP is able to engage with a higher percentage of Indigenous offenders than are presently being incarcerated in Victoria. It may be appropriate, therefore, to build on this success and to further extend CISP (rather than any of the other diversion programs in Victoria) to Indigenous offenders. Secondly, CISP appears for the most part to incorporate a number of key principles or elements outlined herein as likely to underpin effectiveness of an Indigenous-focused bail diversion program.

Thirdly, CISP already has in place an ALO program designed to increase access for and engagement with Indigenous offenders. One method of expanding CISP is to increase the availability of the ALO program to broaden access to diversion for a greater number of Koories. The ALO program may of course be expanded separate to CISP or any other program as a stand-alone Indigenous-specific initiative in adult and/or children’s courts - similar to the ACSS in NSW. The Department may, however, consider that there are particular advantages to attaching the ALO program to the resources and established framework of a program such as CISP. Further, the advantage of focusing upon CISP as an existing program rather expanding further, significant resources upon developing an Indigenous-specific program would be that those resources could or should be fed back into ensuring adequate capacity for the ALO program to provide services as an expanded program, but remaining within CISP. Resourcing of the ALO program as it currently operates is an issue that perhaps needs further attention, but certainly any expansion will require resources commensurate with the scope of ALO work.

Fourthly, in terms of adapting QIADP, the program (or elements of it) may be best incorporated within CISP (linking in with the existing ALO program) in preference to the Department simply developing a new program somehow modeled on QIADP. As noted, the broader and inclusive approach of CISP (including in terms of eligibility criteria) may be preferred to the issue-specific focus of QIADP for Indigenous offenders. The eligibility criteria of CISP may be actually broader than those of QIADP, and CISP already appears to incorporate many of the positive elements of QIADP previously identified as beneficial for Indigenous offenders by the Department. The approach of a general program does not necessarily preclude a specific focus, as required, upon the needs and issues of special relevance to particular groups of offenders, including Indigenous offenders, as noted. Any further QIADP components likely to benefit Koories may be transferable to CISP, including the QIADP alcohol treatment model if evaluation indicates that this is working effectively to address alcohol misuse and dependency for Indigenous people. In this sense, the QIADP model may operate as a subset of CISP, without having to substantially alter CISP eligibility criteria.

It may be appropriate, however, for any further adaptation of CISP to take place at least initially within adult courts rather than children’s courts. The Koori Intensive Bail
Support Program already provides what appears to be an effective bail diversion option for young Koories, although its limitation in terms of number of offenders assisted is apparent. This program may also have potential for expansion to be available to a greater number of Indigenous young people, with reference to the principles set out herein, including those relating to resourcing and targeting of programs, although we note that it is a Department of Human Services (Vic) initiative. An expansion of the ALO or an ALO-type program into the Children’s Court is one option available to the Department in future.

**Recommendation**

The key principles set out at [10.2] herein ought to be considered in further developing bail diversion options for Indigenous offenders in Victoria.

In terms of specific program options, the Department should consider adapting the existing CISP program to provide greater opportunity for Koories to access effective bail diversion in Victoria, in preference to developing an alcohol or Indigenous-specific program.

- As part of this adaptation, the (CISP) ALO program may be expanded to increase program availability at a greater number of courts. The expansion of the ALO program might be targeted, perhaps in accordance with **Key Principle 6** [10.2]. Further, funds which might otherwise have been expended on development of a new bail diversion program may be utilised in ensuring that this expansion is resourced sufficiently in order to enable the needs of Koories to be effectively addressed.

- Positive elements of QIADP, as identified by the Department, may be incorporated within CISP, as part of its adaptation, as required in order to increase Indigenous engagement with the program. This may include the QIADP model of alcohol treatment and support, if evaluation indicates that the latter is working effectively to address alcohol misuse and dependency amongst Indigenous people.

- Further, the adaptation of CISP ought only to extend to adult courts, at least initially.
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