Justice, Rehabilitation and Reintegration:
Evaluating the Effectiveness of Drug Courts in Australia

Amanda Clarke
B. Policing, M. Lship Mgt. (Policing), M. A. (CrimIntel)

A dissertation submitted to Charles Sturt University in partial fulfilment of the requirement for the degree of
Doctor of Policing and Security

December, 2018
# Table of Contents

List of Tables .................................................................................................................. 6
List of Figures .................................................................................................................... 7
List of Acronyms and Abbreviations ................................................................................ 8
Certificate of Authorship ................................................................................................. 10
Acknowledgements .......................................................................................................... 11
Abstract ............................................................................................................................. 12

1. Introduction ................................................................................................................... 1
   1.1. Overview ............................................................................................................... 1
   1.2. Background ......................................................................................................... 1
   1.3. Drug Courts ........................................................................................................ 3
       1.3.1. The International System ............................................................................. 4
       1.3.2. Drug Courts in Australia .............................................................................. 5
       1.3.3. Ten Key Components .................................................................................. 6
       1.3.4. Generalised Australian Drug Court Model .................................................. 7
   1.4. Evaluation of the Drug Court ............................................................................... 9
   1.5. Focus on Recidivism Statistics ............................................................................ 10
   1.6. Research Question and Objectives .................................................................... 11
   1.7. Methodological Approach .................................................................................. 12
   1.8. Rationale and Significance .................................................................................. 12
   1.9. Nomenclature ....................................................................................................... 13
   1.10. Limitations ......................................................................................................... 15
       1.10.1. Single Drug Court Program ....................................................................... 15
       1.10.2. Researcher’s Disclosure- Dual Role ............................................................. 16
   1.11. Organisation of this Dissertation ....................................................................... 16
   1.12. Conclusion .......................................................................................................... 17

2. Literature Review ......................................................................................................... 1
   2.1. Overview ............................................................................................................. 1
   2.2. Traditional Criminal Justice Responses To Proven Criminal Conduct ............ 1
       2.2.1. Retribution ................................................................................................... 2
       2.2.2. Deterrence .................................................................................................. 3
       2.2.3. Protection of the Community ....................................................................... 4
       2.2.4. Rehabilitation .............................................................................................. 6
   2.3. Drugs and Crime .................................................................................................... 8
       2.3.1. Consequences of the Drug-Crime Nexus ....................................................... 10
       2.3.2. Drug-Crime Nexus and Rational Choice Theory .......................................... 12
3. Methodology ................................................................................................................................. 1

3.1. Overview ................................................................................................................................. 1

3.2. Research Design ........................................................................................................................ 1

3.2.1. Pragmatism .......................................................................................................................... 1

3.2.2. Research Procedures .......................................................................................................... 3

3.2.3. Mixed–Methods ................................................................................................................. 3

3.3. Secondary Data – Collection and Analysis Methods ................................................................. 5

3.3.1. Collection of Secondary Documentary Data ....................................................................... 5

3.3.1.1. Category 1: Legislation, Supporting Literature and Other Official Publications .......... 6

3.3.1.2. Category 2: Evaluations ................................................................................................. 7

3.3.2. Analysis of Secondary Documentary Data ......................................................................... 9

3.4. Primary Data – Observational Sources .................................................................................... 10

3.4.1. Collection of Observational Data ...................................................................................... 11

3.4.1.1. Drug Court Team Members .......................................................................................... 13

3.4.1.2. Drug Court Participants ............................................................................................... 13

3.4.2. Analysis of Observation Data ............................................................................................ 15

3.5. Trustworthiness of the Data Collection and Analysis ............................................................... 16

3.5.1. Credibility ........................................................................................................................... 16

3.5.2. Transferability ...................................................................................................................... 19

3.5.3. Dependability ..................................................................................................................... 19

3.5.4. Conformability ................................................................................................................... 20
6. Interpretations and Recommendations .................................................. 95
   6.1. Overview .................................................................................. 95
   6.2. A Key Conclusion .................................................................... 96
   6.3. Identified Key Elements ........................................................... 97
       6.3.1. Structure and Accountability .............................................. 98
           6.3.1.1. Key Findings ........................................................... 99
           6.3.1.2. Recommendations .................................................. 100
           6.3.2. Judicial Relationship .................................................... 102
           6.3.2.1. Key Findings ........................................................... 102
           6.3.2.2. Recommendations .................................................. 103
           6.3.3. Court Capacity .............................................................. 104
           6.3.3.1. Key Findings ........................................................... 105
           6.3.3.2. Recommendations .................................................. 106
           6.3.4. Rewards and Sanctions ................................................. 107
           6.3.4.1. Key Findings ........................................................... 108
           6.3.4.2. Recommendations .................................................. 109
   6.4. The Causal Order of the Drug Court Process ............................... 109
   6.5. Future Research ...................................................................... 113

References .......................................................................................... 115

LEGISLATION .................................................................................... 140

Appendices ......................................................................................... 141

Appendix A: The Ten Key Components and Benchmarks ...................... 141
   The Ten Key Components ................................................................ 141
   The Ten Key Components Benchmarks ......................................... 142

Appendix B: Nomenclature Table .......................................................... 143

Appendix C: Drug Court Program – Performance Measures Used in Published Evaluations .............................................................................. 150

Appendix D: SF-36® Health Survey (Version 1.0) .................................... 153

Appendix E: Signed Research Protocol ................................................. 154

Appendix F: Signed Terms of Agreement with Police Prosecutions Command .......................................................... 156

Appendix G: Approval Letter ................................................................ 158

Appendix H: Observation Schedule ...................................................... 159

Appendix I: Drug Court of New South Wales Boundary Maps .............. 161

Appendix J: Participant Information Sheet ............................................. 164

Appendix K: Consent Form ................................................................ 168

Appendix L: Collection of Observation-based Data............................... 170

Appendix M: Example Participant and Program Requirements .............. 172

Appendix N: Drug Court Program Progression .................................... 174
List of Tables

Table 2.1 Differences between Mainstream Courts and Drug Courts .......................... 24
Table 3.1 Summary of Document Sources – Category 1 .............................................. 6
Table 3.2 Summary of Document Sources – Category 2 .............................................. 8
Table 3.3 Observational Period – Drug Court Characteristics .................................. 12
Table 3.4 Frequencies and Percentages of Participants in Drug Court Team Roles (n= 53) .......................................................................................................................... 13
Table 3.5 Gender, Phase, and Treatment location of Drug Court Program Participants according to Observed Court Matters (n = 1,147) ............................................................. 14
Table 4.1 Australian Drug Courts – Aims and/or Objectives and Assessment Criteria. 26
Table 4.2 The Assessment Criteria Sorted by Category .................................................. 28
Table 5.1 Documents Used – Research Objective Two .................................................. 49
Table 5.2 Key Differences and Similarities for Australian Drug Court Admission ...... 51
Table 5.3 Drug and Offence Reduction Programs – Examples ..................................... 60
Table 5.4 Summary of Drug Court Team Membership ................................................. 61
Table 5.5 Authority and Location of Urine Collection and Analysis in the Five Jurisdictions ......................................................................................................................... 63
Table 5.6 Examples of Rewards for Compliance ............................................................. 64
Table 5.7 Sanction Reduction Process in the NSW, QLD and VIC Jurisdictions .......... 65
Table 5.8 Treatment Types for Drug Court Program Participants (n = 33) ................. 76
Table N.1 Drug Court Program Structure – New South Wales ................................. 174
Table N.2 Drug Court Program Structure – Queensland ............................................. 176
Table N.3 Drug Court Program Structure – Victoria .................................................... 178
List of Figures

Figure 1.1 Generalised Australian Drug Court Model ........................................ 8
Figure 2.1 Offender Attributes and Outside Factor Shape Drug Court Outcomes and
Shape Drug Court Participant Behaviour ......................................................... 35
Figure 5.1 Passage of drug-dependent offenders through the courts.................... 55
Figure 5.2 Pathways to drug court programs ...................................................... 57
Figure 5.3 Termination flow chart of a drug court program ................................. 68
Figure 6.1 Measuring Offender Attributes, Drug Court Treatment Elements and Drug
Court Outcomes – Model Explaining Drug Court Participant Behaviour .......... 112
Figure I.2 Drug Court of NSW – Hunter ......................................................... 162
Figure I.3 Drug Court of NSW – Sydney .......................................................... 163
List of Acronyms and Abbreviations

ABS: Australian Bureau of Statistics
AIC: Australian Institute of Criminology
AIHW: Australian Institute of Health and Welfare
AIJA: Australian Institute of Judicial Administration
Cth: Australian Commonwealth Legislation
DCJB: Drug Court Judicial Benchbook
LRCWA: Law Review Commission of Western Australia
MCOV: Magistrates Court of Victoria
NADCP: National Association of Drug Court Professionals
NDARC: National Drug and Alcohol Research Centre
NSWDCP: New South Wales Drug Court Program
NSWLRC: New South Wales Law Reform Commission
NSWBOCSAR: New South Wales Bureau of Crime Statistics and Research
QDOJ: Queensland Department of Justice
SADOJ: South Australia Department of Justice
SAOCSR: South Australia Office of Crime Statistics and Research
SEC: Strategic Edge Consulting
SFJB: Solution-Focused Judging Benchbook
UOM: University of Melbourne
USA: United States of America
UWA: University of Western Australia
VICDOJ: Victoria Department of Justice

UOQ: University of Queensland

WADOJ: Western Australia Department of Justice

Please note: Due to the large number of organisations referred to in this dissertation, some bracketed references will contain an abbreviation without any corresponding statement of the abbreviation in full. While not typical academic practice, this has been done to ensure the clarity of the respective sentences. All abbreviations used in the bracketed references can be found in this list.
Certificate of Authorship

(a) I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person nor material which to a substantial extent has been accepted for the award of any other degree or diploma at Charles Sturt University or any other educational institution, except where due acknowledgment is made in the dissertation. Any contribution made to the research by colleagues with whom I have worked at Charles Sturt University or elsewhere during my candidature is fully acknowledged.

(b) I agree that this thesis be accessible for the purpose of study and research in accordance with the normal conditions established by the Executive Director, Division of Library Services or nominee, for the care, loan and reproduction of theses.

Signed on:

By Amanda Clarke.
Acknowledgements

This dissertation is dedicated to my husband, Scott Clarke, and our two daughters, Jaime and Sonya.

To my husband Scott who has given me the freedom to pursue various projects without objection and has never wavered in his support for me, all that I have and will accomplish means absolutely nothing without him by my side. Special thanks go to my two little sources of gravity, Jaime Kay and Sonya Amanda, who always pulled me back to reality and reminded me of what was truly important in life.

I would like to thank the Australian Graduate School of Policing and Security for their support and guidance provided in order for this work to develop. Special thanks go to my supervisors and mentors I have had along the way, Dr Hank Prunckun, Dr Anna Corbo Crehan, Dr Garth den Heyer and Dr Susan Robinson for their countless edits, valuable comments, and for pushing me to think more critically about criminal justice policy.

This dissertation was possible through the support of my colleagues at the Drug Court of New South Wales. It takes innovation, teamwork, and strong judicial leadership to achieve success when addressing drug-using offenders in a community. My belief is that, as we approach 20 years of drug courts in Australia, we will continue to move the therapeutic approach to an even higher level of professionalism and success.

Thank you to the New South Wales Police Force for their nurturing of much of my interest in the unique jurisdiction of the drug court. It is understood that drug courts have created new and different roles for the police, and I greatly appreciate the invaluable exposure I have been given to some of the realities that this jurisdiction has created for law enforcement and for being given the opportunity to practise in my field of interest for the past 16 years.
Abstract

The establishment of drug courts has been hailed for some years now as a credible addition to the Australian criminal justice system, one intended to positively influence the drug-crime nexus. Drug courts have now entered their second decade of existence in Australia and bring a considerable literature base with them, with recidivism being the default outcome measure used to determine drug court program performance. This research determined what other elements of the drug court process are linked to the successful completion of a drug court program.

The research used a pragmatic approach and a mixed-methods research design that incorporated quantitative and qualitative approaches to achieve two objectives. The first objective was to identify assessment criteria for Australian drug courts in relation to the operation of the five Australian drug court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia. The second objective was to identify elements of the drug court process that are related to success from the perspective of drug court stakeholders, primarily their participants. The approaches adopted included a documentary analysis of secondary data concerning the operation and outcomes of the five Australian drug court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia; the collection and thematic analysis of naturalistic observational data (qualitative) gathered from drug court proceedings; and, the collection and quantitative analysis of statistics gathered from drug court proceedings. This research identified five assessment criteria that can be described as indicia of a drug court’s success: breaking the drug-crime nexus, economic feasibility, general society well-being, governance, and participant satisfaction. It also identified that one overarching theme, the rehabilitative ideal, is linked to drug court success. Central to this theme are four notable elements, namely: structure and accountability, judicial relationship, court capacity, and rewards and sanctions. While this constitutes a significant progression, work remains to isolate which elements are relevant to positive outcomes. In this vein, drug courts can be informed by the drug court model, identified success assessment measures and identified outcomes developed in this research.

Through the triangulation of results from the analysis of secondary data and observational data, this research succeeded in aligning the drug court model, as outlined in the current literature, with actual drug court structures and processes through identified assessment
criteria and outcomes; however, the task remains to distinguish between the instrumental functions and their outcomes. The appearances before the judge, the appointments for treatment, drug tests and other activities form part of the delivery of the treatment effect. The results they produce, drug court success or failure, are overall drug court outcomes. Enough encouraging evidence exists to support the promise of drug courts, yet much more work is needed to isolate which elements are relevant to positive outcomes. In this vein, drug courts can be informed by the developed drug court model, identified assessment criteria and identified outcomes in this research.
1. Introduction

1.1. Overview

This chapter provides a brief explanation for the emergence and operation of drug courts in the Australian criminal justice landscape. A drug court is a specialist court dealing with offenders who are dependent on drugs and aiming to assist those offenders in overcoming both their drug dependence and their criminal offending.

Drug courts are a pragmatic response to the growing realisation that punitive sanctions, including imprisonment, are contributing to a ‘revolving door effect’. This later term refers to the notion that the prison system is failing to rehabilitate a significant proportion of drug-dependent offenders who resume both their offending behaviour and substance use upon release from serving their sentence. Furthermore, drug courts have entered their second decade of existence and bring an impressive literature base with them. However, there is a noticeable lack of research efforts to operationalise and/or experimentally control key elements and their relationship to drug court outcomes within this base. Additionally, what has been published primarily focuses on recidivism and quantitative methodologies. Given this background, the study seeks to answer the research question, what, besides a lack of reoffending, indicates successful completion of a drug court program?

This dissertation’s intentions are discussed against the backdrop of current criminological thought about the role of drug courts. The research approach, questions, and objectives to be considered in the research process are also discussed. This includes a brief synopsis of the rationale behind conducting the research and the method adopted to analyse the research findings. This chapter’s final section explains the dissertation’s organisation and what its arguments have sought to accomplish.

1.2. Background

Drug-related crime and its prevention and suppression are of great concern in contemporary Australian society, as evidenced by an enormous amount of research, policy, legislation, and public examination into the nexus between drugs and crime (e.g., AIC, 2009b, 2012, 2014). Despite there being many permutations of the connection
between crime and drug use\(^1\), the one that is of specific interest for this dissertation is the criminal behaviour committed by drug-dependent offenders because of their drug dependence.

The criminal justice system has typically regarded public safety (incarceration) and public health (treatment) as competing and incompatible goals when dealing with drug-dependent offenders (Taxman et al., 2009). These views have been challenged over the past 30 years in light of the almost ubiquitous nature of drug use and criminal justice interaction, the ‘revolving door’ phenomenon and the need for effective and efficient solutions (Bull, 2010; Freiberg, 1997, 2001; Hora, 2011; Huddleston & Marlowe, 2011). Generally, the traditional approach to drug offenders has been punitive, and conventional ways of dealing with drug-dependent offenders have proven unsuccessful (AIC, 2002, 2007; Barrett, 2011; Freiberg, 2001; Nolan, 2001, 2002). In particular, after the completion of a custodial sentence, of those offenders who succeed in breaking their drug-using behaviour, most return to using drugs and engaging in criminal activity (Benson, 2009; Wodak, 2014).

This is especially the case when offenders are people whose crimes are motivated by their drug dependence\(^2\) rather than people convicted of drug-related crimes, such as possession and supplying. Sentences in the form of incarceration without rehabilitation have done little to curtail the use of drugs but much to increase the number of drug-dependent offenders in custody (AIC, 2012). A role exists for a specialty jurisdiction\(^3\) within the Australian criminal justice system to act as an intervention tool in this cycle by applying the theoretical principle of therapeutic jurisprudence\(^4\), which encourage drug-dependent offenders to undertake drug rehabilitation treatment through diversion\(^5\). With this in mind, drug courts remain the most common diversionary response in Australia

---

\(^1\) A high prevalence of drug use exists among offenders (AIC, 2012; AIHW, 2011a, 2011b, 2017; NDARC, 2008, 2009, 2016). A 2015 study reported that two-thirds (67\%) of prison entrants into Australian gaols used illicit drugs during the previous 12 months. Participation in this study was not complete, with only 84\% of the prison population participating (AIHW, 2017).

\(^2\) All references to drug-dependent offenders should be understood as referring to offenders who are dependent on illicit and non-illicit drugs.

\(^3\) Specialty courts incorporate rehabilitative and therapeutic practices that focus on the underlying foundations of offending, thus aiming to reduce the risk of an offender’s ongoing involvement in the criminal justice system. Winick (2003) explains specialty courts as future focused, employing persuasion and ‘benevolent coercion’ in a public health approach to ‘recycling problems’ that appear within the criminal justice system, such as domestic violence and mental illness.

\(^4\) This principle is explained later in Chapter Two, Therapeutic Jurisprudence.

\(^5\) Diversion has multiple meanings. ‘Traditional diversion’ involves diversion out of the criminal justice system altogether with no further rehabilitation treatment (Cohen, Rust, Steen, Tidd, 2004; Sarre; 1999). In contrast, the ‘new diversion’ involves diversion into rehabilitation treatment and/or a program within the criminal justice system. The first reflects reforming foundations (see, for example, Goetz. & Mitchell, 2006), whereas the second reflects therapeutic foundations (see, for example, Hora, 2002; Wexler, 2014). Diversion programs are predominantly used for therapeutic purposes, to divert drug-related offenders into drug education and treatment, rather than out of the criminal justice system (AIC, 2008c; Dive, 2012); therefore, future references to diversionary responses in the Australian context should be taken as referring to court therapeutic diversionary responses, unless otherwise stated.
implemented to address increasing rates of recidivism, burgeoning prison populations and the inability of traditional courts to respond effectively to offenders with specific needs.

1.3. Drug Courts

A drug court is a specialist court that deals with offenders who are dependent on drugs; it aims to assist drug-dependent offenders in overcoming both their drug dependence and their criminal offending. The court assumes an alternative approach by reflecting on an offender’s rehabilitation needs as a key characteristic of the judicial function, in contrast to processing matters by determining guilt and delivering a sentence where appropriate. Drug courts use the authority of the law and legal processes to address complex offender needs and community problems in a manner that is appropriate in light of the seriousness of the offence (NDARC, 2008; Dive, 2011). As such, drug courts have a two-fold role in punishing criminal behaviour through the imposition of a sentence⁶ and coordinating services that assist in rehabilitating the offender and addressing their drug use.

Drug courts have been established based on the belief that courts have the capacity to be actively involved in the treatment and rehabilitation of offenders and can serve as a forum to coordinate services to treat individuals, addressing their offending behaviour and substance use problem (Goldkamp, 2010; King, Freiberg, Batagol, & Hyams, 2009). Drug courts address the issues that are often directly linked to the offending behaviour by intervening in the ‘revolving door’ and inhibiting further interaction with the criminal justice system and by addressing offenders’ underlying drug problem(s) (through such services as detoxification, counselling and urine testing), as well as addressing related education, income, housing and/or health problems (through such services as skills training and housing support). By and large, drug courts seek to:

- minimise or avert a person's involvement in, and further potential progression into, the criminal justice system (Brown, 2010; Burke, 2010);
- reduce the number of people cycling through courts and prisons, thereby easing caseloads and reducing delays in the criminal justice system, as well as reducing related imprisonment costs (Dive, 2012);

---

⁶ In most Australian jurisdictions this is the imposition of a gaol sentence. The sentence is suspended whilst the offender undertakes rehabilitation. The offender is in the community and under the supervision of the court (Belenko, 2000; Brown, 2010; Bull, 2003; Carey, Mackin, & Finigan, 2012).
• provide appropriate treatment opportunities to offenders in need of specific, identifiable services (AIC, 2008c; Bull, 2003); and,

• where possible, avoid the negative labelling and stigma attaching to the individuals who are associated with criminal activity and contact with the criminal justice system (Duff, 1999; Measham & Shiner, 2009).

Collectively, such therapeutic social interventions are considered to be both more effective and more economically viable than punitive responses such as incarceration (Strategic Edge Consulting, 2009).

1.3.1. The International System

The first drug court was established in the United States of America (USA) in Dade County, Florida in 1989 (Rottman & Casey, 1999; Winck, 2003). The number of offenders arrested in the USA for drug-related crimes more than doubled in the decade prior to drug courts being introduced (Friedman, 1993; Seddon, 2010). Such a large increase in drug-related arrests was influenced by the introduction of tougher drug policies across the USA, which placed severe penalties on low-level, drug-dependent offenders (Goldkamp, 2003). The vast influx of drug-dependent offenders into the criminal justice system created a number of issues for policymakers as the courts and correctional institutions became increasingly overcrowded (Goldkamp, 2003; Harrison & Scarpitti, 2002). Harrison and Scarpitti (2002) stated that the average time a drug-dependent offender was remanded into custody while awaiting trial in 1988 was 211 days.

The drug court provided an avenue through which low-level, drug-dependent offenders could be diverted away from the criminal justice system and into treatment7. The Dade County Drug Court, therefore, was developed for the practical purpose of reducing prison overcrowding and the growing backlog of drug-related cases appearing in traditional courtrooms.

The Florida drug court’s reported success in reducing overcrowding led to the widespread establishment of drug courts across the USA in the following decade (Harrison & Scarpitti, 2002). Over time, policymakers began to recognise that drug courts not only reduced system overcrowding but also provided the criminal justice system with an effective mechanism for reducing criminal recidivism amongst drug-dependent offenders.

---

7‘Diversion’ is explained earlier in this Chapter, Background. At this stage drug courts were engaged in traditional diversion, not therapeutic diversion.
Drug courts have become what some have described as a ‘movement’ (Hora, Schma, Rosenthal, 1999) within the USA criminal justice context. They have grown exponentially in American jurisdictions over the past 25 years, and every state in the USA now has multiple, functioning drug courts, with a total of 3,142 as of May, 2015 (Global Centre for Drug Treatment Courts, 2015).

### 1.3.2. Drug Courts in Australia

Drug courts initially emerged in Australia in New South Wales (NSW) in 1999 as a response to the perceived failure of traditional court systems to effectively deal with drug-related offending (Drug Court of NSW, 2013; Freeman, 2002; Indermaur & Roberts, 2003). Drug-related crime increased across all Australian states throughout the 1990’s (Mason, 1999; Maxwell, 2001). Statistics from the National Drug Strategy Household Surveys of 1995 and 1998 indicated that amongst the Australian public, lifetime illicit drug use increased significantly during this three-year period (Maxwell, 2001). In 1998, 48% of all Australians surveyed continued to use illicit drugs after an initial period of experimentation, compared with 31% of the population surveyed three years earlier (AIHW, 2008). The Australian public’s consumption of ‘harder’ drugs, most notably heroin and cocaine, also increased significantly during this period (AIHW, 2008). Moreover, increases in property offences and other acquisitive crimes, which were directly related to the growth in illicit drug use during this period, occurred nationwide between 1993 and 2000 (AIC, 2002, 2004).

Drug courts were introduced to Queensland\(^8\), South Australia and Western Australia in 2000, whilst Victoria opened its first drug court in 2002. All of the Australian jurisdictions remain operational and have been given status beyond their ‘trial’ periods. Additionally, the remaining Australian states and territories have all established or trialled drug courts but have none in current operation (International Association of Drug Treatment Courts, 2011)\(^9\).

---

\(^8\) In 2013 Queensland cancelled funding for drug courts, and the courts no longer accepted referrals. In 2017 funding recommenced and referrals were again accepted. Three drug courts are currently operating in Queensland.

\(^9\) Drug court-type operations exist in both the Northern Territory and Australian Capital Territory. They have not been included in this research. A drug court program has been operating in the Australian Capital Territory’s Children’s Court since 2011 (Indermaur & Roberts, 2003; King, Freiberg, Batagol, & Hyams, 2014). The Northern Territory’s Substance Misuse Assessment and Referral for Treatment Court also operated briefly between 2011 and 2013 (Australian National Council on Drugs 2014; Roberts, 2012). Both courts are sufficiently different in their administration to discourage their inclusion in a meaningful analysis of drug courts in Australia. Despite calls for a pilot program (Tasmania Law Reform Institute, 2006), there has been no drug court in Tasmania.
1.3.3. Ten Key Components

All drug courts, internationally and in Australia, share a number of common operational components (Belenko, 2000; Brown, 2010; Bull, 2003; Carey, Mackin, & Finigan, 2012). The main components crucial to the operation of the drug courts are judicial supervision, immediate intervention, and teamwork. Offender accountability (determined through the use of rewards and sanctions), frequent and random drug testing, and the monitoring and evaluation of goals and outcomes are also components shared in the operation of all drug courts (Bean, 2002a, 2002b, Belenko, 2000; Freiberg, 2000; Fulkerson, 2009; Hiller et al., 2010). These components are reflected in the Ten Key Components developed by the National Association of Drug Court Professionals (NADCP) to provide benchmarks for developing effective drug courts in vastly different jurisdictions and to provide a structure for conducting research and evaluation for program accountability; Appendix A lists these (NADCP, 1997). Although each of these components is essential to the successful operation of all drug courts (Freiberg, 2003a, 2003b; Jones, 2013), differences between Australian and USA drug courts are evident. Australian drug courts vary in terms of their establishment, the nature of the dependence (illicit and non-illicit drugs), the entry criteria, and the procedures and manner in which they operate (legislative or policy-based). Despite these differences, however, Australian drug courts share the mutual commitment to divert drug-dependent offenders away from custody and into treatment programs for their substance dependency (Lawrence & Freeman, 2002; Mayhew & Adkins, 2003).

The Ten Key Components reflect expected court operations, drug court personnel cohesiveness, and collaboration with local communities. The components are often used by researchers not only to gauge the effectiveness of individual drug courts but also to measure the individual components of the drug court that impact outcomes (Hiller et al., 2010). Several studies have used the Ten Key Components as the standard of an ideal drug court to compare to actual drug court implementations (Carey, Finigan, & Pukstas, 2008; NPC Research, 2009). The Ten Key Components have been criticised for their subjectivity, with many “[appearing] to represent descriptive themes, aims, or values, as opposed to presenting an overall theoretical perspective” (Goldkamp, 2010, p. 464). Notwithstanding this, a limited but growing body of research has attempted to operationalise and/or experimentally control the Ten Key Components and their relationship to drug court outcomes (Hiller et al., 2010; Carey et al., 2012).
The Ten Key Components represent only the beginning of the measurement and evaluation efforts necessary to assess the causal mechanisms related to drug court success. The creation and use of drug court processes that are linked to the successful completion of a drug court program are necessary and important tasks in understanding how drug courts work, for whom and why they work, as well as how best to invest scarce resources in optimising participant and program outcomes. An understanding of the organisational features associated with drug courts and their variability is necessary to ‘tease apart’ the flexibility in drug court processes and their relationship to successful outcomes, above and beyond the impact of organisational features. Such studies would provide further insight into the ‘active ingredients’ or causal elements of Australian drug courts. Moreover, the usefulness of such studies will be enhanced if a generalised model of all drug courts in Australia could be the reference point. As explained in the next section, there are enough similarities between the states that a generalised drug court model can be developed.

1.3.4. Generalised Australian Drug Court Model

The extreme variability of drug court programming, between programs and within programs over time, represents a challenge related to isolating the effect of a program element that is essentially a ‘moving target’. Some of the diversity in Australian drug courts is in response to a particular community’s problems or concerns or to logistical influences, such as geographical distance and service availability (AIC, 2005d; Freckelton, 2008; Freiberg, 2005, 2007). Nonetheless, deconstructing and simplifying drug court operations into single units for descriptive and analytic purposes will facilitate a more detailed understanding of how the drug court operates generally10. Therefore, for the purposes of the analysis to be undertaken in this research, Australian drug court jurisdictions will be loosely organised into a generalised Australian drug court model.

This model should reflect each Australian jurisdiction enough that any identified element within the model would be applicable to all Australian drug courts, albeit perhaps with some modification (Carey, Mackin & Finigan, 2012; Freeman, 2002). It may be that basing this research on a single, uniform Australian drug court model will make the adoption of any identified causal elements linked to drug court success difficult ‘in the real world’. On the other hand, it may be that such difficulties prompt a drug court to

---

10 This relates only to the drug court jurisdictions included in this research: New South Wales, South Australia, Queensland, Victoria, and Western Australia.
evolve in ways more likely to make it successful. Information derived from legislation that formed the operational framework of the drug court jurisdiction, along with supporting explanatory literature that described the court procedures,\textsuperscript{11} revealed seven elements of a generalised model for Australian drug court operations. Each element’s aims remain relatively consistent across the five drug court jurisdictions of New South Wales, South Australia, Queensland, Victoria, and Western Australia. Figure 1.1 depicts these elements within a generalised Australian Drug Court model.

\textbf{Figure 1.1}
\textbf{Generalised Australian Drug Court Model}

The process commences with a referral, the point at which an offender is referred for consideration by the drug court, followed by an assessment period aimed at determining an offender’s suitability and eligibility for participation. The assessment phase results in one of two possible outcomes, rejection or acceptance. If rejected, offenders are returned or remitted back to the standard criminal justice process and sentenced for their offences.

\textsuperscript{11} The documents reviewed are outlined and explained in Chapter Three, Collection of Secondary Documentary Data. They include those documents termed and defined as Category 1. The documents in this category encompassed 28 official drug court publications originating from drug court and Australian government authorities that were produced to guide their operation.
If accepted, offenders progress to initial sentence stage, either as a condition of bail or as an alternative to a deferred prison sentence. Offenders participate in all required aspects of the drug court program after induction. Program participation has three general components: treatment, case management and compliance monitoring. Noncompliant participants are subject to a range of sanctions, and continued noncompliance may result in program termination. Compliant participants are rewarded for their efforts and subsequently graduate from the program. Although generalised, this model specifies the crucial components typical of an Australian drug court program as depicted in the literature.

1.4. Evaluation of the Drug Court

The effectiveness of drug courts in preventing criminal recidivism and reducing drug use is now considered ‘conventional wisdom’ within the Criminal Justice System (Goldkamp, 2010, p. 456), and has been studied through numerous primary studies (including several randomized trials)\(^\text{12}\), systematic reviews of the literatures, as well as the quantitative synthesis of results from primary studies in meta-analyses (Brown, 2011; Deschenes, Ireland & Kleinpeter, 2009; Gallagher, 2014; Hiller et al., 2010). King et al. (2009) summarise the findings of a number of studies:

- The longer the drug court participant remain in treatment, the better the outcomes;
- Drug court participants have lower rates of recidivism and drug use while still in the drug court program than comparison groups;
- Even in the absence of treatment, graduated sanctions can have a statistically significant impact on offenders’ behaviour;
- The certainty and severity of drug court sanctions are crucial to the model’s effectiveness; and
- There are significant savings to the criminal justice system compared to traditional adjudication (p.137)

---

\(^{12}\) Randomised control trials are the acknowledged ‘gold standard’ in research quality, but in criminology, these trials face a number of ethical, legal and practical constraints, especially in a context where medical treatment is made available to those in the study group and not those in the control group (Friendship, Beech & Browne, 2002; Kraemer, 2000; Luban, 2007).
The earlier Australian research is indebted to the lessons learnt from the imprecision of the early drug court research undertaken in the USA. Research that examined these drug court reviews has highlighted the fact that most analyses used an evaluation method focusing upon treatment outcomes, such as recidivism rates, rather than examining the way in which the drug court coordinates the program (Belenko, 2001; Sanford & Arrigo, 2005). Australian research has also recognised that it is a challenge to improve the quality of evaluations that support or negate claims of their success (AIC, 2001b, 2007; ANCD, 2009).

Generally, drug court participants display lower recidivism rates than those of comparable groups that have not participated in a drug court. When they have relapsed, they have taken longer to re-offend and their offending rate has been lower than it was prior to being afforded the opportunity to participate on a drug court program (e.g. AIC, 2003; NSW BOCSAR, 2002b; VICDOJ, 2006; WADOJ, 2003). During the period of supervision, drug use was lower and the offenders’ health and wellbeing was noticeably increased (Brown, 2011; Gallagher, 2014; King, 2009).

Australian drug courts have a very limited base of drug court research with nationally representative samples to compare to their own process/outcomes, with none of these studies containing systematic descriptions of the implementation of identified assessment criteria. An understanding of the organisational features associated with drug courts and their variability is necessary to ‘tease apart’ the variability in drug court processes and their relationship to outcomes, above and beyond the impact of organisational features identified in the Generalised Australian Drug Court Model (see Figure 1.1).

### 1.5. Focus on Recidivism Statistics

The majority of Australian drug courts have been evaluated, with mostly positive and consistent results. Appendix C provides a summary of drug court programs in New South Wales, Queensland, South Australia, Victoria, and Western Australia. It includes whether they have been formally evaluated, and the criteria used to assess their effectiveness. Something that almost all of these reports, evaluations, and research papers have in common is their focus on the central marker of success for drug courts: recidivism. The current literature regularly identifies criminal recidivism as the default assessment outcome of drug courts (Belenko, 2002; Dive, 2012; IDDI, 2015; NDRAC, 2008). Every drug court program has two overall primary goals, (a) reduce substance use, and (b) reduce criminal behavior in drug-dependant offenders (AIC, 2009c; IDDI, 2015; MCOV,
Most literature focuses on a default proxy of criminal recidivism to determine program outcomes and assessment criteria through reduced costs to the state. Some literature has focused on other outcomes and the impact of ancillary services to the subsequent drug court completion and criminal recidivism outcomes. In discussion of existing outcomes, drug court completion and criminal recidivism, Butzin, Saum, and Scarpitti (2002) identified that relatively little research had explored which drug court processes lead to successful drug court program completion. The authors argued that, with knowledge of the processes that are identified with positive outcomes, programs could be adjusted to target populations that would most benefit drug court programs.

Additionally, there is a noticeable lack of qualitative research in the literature base (Sanford & Arrigo, 2005). Wolfer attempted to fill this void in 2006 with a focus group methodology involving drug court graduates. Her report was able to shed light on the concerns and frustrations of drug court participants, the individuals who may know the programs the best. Her findings suggest that graduates interpret the programs to be helpful for rehabilitative purposes. Also, her research brought to light the vulnerability that drug court participants feel, both while taking part in the program and after graduation. Wolfer argues that much can be learned through the qualitative study of drug court stakeholders. Namely, that “further examination of defendant views may help researchers identify aspects of drug courts that are and are not working to promote program success” (Wolfer, 2006, p. 319).

1.6. Research Question and Objectives

This study will seek to answer this research question: What, besides a lack of reoffending, indicates successful completion of a drug court program?

This research has two individual, although fundamentally linked, objectives:

1. to identify assessment criteria for Australian drug courts in relation to the operation of the five Australian drug court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia; and,

2. to identify elements of the drug court process that are related to success from the perspective of drug court stakeholders, primarily their participants.
3. and thereby determining elements of the drug court model that are associated with drug court success.

1.7. Methodological Approach

This research uses three methodological approaches. The first is used to achieve research Objective One; the second is used to achieve Objective Two; and the third is used to triangulate the results identified in the first two objectives.

The approaches are:

4. a documentary analysis of secondary data concerning the operation and outcomes of the five Australian drug court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia13;

5. the collection and thematic analysis of naturalistic14 observational data (qualitative) gathered from drug court proceedings15; and,

6. the collection and quantitative analysis of statistics gathered from drug court proceedings.

Chapter Three details these three methodological approaches.

1.8. Rationale and Significance

This research is primarily motivated by two needs: to review the current reliance on recidivism as the only assessment criterion for drug court success, and to assess the causal mechanisms related to drug court outcomes.

Most scholarly literature, including outcome evaluations, focuses on drug court participants’ recidivism. Recidivism is an important, but narrow, metric. Belenko (1998) acknowledged that gaps existed in the knowledge about other assessment criteria that required addressing. The academic community’s response to the need to close the

---

13 This focuses on comparing each drug court model of the five Australian Drug Court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia in an effort to determine if they are designed to meet the identified assessment criteria in the literature review. This study collected and analysed two forms of secondary data in the form of documentary sources. These documents guide the operation of the drug court jurisdictions and evaluations concerning various characteristics of drug court operations.

14 One advantage of using an observation method for primary data collection is that it captures the whole event as it occurs in its natural environment. This is termed ‘naturalistic’ observation, defined as research that occurs in a natural environment (Houston, 2001; Neuman, 2011; O'Leary, 2014).

15 This focuses on the experience of the drug court participants in an effort to identify elements of the drug court process that are linked to drug court success.
literature gap identified by Belenko (1998) generated a relatively small amount of literature that has focused on ‘other than recidivism’ drug court program outcomes over the past 17 years. It generally includes process evaluations of program operation and the interconnectedness of education, health and general health (AIC, 2005e; Mitchell, Wilson, Eggers & Mackenzie, 2012; NSWBOCSAR, 2002b; UWA, 2003, 2007; VICDOJ, 2004b).

As Heck (2006) identified,

Process evaluations are tools to be used by programs for improvement and should provide interested parties with a glimpse into the workings of a drug court program. These evaluations are focused on the how and why of drug court activity (p. 4).

There is a general lack of outcome evaluations, even though Australian drug court process evaluations have been undertaken (e.g., AIC, 2005e NSWBOCSAR, 2002a, 2002b). More research is necessary to understand how drug court participants are affected by drug court program services and requirements. Process evaluation has a specific purpose, but identifying the elements of the drug court process that are linked to the successful completion of a drug court program has the potential to document drug court impact on participants. Heck (2006) noted, “Performance measurement refers to the establishment of research-based indicators to measure program activity. Researchers of drug court programs require a more complete understanding of drug court causal mechanisms related to drug court outcomes thus far in order to better understand drug court programs, their effects on participants, the services and requirements of the programs, and subsequent program success. Additional work is needed to provide further information to a growing field of research. Accordingly, the steps undertaken in the current research aligns the drug court model as outlined in the current literature with actual drug court structure and processes in an effort to answer the research question, What, besides a lack of reoffending, indicates successful completion of a drug court program?

1.9. Nomenclature

The researcher developed a nomenclature for the drug court jurisdiction before undertaking this study because of the absence of a national system of terms and their definitions. A nomenclature is a list or collection of words or terms, especially those connected with a particular subject (Amatayakul, 2009; Glesne, 2011). A nomenclature used on its own is insufficient to classify items of a complex nature, but it provides a common understanding or meaning of an object (Ellingson, 2009; Glesne, 2011).
‘Nomenclature’ is defined for this research as a common understanding, definition or glossary of the many shorthand phrases that are relevant to those who work daily in the drug court jurisdiction but that may be confusing to the outsider who tries to interpret the words in their literal sense. As a system of words, an accepted nomenclature used by people in a particular discipline provides a body of systemised and consistently defined terms, thereby potentially reducing disagreement or misunderstanding (Burlew, Weekes, Montgomery, Feaster, Robbins, Rosa, Ruglass, Venner, & Wu, 2011; Cavanagh, 1997).

Terminology has caused much consternation among drug court researchers, resulting in a plethora of nomenclatures. Unfortunately, similar-sounding terms can mean quite different things and vice versa. Furthermore, it is often the case that more than one term is employed in a single study. Sometimes multiple terms are used interchangeably and sometimes they are not; sometimes the meanings of different terms are explained and sometimes their meanings are assumed. Furthermore, two studies may use different terms to convey the same meaning. Terms alone do not always clarify conceptual distinctions and mean little apart from their implementation for this reason. By way of illustration, some earlier Australian drug court researchers were reluctant to embrace the concept of problem-solving, preferring instead the more modest expression problem-oriented. Freiberg noted in 2001 that, at the time, there was “no generally accepted terminology” regarding these new court innovations (p. 16). Freiberg preferred problem-oriented, which ‘is slightly less hubristic’ than problem-solving. Australian criminologist John Braithwaite has also used the term problem-oriented in his studies of drug courts. He notes that problem-solving is the terminology used in the USA (Braithwaite, 2002).

The area of non-diversionary law has become extended, and burdened, with subjective judgments containing seeds of certain attitudes of the proponents of the law and criminal justice with words such as ‘offender’, ‘punishment’, and ‘convicted’. Conversely, the language of diversion is less negatively value-laden, offering terms such as ‘accountability’, ‘participant’, and ‘treatment’. Nevertheless, the adoption of this new vocabulary is hampered by developments that are occurring so fast, often in isolation from each other, that the language and terminology have developed in an ad hoc manner. To this end, the development of a nomenclature incorporating terminology from the available literature, legislation and the related explanatory material is a valuable exercise in positioning drug courts firmly within the criminal justice paradigm and in facilitating consistent definitions of terms. The nomenclature for this dissertation is included in Appendix B to avoid disruption of the dissertation’s text.
1.10. Limitations

Limitations are influences that the researcher cannot control and that place restrictions on
the methodology and conclusions (Singh, 2007; O’Leary, 2014). The current research has
two such limitations: data collected from the observational component of this research
were obtained from a single drug court program; and the dual role undertaken by the
researcher.

1.10.1. Single Drug Court Program

The data collected from the observational component of this research were obtained at a
single point in time from a single drug court program, the Drug Court of New South
Wales. Measurements at a single point in time cannot elucidate how drug court processes
and treatments over time could affect outcomes. Notwithstanding this, any conclusions
generated by the outcomes from the observational component of this study can be
generalised to Australian drug courts overall insofar as they use the same, or a
fundamentally similar, model.

However, the relatively small sample size within the single observed program is another
issue for generalisability. Drug court participants on Phase 1 of the drug court program
had to report to court once a week, participants on Phase 2 every fortnight, and
participants on Phase 3 once a month\textsuperscript{16}. Many participants were on Phases 1 and 2;
therefore, they were required to appear before the drug court more often and comprised a
greater proportion of the drug court participant sample (52.6\% and 28.2\%, respectively).
The drug court participants observed on Phase 3 of the drug court program constituted
only 19.2\% of the sample.

The number of participants on Phase 3 was, therefore, insufficient for a comprehensive
analysis of the drug court as it relates to this phase of the drug court program. However,
the observational component of the research was not intended to elicit information to
enable a comprehensive evaluation of the New South Wales Drug Court Program; rather,
it was an effort to identify elements of the drug court process that are related to success

\textsuperscript{16} Each stage of a drug court program is referred to as a program phase and has phase goals that should be achieved before progression
or completion. The goals associated with each phase are designed to ensure a stepping stone approach to drug treatment. Participating
offenders cannot progress to the next phase until they have successfully demonstrated their achievement of the previous phase. Progression through the program occurred in three stages or phases in the New South Wales Drug Court jurisdictions. Chapter Five, Results, Case Management further explains this approach.
from the perspective of drug court stakeholders and to assist with addressing the research question.

1.10.2. Researcher’s Disclosure- Dual Role

The researcher is an officer of the New South Wales Police Force, who was a police prosecutor at the time of this study working within the New South Wales Drug Court jurisdiction. This position required the researcher to appear in court and perform duties as a member of the drug court team, which inherently created a limitation for the study in terms of potential researcher bias. The researcher had previously worked with some of the participating team members, which could have biased their responses in court. Given this, it is possible that research participants may have known what the researcher ‘was hoping to find’ in the research and behaved accordingly to achieve these results. On the other hand, the researcher was able to reduce personal biases to a considerable extent by using three techniques from Guba and Lincoln’s (1994) method of trustworthiness to ensure the credibility of the data in the current study. The three techniques adopted were reflexivity, triangulation and peer examination. Chapter Three of this research outlines these techniques.

1.11. Organisation of this Dissertation

Chapter Two, Literature Review, discusses the various criminal justice system responses to drug-related offending and the related attempt to balance the four traditional sentencing principles: retribution, deterrence, protection of the community and rehabilitation. It also discusses the theoretical understandings of drug courts and the plethora of research on drug court outcomes, specifically focusing on the relatively contemporary theor and approaches of law, therapeutic jurisprudence. In doing so, it identifies the need to determine which program aspects contribute to successful program completion, which aspects contribute to program failure, and which have no effect. Chapter Two also examines the various assessment criteria used in research to date in Australia to evaluate drug court success. The aim is to demonstrate that different assessment criteria of drug court program success have been used across a number of Australian evaluations, with most literature focusing on a default proxy of criminal recidivism to determine program outcomes. Conclusive statements on the effectiveness of drug court programs may have been limited by the variability in the methodologies, scope, objectives, and a noticeable lack of qualitative research employed in drug court evaluations. Chapter Three describes
the methodological approach, research methods, strategies undertaken to maximise the trustworthiness of the data collection and analysis, and ethical issues of the research.

Chapter Four identifies and defines the assessment criteria for Australian drug courts that are subsequently applied to the operation of the five Australian drug court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia. Identification of the criteria involved a two-step process: firstly, identifying those stated or implied aims and/or objectives of drug courts that could be considered criteria of success; secondly, synthesising the identified aims and/or objectives into a set of assessment criteria. These identified assessment criteria then guided the analysis undertaken to answer the research question.

Chapter Five is the results chapter. The results of this analysis relate to the second research objective. The results presented relate to the analysis of documents guiding the operation of the drug court jurisdiction and evaluation reports concerning the operation and outcomes of the five Australian drug court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia. The results also relate to the qualitative and quantitative analysis of the observational data and statistics gathered from drug court proceedings. The combined findings of the three methodological approaches flow into a discussion and a closer look at the identified elements of the drug court process, other than reoffending, that are related to drug court success of drug courts in Chapter Six. The data analysis revealed one overarching theme, ‘the rehabilitative ideal’ and a number of elements within this theme. This final chapter presents a number of recommendations based on the identified elements which can be functionally applied to drug courts in Australia.

1.12. Conclusion

This chapter briefly outlined the various tasks this dissertation undertook in relation to Australian drug courts. A hyper focus on recidivism rates and quantitative methodologies exists concerning drug court research, in addition to a lack of a clear understanding of drug courts’ success and the associated causal mechanisms. A more in-depth understanding of drug court success and their related outcomes is elucidated by identifying key elements of success and then categorising the relationships of those elements to contexts and processes. This research accordingly conducts activities to develop a measure to assess drug court structures and practices based upon identified assessment criteria for Australian drug courts. Chapter Two, Literature Review, critically
analyses the literature on criminological theories and perspectives that underpin the philosophy and operation of the drug court and also provides a synopsis of the common measures used to assess drug court performance.
2. Literature Review

2.1. Overview

This chapter examines the various criminal justice system responses to offending. Four traditional sentencing principles – retribution, deterrence, protection of the community and rehabilitation – have been applied, in various balances, to the disposition of all sentencing. However political imperatives and an increased acceptance of drug dependence treatment alternatives for offenders have refocused the traditional sentencing principles as applied to drug courts. The drug court model represents a fundamental paradigm shift in sentencing principles, away from a predominantly punitive orientation towards an approach that looks at drug-related crime in a holistic way. Accordingly, this chapter demonstrates that the theoretical framework by which drug courts are primarily informed is therapeutic jurisprudence.

This chapter also provides an overview of the common measures used to assess drug courts’ performance. This demonstrates that different criteria for ‘success’ have been used across a number of Australian evaluations and that conclusive statements on the effectiveness of drug courts have been limited by the variability in the methodologies employed in, and the scope and objectives defined for, drug court evaluations. In doing so it recognises that the programs and requirements that lead to success from any particular drug court may vary slightly from court to court, giving credible support for the hypothesis that drug court impact may be influenced over time by factors external to the drug court.

2.2. Traditional Criminal Justice Responses To Proven Criminal Conduct

The issue of processing people found guilty by the criminal justice system in a manner that is just – and also perceived as just by the community – has historically received considerable attention by theorists in both the health and legal fields (Duff, 2003; Lowenkamp & Latessa, 2004; McMillan & Chavi, 1986; Simon, 2003). Sentences meting out particular punishments are based around the ‘proportionality thesis’ which states that the sentence imposed should be representative of the suffering that was caused to the victim (Bagaric, 2006). There are four goals which sentencing is aimed at achieving: retribution, deterrence, protection of the community and rehabilitation (Bagaric, 2005).
2.2.1. Retribution

Retributive theory has a long history of dominating sentencing principles in Australian society (Bagaric & Amarasekara, 2000; Duff, 2003; Roberts & Indermaur, 2009). In the more serious offences the court will consider the moral outrage of the community, and the need to avenge the crime committed. Retribution is directed towards extracting, on behalf of society, a punishment that fits the crime of the offender (Bradley, 2005; Bagaric 2005). The punishment should be proportional to the criminality involved in the commission of the offence (Cottingham, 1979; Okimoto, Wenzel & Feather, 2012).

There are differing retributive theories and these have significant variation in the manner in which they describe the offender (Bagaric & Amarasekara, 2000; Zedner, 1994). Emotional and impulsive opinions are often formed in the public realm. These public views then place pressure on politicians to make changes in sentencing legislation which can lead to extreme and poorly thought out policy (Bagaric, 2005; Gerber & Jackson, 2013). For example, should a person who takes another person’s life spend a significant proportion of their life imprisoned to equal out the wrongdoing? This may sound logical, however, when poorly thought out sentencing legislation is put into place, many people who do not fit into this category completely, may be placed in it, e.g. a person who killed another accidentally rather than one who intentionally murdered another person.

Restoring the drug-dependent offender to the community through the application of treatment and applying retribution is viewed as a key benefit of the drug court (Bartels & Richards, 2013; Zweig, Lindquist, Downey, Roman & Rossman, 2012). Duff (2003) claimed that the two are not mutually exclusive and that restoration is not only “compatible with retribution, it requires retribution, in that the kind of restoration that crime makes necessary can be brought about only through retributive punishment” (p. 43). He reasoned that the application of retribution adheres to goals which sentencing is aimed at achieving in four different ways. First, arbitration is a communicative practice just as criminal punishment is a communicative business between a state and individuals who exist in it. Second, criminal arbitration is retributive in that it produces ‘suffering’, and is warranted in those terms. Third, the reparation that the offender assumes is not dissimilar to the imposition of a judicial sentence; it is purposefully onerous and is resource-intensive. Fourth, although criminal arbitration is retributive and is somewhat backward-looking in that it considers the actions of the offender that have been committed, it is also future-orientated in that it aims to deter the offender from engaging
in any further criminal activity by encouraging the offender to recognise the wrong committed by his or her actions. By combining these themes, it could be asserted that retribution offers both the certainty of punishment and the understanding that the disposition of a sentence should adequately reflect the criminal act committed, both of which are reflected within the drug court jurisdiction. This is because the operation of drug court legislation relates to public policy. The public policy feature is two-fold. First, the offender is held accountable for committing the offence, which is achieved by increasing the supervision of the offender through relevant legislation and drug court policies (Dive, 2011). Second, the rehabilitation of a drug-dependent person is required in order to interrupt the cycle of drug dependence (Dive, 2012). In this regard, the drug court seeks to regulate the dependence by employing intensive treatment approaches both in- and outside the custodial setting through a variety of treatment options (Freiberg, 2003)

2.2.2. Deterrence

Deterrence operates at two levels. Deterrence specifically directed towards the defendant, and deterrence of a general nature aimed at others in the community who may be contemplating similar behaviour. The purpose is to prevent the commission of crimes by reinforcing in the defendant and or others that they will meet with severe punishment if they do engage in such behavior (Barkan, 2009). Deterrence theory is premised on the belief that individuals will engage in criminal behaviour if they do not fear apprehension and punishment. Beccaria suggested three characteristics of sentences that could make a significant difference in whether the individual decides to commit a criminal act. These are the celerity (swiftness), certainty and severity of punishment. Beccaria recommended that the swiftness of sentences was necessary to reform a system that was severely lacking in time sensitivity. Beccaria asserted that “the more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful it will be” (Beccaria, 1764, p. 364). He also claimed that the swiftness of sentences is related to the deterrence aspect of punishment. Beccaria proposed the idea that people built an association between the pains of punishment and their criminal acts (Barkan, 2009). Because of this, he believed that the offender would not link the sanction with the violation they committed if the sentence was not swiftly imposed. He contended that crime and punishment should always be considered together, one as the cause, and the other as the inevitable effect. Beccaria foresaw both the efficient operations and deterrent nature that swift punishment presented (Clear, 2007).
A key limitation of deterrence relates to the effectiveness of general deterrence. General deterrence is heavily dependent on the sentences imposed by the courts being publicised (McGuire, 2005). While the media often advertises the crimes and the cases, there is little attention to the specifics of the sentence given to the offender. It can also be argued that there is no reason to deter people who are not committing criminal acts because they have already chosen to be law-abiding community members (McGuire, 2005).

The main issue with deterrence is that there is a body of literature that suggests there is no sound link between harsher sentences and a reduction in crime, and that many people do not consider the consequences of the crime before they commit it (Homel, 1988; Paternoster & Piquero, 1995). The moral question of whether it is ethical to give one individual a harsher sentence for the sake of deterring others is also raised (McGuire, 2005). It has been found that increased policing leads to a decrease in crime. This is most likely a better form of deterrence as it is more visible to the general public (Barkan, 2009; Paternoster & Piquero, 1995), however it is a different aspect of deterrence than that identified in the traditional sentencing principles.

Within the drug court model (see Figure 1.1), ‘deterrence’ is inherently connected to the ethical concern of determining whether it is reasonable to punish a drug-dependent person who has committed offences in a manner identical to those who have committed offences who are not drug-dependent. An analysis of the association between criminal behaviour and drug-dependency17 demonstrates that it is a shared dynamic. This raises the moral concerns regarding the question of accountability for drug dependent offenders. This can be discussed through the understanding of Rational Choice Theory18.

2.2.3. Protection of the Community

Protection of the community is based around keeping dangerous members away from the rest of society (King, 2009; Nicholson, 2008; Payne, 2006). Community includes not simply the public generally, but also a victim or victims. Some offenders are inherently dangerous and require separation from the community to ensure the safety of the community (Wahler, 2015). While imprisoning an offender may sound safe in theory, research has shown that imprisonment is often a short-term option with negative long-term effects (e.g., New South Wales Parliament Legislative Council Select Committee,

---

17 The drug-crime nexus is described later in this chapter, Drugs and Crime.
18 ‘Rational choice theory’ is discussed later in this chapter, Drug-Crime Nexus and Rational Choice Theory.
2001; United Nations Office on Drugs and Crime, 2010; Western Australian Department of Justice, 2003a; Wahler, 2015). Prison has also been found to put undue stress on an individual, such as fear of victimisation, boredom and lack of social support (King, 2000). This becomes an issue because stress has been linked to violent offending (King, 2000). There is also the issue of 'toxic mix' whereby an offender's negative behaviours and criminal skills are enhanced because of the introduction to others with a variety of criminal skills (Bagaric, 2000; Wahler, 2015). Prison is intended to be a last resort by judges but, due to social pressures, its utilisation has become more prevalent (Nicholson, 2008). Australian drug courts are informed by the conceptual framework provided by the Risk, Need, Responsively literature (RNR), that suggests drug courts are likely to produce greater positive outcomes in high risk offenders (Andrews & Bonta, 2006; 2010; Marlowe; 2010; 2014b; Saum & Hiller, 2008). RNR is a conceptual framework that posits the level of treatment an offender receives should reflect the level of risk they pose of reoffending (Andrews & Bonta, 2003; Lowenkamp, Latessa & Holsinger, 2006; Marlowe, 2014b). High risk offenders, including those with extensive criminal histories, require intensive treatment that address the offenders ‘criminogenic needs’ if recidivism is to be significantly reduced (Andrews & Bonta, 2003; Marlowe, et al., 2006).

In principle, RNR focuses on the use of cognitive techniques and treatments for managing ‘criminogenic’\(^{19}\) The three key principles of RNR are:

- The risk principle – that the level of program intensity be matched to offender risk level (defined as the risk of reoffending, absent intervention or treatment), and that intensive levels of intervention and treatment be reserved for offenders with the highest level of risk (Bull, 2010; Lowenkamp & Latessa, 2004);

- The need principle – that criminogenic needs (ie. those functionally related to persistence in offending) require commensurate and concurrent redress (Andrews & Bonta 2010); Marlowe; 2010; 2014b

- The responsively principle – that the style and modes of intervention be tailored to each individual offender’s learning style and abilities and be responsive to individual strengths and levels of motivation (Andrews, Bonta & Wormith 2011).

---

\(^{19}\) The term ‘criminogenic need’ has been variously defined in the drug court literature without any clear or consistent conceptualisation. Criminogenic needs are those clinical disorders or functional impairments that, if treated, substantially reduce the likelihood of continuing engagement in crime (Andrews & Bonta 2010).
Incorporating into a drug court program element that address criminogenic needs other than drug use is essential to facilitate what Marlowe (2014a) describes as “prosocial habilitation” and “adaptive habilitation”. Specifically, prosocial habilitation recognises that many high-risk and high-need offenders may not actively or naturally endorse prosocial attitudes or values and therefore lack the inclination to engage in prosocial activities such as work, schooling or pro-social parenting. Consequently, drug courts should afford opportunities to address ‘criminal thinking’ patterns using programs shown to be effective in reducing recidivism (Heck 2008; Lowenkamp 2009).

2.2.4. Rehabilitation

The rehabilitation concept recognises the need and potential for reform in the offender. The purpose is to reform the offender to enable them to join mainstream society. The principle is that the rehabilitated offender is unlikely to re-offend (Nicholson, 2008). Reform or rehabilitation is directed towards correcting the criminal tendencies of the defendant so that he can re-enter society. The theory is that when an individual is rehabilitated or reformed he is unlikely to re-offend. The principle of rehabilitation cannot result in a disproportionate sentence considering the objective seriousness of the offence (University of Melbourne, 2009; AIC, 2011, 2014).

One rehabilitation response that has been particularly popular is the cognitive-behavioural programs conducted within prisons (AIC, 1999). These programs target the criminogenic needs of the offender, otherwise known as the risk factors for offending (Bagaric & Amarasekara, 2000; Costanzo, 2002, 2004). These factors could be anti-social attitudes or anti-social personalities, a drug or alcohol problem, or problems with education or employment (AIC, 2009b; Andrews, Bonta, & Wormith, 2006). Therapy helps the offender to feel more positive emotions and develop better decision-making skills (King, 2000). There is a slight increase in effectiveness when these programs occur in community corrections centres rather than in prisons (Dolinko, 1997). Treatment programs have been found to be between 25-30 percent effective at reducing recidivism rates in offenders (Gendreau & Goggin, 1996), and this is said to have contributed to a well-embedded case management system which is consistent with the evidence-based principles established within the Risk, Need, Responsively literature (see Chapter Two, Protection of the Community) (Andrews, Bonta & Wormith 2010; 2011). Nicholson (2008) notes that it is disappointing that rehabilitation is not valued more highly by the courts because it has the best chance of achieving the goal of protecting the community
through treating the underlying problem. One of the reasons for rehabilitation's limited popularity is that some people choose to believe that it is offering help for those who have done wrong rather than punishing them for their wrongdoing (Nicholson, 2008). Treatment can also be viewed from an alternative perspective because it can sometimes be more severe than a prison sentence (Bagaric, 2000; AIC, 2009b). For example, an individual could be in treatment for years whereas his/her prison sentence may have only been a few months in duration.

Deterrence and retribution encompass various purposes of sentencing that commences with the criminal act and ends with the imposition of a sentence. Rehabilitation is more complicated, however, in that it involves an analysis of offending behaviour within the social context. Furthermore, those who support the rehabilitation of offenders recognise the risk of the offender developing supplementary problems whilst engaged in the sentencing process. These problems might be independent of the criminal behaviour and could result in an outcome whereby the offender is required to devote more time towards treatment or spend a longer period in custody (Bean, 1981).

Under the utilitarian theory\textsuperscript{20}, the sentence imposed should result in a likely consequence of rehabilitative ideals, including ethical ones, on the offender (Ten, 1987). Therefore, to be considered rehabilitative, the sentence should assist the offender in modifying and developing the required principles so they will refrain from engaging in further criminal acts. This should come about because the offender now views such behaviour to be immoral. This change can be distinguished from merely refraining from engaging in such behaviour owing to the anxiety of being sentenced; the latter is purely deterrence and not rehabilitation by punishment. Supporting this concept is the understanding that society will offer treatment to an offender because criminal behaviour is an indicator of a social illness, and the purpose of rehabilitation is to cure that illness by administrating treatment (Bean, 1981). In principle, the rehabilitative viewpoint rejects the idea that there is an association between sentence and guilt.

Legal pragmatism and due process tend to reform the offending character by empowering ‘the self’ through the aid of quasi-scientific intervention when they are intertwined with the rehabilitative ideal (Garland, 2000). A drug court embraces this notion in that it

\textsuperscript{20} In 1974 Mill explained utilitarian theory as a system of ethics according to which the rightness or wrongness of an action should be judged by its consequences. The goal of utilitarian ethics is to promote the greatest happiness for the greatest number (Garland, 200; Ten, 1987).
incorporates therapeutic culture\textsuperscript{21}. The literature on current sentencing practices in drug courts from Australia describes the process of treatment during the program as if it were part of the actual sentencing process, rather than distinguishing between program participation and sentencing (Garland, 2001; Matthew, 2005). For example, the sentencing process in drug courts has been described “as an opportunity to manage change in the offender” (Dive, 2011, p. 186) and participation in treatment as a sentencing option (Dive, 2011; Freeman-Wilson, Sullivan, and Weinstein, 2003). The information generated during this ‘sentencing’ process, which includes regular reports documenting participant progress during the program, is considered ‘material placed before the court during sentencing procedures’ (Dive, 2012; Freeman, 2002). Freiberg (2002) argues that a major difference between drug courts and the mainstream criminal sentencing courts is the ability of the drug court to “vary the sentence whilst it is in operation in response to the offender’s progress on the treatment program” (p.282). This raises the issue of whether an offender subject to the conditions of a drug court program ought to be a consideration for the purposes of sentencing, and it is the partnership between therapy and punishment that underlines the political issues that constrain the drug court jurisdiction

Retribution, deterrence, protection of the community and rehabilitation principles have been applied, in various balances, to the disposition of all sentencing [drug court]. However, since the 1990s two key motivating factors have led to the reconsideration of traditional criminal justice responses in relation to drug related crime. The first concerns the acceptance that drug dependence is not necessarily detached from the crime, accordingly the criminal justice system should address both problems. The second is the increase in community concern with the reduction of drug-related crime, requiring the government to reshape its definition of success. These are discussed now, in the following two sections.

2.3. Drugs and Crime

The criminological literature offers many theories that describe the association between offending behaviour and illicit drug use. However, these can be represented by six primary explanations, as outlined below:

\textsuperscript{21} Therapeutic jurisprudence is explained later in this chapter, Therapeutic Jurisprudence.
1. illicit drug use causes crime (Goldstein, 1992; Mackesy-Amiti & Fendrich, 1999);

2. crime causes illicit drug use (Moyer, 2001; Khantzian, 1985);

3. both illicit drug use and crime are caused by other influences (Becker, 1963; Brick, & Hansell, 1993; Stephens, 1992; White, 2010);

4. the relationship between illicit drug use and crime is shared (Inciardi, Horowitz, & Pottieger, 1993);

5. offenders use illicit drugs to self-medicate, and this results in further acts of criminality by the offender (Collins, 1993; Khantzian, 1985); and, 

6. illicit drug use and criminal activity are not causally linked but merely coexist within a complex environment of occurrences that embrace both (Bennett, 2000).

From the Australian research, several consistent conclusions can be drawn about the relationship between drug use and crime, namely that:

- The prevalence of drug use is significantly higher among criminal justice populations than in the general community and the differential is greater for more serious drug types such as heroin, amphetamine and cocaine (Australian Criminal Intelligence Commission, 2017; AIC, 2019; Livingston, 2013);

- Offenders typically experiment with illicit drugs at younger ages than those who use drugs but do not have contact with the criminal justice system (AIC, 2011b; Livingston, 2013);

- There is modest association between specific drug types and specific crime types (Indermaur, 1994) although the association is likely the result of the pattern of usage more than the psychoactive properties of the drug (AIC 2012; 2014; 2015; 2019);

- Some offenders attribute their own offending to the use of drugs (AIC, 1995; 2006b), though this can vary by drug type (AIC, 2014; 2015, 2019);
Offending rates typically fluctuate according to levels of drug use (AIHW, 2008; 2016, but may also vary depending on the drug being used (AIC, 2002; 2019);

Offenders are typically more likely to report experimenting with drugs only after they are already involved in crime (AIC, 2015; 2019, Hodgson, 2000; Vrecko, 2010); and

A history of drug use serves as a strong predictor of reoffending (AIC, 2004b; NSWBOCSAR, 2012), especially among prisoner populations who continue to use drugs in prison or who express an intention to re-use drugs upon their release (AIC, 2013, 2019).

As wealth of evidence grows, the drug-crime debate nevertheless remains plagued by the unanswered question of causality; whether it exists at all, and if it exists, in which direction it operates. The existence of a positive, albeit strong correlation between drug use and crime confirms only that the two phenomena regularly co-occur, but is not itself evidence that either one acts as a causal agent for the other. Although the question of causality is discussed in more detail later in this thesis, specifically with reference to its theoretical intersection in developmental criminology, here we are reminded of the complexity of the causal debate and its implications for understanding the prevention of drug use and crime. This complexity is eloquently described by Brochu, Agra, & Cousineau (2002). The authors highlight two different positions: those who favour a ‘co-occurrence model’ by rejecting causal relationships as spurious, and those who accept causality but disagree with respect to its strength and direction. From this, they argue that the drug-crime debate: “sinks into a deep epistemological incoherence, for it confounds causal determinism with statistical determinism or co-occurrence and spurious relationship with the absence of determinism” (p. 11).

2.3.1. Consequences of the Drug-Crime Nexus

In assessing the same complex mix of empirical findings Menard (2001) highlights that there are at least four competing explanations of the drug-crime relationship which can be summarised as:

- Drug use leads to crime;
• Crime leads to drug use (the inverse causality model; see Goldstein, 1995, 1995);

• Drug use and crime influence each other in a pattern of mutual causation; a that the relationship between drug use and crime is either coincidental or spurious and that both result from a common underlying aetiology (see also Douglas & McDonald, 2012; White & Gorman, 2000).

In support of their research and following a comprehensive review of the literature, Menard & Mihalic (2001) conclude that the simple hypothesis that drug use causes crime is ‘untenable’ because in the vast majority of research, particularly that conducted with criminal justice populations, the initiation of drug use typically occurs subsequent to the onset of offending. Further, they conclude that once both crime and drug use have commenced, each appears to increase the probability that the other will continue. Most importantly for this research, they found that while some crime is caused by drug use and some drug use is caused by crime, both are also heavily influenced by a similar set of underlying three varying perspectives.

One perspective is that drug use is illegal and is, therefore, deserving of punishment (see also Bull, 2010; Douglas & McDonald, 2012). The other perspective is that drug dependency is a disease – an indication of social and personal problems that should be comprehended and medically treated (see also Leshner, 1997; Nolan, 2002;). A corollary of this view is that drug dependency, and its associated criminal conduct, ought to be disconnected and medically managed exclusive of legal intervention (see also Chandler, Fletcher & Volkow, 2009; Foucault, 1994). A third, somewhat hybrid view supports the idea that drug users are a hazard both to themselves and to society generally, and that it is, therefore, beneficial to all that such dependency is medically treated (see also Foucault, 1994). It acknowledges that the reasons for dependency are various and complicated, and so the dependency remains connected to the criminal conduct and the offender is treated for both their criminal behaviour and their drug dependency. This view has encouraged the expansion of drug court jurisdictions. Arguably the acceptance of this approach has rendered moot the debate as to whether crime leads to drug use or whether the reverse is true. This is because current research has demonstrated that criminal conduct will generally precede drug use, but that offending (in particular, property offences) increases once drug use escalates (AIC, 2004b; NSWBOCSAR, 2012). This implies that any effort to discover the answer to ‘which came first?’ is fundamentally misguided. It additionally
generates a different viewpoint on the sentencing goals that have motivated the operation of the drug court.

2.3.2. Drug-Crime Nexus and Rational Choice Theory

Rational choice theory emerged from deterrence theory. Beccaria believed that individuals make rational, calculated decisions regarding their behaviour, and that this calculated equation could be manipulated to prevent the criminal from inflicting new injuries on society and to deter others from similar acts. He believed that the threat of punishment could be used to convince individuals that the costs of crime outweigh the benefits one might receive (Feeley & Simon 1992, 1994; Simon, 1993).

Rational choice theory is based on the assumptions of hedonism, rationality and free will. Hedonism refers to the claim that human beings are motivated by the pursuit of pleasure and the avoidance of pain (Fischer, 2003). From a legal perspective, hedonism can be conceptualised as the pursuit of pleasure through the maintenance of law-abiding behaviour and the avoidance of pain through legal and penal sanctions (Barkan, 2009; Brigden, 2004). Rationality refers to an individual’s capacity to make good, sound, logically-based judgments. Free will refers to an individual’s ability to consider various courses of action and then select the one that is most desirable or in their best interest (Clear, 2011; Paternoster & Piquero, 1995).

A noted point of concern is the heavy reliance on the assumption that all individuals are capable of making rational choices (McGuire, 2005; Tonry, 2004). Rational choice theory addresses this concern by presenting the idea of the hedonistic calculus. This refers to a rational calculation based upon the individual’s perspective that measures the legal penalty and likelihood of getting caught against the potential pleasure and gain to be had by committing the criminal act (Cosden, Benki, Patz, Walker, & Sullivan, 2010; Moore, 2007). It places an individualised subjective lens on each calculation of the risk of pain versus the potential pleasure. If the probable gain outweighs the probable legal penalties then it is likely that the individual will commit the criminal act. However, if the probable legal penalties outweigh the probable gain then it is likely that the individual will not commit the criminal act (Foucault, 1994; Hodgson, 2000; Vrecko, 2010).

There are two principal ways that rational choice theory has influenced drug courts processes. Firstly, the entire drug court process is contingent upon participants taking individual responsibility for their drug use and dependency. Secondly, in order to remain
in compliance with the drug court program participants must agree to remain drug-free during their term of participation (Moore, 2007; Rice, 2014; Vaughan, 2000). Drug courts provide sanctions and rewards that skew the hedonistic calculus to favour pro-social and law-abiding behaviour. Fischer (2003) strongly implies that dependence can be overcome with sufficient moral and personal strength, discipline and willpower. Within the drug court, there are components of the recovery process that focus on increasing participants’ sense of willpower and discipline while individual attention is given to increase participants’ personal strength (Stitzer, 2008; Stutman, 2014). Several of these components will be presented and discussed in Chapters Five and Six of this dissertation.

2.4. Political Context

It has been argued that law enforcement drug interventions are largely ineffective in reducing those activities that are deemed to produce individual and community harm, such as injecting drug use, drug dealing and drug offences (Mazerolle, Soole, Rombouts, 2007; Mold & Berridge 2010; Measham & Shiner, 2009).22 Two principal themes relate to the political context in which drug courts operate: the creation of drug policy and the experience of economic rationalism. These experiences have reshaped definitions of government success.

2.4.1. Drug Policies and Public Perception

The attitudes and perceptions of the general public are associated with legislative and executive changes in Australia (Finlay, 2002; Shaffer, 2011). Finlay (2002) argued that the influence of public opinion on policy is substantial, as governments are obliged to act on behalf of the electorate if they are to retain office. The criminal justice system is one area in which public perceptions are viewed as being particularly influential on drug court outcomes (Frost, 2010; Manski 2003; Roberts & Stalans, 2004). Jackson, Bradford, Hough, Kuha, Stares, Widdop, Fitzgerald, Yordanova & Gulev (2011) contended that justice providers must maintain public support, as without it, the legitimacy of the criminal justice system can be questioned. If justice policies are at odds with the perceptions of the general public, opposition to the government may increase until such policies are changed to better reflect the attitudes held by the community members (Cullen, Fisher & Applegate, 2000; Freiberg, 2000; King, 2009).

---

22 While Australian evaluations indicate drug courts are cost-effective and reduce recidivism more than conventional sanctions, certainty in these findings is tempered by mixed results and methodological limitations. Australian drug court evaluation outcomes are discussed later in this chapter, Assessment Criteria of Drug Court Program Effectiveness.
International research has found evidence to suggest that community expectations of the criminal justice system tend to be highly punitive (Frost, 2010; Indermaur, 1994; Mackenzie, 2012). Effers, De Keijser, Van Koppen & Van Haeringen (2007) and Malcolm (2005) both stipulated that community members’ perceptions shape government spending on justice policies; therefore, negative perceptions of the criminal justice system may result in the implementation of retributive focused policies. This is potentially an issue for policymakers, as empirical research has consistently found that, although publicly popular, punitive policies fail to address the underlying causes of criminal behaviour and are mostly ineffective for reducing criminal recidivism (Andrews & Bonta, 2003; Russell, 2002; White & Graham, 2010).

The implementation and maintenance of drug courts, which function within a rehabilitative rather than a highly punitive framework\(^{*}\), may be negatively influenced by community perceptions (Fulkerson, 2009; Gerber & Jackson, 2013; Harrison & Scarpitti, 2002; Roberts & Wolfer, 2011). If members of the community demonstrate highly punitive attitudes and do not support the mandate of drug courts, policymakers may choose to implement a more punitive justice policy as a response (Jackson et al., 2011). Research has demonstrated that drug courts can be effective for reducing drug related recidivism (Brown, 2011; Gallagher, 2014; Somers et al., 2014), but if community support for the practice does not exist, reductions in funding, changes to the operational mandate of the drug court and their eventual abolition and a decrease in success outcomes may result (Jackson et al., 2011).

An Australian study by Mitchell, Wilson, Eggers & Mackenzie (2012) found evidence to suggest that members of the community may be willing to support rehabilitation over highly punitive sentences for some offender types. They discovered that the public possessed highly punitive attitudes and were generally dissatisfied with many court-imposed sentences, particularly those for drug-dependent offenders. Amongst a participant sample of 6,005 people, 51% believed that sentencing for non-violent drug offenders was too lenient (Mitchell, et al., 2012). However, despite this view, Mitchell et al., also found that 66% of the sample supported intensive rehabilitation and counselling as a more appropriate response to non-violent drug-dependent offenders than imprisonment. Although there is evidence to suggest that public perceptions towards rehabilitation may be positive, little research currently exists that has addressed

\(^{*}\) Rehabilitation in the drug court context is explained earlier in this Chapter, Rehabilitation and the Drug Court.
community perceptions relating to drug courts success specifically (Frost, 2010; Mandraccia, Shaw & Morgan, 2013).

2.4.2. Drug Strategies

Recent Australian political drug strategies support drug-dependent people in their recovery from problematic drug use while highlighting the significance of harm reduction (Ministerial Council on Drug Strategy, 2011, 2017). The word ‘recovery’ appears throughout the Australian National Drug Strategy 2017-2026 strategy; however, it is undefined. White (2007) proposed a comprehensive meaning of recovery as:

… the experience through which individuals, families, and communities impacted by severe alcohol and other drug problems utilise internal and external resources to voluntarily resolve these problems, heal the wounds inflicted by alcohol and drug related problems, actively manage their continued vulnerability to such problems, and develop a healthy, productive, and meaningful life. (p. 236)

The preceding description is becoming more utilised within the vocabulary associated with drug treatment and is reflected in the operation of a drug court (Freiberg, 2003; King, Freiberg, Bataol, Hyams, 2009; Tooke, 2005).

Drug policy since the 1990s has been increasingly concerned with the reduction of drug-related crime by limiting the availability of drugs, given its commitment to reducing health risks associated with drug use (Mold & Berridge, 2010). This is evident in Australia’s utilisation of a tripartite model for implementing drug-harm minimisation. The three-tiered model focuses on reduction in relation to each of supply, harm and demand and has the stated aim to “support people to recover from dependence and reintegrate with the community” (Ministerial Council on Drug Strategy, 2017, p. 5). The harm reduction approach attempts to limit the risk of harm to individual drug users. Supply reduction is law enforcement, in practice, while demand reduction focuses largely on abstinence approaches (Ministerial Council on Drug Strategy, 2011).

A modern-day harm reduction strategy assumes an apolitical, objective stance that does not involve itself with the political disapproval of prohibition (Roe, 2006). Miller (2001) asserted that this “allows for the continuation of harm without governments accepting responsibility for, or acknowledging, the social, legal and economic source of those harms” (p. 177). Miller (2001) further asserted that this discharge of responsibility is an intentional act on the part of neo-liberal societies to distribute power further down from the State level of governance towards the local level. Consequently, society and, indeed,
community members are encouraged to develop an ability to manage their specific risk (Dean, 1999). Together, social policy and economic rationalism alleviate the political and criminal justice system institutions of responsibility for the consequences of criminalisation by transferring responsibility to individuals for the management of their drug use (Roe, 2006; Seddon, 2010).

Notwithstanding the criticism, the drug court approach is intended to address a specific social problem in a manner that is understood to incorporate contemporary perspectives on law enforcement whilst meeting the political requirements of those assuming the responsibility of satisfying societal concerns of community harm (Armstrong, 2008; Marlowe, 2009). Indeed, it could be argued that it is these approaches that make drug courts politically appealing24.

2.4.3. Economic Rationalism

Australian government spending on law enforcement activities was estimated to be $1,123.3 million in 2009, although it is difficult to obtain current and accurate data on resources committed exclusively to drug law enforcement efforts (NDARC, 2013). It was noted by the researcher that this study, and numerous others, did not take into account other factors associated with measuring cost. These were health-care costs and lost productivity costs of those injured by someone who is drug-dependent, social welfare payments made to those who are drug-dependent, intangible costs of drug use, and costs involved with community awareness campaigns about illicit drugs and the research and training that go with them.

The key objectives of drug law enforcement are to deter potential illicit drug users through the threat of punishment, and to limit the obtainability of illicit drugs and, consequently, reduce the risk of harm to the individual and society (AIC, 2011b; Burke-White, 2003; Livingston, 2013). Yet, an Australian evaluation of the literature on drug law enforcement activities in Australia, the USA, Canada, and the United Kingdom found that many police drug interventions are largely ineffective in reducing drug activities, such as injecting drug use and drug dealing (Mazerolle, Sool, & Rombouts, 2007).

In Australia, the number of national illicit drug arrests increased by 87.6% over a decade, from 82,389 in 2015–16 to a 154,538 in 2016–07 (Australian Criminal Intelligence Commission, 2017). Drug use is clearly a risk factor for criminal behaviour, with research

---

24 The appeal of diversion programs is explained later in this chapter, Redefining Political Success.
showing that “substance misuse is more prevalent among offenders than in the general community” (AIC, 2012, p. 1). More frequent drug use is associated with higher rates of offending (e.g., NDARC, 2008a, 2008b; AIC, 2011a). In a 2017 Australian study of adult prisoners, 44% (n=1,005) of offenders attributed their arrest to either their illicit drug or alcohol use, while 30% (n=690) of offenders reported that illicit drug use was the reason they had been arrested compared with 18 percent (n=418) of offenders who attributed their detention to alcohol. The proportion of offenders reporting that their drug use had contributed to their arrest had increased from the previous five years (18%; n=284 in 2013) (AIC, 2019). The rate appears to be lower, yet still notable, among people who have been arrested. In an analysis of self-reported data from Australian arrestees (n = 1884) approximately 40% of participants in the study indicated that they were intoxicated at the time of offending (AIC, 2012).”

These figures bear similarities to findings from another Australian study of offenders who regularly inject drugs. In 2013, 36% of injecting drug users reported committing some sort of crime in the month preceding their interview, whether it was drug dealing (23%), a property offence (18%), fraud (2%) or a crime of violence (3%) (AIC, 2014). Two in every three participants also reported being intoxicated at the time of the offence(s). The most commonly identified substances linked to the different categories of offending behaviour were: cannabis (about 30% for drug dealing and fraud); benzodiazepines for property offences (29%); and alcohol and heroin for violence (both 32%) (NDARC, 2013). Other research has found that two out of every three offenders detained by police tested positive to at least one drug, not including alcohol (66%) (NDARC, 2008). These figures demonstrate the need to take action to address the intersection of illicit drug use with the criminal justice system, if only from the perspective of economic rationalism.

This impact of economic rationalism is highlighted in discussions concerning drug-related crime in the rising dependence upon language previously reserved for economic discourses (Furedi, 2002). Terms such as ‘target’, ‘prospect’ and ‘choice’ that are more strictly and traditionally aligned with the economic examination of criminal justice are now being used in a more dynamic and open fashion within discussions concerning crime and punishment (Burke-White, 2003; Feeley & Simon, 1994). An example is the statement that “drug courts are economically viable” (Cowdery, 2009, p. 11). This statement is founded on two assumptions: firstly, that the cost of crime and antisocial behaviour to society is so great that any attempt made to reduce or eliminate it is advantageous; and secondly, that the costs to divert drug-dependent offenders into a drug
treatment program are less than the cost associated with the imposition of a custodial sentence.

The cost of drug law enforcement efforts in Australia has already been stated with regard to the first assertion that crime imposes a substantial strain on the Australian economy. The second assertion made in regard to drug courts is that they are financially effective. “It can be said that a program is cost-effectively viable if its financial benefits offset its financial costs” (Welsh & Farrington, 2000, p. 2). Debates on the financial benefits of drug courts can be very convincing. Australian studies demonstrate that diversionary options are at least as cost-effective as the custodial alternative, although the amount that is saved varies depending on the court type and program (AIC, 2005a; NSWBOCSAR, 2002d). Cost studies have been criticised as being too simplistic to determine the benefits of drug courts in that they focus too heavily on simply dollar value (e.g., AIC, 2005a, 2014). This is based on the principle that there is more to be gained from drug courts than what can be determined through financial measurement (AIC, 2014; Douglas & McDonald, 2012). Focusing purely on financial benefits, in this regard, fails to include other tangible benefits of the jurisdictions, such as re-establishing personal relationships, as well as intangible benefits.

Relative expenditure on prison places and rehabilitation places cannot take into account the inestimable benefits which arise from a successful rehabilitation program, in contrast to a successful (insofar as the term successful can be applied in this circumstance) prison term. As Costanzo (2003) asserted, when speaking about the cost-benefit analysis of the Queensland drug court program:

[Although] the formula took into account that for each person terminated from the program the cost was higher than the cost of simply imprisoning each person in the comparison group ... [I]t did not attempt to put a dollar figure on the broad range of benefit (AIC, 2003, p. 236).

Cost avoidance measurements, such as the avoidance of the costs of providing prison places and repeated court appearances, although important considerations when assessing the benefits of the drug court process, may turn out to be less important to the long term success of drug courts than a comprehensive theoretical foundation. Noticeably then, for those involved in the drug court, as well as for the community in general, fiscal effectiveness is only one of the many considerations that need to be taken into account when assessing the drug court’s effectiveness.
2.4.4. Redefining Political ‘Success’

With both the creation of drug policy and the experience of economic rationalism in mind, it is possible for drug courts to be viewed as politically attractive for a variety of reasons. One attractive feature of the drug courts is the accepted assumption that the approach is both tough and effective in terms of reducing recidivism and is economically viable (White & Graham, 2010; King, 2009; NSWBOCSAR, 2008; SAOCSR, 2012). This feature of drug courts has two components. First, much modern public policy on crime perceives the cause of crime to be based entirely on offenders’ drug dependency problems (Braithwaite, 1989, 2002). Drug courts are appealing, therefore, in that they are seen as focusing on the core issues and addressing the underlying causes of criminal behaviour (Freiberg, 2000). Second, drug courts capitalise on the seeming benefits of diversion and/or of offering alternatives to custodial sentences that are more economically sustainable (Mold & Berridge, 2010; Measham & Shiner, 2009; Tonry, 2004). The ability to do more with offenders for less presents obvious political temptation. The ability to reduce the costs of crime, an imperative that is highly significant in the political arena, is of specific concern and interest to society.

The appeal of merging alternative means of justice administration with methods that seem to alleviate the strain on public resources is represented in the drug court model. Consistent with many growths in the areas of social policy and justice, the drug court approach signifies an inventive, supportive and positive alternative that addresses the costly and complicated problem of crime that is committed by a drug-dependent person25.

The new understandings of drugs and crime and the changing political imperatives have combined in a way that has refocused the traditional sentencing principles in relation to drug courts. On one end of the spectrum, under the principle of deterrence (which emphasises certainty of punishment, swiftness in response to criminal action, and appropriateness to the precipitating action), the courts traditionally use legal sanctions, including incarceration, both to punish drug dependent offenders and to deter them from further criminal activity (Adler, 2009; Duff, 2003). On the other end, the treatment community emphasises therapeutic relationships to help treat the disease of dependence

25 By way of illustration, Freiberg asked in 2003, and then again in 2007, whether the appearance of therapeutic jurisprudence (therapeutic jurisprudence is explained later in this chapter, Theoretical Perspectives, Therapeutic jurisprudence) in Australian courts was evidence of some sort of development in the area of social policy and justice within the Australian criminal justice system, or whether it was just ‘pragmatic incrementalism’ (Freiberg, 2003, 2007). He went on to question whether Australia was on the crest of a wave of a fundamental reform in the criminal justice system or just witnessing slight amendments at the edges. It was Freiberg’s assertion that the current paradigm at the heart of the criminal justice system remains adversarial but that its status is being increasingly eroded. His view was that therapeutic jurisprudence could provide a ‘constructive alternative’ to what he identifies as the ‘flawed adversarial paradigm’, which he saw as presently driving the growth of social policy and change (Freiberg, 2007, p. 32).
by motivating offenders to reduce their dependence on drugs, change their behavior, and take control of their lives (Braithwaite, 1989, 2002; Byrd, 1989). However, there are aspects of drug court operation which distance them from an exact facsimile to any one sentencing principle. With such a broad spectrum, drug courts have refocused the four sentencing principles into two theoretical perspectives in an effort to address a particular social problem in a way which is seen to encompass modern ways of thinking about drugs and crime while meeting the political needs of those charged with implementing justice in a more therapeutic way. They are an example of dealing with specific types of social disorder in a holistic way, in contrast to the classical common law paradigm of judicial administration that separates the judicial function from the correction and prevention functions (Baker, 2012; Hora, Schma & Rosenthal, 1998; Schaffer, 2011; Wexler, 2000; Wexler & Winick, 2003).

2.5. Therapeutic Jurisprudence

The first drug court was created in 1988, at Dade County, Miami, Florida, USA to address the revolving door phenomenon of incarceration for offenders with substance use disorders, characterised by arrest, subsequent substance use relapse and criminal recidivism (Fulkerson, 2009; Hora, Schma & Rosenthal, 1999; Hora, 2014; Rottman, & Casey, 1999; Jones, 2012)26. Drug courts were developed largely due to necessity on an atheoretical and pragmatic basis (Hora, 2002), with an implicit understanding that treatment is needed to reduce criminal recidivism (Freiberg, 2002; Hora, 2002). Various attempts have been made to apply theoretical perspectives to the drug court model (see Figure 1.1) retrospectively. Better questions can be asked and better studies can be constructed by understanding which concepts provide the best explanatory power over drug court outcomes (Kevin, 2010; Nurco, 1998).

While drug courts developed independently and with an atheoretical basis, the therapeutic jurisprudence concept has been applied retrospectively to explain the purpose and actions of drug courts by various authors (e.g., Hora et al., 1999; Nolan, 2001; Senjo & Leip, 2001). Therapeutic jurisprudence has been defined as “the use of social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects” (Slobogin, 1996, p. 16). Implicit in this statement is the ability of the law and criminal justice system to operate as a social force that produces

26 As Chapter One previously identified, ‘revolving door’ refers to the notion that the prison system is failing to rehabilitate a significant portion of drug-dependent offenders who resume both their offending behaviour and substance use upon release from serving their sentence.
behaviours and consequences in ways that are either *therapeutic* or non-*therapeutic* (Hora, 2002; Schneider, Bloom & Hereema, 2007). Therapeutic jurisprudence concerns itself with the “human, emotional [and] psychological side of law and the legal process” (Wexler, 2000, p. 125). A strong similarity exists between therapeutic jurisprudence and the rationale and objectives of drug courts to the extent that some commentators see them as commensurate (e.g., Boldt, & Singer, 2006; Senjo, & Leip, 2001; Seigny, Fulehan, & Ferdik, 2013; Slobogin, 1995)

2.5.1. The Concept of Therapeutic Jurisprudence

It is very clear from the literature that therapeutic jurisprudence is difficult to define. This is due in part to the fact that therapeutic jurisprudence is an organic concept that changes according to the context in which it is applied. The aim of therapeutic jurisprudence academics is to apply its philosophy to a particular legal context: for example, in this research it is applied to the drug court legal context. Because therapeutic jurisprudence is an approach rather than a ‘theory’ as such, it produces an array of studies that are illustrative of the ‘approach’ rather than confirmatory of a pre-existing hypothesis (Freiberg, 2003, Bartels & Richards, 2013). Therapeutic jurisprudence is essentially practical, as it reframes the social science and psychological literature and applies it to the legal context by suggesting techniques that legal professionals can use to do their job better.

Therapeutic jurisprudence has been referred to as many things in the legal and social science literature, a approach, a perspective, a framework, a vector, a heurism, a legal theory, a movement, a mechanism, a prism, a field, a notion, and a lens (Birgden, 2002, 2006; DiClemente, 2006; Madden & Brooks, 2010, Winick, 1997; Wexler, 2009). Wexler (2011) affirmed that therapeutic jurisprudence is not and has never pretended to be a full-blown ‘theory’. More modestly, it is simply a ‘field of inquiry’, in essence a research agenda that focuses attention on the often-overlooked area of the impact of the law on psychological wellbeing and the like. Madden and Wayne (2003) refer to Therapeutic jurisprudence as “a framework for assessing legal rules, applying social science research to legal questions, and structuring interventions in the legal environment” (p. 338). For the purposes of this research, therapeutic jurisprudence is understood as a framework for organising and structuring the analysis of the drug court legal system in Australia, and components of its legal process.
While each of the views stated above are justified within their own frame of reference, therapeutic jurisprudence has been criticised for suffering from a “definitional dilemma” (Slobogin, 1995, p.195). Other criticisms of Therapeutic jurisprudence include its lack of innovation, covert paternalism, and it’s unclear application to legal decision making, its unnecessary conceptualisation, and intrusion upon civil liberties, arrogance and its self-referentialism (Brakel, 2007; Campbell, 2010; Slobogin, 1995; Roderick & Krumholz, 2006).

In the foreword to the Solution-Focused Judging Bench Book, the author states that while the term ‘therapeutic jurisprudence’ may continue to ‘raise eyebrows’ amongst some members of the judiciary, he believes it has been broadly recognised as reflecting an important endeavour to improve the administration of justice, in areas where the traditional judicial model of decision-making operating in isolation is inadequate to the task (King, 2009b, p.ix). While its definition may be somewhat contentious, there is general agreement about the key concepts and goals that are valued by therapeutic jurisprudence including self-determination, voice, validation, respect, voluntariness, active participation and autonomy. Advocates suggest that it is these concepts and goals that at a micro level have the potential to create a “shared respect process” (Petrucci, 2003) and promote motivation, successful action, positive behavioural change, confidence and satisfaction in court participants (Stitzer, 2008, Winick, 1992; King, 2009). The concepts and goals valued by therapeutic jurisprudence have been replicated in the operation of drug courts, the roles adopted by the key stakeholders, and the management of the drug court participant, which are all dedicated to the treatment of drug dependence rather than focusing on the administration of punishment.

2.5.2. Therapeutic Jurisprudence and Drug Court

The literature indicates that drug courts can be viewed as a natural application of therapeutic jurisprudence, as the court and its actors, such as the judiciary, prosecution and defence, all work to assist offenders in overcoming drug use and criminal behaviour (Roberts & Indermaur, 2003; Schaffer, 2013; Sevigny, Pollack, & Reuter, 2011). Drug courts operate under the viewpoint that traditional punitive responses to criminal behaviour for the “drug-dependent offender” are inappropriate and ineffective (Freiberg, 2008; Schneider et al., 2007). There is an acceptance that the reason for criminal behaviour is not a matter of individual choice and drug court is a response to address the ‘root’ cause (Schneider, 2010; Slinger & Roesch, 2010). Further, it is an admission that
poor social conditions may be part of that root cause (Winick, 2003) hence provision of health and social services is a key feature of these courts.

Wexler and Winick (1996) described the possibilities of therapeutic jurisprudence to address both the emotional needs of the offender and the psychological impact of the criminal justice proceedings upon the offender, and they argued for connections between systemic structure, rehabilitative potential, and psychological concerns. The impact of their distinct legal concept on reshaping the delivery of legal services is cited throughout much of the drug court literature. It is clear that drug courts are part of a trend of judicial innovation that attempts to humanise and improve outcomes for offenders and communities that face chronic drug-related problems (Burke, 2010; Fox & Huddleston, 2003; Freiburg, 2007; Hora & Schma, 1998; King, 2006, 2011b). Winick and Wexler (2003) assert that therapeutic jurisprudence “has insights regarding how courts might be structured so as to maximize their therapeutic potential” (Winick & Wexler, 2003, p. 7). Therapeutic jurisprudence is a quasi-utilitarian approach to practicing law that attempts to integrate therapeutic goals into legal processes (Stolle, 2000). The courtroom of a drug court has been described as a “laboratory” in which to uncover the elements of court processes that contribute to therapeutic goals (Winick & Wexler, 2003), although the evaluations discussed throughout this research highlight the difficulty in doing so. For practitioners of therapeutic jurisprudence in the drug court setting, the judge and sometimes the court itself are conceptualised as therapeutic agents (Winick & Wexler, 2003).

Drug court programs are used to promote positive treatment and criminal justice outcomes for offenders through a mixture of judicial interaction and community-based or residential treatment. The judicial functions and techniques seen within drug courts appear to achieve results that are not possible in mainstream courts that operate solely according to adversarial principles and practices (Freiberg, 2003; Goldkamp, 2010; Roberts & Wolfer, 2011; White & Graham, 2010). Table 2.1 broadly summarises the differences between mainstream courts and drug courts. The table, which has been developed from a number of sources in relation to drug courts, depicts some of the most current trends in the literature. It highlights in italics those trends that are more indicative of a paradigmatic difference between drug courts and mainstream jurisdictions.
<table>
<thead>
<tr>
<th></th>
<th>Mainstream Court Process</th>
<th>Drug Court Process</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objective</strong></td>
<td>Legal outcome</td>
<td>Therapeutic outcome</td>
</tr>
<tr>
<td><strong>Approach</strong></td>
<td>Individualistic</td>
<td>Interdependent</td>
</tr>
<tr>
<td><strong>Participation</strong></td>
<td>Participation is coerced</td>
<td>Participation is voluntary</td>
</tr>
<tr>
<td><strong>Procedure/Processes</strong></td>
<td>Adversarial</td>
<td>Collaborative (or team based)</td>
</tr>
<tr>
<td><strong>Viewpoint</strong></td>
<td>Retribution, Deterrence,</td>
<td>Rehabilitation</td>
</tr>
<tr>
<td></td>
<td>Protection of the community</td>
<td></td>
</tr>
<tr>
<td></td>
<td>and Rehabilitation</td>
<td></td>
</tr>
<tr>
<td><strong>Monitoring of Offender</strong></td>
<td>Correction organisation (e.g.</td>
<td>Drug Court Team &amp; external assisting agencies</td>
</tr>
<tr>
<td></td>
<td>Corrective Services)</td>
<td></td>
</tr>
<tr>
<td><strong>Procedure/Processes</strong></td>
<td>Adversarial process</td>
<td>Collaborative process</td>
</tr>
<tr>
<td><strong>Treatment for Drug Dependency</strong></td>
<td>Infrequently imposed</td>
<td>Always imposed</td>
</tr>
<tr>
<td><strong>Incentives for Offender</strong></td>
<td>Minimal and custodial related</td>
<td>Various and many (e.g. reduction in custodial</td>
</tr>
<tr>
<td></td>
<td>(e.g. suspended sentence)</td>
<td>sentence, applause from the courtroom,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>reduction in drug testing regime)</td>
</tr>
<tr>
<td><strong>Participation</strong></td>
<td>Limited participants and</td>
<td>Varied range of participants and stakeholders</td>
</tr>
<tr>
<td></td>
<td>stakeholders</td>
<td></td>
</tr>
<tr>
<td><strong>Role of Judge</strong></td>
<td><em>The judge is the tribunal of</em></td>
<td>Ensures procedural fairness</td>
</tr>
<tr>
<td></td>
<td>law To oversee the conduct of</td>
<td><em>To focus on both the process and the outcomes</em></td>
</tr>
<tr>
<td></td>
<td>any hearing</td>
<td>in support of positive behavioural change</td>
</tr>
<tr>
<td><strong>Public Safety Assessed</strong></td>
<td>During incarceration/supervision</td>
<td>During and after completion</td>
</tr>
<tr>
<td><strong>Disposition Determined</strong></td>
<td>Nature of Offence &amp; Criminal</td>
<td>Compliance with Treatment/Conditions of the</td>
</tr>
<tr>
<td></td>
<td>History</td>
<td>Drug Court Program</td>
</tr>
<tr>
<td><strong>Right to a Fair Trial</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Application of law</strong></td>
<td>Precedent Based</td>
<td>Planning Based</td>
</tr>
</tbody>
</table>
The contrasting principles between mainstream courts and drug courts mostly reflect matters of difference in emphasis rather than mutual exclusion. For example, drug courts do not ignore precedent, although they are less concerned with how courts have dealt with matters in the past and are more concerned with the development of strategies to promote the resolution of individual cases. Principles of the common law and statute law, such as natural justice or due process, still apply in these courts (King et al., 2009; Nolan, 2009), and these principles are never trumped by therapeutic concerns (Goldkamp, 2010; King, 2011). The outcome they seek is certainly a therapeutic outcome, but it must also be in accord with the law. Finally, the judicial role in drug courts has coaching or leadership aspects in a collaborative context, but the arbiter role and adversarial context are not entirely absent. For example, in dealing with matters concerning the admission of drug use or termination from the program, the judicial officer acts in the role of arbiter in an adversarial process (Freiberg, 2003; McGrath, 2011).

Therapeutic jurisprudence claims that attending to the individual offender as well as the issues involved in a case leads to more effective dispositions. Within these broad parameters, therapeutic jurisprudence can be functionally implemented on different levels. First, as previously asserted, therapeutic jurisprudence can be practiced by judges when interacting with the offender whilst on the drug court program. In such circumstances, the underlying therapeutic jurisprudence orientation of a judge directs attention beyond the specific criminal case before the court and towards the needs and circumstances of the offender and significant others involved in the case (DeLeon, 2008; Welsh & Farrington, 2000). Second, therapeutic jurisprudence may be practiced at the organisational level of the court. It is open to the drug court to adopt new and innovative procedures, information systems and partners with service and health providers in the community for the individualised benefit of the drug court participants (Schneider, 2006, Wexler, 2011). Lastly, for some areas of law and court policy, the practice of therapeutic jurisprudence principles in the context of the drug court requires changes to State statutes or to court rules, policies, or procedures that apply across courts including court orders, supervision, probation and law enforcement practices (Goldkamp, 2010; Single 1998; Tooke, 2005).

************
The evolution of drug courts has been limited by the atheoretical basis upon which they developed, notwithstanding the two theories discussed above that provide a broad basis for the conceptual understanding not only of the drug court’s intervention but also its important and distinguishing dimensions (e.g., Goldkamp, 2010; Longshore, Turner, Wenzel, Morral, Harrell, McBride, Iguchi, 2001). These theories, however, provide insufficient specificity and nuance to enable meaningful measurement of the drug court’s effectiveness. Accordingly, the challenge remains to explore, define and measure the theoretical basis for drug courts with the goal of identifying their causal mechanisms and associated outcomes.

2.6. Assessment Criteria of Drug Court Program Effectiveness

Examination of the evaluations reported in the Australian literature revealed five main outcome criteria used to evaluate success within the drug court programs operating in New South Wales, Queensland, South Australia, Western Australia, and Victoria. These were: recidivism; retention/completion; reduction or cessation of drug use; health and welfare outcomes; and cost-effectiveness and cost-benefit. Not all jurisdictions used all five criteria in their respective evaluations.

Appendix C provides a summary of drug court programs in New South Wales, Queensland, South Australia, Victoria, and Western Australia. It includes whether they have been formally evaluated and the criteria used to assess their effectiveness. The summary demonstrates that the five criteria identified above have been used in different combinations by Australian researchers to measure the success of drug courts. The following subsections examine and discuss each of the performance criteria used in previous evaluation studies. It was noted, based on this examination, that the evaluations’ quality varied widely, and many of the evaluations exposed unresolved methodological and conceptual issues.

2.6.1. Outcome Criteria 1: Recidivism

A drug court program’s central objective is to reduce drug-related offending (Dive, 2012; Victorian Alcohol and Drug Association, 2013). Predictably, repeat offending, or recidivism, was the most common criterion used to assess a program’s success. However, evaluations across the five jurisdictions differed on the following:

- the definition of recidivism and offence type;
• the comparison group; and,

• data collection and timing of the evaluation.

2.6.1.1. The Definition of Recidivism and Offence Type

The term recidivism originates from the Latin recidere, which means to ‘fall back’. It is often used interchangeably with others such as repeat offending or reoffending. In the criminological literature it has been described in various ways, including “the reversion of an individual to criminal behaviour” (Maltz, 1984, p.1), “the return of a prisoner to custody” (AIC, 2009a), and the “reappearance of a juvenile in court” (Victorian Department of Human Services, 2001, p. 23). Although the technical elements of each of the examples may differ, there is one common theme that underpins them, namely that recidivism is generally used for describing repetitious criminal activity, and a recidivist offender is an individual who engages in such activity.

The term ‘recidivism’ is freely used throughout the evaluations reviewed by the researcher for this study to describe the general act of reoffending. In reality however it evades a systematic and simple definition. Maltz (1984), in his study of recidivism, emphasised this issue, noting that:

recidivism has been defined on an ad hoc basis, without consideration of its true meaning; and it has been measured in ways remarkable for their inconsistency. Yet we find ‘recidivism rates’, based on different definitions applied in different contexts and measured in different ways, being compared to each other. (p. 13)

A number of evaluations used reconviction to determine whether a participant had reoffended (e.g., NSWBOCSAR 2002c, 2008). This meant only cases that were finalised through the judicial system were considered to indicate recidivism. The other main definition of re-offending was based on re-apprehension/re-arrest (e.g., VICDOJ, 2004c, 2006a). This included all offences reported and entered into a police data system. Apprehension data, therefore, includes charges that may later be withdrawn or referred to another diversionary process and those for which an offender may be found not guilty by the court. For the purposes of this research, ‘recidivism’ will be understood as ‘the reconviction of a drug court participant’ unless otherwise stated. Although this is relatively limited, it avoids the lack of clarity inherent in apprehension data.

Associated with these two measures is the offence type under consideration. Many of the drug court programs contain aims or objectives around reducing drug-related offending.
Therefore, researchers may consider property or drug offences to be the only pertinent focus rather than offences that are not seen to be related to drug use. Most of the evaluations looked specifically at property-related offences over time in order to be comprehensive (e.g., MCOV, 2014). Only a few studies were able to measure seriousness (e.g., violent offences) in relation to recidivism and whether there were changes in the type or seriousness of offences committed by participants over time (e.g., SAOCSR, 2006, 2012). This inevitably complicates any comparisons between the findings.

2.6.1.2. The Comparison Group

All of the evaluation studies compared the results for the drug court participants with some form of comparison group when measuring recidivism. Comparison groups identified in the literature included:

- those who received a community or custodial based sentence (e.g., NSWBOCSAR, 2002c);
- eligible offenders who refused to participate in the drug court program (e.g., AIC, 2003);
- participants who were referred to the drug court program but were later deemed ineligible due to residence outside of the geographic catchment area or antecedents of prior violent offence/s (e.g., NSWBOCSAR, 2008);
- participants eligible for a drug court program but who could not participate due to a shortage of places available (e.g., NSWBOCSAR, 2002); and,
- drug court participants effectively used as their own control group, comparing their offending pre-, during and post-drug court program (e.g., MCOV, 2014, NSWBOCSAR, 2011).

2.6.1.3. Data Collection and Timing of the Evaluation

The collection of recidivism data varied widely, ranging from two-year, post-graduation follow-ups (e.g., UWS, 2003) to others in which few or no drug court participants had graduated at the time of evaluation, i.e., those participants in custody following termination of their drug court program or who had abandoned their drug court program (VICDOJ, 2004). The majority of the evaluations measured offending at entry, and re-offending during and after drug court program completion. However, due to low numbers,
some could only measure for a period after completion of the program (e.g., one year from the commencement of the drug treatment order) (e.g., SAOCSR, 2006) and did not distinguish between offences committed while on the program and those committed post-program.

Recidivism was most commonly measured based on offending frequency (over a given time period) and time to the first subsequent offence. Most evaluations described the types of offences committed pre-program, during and post-program (e.g., SAOCSR, 2012). Due to low participant numbers and a short follow-up period available to some evaluators, time to the first subsequent offence was often measured amongst participants still on the drug court program (e.g., SAOCSR, 2006; AIC, 2005e). These evaluations, however, did not take into account how long the participants had been on the drug court program. Such a consideration is important, though, as one would anticipate a much higher rate and shorter period between subsequent offences amongst new participants and a reduced rate and greater time between such offences amongst those near or at completion of a drug court program.

Many evaluations determined that drug courts, while not a complete solution to the problem of the drug-crime nexus, produced significant reductions in recidivism rates when compared with the mainstream criminal justice system (e.g., MCOV, 2014; VICDOJ, 2004d; WADOJ, 2006). In this regard, the Australian drug court professional community has specifically relied upon two evaluations conducted in New South Wales to support the claim of success. The first was conducted in 2002 and the second in 2008.

The 2002 evaluation demonstrated that participation in a New South Wales drug court program was more successful than imprisonment in decreasing the frequency of criminal behaviour (NSWBOCSAR, 2002c). A follow-up study in 2008 (NSWBOCSAR, 2008) determined that participants in a New South Wales drug court program were 17 percent less likely to be convicted of a new offence, 30 percent less likely to be found guilty of a violent offence, and 38 percent less likely to be found guilty of a drug offence at any point throughout the follow-up period when compared with drug-dependent defendants who were sentenced to imprisonment by the mainstream court.

All the examined Australian drug court program evaluations used repeat offending, or recidivism, as a measure of success with mostly positive and consistent results. Drug court participants generally display lower recidivism rates than those of comparable
groups; they take longer to re-offend; and their offending rate is less than it was prior to being afforded the opportunity to participate in a drug court program.

2.6.2. Outcome Criteria 2: Reduction or Cessation of Drug Use

The reduction or cessation of drug use is another key objective of a drug court program (Olson, 2014; QDOJ, 2010). Urinalysis was the method most commonly used to determine drug use (e.g., MCOV, 2014; SAOCSR, 2006). Urine testing occurs throughout participation in all drug court programs in Australia, and most studies were able to measure the frequency and duration of drug use over time, assess changes in the type of drug used (e.g., heroin to methamphetamine) and/or poly-drug use (e.g., AIC, 2008; NSWBOCSAR, 2011). The researcher used participant reports and interviews with drug treatment providers to gauge changes in drug use over time when urinalysis results were inaccessible (e.g., NSWBOCSAR, 2002c).

The validity and reliability of using participant reports and interviews with drug treatment providers as a method of data collection can be questionable. Research has found that the context of the interview influences reliability (Burlew, Weekes, Montgomery, Feaster, Robbins, Rosa, Ruglass, Venner & Wu, 2011; Mitchell et al., 2012; Sherman, 2010; Wilson et al., 2006). Concern about deception in self-reports is also most likely at the assessment stage27 of the drug court participant’s program when information is being collected by drug treatment providers who drug court participants may see as affiliated with the criminal justice system (Freeman, 2002; Gallagher, 2014; Goetz & Mitchell, 2006). Distortion may be less likely at follow-up when the interviewer is unknown to the participant (Brandon & Fukunaga, 2014).

Information about the types and amount of drugs used by drug court participants was collected inconsistently across the drug court programs operating in New South Wales, Queensland, South Australia, Western Australia, and Victoria. No standardised measure of drug dependency was administered uniformly across the jurisdictions during the assessment process. Furthermore, the information was not elicited in identical ways; and drug treatment providers, in some jurisdictions, did not specifically ask each drug court participant their response to stated variables (e.g., types and amount of drug/s used), but rather only recorded pertinent details if the information emerged during the course of the assessment discussion (e.g., SAOCSR, 2005; VICDOJ, 2004c). Inconsistencies with

---

27 The ‘assessment stage’ is explained later in Chapter Five, Analysis of Secondary Data, Assessment and Admission.
these variables rendered some data unreliable and unsuitable for comparative analysis across the drug court jurisdictions reviewed in this current research.

2.6.3. Outcome Criteria 3: Retention/Completion

Completion of a drug court program is a commonly used indicator of drug court success (Marlow, 2014b; Senjo & Leip, 2001). Each of the evaluations reported on the number of participants who entered the drug court program, the number who were currently in a drug court program and the number who completed or graduated from a drug court program. A few evaluations measured the retention rate at different points in time with a view to determining whether it varied at different stages of a drug court program (e.g., NSWBOCSAR, 2002; SAOCSR, 2012). An overall graduation rate (the percentage of the entire cohort at entry who completed the drug court program) was also used as an indicator of success (e.g., AIC, 2005e; NSWBOCSAR, 2008). The timing of some evaluations did not always allow such a measure, as there were either no graduates at the time of the evaluation or few had entered the final stages of the drug court program (e.g., AIC, 2003; VICDOJ, 2004a, 2006).

2.6.4. Outcome Criteria 4: Health and Welfare Outcomes

Outcomes such as employment, social functioning and health were commonly measured based on the results of interviews and surveys with participants and drug court or treatment providers. Most drug court programs used standard questionnaires such as the Short Form 36 Health Survey (SF-36) (see Appendix D) and conducted general physical and mental well-being assessments upon entry, during and post-program (e.g., AIC, 2005e). Where this data was unavailable to researchers, some studies conducted their own surveys of participants to measure health and well-being changes over the length of the program (e.g., VICDOJ, 2004b). Participant interview analysis has its own limitation. In general, participant interviews can provide a wealth of information about a program’s operation and in particular an individual’s satisfaction with its components. The difficulty is maintaining an offender’s motivation to participate in interviews at various points in an evaluation. The most notable limitation of drug court evaluations that rely on participant interviews is the high attrition rate and the possible bias that results from those who do participate in follow-ups. Wundersitz (2007) suggested that those interviewed nearer the completion of their drug court program are more likely to be the successful ones, which may positively skew findings.
2.6.5. Outcome Criteria 5: Cost-effectiveness and Cost-benefit

A number of approaches exist for evaluating drug court programs in economic terms, with the two most commonly used techniques being a cost-effectiveness analysis and a cost-benefit analysis. The main difference between the two is that cost-effectiveness analyses consider only the costs expressed in monetary terms, while a cost-benefit analysis goes one step further to also quantify the non-monetary benefits of the outcome. Several studies have evaluated either the cost-effectiveness or cost-benefit of a drug court program or sought to measure the initial start-up and operational costs of a drug court program. Most studies compared the cost of participants in a drug court program with a comparison group. The comparison groups included:

- offenders in incarceration or on community-based orders (e.g., WADOJ, 2006);
- offenders processed through the Magistrates Court with identical charges (e.g., NSWBOCSAR, 2002c); and,
- offenders who were eligible for the drug court program but were dealt with through the mainstream court process (e.g., NSWBOCSAR, 2008).

Studies that examined drug court cost effectiveness used the differences in the offending behaviour between the two groups (recidivism) to measure effectiveness, taking both operational and ongoing administration costs of the drug court program into account. These encompassed, but were not limited to, the assessment, monitoring, treatment and drug testing of drug court participants (e.g., NSWBOCSAR, 2002c). Some evaluations included the cost of incarceration of mainstream processing of offenders. These costs were then broken down to provide a cost-per-offender for a given period (e.g., VICDOJ, 2004c; WADOJ, 2006).

Cost-effectiveness and cost-benefit evaluations are a simplistic measure of financial success because they only account for nominal benefits that can be valued in financial units. Such evaluations cannot determine or measure the other benefits derived from a drug court program, such as the health benefits of re-engaging in physical activity. In this regard, both cost-effectiveness and cost-benefits are a crude measure of program success. They often underestimate the true benefits delivered by a drug court program to a participant, the community and society in general. Similarly, as with all evaluations, time plays an important role in the interpretation of cost-effectiveness and cost-benefit.
evaluations. The length of time a participant will abstain from the relevant criminal activity is unknown when the evaluation is done. It is difficult, therefore, to ascertain the real, sustained cost savings of such a program in the future. Some offenders may return to the behaviour that necessitated drug court intervention. This does not mean, however, that other benefits such as health and lifestyle improvements have not been maintained.

### 2.7. Methodological Considerations

Two methodological limitations were identified during the literature review – a lack of focus on the causal processes leading to the outcomes just discussed, and a lack of qualitative data. While the five criteria discussed above have been identified in the literature as measures of drug court success, Butzin, Saum, and Scarpitti (2002), when discussing drug court completion and criminal recidivism, reported that relatively little research had explored which drug court processes lead to successful drug court program completion. The authors argued that, with knowledge of the processes that are identified with positive outcomes, programs could be adjusted to target populations that would most benefit drug court programs.

Additionally, there is a noticeable lack of qualitative research in the literature base (Sanford & Arrigo, 2005). Wolfer attempted to fill this void in 2006 with a focus group methodology involving drug court graduates. Her report was able to shed light on the concerns and frustrations of drug court participants, the individuals who may know the drug court the best. Her research also brought to light the vulnerability that drug court participants feel, both while taking part in the program and after graduation. Wolfer argued that much can be learned through the qualitative study of drug court stakeholders (2006, p. 319). This is supported by Fischer, Geiger, and Hughes (2007), who assert that “to evaluate the effectiveness of a program one must listen to the voice and the stories of those about whom statistics have been compounded” (p. 704). Furthermore, it is critical to examine participants’ experiences because “the norms, values, and perceptions of offenders may be quite different from those of the ... policy makers” (Deschenes, Turner, & Petersilia, 1997, p. 375). While there is the recognition that participants’ and stakeholders’ views and their experiences are critical to improve the operation and increase overall effectiveness of drug courts (Fischer & Geiger, 2012; Fulkerson, Keena & O’Brian, 2012), the researcher’s review of qualitative studies shows that this topic has received limited attention, a gap that is anticipated to be filled somewhat by the undertaking of the current study.
2.8. Modelling the Impact of Drug Courts

As noted in Chapter One, the literature suggests evaluation of drug courts should be tied to a clear understanding of their goals (Freeman, 2002; Goldkamp, 1995) and that assessment of their impact can best be understood through a conceptual generalised framework that identifies key elements thought to be responsible for their results (Gallagher, 2014; Goldkamp, 2000; Goldkamp, White, & Robinson, 2000). Information derived from the literature revealed seven components of a generalised model for Australian drug court operations, which were represented in Figure 1.1. However, the Australian evaluations discussed above demonstrated a variation in drug court impact seen over time, a variation that cannot completely be explained by that generalised model. By way of illustration, two separate evaluations have been conducted to determine effectiveness since the establishment of the Western Australian Drug Court in 2001. Both studies examined the effect of the drug court on criminal recidivism rates amongst drug-dependent offenders. The findings from the original 2003 evaluation found no statistically significant results to suggest that the Western Australian Drug Court was more effective for reducing recidivism amongst drug-dependent offenders than traditional methods (UWS, 2003). The second evaluation, conducted in 2006, found that program completion did significantly reduce the incidence of drug-related crime. The findings indicate that drug court graduates are significantly less likely to re-offend over a significantly longer period of time when compared with drug-dependent offenders who served a prison sentence or some form of community-based order.

Taking this information together with that of the political environment in which drug courts operate and occasional imperatives such as jail overcrowding, it is clear that there must be other elements, beyond those related to the drug court, that are relevant to answering the research question. This means that any representation of drug courts’ impact must include, but not be limited to, the generalised model of the court itself.

In relation to causal factors other than the drug courts’ own processes, much of the literature suggests that changes in legislation affixing sentences for drug-related offences affect an offender’s willingness to pursue risky drug-using behaviour as well as their willingness to enter drug court and comply with the conditions of their treatment program (Andrews & Bonta, 2010; Indermaur & Roberts, 2003; Marlow, 2014b). Also, the offender’s residential address may provide a context that both encourages crime (through opportunities to commit offences or the availability of drugs) and discourages access to
treatment services (Belenko, Fabrikant & Wolff, 2011; Friedman, 1993; King, 2011). A compelling assertion throughout the literature suggests that antecedents may also play a strong role in shaping drug court impact when offender attributes are considered (Cooper, 2003; Fox & Wolf, 2004; Freckelton, 2006; Seddon, 2010).

Figure 2.1 suggests a basic model that can take account of the sorts of factors just identified. The basic hypothesised causal relationship implicit in the generalised drug court model is that ‘drug courts impact offender behaviour’ (that is, ‘A’ (drug court) impacts on ‘B’ (variations in offender behaviour)). The drug court’s impact on offender behaviour is influenced by outside factors, which are either in play prior to the drug court process (e.g. administrative policies, treatment resources and changes in law) or which come into play subsequent to that process (e.g. treatment attendance, number of court sessions attended). That is, ‘C’ (outside factors) also impacts on ‘B’ (variations in offender behaviour). Additionally, ‘C’ (outside factors) impacts on ‘A’ (drug court). In this model various attributes of drug court participants (e.g., family relationships, prior criminal history, type and frequency of drug use) may at least partly explain offenders’ drug court participation and behaviour during a follow-up period (that is, ‘D’ (offender attributes) impacts on ‘B’ (variations in offender behaviour) and also on ‘A’ (drug court). This is significant, given that the majority of the evaluations considered thus far measured offending at entry, during and after drug court program completion.

![Figure 2.1](image_url)

Offender Attributes and Outside Factor Shape Drug Court Outcomes and Shape Drug Court Participant Behaviour.
What the model does not capture in relation to ‘A’ is the distinction between the drug courts’ operating elements (e.g. drug testing or length of treatment) and their results or outcomes (e.g. graduation or early removal from the program). The salience of the operating elements present in the generalised drug court model is likely to vary over time in a particular jurisdiction and to vary from location to location as the elements of the model are adapted to different settings. This presents an important challenge for research, namely determining the relative contributions of the various operating elements in accounting for the drug courts’ overall impact. While the vast majority of previous evaluation research is outcome oriented, focusing on recidivism rates\(^{28}\), this research addresses an understudied dynamic by observing the process and structure in which drug courts therapeutically operate. Conducting an evaluation on the actual outcomes of the drug courts without considering the process is typically referred to as a ‘black box’ evaluation and is a noted shortcoming in the existing literature (Freiberg, 2003, 2007; Goldkamp, White, & Robinson, 2001; Schaffer, 2011).

In such evaluations, the drug dependent offenders are ‘black box’ inputs and successful or unsuccessful program completers are the outputs. Within the ‘black box’, individuals are bombarded with various program aspects including regular court report back sessions, treatment, and other services. Without any evaluation of what goes on within the ‘black box’, it is difficult to determine which program aspects contribute to successful program completion, which contribute to program failure, and which have no effect (Goldkamp et al., 2001; Schaffer, 2011). As distinct from a ‘black box’ evaluation that identifies accountability requirements, this research explains drug courts’ performance in light of both its accountability requirements and its therapeutic operation and structures, i.e. it studies both the inside and outside of the ‘black box’.

According to Davidson (2005), it is essential to have “a program theory to unearth impediments in the causal mechanisms and determine that which is ‘working’ or ‘what is not working’ at a marginal level in order to facilitate a program’s targeted outcomes” (p. 10). The main problem with ‘black box’ evaluations is that they neither consider the context of the program, which is how the program is designed, nor how the program is implemented; yet both the context and its implementation contribute to the end result

\(^{28}\) This type of evaluation mostly focuses on the inputs and outcomes of a drug court program without trying to understand the mechanisms which lead to the outcomes (Marlow, 2014a, 2014b; Schaffer, 2011).
(Schaffer, 2011). While maintaining an emphasis on therapeutic jurisprudence, this research seeks to bridge the gaps between design, implementation, and outcome.

Moreover, therapeutic jurisprudence takes seriously the role that processes play in outcomes and acknowledges the fact that processes can both positively and negatively impact the target population. Processes that negatively impact the target population are labelled as problematic and are sought to be modified. This is the foundation on which this research was conducted to address the ‘black box’ and seek a better understanding of the causal mechanisms related to drug court outcomes.

2.9. Conclusion

This chapter examined the issue of punishment following conviction by a court of law, and in particular the manner in which the criminal justice system typically responds to criminal conduct committed by drug dependent offenders. A specific focus was sentencing principles and relatively contemporary theories and approaches of law. These were considered in terms of their possible influence on drug court operations and their retroactive application by various authors to explain the purpose and actions of drug courts. Consideration of the operation of drug courts from a theoretical perspective suggests that they are in keeping with the fundamental concept embedded in the theory of therapeutic jurisprudence, with the literature concluding that they signify the joining of the most appropriate characteristics of current criminological thought, combined with the political requirement to produce a response to drug dependency and its related crime that is consistent with modern principles of justice.

The discussions in this chapter have also demonstrated that the drug courts’ effectiveness in reducing criminal recidivism and drug use has been documented through numerous outcome evaluations. The literature suggests not only a general lack of qualitative measures to assess drug court outcomes but also a hyper focus on recidivism as the central marker of success. Furthermore, there is plausible support for the hypothesis that drug court impact is influenced over time by outside factors, such as laws, administrative policies, and the resources that are available to the court. Notwithstanding this, not all of the variability in drug court outcomes can be attributed to outside factors. This indicates a justification for further research into how program structure affects outcomes so that productive adjustments can be made. Accordingly, the overall aim of this research is to determine what other elements related to the drug court process are linked to the successful completion of a drug court program, focusing on the drug court stakeholders’
perspectives. The next chapter explains and justifies the research methodologies chosen to do this.
3. Methodology

3.1. Overview

This chapter explains and justifies the methodological approach (Pragmatism) and methods (mixed) adopted for the study. The specific data collection and analysis methods are described in detail – both in themselves, and in terms of the ‘trustworthiness’ approach developed by Guba and Lincoln (1994). The four elements of that approach, namely, credibility, transferability, dependability and conformability are each considered in turn to demonstrate the robustness of the research approaches taken. Finally, the ethical issues that the current study raises in terms of data collection and analysis are identified and addressed, highlighting the unique challenges facing researchers working within the drug court setting.

3.2. Research Design

This section discusses three key elements of the research design, namely: Pragmatism, research procedures; and the ways in which mixed methods were used to obtain the empirical information required to answer the research question, What, besides a lack of reoffending, indicates successful completion of a drug court program? It rationalises the use of pragmatism and explains the processes used for collection and analysis of both the primary (observational) data from within a drug court setting and the secondary data.

3.2.1. Pragmatism

The pragmatic approach to research involves using the method which appears best suited to the research problem and not getting caught up in philosophical debates about which is the best approach. Pragmatists link the choice of approach directly to the purpose of and the nature of the research questions posed (Berg & Lune, 2012; Creswell, 2003). Pragmatic researchers therefore grant themselves the freedom to use any of the methods, techniques and procedures typically associated with quantitative or qualitative research (Moses & Torbjorn, 2012). This research shares some commonalities with ethnography, but is not wholly consistent with ethnography. Broadly speaking, ethnographical research is defined as research that aims to understand another way of life from a native point of view; it is therefore an effective method for studying a social activity such as drug use (Berger & Luckmann, 2012; Ellingson, 2009).
The value of ethnography in the current research lies in its potential to include participants who are directly related to the research topic (Holloway, 1997; Jupp, Davies, & Francis, 2011; Khan, 2014). This research attempts to disrupt the idea of a singular truth of drug court success by including alternative truths. Foucault (1984) suggested that ‘subjugated knowledges’ tend to be excluded in historical contexts and documentary sources and, consequently, overlooked by researchers (1980; 1984). Subjugated knowledges may be those that have been excluded as lacking academic rigour and credibility and are, therefore, regarded as unqualified and low down on the hierarchy of knowledges, such as the knowledge of the young or the mentally ill person. He also suggested that only those directly concerned can speak in a practical way on their own behalf (1980). For Foucault, the re-emergence of these low-ranking knowledges facilitates criticism and allows alternative truths to be infused into the subject matter (1984). Following Foucault’s notion, the current research approach includes the subjugated knowledges of drug-dependent offenders, as they are regarded as experts on their own experiences in drug court procedures and related outcomes. The study relies substantially on the drug court participants and key stakeholders involved with the operation of the drug court (what they say and what they do in response to court processes) and not solely on the process itself (e.g., governance, policies, etc.).

The pragmatic approach also uses different techniques at the same time or one after the other (Darlington & Scott, 2002). This research starts with a documentary analysis of secondary data concerning the operation and outcomes of the five Australian drug court jurisdictions. It then undertakes an observational component which involves two techniques at the same time: the collection and thematic analysis of observational data (qualitative) gathered from drug court proceedings, and, the collection and quantitative analysis of statistics gathered from drug court proceedings. Depending on which measures have been used, the data collected is analysed in the appropriate manner (Bickman & Rog, 2000; Bryman, 1988; Glesne, 2011). In relation to this research, it was possible to transform quantitative data into qualitative.

The pragmatic paradigm fitted best with this research, giving the researcher permission to study areas that are of interest, embracing methods that are appropriate and using findings in a positive manner in harmony with the value system held by the researcher.
(Cavanagh, 1997; Creswell, 2003)²⁹. For these reasons it can be argued that the pragmatic paradigm is congruent with the mixed quantitative and qualitative approach taken within the predisposition of “practitioner-based” research.

### 3.2.2. Research Procedures

A number of procedural requirements needed to be satisfied, given the site of the proposed research (the Drug Court of NSW) and the researcher’s role in the NSW Police. A research protocol that defined how the research was to be conducted was provided to the Drug Court of New South Wales (see Appendix E), represented by the senior judge of the court. Similarly, the terms of reference and a risk management agreement (see Appendix F) were provided to the Commander of Police Prosecutions representing the New South Wales Police Force. Both organisations agreed to the undertaking of the research, subject to the researcher agreeing to the terms and conditions outlined within the documents. The research protocol and terms of reference defined the intentions and the scope of the research and also outlined the researcher’s responsibilities to maintain accountability. Specifically, they provided a clear explanation of the reporting requirements that were required and adhered to during the conduct of the study. These acted as an auditing tool before, during and at the completion of the research. The Charles Sturt University Human Research Ethics Committee (HREC) approved this project on 09 May 2014, protocol number 2014/061 (see Appendix G)³⁰.

### 3.2.3. Mixed–Methods

The current research used a mixed-methods design that incorporated quantitative and qualitative approaches. Generally speaking, quantitative research assesses the magnitude and frequency of constructs, while qualitative research explores the meaning and understanding of constructs (Minichiello & Kottler, 2010; Moses & Torbjorn, 2012). The main advantage of the mixed-methods design lies in its combining of the strengths of quantitative and qualitative research, allowing for a robust analysis (Creswell, Klassen, Plano, Clark, & Smith, 2011; O’Leary, 2014; Schreier, 2012). Central to the application of mixed methods research in pragmatism is the development of research questions that

---

²⁹ The researcher was a police prosecutor at the time of this study working within the New South Wales Drug Court jurisdiction (see section 3.2.2, Research Procedures). This allowed for the opportunity to identify potential issues in the workplace. As a means to overcoming these issues I worked backwards and forwards between formulating a research question and identifying data collection methods that would be approved by the Drug Court of NSW and would allow me to answer the research question. Those methods in totality did not correspond solely to any specific methodology, so my intention was to point to the types of methodology that had at least some characteristic in common with the methods used.

³⁰ The stated documents also assist in establishing ‘conformability’ as per the Guba and Lincoln (1994) method of trustworthiness, discussed in-depth later in this chapter.
can be answered by integrating the results of quantitative and qualitative research (Darlington & Scott, 2002; O’Leary, 2014). The emphasis here is on a value system in which the researcher chooses the appropriate methods to answer research questions, rather than simply choosing methods preferred for some other reason (Glesne, 2011). Consequently, the research is concerned primarily with the research objectives, but it is not concerned with using inquiry to pursue abstract knowledge (Creswell, 2003; Greene 2007). It is an attempt to enhance knowledge through meeting specified research goals (Plano, Clark, & Smith, 2011). In relation to this research, the application of the pragmatism approach meant that that no initial hypothesis were made about drug courts and their social world prior to undertaking the research. The only assertions made were derived from the research itself. Hence, the commencement of knowledge generation was practical and not only theoretical, and the generation of knowledge was derived from prior knowledge.

Greene (2007) stated that two dimensions characterise the mixed-methods design: (1) the quantitative and qualitative methods are conducted independently (rather than integrated at all levels of study design); and (2) the methods are treated equally (rather than one taking precedence over the other). This study conducted quantitative and qualitative methods independently to (a) facilitate the illustrations of quantitative results, (b) assist in interpretation of unexpected findings of the quantitative research, and (c) provide an in-depth examination of the elements of the drug court model (see Figure 1.1) that impede or facilitate progression in a drug court program.

This study collected and analysed both secondary data, in the form of documentary sources, and primary data, in the form of first-hand courtroom naturalistic observations of three drug courts in New South Wales. Naturalistic observation is defined as research that occurs in a natural environment (Houston, 2001; Neuman, 2011; O'Leary, 2014). Secondary data is data that has been collected by someone other than the researcher and with some purpose other than the current research problem in mind (Jupp, Davies & Francis, 2000; O’Leary, 2014). Primary data is original data collected by a researcher for a specific purpose (Crotty, 1998; Glesne, 2011), and can be either quantitative or qualitative in nature. This project collected both forms of primary data. The following sections describe in detail the data collection methods used and the respective techniques used to analyse them.
3.3. Secondary Data – Collection and Analysis Methods

The purpose of this element of the research is to enable a determination of whether the five Australian drug courts are designed to meet the assessment criteria identified in the literature review, thereby achieving objective one. A key advantage of using secondary data is that an opportunity exists to capitalise on data already collected, which is both cost-effective and less resource intensive (Cavanagh, 1997; Glesne, 2011; Holloway, 1997). In some circumstances, it can allow the researcher to work with samples that might otherwise have been inaccessible or samples that might be much larger than the researcher would have been able to generate (Berg & Lune, 2012; Cavanagh, 1997; Donaldson, Christie, Mark, 2009). However, this is subject to good original collection processes, something over which the researcher may have no or limited control (Ellingson, 2009; O’Leary, 2014).

The use of reliable document sources is an advantage of secondary data that applies to this research. Some document sources are generally known to be more reliable and valid than others (Khan, 2014; Maxwell, 2002). All documents for this research were collected from established Australian government organisations.

3.3.1. Collection of Secondary Documentary Data

Given the wealth of material concerning drug courts available in Australia, careful consideration was given to the information required to meet the aims of the study. Therefore, relevant data sources were selected based on their ability to provide information on one or more of the following:

1. the political, legal or social context of the emergence or implementation of drug courts in Australia;

2. the intended and actual processes, practices or aims of the Australian drug courts; and/or,

3. the intended or actual outcomes of Australian drug courts.

A number of publications were selected on the basis of these three criteria and then sorted into two categories according to publication type:
1. Category 1: legislation that guided the operational framework of the drug court jurisdiction, along with supporting explanatory literature and other official drug court publications;

2. Category 2: evaluations concerning various characteristics of Australian drug court operations.

3.3.1.1. Category 1: Legislation, Supporting Literature and Other Official Publications

The documents in this category comprised 28 official drug court publications produced to guide the Australian drug courts’ operations, including their administrative frameworks. These publications (produced by either government authorities or a specific drug court) included operating manuals, policies and supporting operational documents, the majority of which were publicly accessible via the Internet. However, some were publicly available but accessible only by contacting the court registry of the respective jurisdictions. Some jurisdictions, such as Victoria, were abundant in their publication regime, providing a large amount of explanatory information via various means aimed at the public in general and prospective drug court participants in particular (e.g., MCOV, 2009; 2011).

Table 3.1 provides a summary of the publications included in this category and identifies the originating jurisdiction, document title, date author(s), index number.

<table>
<thead>
<tr>
<th>Australian jurisdiction</th>
<th>Document title</th>
<th>Date (Author/s)</th>
<th>Document Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>Drug Court of NSW 2005 Annual Review</td>
<td>2005 (CS)</td>
<td>NSW(AR)1</td>
</tr>
<tr>
<td></td>
<td>Drug Court of NSW 2013 Annual Review</td>
<td>2013 (CS)</td>
<td>NSW(AR)2</td>
</tr>
<tr>
<td></td>
<td>Drug Court of NSW 2017 Annual Review</td>
<td>2017 (CS)</td>
<td>NSW(AR)3</td>
</tr>
<tr>
<td></td>
<td>Drug Court Act 1998 (NSW)</td>
<td>1998-150</td>
<td>NSW(L)1</td>
</tr>
<tr>
<td></td>
<td>Drug Court Regulations 1998 (NSW)</td>
<td>2015 -515</td>
<td>NSW(L)2</td>
</tr>
<tr>
<td></td>
<td>Drug Court Policies (1-13)</td>
<td>2017 (CS)</td>
<td>NSW(PL)1</td>
</tr>
<tr>
<td></td>
<td>General Program Undertaking</td>
<td>2017 (CS)</td>
<td>NSW(LIT)1</td>
</tr>
</tbody>
</table>
Queensland

<table>
<thead>
<tr>
<th>Act/Regulation</th>
<th>Year</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Rehabilitation (Court Diversion) Act 2000 (QLD)</td>
<td>2000-03</td>
<td>QLD(L)1</td>
</tr>
<tr>
<td>Drug Court Regulation 2006 (QLD)</td>
<td>2006-165</td>
<td>QLD(L)2</td>
</tr>
<tr>
<td>Participating in the Drug Court</td>
<td>2010</td>
<td>QLD(LIT)1</td>
</tr>
<tr>
<td>Drug Court Procedures Manual</td>
<td>2009 (QDOJ)</td>
<td>QLD(PM)1</td>
</tr>
</tbody>
</table>

South Australia

<table>
<thead>
<tr>
<th>Act/Regulation</th>
<th>Year</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bail Act 1995 (SA)</td>
<td>1995b</td>
<td>SA(L)1</td>
</tr>
<tr>
<td>Specialist Sentencing Courts – Drug Court</td>
<td>2009 (SADOJ)</td>
<td>SA(PM)1</td>
</tr>
</tbody>
</table>

Victoria

<table>
<thead>
<tr>
<th>Act/Regulation</th>
<th>Year</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentencing Act 1991 (VIC)</td>
<td>1991-49</td>
<td>VIC(L)1</td>
</tr>
<tr>
<td>Guide to Specialist Courts and Court Support Services</td>
<td>2011 (CS)</td>
<td>VIC(LIT)1</td>
</tr>
<tr>
<td>Drug Court Manual of Operations</td>
<td>2014 (VICDOJ)</td>
<td>VIC(PM)1</td>
</tr>
</tbody>
</table>

Western Australia

<table>
<thead>
<tr>
<th>Act/Regulation</th>
<th>Year</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perth Drug Court Manual</td>
<td>2017 (CS)</td>
<td>WA(PM)1</td>
</tr>
<tr>
<td>Evaluation of the Perth Drug Court Law Reform Commission of Western Australia – Court Intervention Programs: Consultation Paper</td>
<td>2009 (LRCWA)</td>
<td>WA(LIT)1</td>
</tr>
</tbody>
</table>

Note. L = Legislation; AR = Annual review; PM = Procedures manual; PL = Policy; LIT = Literature; CS = Court supplied.

a An Act is a statute or law passed by both Houses of Parliament that has received royal assent. On Royal Assent, Acts are given a year and number. Both the year and number have been included in the table.

b This legislation was not published under the Legislation Revision and Publication Act 2002 (SA); therefore, a year and number were not identified.

3.3.1.2. Category 2: Evaluations

The documents in this category comprised 18 drug court evaluations and analyses that sought to measure the success of drug court procedures and processes in Australia. While a substantial body of work exists concerning their operation and assumed effectiveness (e.g., see Appendix C), to date much of the drug court evaluative research has been conducted in a piecemeal way and much of what is available is descriptive rather than empirical and subjective rather than objective. For this reason, only those that purported to test the effectiveness of drug courts in relation to their stated objectives were included.

An evaluation data source was selected as relevant on the basis that it complied with at least one of the following criteria:
1. It included a quantitative analysis of data collected;

2. It examined at least one of the outcome variables expressed in the five assessment criteria identified in the literature review;

3. It fell within the limitations and scope of this dissertation; and,

4. It had been published.

Each of the five jurisdictions of New South Wales, Queensland, South, Victoria and Western Australia have had official, government-sponsored evaluations conducted; the Australian Institute of Criminology has also been active in publishing evaluations relating to drug courts. Those studies that did not evaluate drug court operations against specific benchmarks were not included. Table 3.2 provides a summary of the evaluations concerning various characteristics of drug courts. It includes the originating jurisdiction, document title, date, author(s), and relevant subcategory (see Note following table).

### Table 3.2 Summary of Document Sources – Category 2

<table>
<thead>
<tr>
<th>Australian jurisdiction</th>
<th>Document title</th>
<th>Date (Author/s)</th>
<th>Subcategory</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>New South Wales Drug Court Evaluation: Cost-Effectiveness</td>
<td>2002 (NSWBOCSAR)</td>
<td>SA</td>
</tr>
<tr>
<td></td>
<td>New South Wales Drug Court Evaluation: Health, Well-being and Participant Satisfaction</td>
<td>2002 (NSWBOCSAR)</td>
<td>PS, SA</td>
</tr>
<tr>
<td></td>
<td>New South Wales Drug Court: A Re-evaluation of Its Effectiveness</td>
<td>2008 (NSWBOCSAR)</td>
<td>PS, SA, RS</td>
</tr>
<tr>
<td></td>
<td>New South Wales Drug Court: Intensive Judicial Supervision and Drug Court Outcomes: Interim Findings From a Randomised Controlled Trial</td>
<td>2011 (NSWBOCSAR)</td>
<td>PS</td>
</tr>
<tr>
<td>Queensland</td>
<td>Final Report on the South East Queensland Drug Court</td>
<td>2003 (AIC)</td>
<td>PS, SA, RS</td>
</tr>
<tr>
<td></td>
<td>Final Report on the North Queensland Drug Court</td>
<td>2005 (AIC)</td>
<td>PS, SA, RS</td>
</tr>
<tr>
<td></td>
<td>The Queensland Drug Court: A Recidivism Study of the First 100 Graduates</td>
<td>2008 (AIC)</td>
<td>PS</td>
</tr>
<tr>
<td>South Australia</td>
<td>Offending profiles of the South Australian Drug Court Pilot Program ‘completers’</td>
<td>2005 (SAOCSR)</td>
<td>PS</td>
</tr>
</tbody>
</table>
3.3.2. Analysis of Secondary Documentary Data

A general inductive approach to data analysis (O'Leary, 2014; Thomas, 2006) was used for the analysis undertaken of the secondary data. Such an approach is often used when a paucity of empirical findings exists within an area (Payne, 2005). Inductive reasoning was used so that themes or concepts relating to drug court assessment criteria could be drawn from the data (Houston, 2001; Neuman, 2011; Thomas, 2006). This contrasts with a deductive approach in which hypotheses are drawn from existing theories and then used to test the consistency of the data (Khan, 2014; Thomas, 2006). A deductive approach would have been appropriate if the secondary data were to be analysed only for the presence or absence of the assessment criteria identified in Chapter Two.

The initial analysis began with the line-by-line assessment of all documents listed in Table 3.1. Data were sorted according to whether they contained a keyword. The comprehensive list of keywords included the words outlined in Figure 1.1 and the following additional terms: ‘reward’, ‘sanction’, ‘screening’, ‘team meeting’, ‘treatment plan’ and ‘treatment team’. Text was then assigned to an element identified in the process illustration (See Figure 1.1) to facilitate a more detailed understanding of a drug court model applicable to Australia that describes how drug court programs operate generally. In this regard each identified element was given additional nuance and detail. This analysis was the first step in the effort to determine if Australian drug courts are designed to meet their identified assessment criteria.

Data were then extracted from all publications in Table 3.2, with a view to identifying the specified outcomes and drug court characteristics identified in each of the evaluations.
Data in the form of statistics and text were extracted from each document and recorded in an Excel spreadsheet for the statistical data analysis, which led to an extensive database of drug court outcomes. A second analysis then occurred with a more attuned perspective in which textual data were extracted from each evaluation and sorted according to their substantive association with the five main outcome criteria used to evaluate success within the drug court programs identified in Chapter Two and not solely based on whether they contained statistics. Cross-referencing statements were then extracted and added to the spreadsheet using inductive reasoning to identify the essence of each stated outcome or characteristic. The spreadsheet was later analysed using the identified assessment criteria (see Chapter Four). This involved coding statistical and textual themes into the identified assessment criteria, to enable all data to be considered together. Following the coding and identification of key themes, the latter were then grouped into the seven elements depicted in the framework of a Generalised Drug Court Program Model (see Figure 1.1). This allowed for the triangulation of results from the documentary analysis of secondary data, that is, the triangulation of the two publication sources used.

3.4. Primary Data – Observational Sources

The primary data were collected during the researcher’s first-hand courtroom observations at three drug courts in New South Wales over 30 days within a three-month period in 2014\textsuperscript{31}. One advantage of using an observation method for primary data collection is that it captures the whole event as it occurs in its natural environment. The aim of the observation period was to gain an accurate picture of the drug court in its real-life context. The researcher sat on a court seat located in the back of the courtroom. The researcher remained discreet and did not engage in conversations with any research participants to minimise the observer’s influence. This technique was used to assist the researcher in understanding how the techniques of the court influenced the behaviour and outcomes of drug court participants. Observations were also used to study the relationship between drug court stakeholders and participants. Drug court operates differently than traditional court (see Table 2.1), therefore, it was important to study all aspects of drug court, including court interactions.

\textsuperscript{31} The reasons for selecting the Drug Court of New South Wales as the preferred jurisdiction to observe are outlined in the following section. Based on the understanding that a Generalised Drug Court Model has been identified, any conclusions generated by the outcomes from the observation of a single Australian jurisdiction, namely New South Wales, can be generalised to Australian Drug Courts overall.
The challenge involved with naturalistic observation is that everyone, including researchers, look at things differently. Two people can observe the same subject and see the same thing, yet they may draw two very different conclusions from the behaviours observed. The observer used a semi-structured observation schedule at the three locations for this reason. The schedule (see Appendix H) was developed to systematically document such things as: the physical layout of the court; interactions between the stakeholders and drug court participants in the drug court; body language and behaviours (for instance, the judicial officer usually has direct, informal conversations with the drug court participant which is a very different arrangement to conventional court processes); decision-making processes; the role of various actors in the drug court; and language used in ‘report back sessions’32. These variables were selected because they were identified in Chapter Two (see Table 2.1) as key elements of drug courts. This not only ensured consistency across the researchers’ observations of the three courts, but it also enabled the recording of observations using objective criteria that were based on the identified Generalised Drug Court Program Model (see Figure 1.1).

3.4.1. Collection of Observational Data

The observation schedule (see Appendix H) acted as a broad guideline of activities, processes, and communications to be observed. Program structure and management, operations, treatment, drug testing, courtroom practices and outcomes were explored in greater detail through the observation of drug court ‘report backs’ sessions, sentence hearings, termination applications and graduations33.

A non-random selection strategy was adopted when determining the drug court of New South Wales as the site for the courtroom observations. The researcher selected this court based on three factors:

- it was the first established and longest operating drug court in Australia;
- it has been the subject of more evaluation reviews by external independent bodies than the other jurisdictions; and,

---

32 A ‘report back’ is a meeting between the participant and the judge during which the participant’s progress is reviewed. It is considered the unique aspect of the drug court experience (Dive, 2012; Victorian Alcohol and Drug Association, 2013). Chapter Five presents the remaining court processes in greater detail later.

33 A ‘report back’ is a meeting between the participant and the judge during which the participant’s progress is reviewed. It is considered the unique aspect of the drug court experience (Dive, 2012; Victorian Alcohol and Drug Association, 2013). Chapter Five presents the remaining court processes in greater detail later.
• the literature suggested that other Australian drug court jurisdictions have relied upon evaluations conducted in New South Wales to support their claims of success and/or to model their operation during their development phase (Goldkamp 2010; VICDOJ, 2006b, 2015).

Only one drug court exists in New South Wales. It operates, however, at three locations: Parramatta Court House and the Sydney Downing Centre Court Complex (both in Sydney), and Toronto Court House (in the Hunter Valley, a region north of Sydney), all in New South Wales, Australia. Therefore, the sample comprised these three operational drug courts (titled respectively Parramatta Drug Court, Hunter Drug Court and Sydney Drug Court); Table 3.3 summarises their characteristics.

Table 3.3 Observational Period – Drug Court Characteristics

<table>
<thead>
<tr>
<th>Drug Court</th>
<th>Year Established</th>
<th>Catchment Area</th>
<th>Sitting Days During Collection Period</th>
<th>Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parramatta</td>
<td>1999</td>
<td>See Appendix I, Figure 1</td>
<td>Monday to Friday</td>
<td>150</td>
</tr>
<tr>
<td>Hunter</td>
<td>2011</td>
<td>See Appendix I, Figure 2</td>
<td>Monday and each alternate Tuesday</td>
<td>80</td>
</tr>
<tr>
<td>Sydney</td>
<td>2013</td>
<td>See Appendix I, Figure 3</td>
<td>Thursdays only</td>
<td>50</td>
</tr>
</tbody>
</table>

Note. Capacity = Number of participants permitted in the drug court Program at any one time.

The New South Wales Drug Court’s expansion of services to the Hunter area was encouraged to proceed by the positive findings of the New South Wales Bureau of Crime Statistics and Research’s studies of the drug court operating at Parramatta (NSWBOCSAR, 2008). The Sydney drug court marked the commencement of the ‘crossover model’ across all three NSW drug courts. Under this model, offenders were eligible for referral to a drug court so long as they lived in the catchment area of one of the drug courts (i.e. eligibility was not determined by where the offence/s occurred). This model was initiated to enhance access to a drug court program for those offenders who would have otherwise been excluded.

The participants comprised two groups: drug court team members and drug court program participants. The two cohorts, together with the respective recruitment and ethical approval processes used, are described next. Please note that, in to minimise any possibility of participant identification, the following discussion does not distinguish
team members or drug court participants by their respective drug court. Each group is referred to as an aggregated whole.

3.4.1.1. Drug Court Team Members

The drug court team comprised legal and health professionals representing the three drug courts of New South Wales. These participants were recruited for the research directly after the researcher received approval from the Senior Drug Court Judge and from the Charles Sturt University Human Research Ethics Committee (CSU HREC) to undertake the research. Each manager of the various key stakeholders provided a list of current staff within their organisation. Fifty-three staff members were approached in their workplace and provided with full disclosure of the nature of the study and the role the observations would play in the research. They were handed a participant information statement (see Appendix J) that detailed the purpose of the research and how the information would be used. They were also handed a consent form to complete and return (see Appendix K). Table 3.4 shows the team member roles of the 53 drug court team members (34 women and 19 men) who were approached and who participated (100%) in the observations (aggregated over the three drug courts, to minimise any possibility of participant identification).

<table>
<thead>
<tr>
<th>Role</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW Justice Health (or equivalent health service provider)</td>
<td>7</td>
<td>13.2</td>
</tr>
<tr>
<td>Legal Aid Commission of NSW</td>
<td>12</td>
<td>22.6</td>
</tr>
<tr>
<td>Office of the Director of Public Prosecutions</td>
<td>15</td>
<td>28.4</td>
</tr>
<tr>
<td>Community Corrections</td>
<td>7</td>
<td>13.2</td>
</tr>
<tr>
<td>New South Wales Police Force</td>
<td>7</td>
<td>13.2</td>
</tr>
<tr>
<td>Drug Court Judge</td>
<td>5</td>
<td>9.4</td>
</tr>
<tr>
<td>Totals</td>
<td>53</td>
<td>100</td>
</tr>
</tbody>
</table>

3.4.1.2. Drug Court Participants

Thirty days were spent at the drug court programs in New South Wales, comprising of 10 days at each of the three locations. The New South Wales Drug Court Program has three
phases, and the researcher observed a cross-section of participants across all three during ‘report backs’. A total of 1,147 report back matters were observed. This figure refers to the total number of participants on the court lists required to discuss their progress on the drug court program. In addition, this cohort also included offenders who were either referred to the drug court program, are currently on a drug court program, those being sentenced at the drug court, and those graduating from the drug court program (n=1,222). The researcher also had the opportunity to observe an additional 32 sentence matters, 33 referral matters and 10 graduations.

Some participants on those lists were discussed in their absence; not all are required to appear in person every time their matter is reviewed by the drug court. Furthermore, some participants were seen on more than one occasion during the observation period. Table 3.5 shows the characteristics of the drug court participants observed during the 1,147 report back court matters (aggregated over the three drug courts, to minimise any possibility of participant identification).

Table 3.5 Gender, Phase, and Treatment location of Drug Court Program Participants according to Observed Court Matters (n = 1,147)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>852</td>
<td>74.3</td>
</tr>
<tr>
<td>Females</td>
<td>295</td>
<td>25.7</td>
</tr>
<tr>
<td>Totals</td>
<td>1,147</td>
<td>100</td>
</tr>
<tr>
<td>Drug Court phase</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phase 1</td>
<td>567</td>
<td>49.4</td>
</tr>
<tr>
<td>Phase 2</td>
<td>362</td>
<td>31.6</td>
</tr>
<tr>
<td>Phase 3</td>
<td>218</td>
<td>19.0</td>
</tr>
<tr>
<td>Totals</td>
<td>1,147</td>
<td>100</td>
</tr>
<tr>
<td>Current treatment location type</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community</td>
<td>834</td>
<td>72.8</td>
</tr>
<tr>
<td>Residential</td>
<td>313</td>
<td>27.2</td>
</tr>
</tbody>
</table>

34 A “report back” is a short meeting between the participant and the judge during which the participant’s progress is reviewed.
Appendix L provides a summary of the collection of the observation-based data by daily activity. It includes the three main phases: program events, termination and completion.

Active recruitment did not occur for the drug court program participants. A drug court, in its application of therapeutic jurisprudence, encourages (if not mandates) honest and open communication between the drug court program participant, the judiciary and the drug court team members. An operational illustration of this is the legislative immunity against prosecution given to drug court participants for admitting to drug use (s.17 Drug Court Act 1998 (NSW)). Open and honest interaction is a key component of the drug court. The current study observed drug court participants’ natural behaviour during their court report-backs. A risk existed that the participants, if they knew they were being observed, might have behaved differently and been less inclined to engage in the communication process (e.g., not admit to their drug use). This would not have been considered favourably and may have attracted the imposition of sanctions by the court. The researcher thus adopted a covert observation approach of these participants, with CSU HREC and Senior Drug Court Judge and Court approval.

3.4.2. Analysis of Observation Data

Data analysis of the observation component of this research was consistent with an ethnographic approach (Crotty, 1998; Lincoln & Guba, 1985). Thematic analysis was used to identify key themes in the data set. Thematic analysis is a form of pattern recognition within the data, in which emerging themes become categories for analysis by using coding (Ellingson, 2009; O’Leary, 2014). This allows the themes to emerge from observation data rather than from a pre-existing literature review or theoretical framework (Donaldson, Christie, Mark, 2009). The themes that occur most frequently generate the coding scheme used to analyse the data. This allows for flexibility and richness in ethnographic studies such as the current research and enables the researcher to generate explanations from the findings (Glesne, 2011; Holloway, 1997; Khan, 2014).

The researcher adopted a two-round analysis approach for the observation component of this study: one for the qualitative data, and one for the quantitative data. The first-round analysis involved extracting data in the form of text from each daily observation schedule (n= 30) in an effort to identify case illustrations and individual case studies that focused on the drug court participants’ experiences. Cross-referencing statements were extracted
and added to an Excel spreadsheet, similar to the document analysis that used inductive reasoning to identify the essence of each stated process or outcome. A similar approach was adopted for the second-round analysis. Data in the form of statistics were extracted from each daily observation schedule (n=30). The spreadsheet was analysed using the identified assessment criteria. This enabled counting of the data collected on referrals to and participation in the drug court program during the observation period. This method also allowed for all the dialogue on each identified assessment criterion and the statistical data collected to be considered together.

Emergent themes were grouped into the seven elements depicted in the framework of a Generalised Drug Court Program Model (see Figure 1.1), following the identification of key themes emerging from both rounds of analysis. This allowed for the triangulation of results from the analysis of secondary data and observational data.

### 3.5. Trustworthiness of the Data Collection and Analysis

Pragmatists believe that from an epistemological perspective at some stages of the research, an objective approach will be needed (i.e. one involving no interaction with the research subjects), while at other stages it will be necessary to take a more subjective approach by interacting with research subjects to construct realities (Bickman, 2009; Cavanagh, 1997; Darlington & Scott, 2002). This allows researchers to be flexible enough to adopt the most practical approach to address research questions. By doing this, there will be singular and multiple realities derived from the quantitative and qualitative research (Becker, 1967; Creswell, 2003). Given this, there cannot be a complete or true way of understanding or describing what takes place in any social setting since there are different perspectives. For these reasons, this research applies the four criteria of the trustworthiness approach developed by Guba and Lincoln (1994): credibility, transferability, dependability and conformability.

#### 3.5.1. Credibility

According to Guba & Lincoln (1994), the rigour of any research is partly judged according to its credibility. Credibility includes activities that increase the probability that reliable findings will be produced. These authors suggested that credibility can be

---

35 These are determined in Chapter Four.
established through prolonged engagement with the subject matter or allowing participants to validate that the reported findings represent their experience.

When considering multiple accounts of a social reality, such as drug court participants’ health and personal needs, confidence in the accuracy of the findings is paramount. Credibility, as reported by Bryman (2008), involves establishing the results of qualitative research as believable from the perspective of the research participants. Triangulation was a central technique used to ensure the credibility of the data in the current study.

Triangulation is a strategy to improve the consistency of the data interpretation (Ellingson, 2009; Strauss & Corbin, 1990). Neuman (2011) referred to data triangulation as the process of collecting data over different times or by using multiple methods. Decrop (1999) claimed that using multiple methods paves the way for more reliable information. Denzin (1970) identified multiple triangulations that can be used in the same investigation:

1. data triangulation – the use of a variety of data sources in a study in terms of person, time and space;

2. methodological triangulation – the use of multiple methods to collect data;

3. investigator triangulation – whereby multiple researchers are employed to investigate the problem; and,

4. theoretical triangulation – approaching the research with varied perspectives and hypotheses.

For the purposes of this study, both data triangulation and methodological triangulation were employed, as well as a type of investigator triangulation (namely, peer triangulation; see below).

Data triangulation concerns itself with the use of various data sources; this study used the collection of secondary data in the form of document sources and the collection of primary data in the form of courtroom observation to answer the research question. Methodological triangulation, as it relates to this study, concerns itself with the use of both qualitative and quantitative methods (Decrop, 1989; O'Leary, 2014); those used in this study have been described previously.

Triangulation offered the following benefits for this study:
• it provided additional sources of valuable insight that could not be obtained from the literature review alone;

• it minimised the inadequacies of single-source research by engaging two data sources which complemented and, as it turned out, verified each other; and,

• it also allowed for richer and more comprehensive information than would have been available from any one source alone.

This research also utilised a peer examiner as a type of investigator triangulation (Berg & Lune, 2012; Bryman, 1988). The purpose of using multiple investigators is to decrease the potential of bias in gathering, reporting, coding, or analysing the data (Kottler, 2010) and to contribute to credibility (Boyd, 2000). Having more than one investigator on the team has the potential for keeping the team honest, therefore increasing the findings’ credibility (Lincoln & Guba, 1985). Most instances of investigator triangulation lie in studies using qualitative methods, usually where coding of data is required, and are broadly self-similar. Investigator triangulation here using an examiner is confirmatory in nature and a means of demonstrating the reliability of the coding instrument rather than challenging conclusions. Peer examination involves the use of an objective other (Ellingson, 2009).

During peer examination, researchers discuss their research process and findings with neutral colleagues, such as an independent person who has experience in the field of study under review (Bitsch, 2005; Glesne, 2011). The aim of the discussion with colleagues is, in part, to obtain a reliability check of the researcher's interpretation of the data. According to Krefting (1991), a peer examiner is used to appraise the researcher’s coding and enhances the credibility of the interpretation. Therefore, this approach was relevant to establishing the trustworthiness of the current study.

An independent senior drug court colleague was identified as an appropriate person and utilised as a peer examiner in the current study. This person had extensive professional experience as an advocate in the drug court jurisdiction and was considered to hold impartial views. They peer-reviewed the researcher’s observational notes and draft chapters at regular intervals. She provided feedback during this process feedback to enhance credibility. Through the consultation feedback, the peer highlighted, where applicable, areas that required further consideration. The peer debriefing also helped the
researcher become more aware of her own views regarding the data. The peer reviewer was not a research participant.

3.5.2. Transferability

Transferability refers to the degree to which the results of research can be transferred to other contexts with other respondents – it is the interpretive counterpart of generalisability (Guba & Lincoln, 1994). Research findings are transferable only if they fit into new contexts outside the actual study context. Transferability refers to the extent to which one can extend the account of a situation or population to persons, times or settings other than those directly studied (Maxwell, 2002).

In research, transferability is sometimes simply ignored in favour of enriching the local understanding of a situation (Guba & Lincoln, 1989). However, in the present study, the researcher has provided a rich, thick description of the study with a view to the conclusions applying more widely than just the NSW Drug Court. Thick description refers to a detailed description of a phenomenon that includes the researcher’s interpretation in addition to the observed context and processes. It may also include providing a thorough accounting of the methods and procedures followed during and after data collection (Morse, 1999; Wallendorf & Belk, 1989). Using the generalised drug court program model (see Figure 1.1) as a framework for making sense of what was observed allows for the results from the research to be transferable to all drug courts in Australia.

3.5.3. Dependability

Lincoln and Guba (1985) and Merriam (1998) have suggested that the dependability of the results can be ensured by using three techniques:

1. triangulation (data, methodological, investigator and theoretical);

2. audit trial; and,

3. the researcher’s position.

The researcher used all three techniques for the purposes of this study. The use of three triangulation techniques for ensuring the dependability of the data and data interpretation in the current study have been previously discussed, and the next section of this chapter discusses the use of an audit trail. In relation to the third technique of dependability, the researcher needs to explain explicitly the different processes and phases of the inquiry to
increase the dependability of the research (Khan, 2014; Merriam, 2009). Accordingly, the researcher should elaborate on every aspect of the study. The researcher in this current study has described, in detail, the rationale of the study, design of the study and its participants.

3.5.4. Conformability

Conformability is the final feature of Guba and Lincoln’s (1994) trustworthiness approach; it refers to the extent to which others can confirm the findings to ensure that the results yield the understandings and experiences from involved participants, as opposed to the researcher’s own influences and preferences (Denzin & Lincoln, 1998; Stake, 2010).

The researcher should use an audit trail for the study to ensure that there is confirmation of the study, since an audit trial is a transparent description of the research steps taken from the start of a research project to ensure the development and reporting of the research findings (Bowen, 2009; Lincoln & Guba, 1985). Bryman (2008) reported that whilst complete objectivity is impractical in social research, it is essential that researchers “act in good faith; in other words, it should be apparent that they have not overtly allowed personal values or theoretical inclinations manifestly to sway the conduct of the research and findings deriving from it” (p. 379).

An audit trail involves an examination of the research procedure and results to validate the data, whereby a researcher accounts for all the research decisions and activities to show how the data were collected, recorded and analysed (Bowen, 2009). A researcher needs to maintain a log of all research activities, develop memos, maintain research journals, and document all data collection and analysis procedures throughout the study to develop a detailed audit trail (Creswell & Millar, 2000). Attempts were made in this study to maintain sufficient conformability through logging the procedures and ensuring consistency in the analysis procedures.

The present researcher maintained a record and reported all phases of the research process. Documents included the observational schedule, informed consent forms from the key stakeholders involved in the observational phase of the data collection, a spreadsheet of documents utilised, and all email correspondence in relation to the undertaking of the research. The research protocol, Terms of Reference and risk
management agreement additionally defined the intentions and the scope of the research and outlined the obligations of the researcher to maintain accountability.

3.6. Ethical Issues

Researchers face numerous challenges when working with a vulnerable population of justice-involved drug users (Evans & King, 2011; Freeman, 2000; Moses & Torbjorn, 2012). There were a number of key ethical issues raised and addressed during the undertaking of this study. These issues primarily related to the need for consent from research participants, and the use of naturalistic observations. There are two types of naturalistic observation methods, overt and covert. This research used both methods: overt for the drug court team cohort and covert for the drug court participants. Overt observations refer to the researcher being open about their intentions in the field and ensuring all members of the group are aware of what is happening (Crotty, 1998; Strauss & Corbin, 1990). Covert observations involve the researcher not informing members of the group of the reason for their presence, keeping their true intentions secret (Crotty, 1998; Seddon, 2006). Both forms of observation proved valuable because they were used together to understand details within a bigger picture. In this regard the researcher combined simple observational data (e.g. how many drug court participants graduated from the program during the observational period) with behavioural observational data (e.g. how actively drug court participants participated in the program) to assess how effective elements of the program were in achieving drug court success.

3.6.1. Consent from Drug Court Team Members

Overt observations of drug court team members was conducted to illicit information concerning the extent to which the dialogue exchanged between drug court team members and participants concerning process-oriented issues (court dates, phase requirements, procedural issues) and individual drug court participants needs (housing, child care, transportation, health care, mental health, relationships issues, etc.) impact on drug court outcomes. These observations provide information on the processes adopted at the drug court and whether or not the relationship between drug court stakeholders and participant impact drug court outcomes.

It was not feasible or practical to obtain informed consent from all the drug court team members present in the Court during observation periods because there was no way to determine which team members would be appearing in the courtroom on a specific date
(i.e., it was not possible to give them the Information Sheet with sufficient time to make an informed decision). Therefore, only information about participants who did provide consent was recorded and included in the data collection and subsequent analysis. Public behaviour exhibited in the courtroom is not generally considered confidential. However, recording naturalistic behaviour created the potential to make participants identifiable; therefore, the researcher only recorded information on the observation schedule in relation to the 53 team members who had provided consent.

3.6.2. Waiver of Informed Consent – Drug Court Participant Cohort

The literature determined that one way in which the drug court practices therapeutic jurisprudence is by shaping ‘report back’ sessions to convey important messages to the audience of drug court participants. These sessions provided an open forum for the participant to disclose the progress of their performance on the drug court program. Accordingly, and in addition to the reasons outlined above for observations of drug court team members, covert observation of drug court participants was used to assist the researcher to negate or confirm the identified assessment criteria that were recommended and determined through the literature analysis. Covert observation has been defined as ‘research processes in which researchers do not disclose their presence and identity as researcher and participants have no knowledge of their research identity’ (Holloway, 1997, p. 39). It has long been argued that covert research is appropriate when it is necessary to achieve a better understanding of certain social phenomena (Biber, 2005; Kennet & Fine, 2009). The study of the social life of drug users and drug suppliers is an example of this kind of research. As identified by Williams (1996), it is challenging, if not impossible, to obtain informed consent when investigating the social life of offenders and of drug users because they do not usually want to be investigated (p. 28). It has also been contended that the very act of seeking informed consent from some research participants can lead to a modification in their behaviour whilst under investigation (Bowen, 2009; Garland, 2009; Houston, 2001). This highlights the importance of covert observation in relation to this cohort.

In the current research, covert observation was undertaken to reduce the likelihood of drug court program participants giving self-protecting responses on sensitive topics, especially as those responses may bring them into conflict with the honesty required by the drug court. The researcher did not disclose to the drug court program participants who appeared during the observations periods that the study was being undertaken. The
researcher requested, and was granted, a waiver of consent by the Human Research Ethics Committee primarily on the basis that it would impact on the operation of the Court and that it was not in the best interests of the drug court program participants. The researcher relied on the following particulars to support the application for the waiver of consent:

- drug court program participants are protected legally from any self-incriminating admissions under the Drug Court Act 1998 (NSW) (s.31);
- the methodology was purely observational in a public setting with no interactions between drug court participants and the researcher;
- a research protocol from the Senior Judge of the Court confirmed and stipulated the Court’s preferred practice regarding observational research in respect to drug court participants, namely that observational researchers are not encouraged to approach drug court participants to acquire their consent for the purposes of research;
- the waiving of consent was consistent with the conditions outlined in the Non-Publication Suppression Order made and dated under the Court Suppression and Non-Publication Orders Act 2010 on 20 November 2011 by the Senior Drug Court Judge, Drug Court of New South Wales, Roger Dive;
- the waiving of consent in the courtroom observational phase was also justified as meeting four of the criteria for circumstances in which consent can be waived in accordance with the National Statement on Ethical Conduct in Human Research (2007), namely:
  - The benefits from the research justified any risks of harm associated with not seeking consent (s. 2.3.10 b);
  - it was impracticable to obtain consent (s. 2.3.10 c);
  - there was sufficient protection of their privacy (s. 2.3.10 e); and,
  - there was an adequate plan to protect the confidentiality of data (s. 2.3.10 f).
3.7. Conclusion

This chapter identified that a mixed-methods design and an ethnographic approach would be the most appropriate methodology to adopt for this research. The combination of both would expose the causal mechanisms related to a variety of systemic, community, political and individualised assessment outcomes to be considered when measuring drug court success. Furthermore, the proposed research design would not interfere with offenders’ rights; and it incorporated endorsement and participation from key drug court stakeholders and the use of an oversight committee (namely, the CSU HREC) to monitor the research.

The following chapter identifies and defines a set of assessment criteria for Australian drug courts. In doing so, Chapter Four functions as a stepping stone to applying identified assessment criteria for Australian drug courts to the operation of the five Australian drug court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia. In turn, this allows for the identification of the drug court processes that are related to success.
4. Determining The Assessment Criteria

4.1. Overview

This chapter develops a set of assessment criteria to enable determination of the elements of the drug court model that are associated with drug court success. This construct should obviate the limitations of many of the previous analyses. A three-step process was undertaken: firstly, identifying those stated or implied aims and/or objectives of drug courts that could be considered assessment criteria of success; secondly, synthesising the identified aims and/or objectives into a set of assessment criteria that will be relevant for evaluating drug court effectiveness; lastly, reviewing the evaluations and associated literature in relation to the five Australian drug court against the identified assessment criteria, to enable an appraisal of the identified assessment criteria.

4.2. Identification of Assessment Criteria

The purpose of the document analysis reported in this chapter was to identify and synthesise the stated aims and/or objectives of the drug court into useful assessment criteria (i.e., criteria that could be used to determine drug court success). Legislation that formed the operational framework of the drug court jurisdiction was reviewed, along with supporting explanatory literature and other official drug court publications36 to identify the aims and/or objectives cited by the five Australian drug courts. These aims and/or objectives are listed in column 1 of Table 4.1. Inductive reasoning was then used to identify the essence of each aim/objective and so restate each as a measurable or assessable criterion (column two of Table 4.1). Some aims/objectives implied more than one criterion.

Each criterion was then assigned to one of five categories (see Column 3 of Table 4.1), mainly to simplify later discussion. These categories are consistent with the Chapter Two information that for drug courts to be successful, in a very general sense, they must work at all levels and fulfil the needs of all stakeholders, whether that is the tax-paying public or the drug-dependent offender. The drug court must operate on a robust platform that meets the needs and objectives of those with political power, that assuages community fears about the drug-crime problem, that does not offend against the well-established

36 See Chapter Three.
principles that underlie the criminal justice system, and that gives the drug-dependent offender a means to recovery and a crime-free life. Finally, column 4 lists the sources corresponding to each aim/objective.

Table 4.1 Australian Drug Courts – Aims and/or Objectives and Assessment Criteria

<table>
<thead>
<tr>
<th>Identified aims and/or objectives</th>
<th>Assessment criteria</th>
<th>Assessment category</th>
<th>Source document by index number</th>
</tr>
</thead>
<tbody>
<tr>
<td>To divert drug-dependent persons charged with criminal offences into programs designed to eliminate or at least reduce their dependency on drugs</td>
<td>Reduction in or elimination of use of illicit drugs and recidivism by offenders</td>
<td>Breaking the drug-crime nexus</td>
<td>NSW(AR)1 NSW(AR)2 NSW(AR)3 NSW(L)1 NSW(PL)1</td>
</tr>
<tr>
<td></td>
<td>Ongoing treatment</td>
<td>Participation satisfaction</td>
<td></td>
</tr>
<tr>
<td>To promote the re-integration of the drug-dependent persons into the community; and to reduce health risks to the community associated with drug dependency</td>
<td>Reduction of harm to society</td>
<td>General society well-being</td>
<td>NSW(AR)1 NSW(AR)2 NSW(AR)3 NSW(PL)1 NSW(LIT)1</td>
</tr>
<tr>
<td></td>
<td>Physical, mental and general well-being</td>
<td>Participant satisfaction</td>
<td></td>
</tr>
<tr>
<td>To immunity against protected information relating to the drug offender</td>
<td>Justice that is appropriate and proportionate</td>
<td>Governance</td>
<td>NSW(L)1 NSW(LIT)1</td>
</tr>
<tr>
<td>To review the legislation to determine whether the policy objectives of the legislation remain valid and whether the terms of the Act remain appropriate for securing those objectives</td>
<td>Monitoring and evaluation</td>
<td>Governance</td>
<td>NSW(L)1 NSW(AR)2</td>
</tr>
<tr>
<td></td>
<td>Administrative viability</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cost/benefit</td>
<td>Economic feasibility</td>
<td></td>
</tr>
<tr>
<td>To refer an offender to the drug court as soon as practicable after the person first comes before the mainstream jurisdiction</td>
<td>Timely intervention</td>
<td>Participant satisfaction</td>
<td>NSW(L)1 NSW(PL)1</td>
</tr>
<tr>
<td>To reduce the level of criminal activity associated with drug dependency</td>
<td>Reduction in or elimination of use of illicit drugs and recidivism by offenders</td>
<td>Breaking the drug-crime nexus</td>
<td>QLD(L)1 QLD(L)2 QLD(LIT)1 QLD(PM)1</td>
</tr>
<tr>
<td>To reduce the health risk to the community associated with drug dependency</td>
<td>Reduction of harm to society</td>
<td>General society well-being</td>
<td>QLD(PM)1</td>
</tr>
<tr>
<td></td>
<td>Cost/benefit</td>
<td>Economic feasibility</td>
<td>QLD(PM)1</td>
</tr>
<tr>
<td>Objective</td>
<td>Strategy</td>
<td>Outcome</td>
<td>Evaluation</td>
</tr>
<tr>
<td>-----------</td>
<td>----------</td>
<td>---------</td>
<td>------------</td>
</tr>
<tr>
<td>To reduce the pressure on resources in the court and prison system.</td>
<td>Cost saving</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To minimise or stop the use of illicit drugs by the offender</td>
<td>Reduction in or elimination of the use of illicit drugs</td>
<td>Breaking the drug-crime nexus</td>
<td>SA(L)1 SA(PM)1</td>
</tr>
<tr>
<td>To prevent or decrease further drug-related offending</td>
<td>Reduction in or elimination of recidivism by offenders.</td>
<td>Breaking the drug-crime nexus.</td>
<td>SA(L)1 SA(PM)1</td>
</tr>
<tr>
<td>To significantly improve the participants physical and mental health of the offender</td>
<td>Physical, mental and general well-being</td>
<td>Participant satisfaction.</td>
<td>SA(PM)1</td>
</tr>
<tr>
<td>To provide a judicially supervised, therapeutically oriented, intensive and integrated drug supervision and treatment regime</td>
<td>Ongoing treatment</td>
<td>Participant satisfaction</td>
<td>VIC(L)1 VIC(LIT)1</td>
</tr>
<tr>
<td>To reduce offender’s health risk associated with drug dependency</td>
<td>Reduction in or elimination of recidivism by offenders</td>
<td>Breaking the drug-crime nexus</td>
<td>VIC(L)1 VIC(LIT)1 VIC(PM)1</td>
</tr>
<tr>
<td></td>
<td>Physical, mental and general well-being</td>
<td>Participant satisfaction</td>
<td></td>
</tr>
<tr>
<td>To reduce the level of criminal activity associated with drug dependency</td>
<td>Reduction in or elimination of the use of illicit drugs</td>
<td>Breaking the drug-crime nexus</td>
<td>VIC(L)1 VIC(LIT)1 VIC(PM)1</td>
</tr>
<tr>
<td>To provide cost savings to the community and the government</td>
<td>Cost saving</td>
<td>Economic feasibility</td>
<td>WA(LIT)1</td>
</tr>
<tr>
<td>To reduce drug-related crime</td>
<td>Reduction in or elimination of recidivism by offenders</td>
<td>Breaking the drug-crime nexus</td>
<td>WA(PM)1 WA(LIT)1</td>
</tr>
<tr>
<td>To reduce the substance abuse and misuse of offenders.</td>
<td>Reduction in or elimination of the use of illicit drugs</td>
<td>Breaking the drug-crime nexus</td>
<td>WA(PM)1 WA(LIT)1</td>
</tr>
<tr>
<td>To provide a judicially supervised, therapeutically oriented, intensive and integrated drug supervision and treatment regime.</td>
<td>Ongoing treatment</td>
<td>Participant satisfaction</td>
<td>WA(PM)1 WA(LIT)1</td>
</tr>
<tr>
<td></td>
<td>Ongoing judicial interaction</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Physical, mental and general well-being.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The analysis found no hierarchical order. However, as Table 4.2 demonstrates, a division was clear between those assessment criteria that aim to improve procedural justice and
services for offenders, victims, and the community (purple shading) and those that aim to modify, change or control offenders’ behaviour (orange shading).

### Table 4.2 The Assessment Criteria Sorted by Category

<table>
<thead>
<tr>
<th>Assessment category</th>
<th>Assessment criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breaking the drug-crime nexus</td>
<td>Reduction in or elimination of recidivism by offenders</td>
</tr>
<tr>
<td></td>
<td>Reduction in or elimination of the use of illicit drugs</td>
</tr>
<tr>
<td>Economic feasibility</td>
<td>Cost savings</td>
</tr>
<tr>
<td></td>
<td>Cost/benefit</td>
</tr>
<tr>
<td>General society well-being</td>
<td>Involvement of the wider community</td>
</tr>
<tr>
<td></td>
<td>Reduction of harm to society</td>
</tr>
<tr>
<td>Governance</td>
<td>Justice that is appropriate and proportionate</td>
</tr>
<tr>
<td></td>
<td>Administrative viability</td>
</tr>
<tr>
<td></td>
<td>Monitoring and evaluation</td>
</tr>
<tr>
<td>Participant satisfaction</td>
<td>Physical, mental and general well-being</td>
</tr>
<tr>
<td></td>
<td>Ongoing treatment</td>
</tr>
<tr>
<td></td>
<td>Timely intervention</td>
</tr>
<tr>
<td></td>
<td>Ongoing judicial interaction</td>
</tr>
</tbody>
</table>

#### 4.3. Operation of the Assessment Criteria

This section discusses each of the identified assessment criteria (arranged by category) to justify acceptance of them and their application to the characteristics of a generalised drug court operational model for Australia (see Figure 1.1).

##### 4.3.1. Breaking The Drug-crime Nexus

In terms of specified objectives, the challenge of addressing re-offending is a prominent focus of the aims as expressed in the various legislative instruments and related literature; however, recidivism is problematic as an indication of success for drug courts. In relation to drug court participants, it is not clear whether recidivism should refer to an absence of any sort of criminal re-offending, or only drug-related re-offending, or only recurrences of the crime that first brought them to the drug court. Elimination or reduction of illicit drug use is also problematic: what counts as a substantial-enough reduction, how realistic is total elimination of such use. The following two sub-sections will discuss these two criteria.
4.3.1.1. **Recidivism**

Measuring re-offending within the drug court environment has been challenged by the inability to obtain outcome measures that are sufficiently robust to test the impact of this unique jurisdiction. Issues that must be prudently considered in researching drug court effectiveness include meanings of values (of the drug court program, participants, other stakeholders) and matters of rights, due process and obligations. This can be demonstrated by examining two evaluations of the Western Australia Drug Courts. A 2003 evaluation undertaken by the Crime Research Centre found no significant differences in recidivism between those offenders who completed the drug court program and other comparison groups (WADOJ, 2003); a later study, in 2006, identified significant variations (WADOJ, 2006). It is highly likely that these different results can, to some extent, be attributed to different methodologies, comparison groups and counting guidelines adopted by each evaluation.

The internal validity of those Australian evaluations that considered recidivism rates as an outcome was undermined by the use of fundamentally unlike treatment and comparison groups. The randomised control trial is the evaluation ‘gold standard’ in the drug court setting (Kraemer, 2000; Marlowe, Festinger, Lee, Schepise, Hazaard, Merrill, Mulvaney & McLellan, 2003). In these sorts of evaluations, participants are randomly selected from a group of offenders to participate in the program. Offenders who are not selected are returned to the mainstream criminal justice system and are subsequently used as the comparison group. Having a randomised control group means that selection bias is minimised (Marlow, 2012, 2014a; Merriam, 2009; Moses & Torbjorn, 2012; Neuman, 2011). Differences between program participants and their comparison group cannot be attributed to inherent and pre-existing differences between the groups.

The only outcome evaluation in this analysis that closely resembled a randomised control trial was the 2002a New South Wales drug court program evaluation. This was possible because the program demand was expected to exceed program capacity. The gap enabled partial random selection of referrals and participants (NSWBOCSAR, 2002a), which gave the researchers an opportunity to compare the re-offending patterns of those who did and did not gain access to the drug court program. In nearly all of the other evaluations, researchers could not conclusively state that the differences between groups were due to the effects of the drug court program and not due to prior differences in characteristics of the groups or extraneous factors outside of the drug court program. It
could be argued that even the evaluations that use the participant group as its own control may not be wholly sound. For example, a legislative amendment to a drug charge, as occurred in South Australia in relation to cannabis in 2012, could mean that any changes in pre-offending and post-offending are a result of an external factor rather than a program effect.

Making comparisons between unlike comparison groups likely overestimated the effectiveness of Australia’s drug courts in regards to recidivism; consequently, in spite of the predominance of this assessment criteria for determining drug court success, the stated outcomes cannot be used without making adjustments for the way they were obtained. Most studies reviewed compared the recidivism rates of those who have successfully graduated from drug court to those who did not undertake a drug court program. It could be argued that studies should also include offenders who failed to finish the drug court program and compare them to those who do successfully complete the program to offenders with similar backgrounds (e.g., ethnic, economic, and sociological considerations), as these aspects will obviously impact on a drug court participant’s ability to not re-offend. Therefore, if recidivism rates are to be used as an indicator of success for drug courts, the relevant researchers need to choose their comparison group carefully, taking into account the social, political and theoretical context in which the drug court program is operating.

Another adjustment that needs to be made when considering recidivism rates as an indication of success is the time period over which the measurements are made. The timing of the collection data between all the evaluations that considered re-offending varied widely, ranging from two-year, post-graduation follow-ups (e.g., UWS, 2003) to other studies in which few or none had graduated at the time of the evaluation because they were all in custody as a result of breaching their drug court program or had abandoned their drug court program (e.g. VICDOJ, 2004). Most studies analysed measured recidivism over a short time-frame (typically one year after program entry). Such short timeframe outcomes essentially reflect in-program ‘recidivism’.

Chapter Two highlighted that drug court programs are not only interested in offending for the duration of offenders’ participation, but they also hope to achieve tangible results that are sustainable after a participant completes the program and returns to the community. Many of the evaluations have reported improvements in lowering offending rates. These evaluations, however, are limited in their capacity to measure the long-term
sustainability of these results. The length of the follow-up period also has significant implications for the interpretation of the drug court evaluation results. Given this, at least some assessments of recidivism should look for information that reflects long-term, rather than short-term, benefits obtained as a result of the work and operation of drug courts.

4.3.1.2. Drug Use

With the causal nexus between drug use and crime in little doubt, any efforts that result in a reduction in the use of illicit drugs, however small, is beneficial. In line with the political, social and theoretical foundations acknowledged in Chapter Two as sustaining the drug court, it was predictable that the drug court literature emphasised the elimination of or reduction in the use of illicit drugs. Of those evaluations that looked at drug use, urinalysis of the participants was the primary method used to monitor the use of illicit drugs; the other method was self-reporting (e.g. MCOV, 2014). For the Western Australian and South Australian drug court programs, none of the publicly available evaluation reports specifically aimed to assess the impact of drug courts on achieving reductions in drug use.

Notwithstanding the fact that the methods used to measure reductions in drug use varied across each of the studies reviewed, various evaluations acknowledged that a reduction in the use of prohibited drugs while on the drug court program was achievable and was the program’s main, tangible objective (e.g., AIC, 2003, 2005e). The evidence demonstrated, however, that such abstinence was not easily achievable. By way of illustration, of the 171 participants surveyed in 2005 who remained on the New South Wales Drug Court program at six months, 91 tested positive for opiates at least once during the 5th to 6th month of their program (NSWBOCSAR, 2005), which meant that more than half of the participants used drugs whilst participating in the program. Similarly, 71% reported daily heroin use during the fifth to sixth month of their drug court program (NSWBOCSAR, 2002c). The statistics in Queensland were not dissimilar to these, with urinalysis results demonstrating time-graded reductions in drug use (AIC, 2003, 2005e). Furthermore, research in New South Wales showed that intensive judicial supervision of offenders reduced the risk of relapse among drug-dependent offenders (NSWBOCSAR, 2011). These results suggest that participants’ drug use decreased, but did not necessarily end, while they were subject to the conditions of a drug court program.

Although complete abstinence was laudable as an indication of success for drug courts, the findings conceded that it was unlikely. Recovery from drug dependency may involve
relapses and progression on the program was evident despite some drug use. By way of illustration, the objectives of the Victoria Drug Court in regard to drug use for each of the three phases developed from ‘reduce drug use’ through ‘strive to be drug-free’ to ‘be relatively drug-free and ‘accept a drug-free lifestyle’ (MCOV, 2014, p. 18). Thus, assessment of drug use should allow for treatment relapse as a measure of drug courts’ success. This expectation of ‘failure’ and the necessity for program flexibility are antithetical to the mainstream criminal justice system, yet, as highlighted in the evaluations reviewed, it is an essential component if treatment outcomes are to be achievable. The important policy question is what level of ‘failure’ is tolerable? If used as an indicator of success for drug courts, the reduction or elimination in the use of illicit drugs needs to be evaluated objectively; this involves determining the ‘acceptable’ failure level at the outset.

4.3.2. Economic Feasibility

It has been previously highlighted that public acceptance of the drug court is closely aligned with the political message that drug courts are an efficient way of dealing with drug-dependent offenders (Fulkerson, 2009; Gerber & Jackson, 2013; Harrison & Scarpitti, 2002). It was implicitly understood that this efficiency involves less cost in real terms but also improves the cost-benefit proportion by way of prevented opportunity costs. Identifying real resources used is therefore important. Simply using budget and accounting information may not capture true opportunity costs, therefore it should address expenditure concerns by considering the complete financial profits. Different methods of allocating fixed and overhead costs may further complicate the process of estimating costs. Nevertheless, only the Queensland legislation listed a reduction of pressure on resources in the criminal justice system as one of the drug court’s core objectives, although it was mentioned in Western Australia’s supporting legislation. The remaining jurisdictions dealt only with the cost issues.

4.3.2.1. Cost Saving

Cost reduction featured as a key element in many of the evaluations of drug court operations (e.g., NSWBOCSAR 2002a; UWA, 2007; VICDOJ, 2004e; 2005) and formed the foundation for assertions of effectiveness from drug court advocates (Freiberg, 2007; Goldkamp, White, & Robinson, 2001). The broader societal benefits that may flow from the drug court program, thus reducing costs overall, were ignored by the majority of these evaluations. These benefits include reductions in demand (over the long term) on health
services, the criminal justice system, insurance claims, social security outlays and pain and suffering because of criminal victimisation.

More recent international and a limited number of Australian studies however (e.g., MCOV, 2014), have increasingly taken a variety of other cost factors into account, such as:

- social welfare expenses, including support of family members;
- costs relating to lost productivity, including workplace accidents and unemployment; and,
- a variety of other costs resulting from drug dependency, including those incurred by crime victims, substance dependency, detoxification services and programs, and additional treatment services.

4.3.2.2. Cost/Benefit

No legislative provisions made direct reference to the notion of cost/benefit analysis. Nevertheless, the concept was cited in the publication data and referred to in some commentaries (e.g., AIC, 2002, 2014; Downey & Roman, 2010; Single, 1998; Welsh & Farrington, 1999; 2000).

Hewson (2011) affirms that:

… a cost-benefit analysis is only as good as the analyses of opportunity cost. This requires a comprehensive understanding of the costs and drug court benefits or avoided costs to the community as a principal gauge of program effectiveness. Put simply, a drug court program cost-benefit examination that aims to measure cost-effectiveness requires consideration of the unseen expenditures. Cost-benefit analysis is, however, challenged by the complexity of comparing the cost of the drug court program with the cost of a prison term … (Hewson, 2011, p. 22)

This statement highlights that for drug court programs where an offender would not have otherwise received an imprisonment term, it is challenging to know the comparison group to measure cost against. Comparing program costs with that of incarceration was the most common method identified in this study (e.g., AIC, 2005; SAOCSR, 2005), yet this was not suitable for some drug court programs, given that the offences before the court would not have incurred a sentence of imprisonment. Some drug court programs were compared to other community-based sanctions, but the program was considerably more expensive in such cases than these sanctions, and the cost should be offset against the likely savings
made by improvements in health and reduced re-contact with the criminal justice system (AIC, 2002; Single, 1998; Welsh & Farrington, 2000).

Notwithstanding this, there have been some methodologically sound cost/benefit analyses of drug courts undertaken in Australia (e.g., NSWBOCSAR, 2002, 2008; UWA, 2007; VICDOJ, 2006). Some of the noticeable benefits outlined in the evaluations included savings through reduced recidivism with subsequently reduced demand on prison capacity and reduced pressure on health services. In the long term, this included increased employment, a decrease in demand for drug treatment, increased community confidence, and improved quality of life for individuals and, ultimately, the community.

The evaluations reviewed for this study did not contain all relevant and, indeed, significant information. Aggregate financial data that provided cost information for whole units of a drug court program could not be broken down for a more detailed cost attribution for each participant; for example, treatment and supervision costs were not itemised (e.g., MCOV, 2014; WADOJ, 2006). Moreover, cost-benefit evaluations only accounted for nominal benefits, which could be appreciated in financial units. In this sense, if used as an indicator of success for drug courts, it should be considered that cost benefit evaluations are a crude measure of program success that risk underestimating the true benefits delivered by a drug court program to an offender and the community.

These points simply serve to illustrate the complexity of the task of determining the cost of drug court programs, and, as with the use of any statistical data, it is possible to extract from raw figures a number of different interpretations, highlighting the importance of clarity about the goal of the cost analysis.

4.3.3. General Society Well-being

A further success indicator on which drug courts can be judged is their ability to contribute to the general well-being of society. There are two aspects to this: the first is to raise community involvement and to increase levels of service provider engagement, and the second is the reduction of harm to society.

4.3.3.1. Involvement of The Wider Community

Most drug court literature acknowledges that forging partnerships in the community serves a two-fold purpose: (1) it expands the services base, and (2) it informs the community about the drug court concepts (Freiberg, 2003, 2007; NADCP 1997).
Furthermore, while community involvement in a drug court might be measurable, the benefits of such involvement are challenging to capture other than by way of anecdotal and observational methods. Wenzel et al. (2008) found that there are difficulties in capturing reliable data due to the strained relationship between criminal justice services and health services. They argue for building a “bridge” between the drug court and the health community in order to undertake further research and provide better treatment to the drug court participant (Wenzel et al., 2008). The authors found that if the drug court field understood collaborative linkages and their barriers and facilitators in greater depth, this information could prove useful for improving drug court programs and offender outcomes. The final report of the Victorian Drug Court Program concluded that there was unlimited data available on the relationship between internal and external service providers and the drug court impact (VICDOJ, 2006a). That is, if used as an indicator of drug courts’ success, the benefits accruing from the partnerships formed from the drug court alliance are countless; therefore, it is impossible to capture all of them, but they are extremely important, nevertheless.

As highlighted in Chapter Two, public support of the drug court is essential and so, therefore, is informing the community about drug court concepts. The drug court does not want to give the appearance of being “soft” on crime, but it also needs to understand the offenders’ dependence (Legal Affairs and Community Safety Committee, 2014; Previtera, 2006; Snow & Sanger, 2011). Various evaluations acknowledged restorative justice policy processes as being present in the operation of the drug court, with some reasoning that that the drug court provides a “platform” for communities to subscribe to the restorative justice policy (SAOCSR, 2006; UWS, 2007). As previously discussed, drug courts may not be described as wholly restorative in nature, and may lack the key components, for example victim input, necessary for the implementation of restorative justice measures (Hora et al., 1999; Miethe et al., 2000). Thus, while the drug court may not be described as wholly restorative in nature, it does exemplify some characteristics of restorative justice and can benefit from continued review in terms of restorative principles.

Recent international studies and some of the Australian literature (e.g., Carey et al., 2008; MCOV, 2014) conclude that having members of the public on the drug court team does not make a significant difference to drug court outcomes. This may simply be a result of the wide variety of representatives that could be on the drug court team; perhaps the best representatives of the public have not yet been identified. However, if it is true, then the
goal of forging partnerships with community, as expressed in the various legislative instruments and related literature, will need to be reconsidered. Clearly, further assessment of this component is required.

4.3.3.2. Reduction Of Harm To Society

The reduction of harm to society is another key assessment criterion for drug courts’ success. Chapter Two highlighted that drug use and dependency have become a major challenge to manage in today’s political and social climate; furthermore, the drug-crime nexus has resulted in significant harm to both individuals and to the community. This harm has been obvious in the compromised health of individuals, high crime rates, dysfunctional and fractured families, and what has been described in the literature as ‘fearful communities’ (AIC, 2003, 2005d). The evaluations identified that reducing the burden of drug misuse on society, in relation not only to economic costs but also to both the visible and invisible costs of a fractured community, is an important criterion against which to measure drug courts’ success (e.g., AIC, 2008; SAOCSR, 2005; UWS, 2003).

Drug courts are “thought to improve not only the health and reintegration of the offender but public health and safety by addressing root causes of criminal behaviour” (Brown, 2010, p. 1). The evidence recognised that drug courts ultimately seek to protect the community by focusing on the rehabilitation of offenders from drug dependency and by bringing stability to offenders’ chaotic lifestyles and reintegrating them into the community.

Levels of drug use are harmful to the community within which it occurs. Drug court programs are not only interested in reducing offending and drug use for the duration of offenders’ participation; they also hope to achieve tangible results that are sustainable after a participant completes the program and returns to the community. Many of the Australian evaluations considered in this study demonstrated improvements in both offending rates and drug use (e.g. AIC, 2003; UWS, 2003). These evaluations, however, were limited in their capacity to measure the long-term sustainability of these results as they related to the community. The length of the follow-up period also had significant implications for the interpretation of the drug court evaluation results. Given this, the information presented in the evaluations reviewed reflects only the short-term benefits obtained as a result of the work and operation of drug court programs and is not necessarily related to the reduction of harm to society per se. Therefore, similar to other recommendations that have previously been made, any assessment of harm to society
should look for information that reflects long-term, rather than short-term, benefits obtained as a result of the work and operation of drug courts.

4.3.4. Governance

Most literature has concentrated on outcomes and process evaluations, while less effort has been exerted to identify the principles underlying the operation of legal rules and procedures within the drug court setting. One possible explanation for this is that certain measures of success, while possibly significant in their own right, are more conceptual (such as the association between re-offending and retention rates) than others and are, consequently, too difficult to determine (e.g., AIC, 2005; SAOSGR, 2005).

4.3.4.1. Appropriate and Proportionate Justice

Access to a drug court program in Australia requires participants to waive some basic procedural rights (Birgdn, 2009; Previtera, 2006). A fundamental assumption in the Australian criminal justice system is that a person is innocent until guilt is established. This assumption carries with it an understanding that a guilty plea must be entered by an alleged offender without coercion (Bull, 2003; Clarke, 2006; Freiberg, 2007). Arguably, however, coercion is present in the requirement that an alleged offender must plead guilty to be eligible to access a drug court program (NSWBOCSAR, 2011; VICDOJ, 2006). That is, a guilty plea may be seen as coerced by the benefits to be gained from undertaking a drug court program. In addition, the customary adversarial courtroom relationship between the prosecution and defence lawyers (considered critical for justice in most Australian courts) is abandoned in the drug court setting, where the two ‘sides’ work together as a team. And finally, coercion is also a factor in the case discussions held in team meetings37. As noted by Judge Julie Wagner (2002):

To have a continuing relationship with a drug court lawyer, the participant is requested to sign a waiver so that the lawyer may provide full and frank information to the team. On many occasions the lawyer is forced to withdraw from the team discussions because of concerns in relation to professional obligations. This means that either the Team cannot operate or the lawyer must rely on a waiver signed by client who is told: ‘if this waiver is not signed you probably cannot take part in the Drug Court’. (p. 6)

---

37 A team meeting is a meeting conducted to discuss the progress of participants on the case list for that day. The purpose of a team meeting is to identify and reach consensus among stakeholders on any issues concerning a participant and their drug court program. A team meeting will precede the sitting. All five Australian Drug Court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia adopted the team meeting practice (MCOV, 2014; NSWDCP, 2017, Policy 1, Team meetings and Participant Review, SAOSGR, 2012, VICDOJ, 2004d).
Clearly, this raises questions of the voluntariness of the decision to waive lawyer-client privilege.

Accordingly, when those evaluating drug courts use ‘justice that is appropriate and proportionate’ as an indicator of success, it can be easy to conclude a ‘lack of success’, based on the issues identified in the preceding paragraph. However, this would be short sighted, ignoring the fact that drug courts include other justice-facilitating mechanisms that make up for the loss of these two (e.g., regular access to the judge for one on one mentoring and regular drug screen testing). It should also be noted that although the practices and procedures traditionally used in the mainstream criminal justice system are thought to provide the most complete protection of individual rights, there are other systems of justice in use around the world that rely on different practices and procedures, for example the inquisitorial system that is used particularly in many European countries and continental jurisdictions (Bagaric, 2005; Finnis, 1998; Pratt, 2002). Deviation from mainstream criminal justice practice is not in itself a reason for thinking that an alternative practice or procedure will fail to provide justice. Therefore, when ‘justice that is appropriate and proportionate’ is used as an indicator of drug courts’ success, evaluators must be careful not to make assumptions based on the type of justice system with which they are most familiar.

4.3.4.2. Administrative Viability

When used in the context of a assessment criteria for drug courts, administrative viability is referring to the degree to which such courts can be accommodated within the mainstream criminal justice system. Resource constraints have been cited as a key practical and conceptual challenge to bringing drug courts into the mainstream (Farole, Puffett, Rempel & Byrne, 2005; Mold & Berridge, 2010; Measham & Shiner, 2009; Tonry, 2004; Farole, Puffett, Rempel & Byrne, 2005). This has impacted on the operation of administrative viability as an indicator of success38.

The literature confirms that drug courts are resource intensive, requiring specialised staff, money and access to medical, social and other services (AIC, 2009b; Andrews, Bonta, & Wormith, 2006). Providing these resources will obviously have significant cost implications, particularly if rolled out across a jurisdiction or nationally. Conversely, if a

---

38 It should be noted, however, that there are a number of other challenges which would also need to be addressed to enable successful mainstreaming, for example, legal and constitutional constraints on what can or should be done in a traditional court.
drug court can be shown to be effective in reducing recidivism and promoting offender wellbeing, including health and employment, costs are likely to be saved in other areas of government expenditure.

This raises issues in relation to direct costs to the criminal justice system. The Law Reform Commission of Western Australia has observed that high caseloads in mainstream courts mean that sentencing proceedings are invariably conducted quickly, noting that specialist courts were developed in the United States as a response to ‘assembly-line’ justice or what has been described as ‘McJustice’ (LRCWA 2008, p. 24). It would therefore seem to follow that judicial officers spending more time with each offender and being involved in ‘report backs’ will necessarily add to court time. However, this may not translate to increases in court administration time. For example, none of the seven judicial officers surveyed by the Judicial Commission of New South Wales thought that their involvement with the drug court program had significantly impacted their judicial workload, with five of the respondents indicating it had had little impact (WADOJ, 2006). Accordingly, when those evaluating drug courts use ‘administrative viability’ as an indicator of success, it would be beneficial to examine the court time required per offender on the drug court program. The impact on the resources of the criminal justice system as a whole should also be considered. This approach concurs with the emphasis given in the list of Ten Key Components39, which implies but does not specify that modifications in underlying practices and procedures, if necessary or appropriate, are an important factor in gauging drug courts’ success.

4.3.4.3. Monitoring and Evaluation

Coordinated management, monitoring, and evaluation systems are fundamental to demonstrating effective drug court operation. The design and operation of an effective drug court program should be described concretely and in measurable terms to provide accountability to funding agencies and policymakers (Marlow, 2004; Mitchell, Wilson, Eggers & MacKenzie, 2012; Kraemer, 2000). A review of drug court evaluations in relation to the five Australian drug court jurisdictions identified three main concerns: a lack of randomised experiments; weak quasi-experiments; and short and poorly defined follow-up periods.

---

39 The Ten Key Components were explained in Chapter One, Ten Key Components.
The internal validity of the Australian evaluations analysed for this research was undermined by the absence of randomised experiments. Only one of the Australian evaluations, the 2002 New South Wales Drug Court evaluation, used a randomised design, as previously indicated (NSWBOCSAR, 2002a). Despite their strengths, randomised experiments are relatively uncommon in evaluations of criminal justice interventions due to legal, ethical and practical constraints (Farrington & Welsh, 2005; Seale, 1999; Schreier, 2012). Although, considerable weight is placed on the evidence from randomised experiments (Sherman, 2002; Kraemer, 2000), this research method is not appropriate to answer every question. Valuable information can also be obtained from other methods of enquiry and each has its role to play in providing evidence concerning drug court outcomes.

Eight of the eighteen Australian drug court evaluations relied upon alternative quasi-experimental designs. Quasi-experiments seek to isolate an intervention’s effect through means other than random allocation (Belenko, 2001; Brown, 2010). This includes establishing equivalent treated and comparison groups or statistically controlling for group differences (Weisburd et al., 2001). Quasi-experiments are generally considered inferior, without suggesting that randomised experiments cannot provide poor quality evidence of a program’s effectiveness. It is often difficult to isolate a treatment effect in practice without randomisation. Relevant differences between treated and comparison groups that may affect outcomes are often unknown or hard to effectively measure and control, undermining internal validity. As such differences cannot be eliminated as explaining the observed results (Sherman, 2010; Weisburd et al., 2001). Given the difficulties with both random experiments and quasi-experimental designs in relation to evaluation drug courts, researchers will need to seek other, innovative ways of evaluating drug courts.

Short follow-up periods or a lack of information regarding the duration and nature of follow-up periods were evident in the Australian evaluations. Only three studies had an average post-program follow-up period of at least two years: the 2008 study of the Queensland Drug Court (over three years; AIC, 2008); the 2006 study of the Perth Drug Court (minimum of two years; WADOJ, 2006); and the 2014 study of the Victorian Drug Court (two years; MCOV, 2014). One further evaluation had a post-program follow-up

---

40 For example, the 2014 Victorian Drug Court evaluation acknowledged that the data did not allow for a consideration of the effect of substance dependency on recidivism, and the comparison group did not necessarily have an offending history comparable to that of the treated group (KPMG, 2014). Such factors can be expected to affect recidivism outcomes, and without controlling for them it is difficult to isolate the drug courts’ impacts.
period of at least one year: the 2012 study of the South Australian Drug Court (SAOCSR, 2012). Some of the Australian studies provided relatively little detail about their follow-up periods (NSWBOCSAR, 2008; SAOCSR, 2012), but follow-up periods were generally short, particularly post-program. The 2003 and 2005 Queensland studies (AIC, 2003; 2005), for instance, used average post-program follow-up periods of 304 and 242 days for the treated group, respectively. Follow-up periods must be sufficient to account for the fact that drug courts cannot be expected to immediately reduce recidivism but may result in long-term behavioural change (Belenko, 2001; Gallagher, 2014; Stutman, 2014). Relapse occurs in even successful drug dependency treatment; and rates of recidivism generally do not tend to stabilise until approximately three to five years post-intervention (e.g., AIC, 2008; SAOCSR, 2012). Furthermore, a few of the Australian evaluations failed to clearly distinguish between follow-up periods that occurred during the program and those that occurred post-program (e.g., NSWBOCSAR, 2008; UWS, 2003; VICDOJ, 2004b). Such a distinction is critical as it assists in the differentiation of the effect of in-program supervision from the intervention’s ongoing impact.

4.3.5. Participant Satisfaction

The last assessment criterion moves from perceptions of those external to the court to those of the primary stakeholders in the drug court, namely the participants themselves. Participant satisfaction has been frequently assessed through consideration of many factors, including the immediacy or timeliness of intervention; the continuum of treatment and rehabilitation services; ongoing judicial intervention and its effects on participation; social, physical, and psychological well-being; and the ability to reintegrate into the wider community (Fischer, Geiger & Hughes, 2007; Marlow, 2014b). However, surveys of participant satisfaction with the drug court process range from empirically sound evaluations to anecdotal reporting; thus, their evidential value overall is patchy. This does not, however, diminish the importance of participant satisfaction as a success measure for drug court (Islam, Stern, Conigrave & Wodak, 2008; Fischer, Geiger & Hughes, 2007).

It is tempting to succumb to political cynicism and minimise the importance of participant satisfaction when assessing drug courts’ success. Some have simply asserted that a drug rehabilitation program must be a better alternative than serving time in custody. For example, when writing about the necessity for rigorous evaluations to support claims of
the success of therapeutic based diversion programs such as drug courts, two commentators claimed:

From a critical perspective the key question in determining effectiveness is whether [therapeutic jurisprudence] initiatives reduce the likelihood of future criminal activity by participants and reduce the costs to society. Whether the [therapeutic jurisprudence] initiatives make the individual feel good, improves their self-esteem, has a positive effect on their mental health or psychological well-being or provides other therapeutic outcomes is secondary. (Roberts & Indermaur, 2006, p. 6)

However, much of the literature shows that unless the participants are able to experience improvements in their mental and physical well-being, retention and completion rates will be low. The assessment criteria outlined next focus on some aspects of the participants’ experiences with a drug court that have been shown to affect retention rates and program completion.

4.3.5.1. Physical, Mental and General Well-Being

This aspect of the participant satisfaction criterion included all aspects of the well-being of drug court participants, including the specific goal of rehabilitation from drug use and the associated improvement in physical health, as well as the broader goal of general well-being that signals an individual’s return to normal life. The fact of graduation from the program appears to have a psychological benefit that was considered to signify an offender’s reintegration into the community and achievement of a drug-free existence (International Association of Drug Treatment Courts; 2011; Goldkamp, White & Robinson, 2002; Marlowe & Meyer, 2011). Victoria is the only state to have enacted specific legislation that focuses on general health goals and risks to an offender in a drug court program.

Out of any group of offenders placed in a drug court program, some will comply and complete the program and some will drop out or are terminated. Excluding these latter groups from an evaluation introduces bias, as it produces a ‘sorting’ effect such that the remaining group members are those that were more likely to succeed. By way of example, research was undertaken in New South Wales addressing the health and well-being of participants in the drug court program (NSWBOCSAR, 2002c). It focused on an examination of the changes to a participant’s health and well-being as a result of the drug court program, observing the association between the type and level of pre-program drug use and participant well-being. The data were collected at 4, 8, and 12-month intervals. This research did not utilise a control group or those who did not complete the program.
because of the challenges associated with tracking offenders outside the drug court program. The comparison of only program completers with all members of the comparison/control group thus presents an invalid comparison. Given this, any assessment of physical, mental or general well-being should include all completers, offenders who were not accepted onto the drug court program, and drop-outs in the treatment group against which comparison groups are selected. A program must ultimately be able to demonstrate a capacity to lift the average performance of the whole cohort of offenders placed on the program, not just those who successfully complete the program.

Research undertaken of successful graduates from the Queensland Drug Court Program predicted, and then confirmed, that being employed, residing with a partner, having no prior custodial sentence, and being compliant with the treatment plan and its associated conditions increased the likelihood of graduation (AIC, 2003). Other measures that were investigated included participant social and welfare functioning, social associations, and financial support, and improvements were identified on all of these indicia (AIC, 2003).

Other Australian studies include a preliminary examination of factors associated with retention on the drug court program in the South Australia (SAOCSR, 2005; 2006), Victoria (MCOV, 2014; VICDOJ, 2006) and New South Wales (NSWBOCSAR, 2000) jurisdictions, although the results were inconclusive for any variable except the types and lengths of sentences imposed. A correlation study still to be undertaken is a longitudinal analysis of participant characteristics linked to graduation from the program and sustained, long-term reduction in recidivism. Perhaps that should be considered if physical, mental or general well-being is used as an indicator of drug courts’ success.

4.3.5.2. Ongoing Treatment

Drug court literature acknowledges that several attempts may be needed before an individual participant is able to achieve long periods of abstinence. This is demonstrated in the eligibility criteria for program access in New South Wales:

An applicant who has previously been a drug court participant is not an appropriate person for a drug court program if it is less than three years since final sentence was imposed in relation to the participant’s last drug court program, or if it is less than three years since the completion of the non-parole period of any final sentence that was imposed, whichever is later. (NSWDACP, 2017, Policy 12, Selection of Participants)

To this end, drug courts have established a coordinated strategy, including a continuum of responses to continuing drug use and other non-compliant behaviour.
The dual nature of the drug court was evident in its combination of rehabilitative goals with deterrence-based sentences; on this basis, it was recognised that the effectiveness of the monitoring and evaluation process was very important to participant satisfaction with the drug court process. Thus, well-defined guidelines and goals of which the participant is aware and that are effectively monitored clearly assist in making the process transparent and in ensuring that there is some shared ownership of the drug court program.

The evaluations and related literature sources highlighted the need to define what drug courts aim to achieve and to delineate this from incidental benefits resulting from drug courts (e.g., Burke, 2010; Lutze, van Wormer, 2007, Rice, 2014; Stutman, 2014). Furthermore, success definitions may vary according to whether a treatment or criminogenic perspective is adopted but may include as primary goals reductions in drug use, reductions in recidivism and increased retention in treatment. The timeframe for this success needs to be specified in addition to defining what comprises success; measures to date have included employment stabilisation, improved housing situations and increased participation in education, which were in addition to the established criteria of criminal activity and drug use (e.g., MCOV, 2014; SAOCSR, 2006; UWS, 2007; VICDOJ, 2004b).

Drug court program participants cannot simply stop using drugs for a few days and be cured because dependency is typically a chronic disease. Most participants require long-term or repeated episodes of care to achieve the ultimate goal of sustained abstinence and recovery of their lives (NIDA, 2009; AIC, 2003). Therefore, offenders with drug dependency issues often require an extensive range of interventions over a long period of time (Fischer et al., 2007). Success can, thus, be measured by the range of service types engaged by participants and their individual experience in regards to the smooth referral processes between treatment providers.

4.3.5.3. *Timely Intervention*

The use of legal coercion, in an effort to ensure that individuals with drug related problems receive treatment, has long been an issue in the field of drug dependency studies (Boldt, 1998; Goldkamp, 2000; Hodgson, 2000; Hudson, 1996). In relation to drug courts, this issue concerns the fact that in order to take part in the drug court program participants are required to plead guilty and thereby sacrifice some of their rights to the due process of the formal criminal justice system (Dive, 2011; 2012; Freeman-Wilson, Sullivan & Weinstein, 2003). All diversion programs employ coercive strategies in that
offenders are presented with the option of doing something about their drug problem (for example, undergoing rehabilitation) or facing legal consequences, such as imprisonment. However, diversion is more effective if those involved are motivated to make the change rather than coerced into doing so, as indicated by evidence which suggests that when people perceive themselves as having choice, control, and self-determination over their behaviour, they perform better, are more persistent, and feel more motivated and interested to engage in the activity than people who feel controlled by their environment (Freiberg, 2002; Previtera, 2006; Wild, Newton-Taylor & Alletto, 1998). Therefore, drug-dependent offenders who feel forced into treatment by the criminal justice system may experience increased perceptions of coercion and therefore a diminished sense of autonomy. This in turn could result in reduced motivation for treatment or compliance to demands by the legal system, leading to decreased program retention rates and less positive treatment outcomes. Interestingly, however, evaluation research indicates that a person coerced to enter treatment by the criminal justice system is likely to do as well as one who volunteers.

The adage that ‘justice delayed is justice denied’ was observed to be accurate in the findings outlined in the evaluations. The criminal justice system has the unique capability to influence an offender shortly after a significant triggering event such as apprehension by police and can, thus, compel that person to enter and remain in treatment. Commentators express the view that potentially eligible and appropriate offenders for a drug court program should be taken before the court immediately following apprehension. This can ensure that the offender receives the full benefits of therapeutic treatment intervention (Buggy, 2014; Freiberg, 2001; Roberts & Indermaur, 2006). In contrast, studies have also suggested that there is no connection between the time it takes offenders to be accepted and made subject to drug court conditions and successful program outcomes (Carey et al., 2008). In challenging the drug court referral process, Chriss (2002) contended that drug court offenders were erroneously fast-tracked into treatment, and the admission process was not only less than ideal for recovery but also circumvented the requirements of due process.

It was originally predicted that there would be a delay of approximately seven days between the time a potential participant’s eligibility was confirmed and when he or she was accepted onto the New South Wales drug court program (NSWBOCSAR, 2002). However, it was subsequently found that many participants who successfully graduated
from the drug court program had remained longer in custody\textsuperscript{41}. Seven days was found to be not long enough. It was thought that two weeks in a designated detoxification prison would enable the offender to undertake the withdrawal process. At the time of the study the court was in the process of extending the detoxification further (NSWBOCSAR, 2002).

This is inconsistent with research conducted by Carey et al. (2008) who found that the initial appearance before the drug court occurred within two weeks of apprehension by police. The literature did suggest contradictory assessments as to whether timely drug-dependence management following apprehension was of value, and it appeared, given that in New South Wales the offender was swiftly placed into the program upon being deemed eligible and appropriate, that the NSWBOCSAR findings were not considered determinative in that jurisdiction.

All Australian drug courts make every effort to expedite accepting a person into the drug court program and commencing treatment, with the process of detoxification\textsuperscript{42} and assessment ideally taking less than two weeks to complete. By way of example, it has been reported in Victoria that offenders in custody for drug-related offences have not always received timely, targeted, effective and ongoing drug treatment (Victorian Auditor, 2011). However, the Victorian Drug Court Program established measures to expedite the intervention for potential drug court participants in that, once it has been decided that the offender is suitable for the program, the case is adjourned for 21 days to allow assessment by the health advisors of the drug court team (MCOV, 2014). However, expediency in this regard must be balanced against the seriousness of forcing eligible participants into the program (as this requires them to forgo the right to trial and instead plead guilty) before sufficient time has elapsed for all available options to be considered.

4.3.5.4. \textit{Ongoing Judicial Interaction}

A defining feature of the drug court is the judicial adoption of the disease model for explaining drug-using behaviour, which is an interpretive paradigm that historically has not played a significant role in the adjudication of drug-dependent offenders. The disease model finds a very central place in the adjudicative process in drug courts, however, and profoundly shapes the way judges view and treat offenders. This is the essential feature

\textsuperscript{41} Offenders typically remain in custody until the court makes a determination in relation to program access.

\textsuperscript{42} Before acceptance onto a drug court program a health assessment must be conducted. This assessment is undertaken whilst the offender is in custody in an effort to determine an appropriate treatment plan.
underlying the application of therapeutic jurisprudence within the drug court operation. Frequent and meaningful contacts with a judicial authority figure have been claimed to be a hallmark of the drug court model and the platform on which drug courts’ success can be based (Cosden, Benki, Patz, Walker & Sullivan, 2010; Fischer et al., 2007; Hora, 2014; King, 2007, 2010; Marlow, 2010).

The close interpersonal relationship between the judicial officer and the drug court participant apparently increases the likelihood that a participant will remain in treatment (Bouffard & Taxman, 2004; Hirsch, 2014). Cosden, Benki, Patz, Walker & Sullivan (2010) supported the practice of open communication between the participant and the court by suggesting that this interaction process aided the supervisory function of the judge and that the role of the judge was the lynchpin for drug courts to produce their desired outcomes. Marlow (2004) challenged this notion by suggesting that increased interaction between the presiding authority and the drug court participant was not associated with positive results. In contrast, research in New South Wales showed that intensive judicial supervision of offenders reduced the risk of relapse among drug-dependent offenders (NSWBOCSAR, 2011). The research findings were that the risk of drug use and sanctioning imposed by the court decreased by more than 40% among the intensive monitoring cohort as a whole, relative to those under the usual monitoring conditions (NSWBOCSAR, 2011). This had a follow-on impact for various other program outcomes. Thirty-five per cent of intensively monitored cohorts were returned to custody when their drug court program came to an end. This compared with 49% of participants who were under monitoring as usual (NSWBOCSAR, 2011). Whilst a relationship between the two variables is observed, these findings do not signify any causal link. Furthermore, the association between the two could be mediated by a host of other variables (NSWBOCSAR, 2011). Therefore, these findings suggest that the status and authority of the presiding judicial authority was a key component in modifying the behaviour of drug-dependent offenders. Notwithstanding this the fact that close judicial involvement with participants is a hallmark of the drug court process makes it challenging to ascertain the degree to which it adds to the success of the outcomes.

4.3.6. Conclusion

This chapter identified and synthesised the stated aims and/or objectives of the drug court into useful assessment criteria. By exploring the various characteristics and outcomes of drug court evaluations in relation to the five Australian drug court jurisdictions of New
South Wales, Queensland, South Australia, Victoria, and Western Australia this chapter was able to appraise the assessment criteria as a means of determining drug court success.

This chapter flows into the presentation of the research findings in relation to the research question, what, besides a lack of reoffending, indicates successful completion of a drug court program? The results presented in the next chapter, Chapter Five, relate to the analysis of secondary (documentary) data, thematic analysis of observation data of drug court proceedings, and the quantitative analysis of statistics gathered from drug court proceedings.
5. Results

5.1. Overview

This chapter presents the results of the document analyses of the secondary data and of the observational data (qualitative and quantitative) to achieve research Objective Two, to identify elements of the drug court process that are related to success from the perspective of drug court stakeholders, primarily their participants. The chapter first presents two sets of results for this research objective in a descriptive, tabular form and then discusses them within the framework of the generalised drug court model (see Figure 1.1). The generalised drug court model outlines the key procedures that characterise the operation of a drug court program.

5.2. Analysis of Secondary Data

The current study analysed twenty-three documents in to achieve objective two. These documents included those that met the criteria used to enable a review of the operational and conceptual differences and similarities in the five Australian drug court jurisdictions. A summary of the documents from which data was extracted during analysis is provided in Table 5.1. It is arranged alphabetically, according to index number and includes the title of the document, author(s) and date; index numbers are used to reference the documents.

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Index Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Court Act 1998 (NSW)</td>
<td>D1</td>
</tr>
<tr>
<td>Drug Court Regulations 2015 (NSW)</td>
<td>D2</td>
</tr>
<tr>
<td>Drug Rehabilitation (Court Diversion) Act 2000 (QLD)</td>
<td>D3</td>
</tr>
<tr>
<td>Bail Act 1995 (SA)</td>
<td>D4</td>
</tr>
<tr>
<td>Sentencing Act 1991 (VIC)</td>
<td>D5</td>
</tr>
</tbody>
</table>

43 This relates to the first methodological approach adopted in this research. This is explained in Chapter One, Methodological Approach.
44 While the analysis included a line-by-line assessment of all documents listed in Table 3.1 and Table 3.2, not all documents were relevant to achieving research objective two. Table 5.1 contains document sources from which data was extracted.
<table>
<thead>
<tr>
<th>Author</th>
<th>Date</th>
<th>Name</th>
<th>Index Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Court of New South Wales</td>
<td>2003</td>
<td>Drug Court of NSW 2003 Annual Review</td>
<td>D6</td>
</tr>
<tr>
<td>Drug Court of New South Wales</td>
<td>2005</td>
<td>Drug Court of NSW 2003 Annual Review</td>
<td>D7</td>
</tr>
<tr>
<td>Drug Court of New South Wales</td>
<td>2017</td>
<td>Drug Court of NSW 2017 Annual Review</td>
<td>D8</td>
</tr>
<tr>
<td>Drug Court of New South Wales</td>
<td>2017</td>
<td>Drug Court Policies (1-13)</td>
<td>D9</td>
</tr>
<tr>
<td>Drug Court of New South Wales</td>
<td>2017</td>
<td>General Program Undertaking</td>
<td>D10</td>
</tr>
<tr>
<td>Queensland Court Service</td>
<td>2010</td>
<td>Participating In The Drug Court</td>
<td>D12</td>
</tr>
<tr>
<td>Australian Institute of Criminology</td>
<td>2003</td>
<td>Final Report on the South East Queensland Drug Court</td>
<td>D13</td>
</tr>
<tr>
<td>Australian Institute of Criminology</td>
<td>2008</td>
<td>The Queensland Drug Court: A Recidivism Study of the First 100 Graduates.</td>
<td>D14</td>
</tr>
<tr>
<td>Queensland Department of Justice</td>
<td>2009</td>
<td>Drug Court Procedures Manual</td>
<td>D15</td>
</tr>
<tr>
<td>South Australian Department of Justice</td>
<td>2009</td>
<td>Specialist Sentencing Courts – Drug Court</td>
<td>D16</td>
</tr>
<tr>
<td>South Australia Office of Crime Statistics and Research</td>
<td>2012</td>
<td>The South Australian Drug Court: A Recidivism Study</td>
<td>D17</td>
</tr>
<tr>
<td>Victorian Department of Justice</td>
<td>2011</td>
<td>Guide to Specialist Courts and Court Support Services</td>
<td>D18</td>
</tr>
<tr>
<td>Victorian Department of Justice</td>
<td>2014</td>
<td>Drug Court Operations Manual</td>
<td>D19</td>
</tr>
<tr>
<td>Perth Drug Court</td>
<td>2007</td>
<td>Perth Drug Court Manual</td>
<td>D20</td>
</tr>
<tr>
<td>University of Western Sydney</td>
<td>2003</td>
<td>Evaluation of the Perth Drug Court Pilot Program, Final Report.</td>
<td>D21</td>
</tr>
<tr>
<td>University of Western Sydney</td>
<td>2007</td>
<td>Evaluation of the Perth Drug Court</td>
<td>D22</td>
</tr>
<tr>
<td>Western Australia Law Review Commission</td>
<td>2009</td>
<td>Court Intervention Programs: Consultation Paper</td>
<td>D23</td>
</tr>
</tbody>
</table>
5.2.1. Assessment and Admission

The literature of the various Australian drug courts showed that there were some fundamental similarities concerning issues of eligibility and the availability of places on the respective drug court programs. Each drug court program in NSW, SA, Queensland, Victoria, and WA specified eligibility criteria designed to restrict the number and type of offenders eligible to participate. These drug court programs aimed to deliver tangible outcomes for a specified offender type.

Table 5.2 outlines the eligibility criteria of each of the drug court programs reviewed and other key differences and similarities in relation to those programs.

**Table 5.2 Key Differences and Similarities for Australian Drug Court Admission**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>VIC</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative base</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
<td>P</td>
</tr>
<tr>
<td>Limit on number of participants</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>Evaluations</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
</tbody>
</table>

*Eligibility criteria:*

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>VIC</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imprisonment is a possible penalty for the offence committed</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>A person must plead guilty</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Dependent on illicit drug use</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Resides in a catchment area</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>NS</td>
</tr>
<tr>
<td>Referred from another court</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Consent to participate</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Previous criminal record</td>
<td>Y</td>
<td>Y</td>
<td>Y (If no previous violent offences)</td>
<td>Y (If not on parole or other community-based sentence)</td>
<td>Y</td>
</tr>
<tr>
<td>Pending violent offences</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>NS (violent offenders eligible for referral to the court)</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---------------------------------------------------------</td>
</tr>
<tr>
<td>Pending sex offences</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>NS</td>
</tr>
<tr>
<td>Mental illness</td>
<td>N</td>
<td>NS</td>
<td>NS</td>
<td>NS</td>
<td>NS</td>
</tr>
</tbody>
</table>

*Note. Y = Yes; N = No; P = Partial; NS = Not stated.*

Eligibility characteristically referred to the criteria that set the necessary boundaries of the program. The literature identified that these criteria were necessary to ensure that programs were offered to the appropriate offender type and that inappropriate offenders were not permitted to participate (e.g., D20; D15).

Some eligibility criteria were explicitly stated while others were implied. As an example of the latter: when a drug court operated from within the magistrates or local court, it was not always formally documented that commission of offences outside the jurisdiction of the magistrate’s court would render potential participants ineligible. For the purposes of the current project, only explicitly stated eligibility criteria were used for analysis. To have analysed the plethora of possible (i.e. implied) eligibility restrictions would have exceeded the scope of this project.

The initial referral to a drug court could be at the suggestion of the magistrate, the police prosecutor, the defence lawyer or a caseworker/probation officer. In NSW, once an offender has been referred to the drug court, its registry staff conducted a preliminary eligibility screening based on the offender’s residence location, age and referring court (D7; D9, Policy 2, Treatment Plans and Placement). Whenever there were more eligible applicants than available program places, a weekly random selection process occurred to determine which applicant was assigned to each available place. The documentation reviewed for this research identified three reasons for imposing residence restrictions in all the jurisdictions reviewed: the requirement for physical access, funding, and limitations on participant numbers (e.g., D1, s. 5; D3, s. 3(2); D11)

---

45 As this section is referring to the secondary document analysis completed by the researcher, many statements are phrased in the past tense. This usage should not be interpreted as meaning that the aspect of the drug court under discussion has been altered or abolished (i.e. the past tense does not apply to those aspects).
Participants on a drug court program in all five jurisdictions were required to physically attend the drug court program. Their capacity to participate, attend court regularly, and undertake treatment were likely to be influenced by the distance they had to travel to access those services (for reasons such as cost and availability of public transport) (e.g., D10; D15). Potential participants in SA had to reside within the boundaries of the Adelaide metropolitan area and at a residence that was suitable for electronically monitored home detention bail (D16; D17). Similarly, the Victorian Drug Court’s location in the suburb of Dandenong meant that the usual place of residence of a potential participant in that jurisdiction needed to be within relevant local government boundaries (D5, s. 18z; D18; D19). Neither of these jurisdictions extended their services outside the mandated areas.

The analysis showed that drug court funding was provided to only a specified number of treatment and programming services within each jurisdiction. Offenders needed to attend these services as a condition of their participation. Some drug court programs were funded up to a ‘cap’; that is, the number of offenders who could participate in the program at any one time was restricted (e.g., D7; D23). Funding precluded excess referrals and provided an additional reason for catchment area restrictions (to ensure that programs were not oversubscribed). The documentation reviewed for this study showed that NSW was the only drug court in Australia that restricted participant numbers directly (operating to a capacity of 270 participants), rather than as a result of funding limitations (D8).

In all jurisdictions, the preliminary inquiries made prior to a defendant’s first appearance before the drug court included a drug dependency evaluation (e.g., D1, s. 5; D23). Reports were compiled by specialists from health services to assess whether proposed participants were drug-dependent and whether they were suitable for a drug court. This assessment focused on the drug, alcohol, medical, and psychiatric needs of the potential participant and formed the basis of the treatment plan. In Queensland, drug court team members from Community Corrections and from Queensland Health assessed the applicants and considered issues such as the offender’s attitude, antecedents, accommodation options, family support structures, mental health stability, and substance use history (D3, s. 15; D15). If it was found that the applicants were eligible, they were refused bail and remanded for detoxification and stabilization in a unit within a goal specifically designated for drug court participants (D3, s. 16). Provisions in WA existed for the drug court to conduct the court assessment while the offender was on bail. The aim of the preliminary screening was to provide the essential information required, for example drug
use and mental health history, to identify prospective drug court participants, evaluate their eligibility and begin the treatment process (D20, D22).

SA was different from the other four jurisdictions in that the preliminary assessment was undertaken on the day of the first court appearance. The assessment was completed on the same day and consisted of a personal interview together with an evaluation of information gathered from other sources (D17; D18). Provisions also existed for the drug court to conduct the court assessment while the offender was on bail; referrals were ordinarily remanded to home detention in such instances (D4; D18; D19).

Figure 5.1 outlines the method by which drug-dependent offenders could be processed by the criminal justice system. This diagram has been adapted from information documented in the NSW Drug Court evaluation material and provides a basic model that is also followed in the Queensland and Victoria jurisdictions.46

---

46 The current research identified two program initiation mechanisms that are commonly used, pre-sentence (i.e. deferred prosecution) and/or post-sentence (i.e. deferred or suspended sentencing following a plea or finding of guilt). In the pre-sentence model, compliance with the drug court program is achieved through the operation of the bail conditions. This is the case for both the SA and WA drug court programs. In the other remaining three jurisdictions, NSW, Queensland and Victoria, a post-sentence model has been adopted, meaning that drug treatment is created on post-conviction sentencing orders. Both SA and WA jurisdictions were excluded from this diagram due to their vast differences in sentencing process.
The focus of these drug courts was treatment; they were not designed to be forums in which offenders contested the charges that were brought against them. Accordingly, the offender must have pleaded, or indicated that they intended to plead guilty in order to enter into a drug court program. This may have appeared unfair and contrary to accepted practice (as discussed earlier), but it meant that the court’s resources were not diverted from its main task of supervision and treatment. Contests as to guilt or innocence could still take place in other, including referring, courts. This preserved the offenders’ right to challenge the nature, number and seriousness of the charges they faced.

In addition to decisions on residential eligibility, some offenders were excluded from accessing a drug court program because they had a prior criminal record (previous conviction or matters that had been referred to the drug court) that included a disqualifying offence. In NSW this included a drug offence not capable of being dealt with summarily and/or an offence involving violent conduct or sexual assault (D1, s. 5). A disqualifying offence in Queensland was defined as ‘an offence of a sexual nature, or an offence involving violence against another person’ (D3, s. 7), and in Victoria eligibility
was denied if the offender pleaded guilty to a sexual offence or an offence involving the infliction of actual bodily harm (D5, s. 18z). Disqualifying offences in SA included violent and major indictable offences (D16; D17). Certain offences in WA were excluded from the program, including homicide, grievous bodily harm, threat to kill, stalking, dangerous driving causing death, sexual offences, drug trafficking charges and certain violent, aggravated burglaries (D21; D22; D23). Individuals with a history of violent or sexual offences were excluded because they usually lacked sufficient cooperation and trust required of a drug court participant, given that their sentence would be community-based\(^\text{47}\). To qualify for a drug court program in all jurisdictions included in this research the offender must be liable to be sentenced by the court to custodial imprisonment for their referred offence (e.g., D1, s. 5; D3, s.29).

5.2.2. Initial Sentence

Figure 5.2 (below) illustrates the passage available for those offenders in NSW, Queensland and Victoria who passed the initial assessment of suitability by the drug court to determine their motivation level to participate in a drug court program. From Figure 5.2 it can be observed that of the offenders referred to the drug court, not all ultimately became part of the cohort of offenders who received treatment (see (a) in Figure 5.2). These are offenders who met all of the eligibility criteria, underwent detoxification, and were then allocated a place on the drug court program. A second group met the eligibility criteria but were not accepted into the drug court program (see (b) in Figure 5.1); the reason this group did not progress was ‘there was no place available in detoxification’ (e.g., D2, s. 7; D11; D14; D22). The other cohort (see (c) in Figure 5.2) were offenders who did not enter the drug court program. This included two scenarios. The first included those who were initially assessed to be ineligible or unwilling prior to detoxification (see the first (c) in Figure 5.2). The second included those offenders who were initially thought to be eligible however did not enter the program following detoxification. The reasons for not entering the program at this point included that they were unwilling, ineligible or there was no suitable treatment plan available (see the second (c) in Figure 5.2) (e.g., D6; D9, Policy 2, Treatment Plans and Placement). A reason for the latter finding could have

\(^{47}\) Some literature illustrated that what constitutes a disqualifying offence is unclear and not well explained for drug court programs in Australia (e.g. D14; D18; D24). By way of illustration, an offender is not eligible to enter a NSW drug court program if she or he is charged with matters involving ‘sexual assault’ or ‘violent conduct’ (D1, s.5). Neither ‘violent conduct’ nor ‘charged’ are defined in the legislation. The drug court has interpreted this provision to mean that an offence encompassing violent conduct is disqualified if violence is technically an element of the offence charged, but if it is not, the fact that the actual commission of the offence involved conduct of a violent nature does not render the applicant ineligible (Chandler v DPP (2000) 49 NSWLR 1; DPP v Ebsworth (2001) 124 A Crim R 410).
been that the offender was living in unsuitable or unstable accommodation, for example, at a location that could not be declared a drug-free environment.

![Figure 5.2 Pathways to drug court programs](image)

Offenders assessed as eligible participants for a drug court program were subsequently initiated into the program. The current research identified two general types of drug court programs: pre-sentence and post-sentence. The SA and WA Drug Court Programs operated as pre-sentencing programs. Entrance to these required that an offender consented to enter the program, was eligible for bail and pleaded guilty to an offence that was likely to result in imprisonment (e.g., D4; D21) The NSW, Queensland and Victoria drug court programs operated as post-sentence programs. Entrance to these required that offenders had been sentenced to a period of imprisonment, which was then suspended to enable program participation (e.g., D4; D5, s.18Z; D22). Offenders in Queensland must have expressed interest in the program prior to the sentencing phase (D3, s.4).

Both pre- and post-sentence programs offered incentives for program participation. For example, successful completion of pre-sentence programs may have resulted in a non-custodial sentence (e.g.; D7; D12; D18). However, given that sentencing had not been undertaken, there was also a risk in jurisdictions such as NSW, where the offender must be ‘highly likely to receive a custodial sentence’ (D2, s. 5; D11) that such offenders would not have received a sentence of imprisonment in any case. That is, a drug court order would have been used as a substitute for a non-custodial sentence. Successful completion of post-sentence programs resulted in a non-custodial sentence or reduced period of imprisonment (e.g., D6; D13).

Offenders were required to undertake several different tasks and activities as part of their drug court program. These tasks were specified as conditions of participation. If they were not completed to the court’s satisfaction, the participant could be reprimanded,
sanctioned, or have their participation in the program ended. This research used the relevant descriptive documentation to identify the core program conditions. In summary, the analysis revealed that drug court programs were governed by two categories of core conditions: program participation requirements and compliance requirements. Appendix M outlines some examples of the various participation and compliance requirements for each of the drug court programs in the five Australian drug court jurisdictions.

The first category of core conditions imposed on participants related to their required participation in a drug court program designed to assist their rehabilitation. These conditions most commonly specified that a participating offender must attend various aspects of treatment. For example, treatment might include detoxification, mental health counselling or drug counselling. Common to all drug court programs in NSW, SA, Queensland, Victoria, and WA was that no specific details of the treatment plan were outlined within the documents analysed. Notwithstanding this, the research identified three broad participation requirements common to all five jurisdictions. These indicated that the drug court program participant was required to:

- undertake treatment for drug dependency as specified in the order,
- attend counselling sessions as directed; and,
- participate in a specific program and abide by the rules and regulations of that program (this involves a program in addition to treatment and counselling, for example the Moral Recognition Therapy and Staying Quit programs in SA (D16; D17)).

The second category of core conditions specified the required actions or behaviours of the participants to ensure that the drug court program objectively measured their compliance. This research identified that each Australian drug court program mandated three core compliance directions, which indicated that the drug court participant must:

- not commit a new offence;
- undertake urinalysis; and,
- obey the lawful directions of the court.

Beyond the general requirements of a drug court program, the analysed documents described a complex matrix of supervision services (monitoring function) and treatment
(therapeutic function). Essentially, however, this matrix could be classified into three essential components: treatment, case management, and compliance monitoring.

5.2.3. Treatment

This research identified that the treatment component in each of the drug court programs in NSW, SA, Queensland, Victoria and WA involved some form of community-based treatment and offender rehabilitation plan. All drug court programs in these jurisdictions offering drug treatment and programs aimed at reducing both recidivism and drug use (e.g., D9; Policy 7, Program Goals and Measures; D13; D23). A general therapeutic principle in the drug court programs was that participating offenders undertook only those treatment options that were considered suitable and appropriate for their needs, with participants required to provide consent and indicate their willingness to undertake the recommended treatment plan as a condition of their acceptance. The court mandated attendance at treatment.

This research identified that the treatment component in each of the drug court programs in NSW, SA, Queensland, Victoria and WA involved some form of community-based treatment and offender rehabilitation plan. All drug court programs in these jurisdictions offering drug treatment and programs aimed at reducing both recidivism and drug use, for example, the Making Choices: Moderate Intensity Men’s and Women’s Programs for General Offending in Queensland (D12; D14). A general therapeutic principle in the drug court programs was that participating offenders undertook only those treatment options that were considered suitable and appropriate for their needs, with participants required to provide consent and indicate their willingness to undertake the recommended treatment plan as a condition of their acceptance.

The court mandated attendance at treatment. Drug courts have sought to achieve the common goal of reducing offenders’ drug use (e.g. D1, s. 3; D13). A range of drug treatment and rehabilitation programs were provided to participants for this purpose, including detoxification, pharmacotherapies, drug dependency counselling, and specific drug and offence-reduction programs. Pharmacotherapy is the use of approved and prescribed medications as maintenance for drug dependency. This research identified four prescribed medications that were accepted as a legitimate form of drug treatment and maintenance: methadone, buprenorphine, suboxone and naltrexone. All four medications could be prescribed for drug court participants in Queensland, SA, Victoria and WA, while naltrexone was excluded in NSW (D3, s. 24; D10; D11; D1, s. 16; D17, D22).
Drug counselling referred to any method of individual or group counselling directed towards identified problems with drug use or dependency. It did not include counselling activity that formed part of a formal rehabilitation program that a participant was already attending outside of the drug court. Drug counselling was the most extensively used form of drug treatment management within all jurisdictions, with each drug court program delivering both one-on-one counselling with an accredited psychologist or psychological care specialist and group sessions conducted by community organisations (e.g., D7; D12).

An extensive range of drug- and offence-reduction programs were identified as accessible in all jurisdictions. The various programs can be sorted into three categories: cognition therapy, crime deterrence, and life skills programs. Table 5.3 outlines one example corresponding to each category for each of the drug court programs in the five drug court jurisdictions of NSW, SA, Queensland, Victoria, and WA.

<table>
<thead>
<tr>
<th>Reduction program</th>
<th>NSW</th>
<th>QLD</th>
<th>SA</th>
<th>VIC</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cognition therapy</td>
<td>Guthrie House relapse prevention program</td>
<td>Substance abuse recovery education program</td>
<td>Moral recognition therapy and staying quit</td>
<td>Drug misuse and rehabilitation planning program</td>
<td>Moral recognition treatment program</td>
</tr>
<tr>
<td>Crime deterrence</td>
<td>Anger management</td>
<td>Making choices: Moderate intensity men’s and women’s programs for general offending</td>
<td>Victim awareness program</td>
<td>Traffic offenders’ program</td>
<td>Addressing antisocial behaviour program</td>
</tr>
<tr>
<td>Life skills</td>
<td>Job-seeking skills workshop</td>
<td>Relationship counselling</td>
<td>Positive lifestyle changes</td>
<td>Relationship counselling</td>
<td>Family counselling</td>
</tr>
</tbody>
</table>

### 5.2.4. Case Management

The document analysis clarified the unique, essential feature of the drug court paradigm across all five jurisdictions, namely the drug court team. Judicial officers (magistrate or judge), lawyers (defence and prosecution), medical workers (clinical, psychological, drug and alcohol specialists), correctional representatives and law enforcement personnel worked jointly with community social service providers in what was identified throughout the documents as the drug court team. This group of stakeholders oversaw the...
rehabilitation progression of all participants to assist in addressing the core problems of dependency in offenders who had come to the attention of the criminal justice system (e.g., D5, s. 18ZG; D15).

Table 5.4 shows that membership of the drug court varied slightly in each of the five jurisdictions.

<table>
<thead>
<tr>
<th>NSW</th>
<th>QLD</th>
<th>VIC</th>
<th>SA</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge</td>
<td>Magistrate</td>
<td>Magistrate</td>
<td>Magistrate</td>
<td>Magistrate</td>
</tr>
<tr>
<td>Drug Court registrar</td>
<td>Drug Court registrar</td>
<td>Drug Court manager</td>
<td>Clinical psychologist</td>
<td>Drug Court manager</td>
</tr>
<tr>
<td>Prosecutor (Office of the Department of Public Prosecutions)</td>
<td>Police prosecutor</td>
<td>Police liaison officer</td>
<td>Community corrections officer</td>
<td>Drug Court manager</td>
</tr>
<tr>
<td>Police prosecutor</td>
<td>Defence solicitor from (Legal Aid QLD)</td>
<td>Case manager</td>
<td>Police prosecutor</td>
<td>Community corrections officer</td>
</tr>
<tr>
<td>Senior nurse (Justice Health)</td>
<td>Clinical nurse consultant (QLD Health)</td>
<td>Defence lawyer (Legal Aid VIC)</td>
<td>Defence solicitor (Legal Aid WA)</td>
<td>Police prosecutor</td>
</tr>
<tr>
<td>Defence solicitor (Legal Aid NSW)</td>
<td>Corrective services officer</td>
<td>Clinical adviser</td>
<td>Drug Court coordinator (Court Services)</td>
<td>Community corrections officer</td>
</tr>
<tr>
<td>Corrective services coordinator</td>
<td></td>
<td>Specialist community correction officers</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The principal function of the drug court team was to monitor the development of participants through the drug court program and cooperatively formulate approaches to assist their rehabilitation. The documents acknowledged that in each Australian jurisdiction the everyday supervision of participating offenders was the responsibility of a designated case manager and/or treatment provider.

On days that the drug court sat to consider the participants’ progress, a drug court team meeting generally preceded the sitting in all of the jurisdictions under review. The purpose of the drug court team meeting about a participant was to reach consensus on any changes to the participant’s treatment plan and to identify any contentious issues, for example participants may be wanted by police for offences that were committed before the commencement of the drug court program. In such circumstances the police
prosecutor would use the team meeting as an opportunity to consult with stakeholders in regards to the most efficient means to conduct the arrest (D9, Policy 10, Offences Committed by Participants). The document data showed that the drug court team discussed each of the cases listed for that day at that meeting. No participants were present at a drug court team meeting when their progress on the drug court program was discussed, and the NSW and Victoria jurisdictions specifically documented that this practice would not occur (D10, Policy 1, Team Meeting and Participant Review; D20). The document analysis identified five discussion points common to all of the drug courts in NSW, SA, Queensland, Victoria, and WA: whether an offender appeared to be eligible and appropriate to participate in a drug court program; the treatment plans (implementation and variation); specific conditions of participants’ drug court programs; appropriate rewards and/or sanctions; and custodial accommodation arrangements and variations.

Progression through the program occurred in three stages or phases in the drug court jurisdictions of NSW, Queensland, SA and Victoria. Each phase was designed so that the participant was required to achieve certain goals before being able to graduate to the next stage. The length of a drug court order varied between jurisdictions, yet the content and levels needed to be attained for progression from one stage to the next were remarkably similar. Appendix N, Tables N1.1 – N1.3, outline the progression of the drug court programs in each of these jurisdictions as identified from the document analysis. Each table includes the phase title, goals, duration and the principal means of achieving the specific phase goals. Compliance Monitoring

Compliance was the third and final component of the drug court treatment matrix. Drug courts are interested in their participants’ achievements; therefore, they must be able to objectively measure their progress and participation. The document analysis identified three mechanisms that measured progress and participation of a participant on a drug court program.

The first mechanism was to objectively measure compliance. Compliance monitoring generally occurred during case management, when participants were required to attend each of their identified programs and comply with any internal conditions of those

---

48 The drug court program operating period in other post-sentencing jurisdictions (WA and SA) was controlled by the provisions of the legislation (D17, D20; D22). Beyond this, a framework containing the various objectives of each stream could not be identified within the documents analysed, and so WA and SA has not been included in the tables provided in Appendix N.
programs. Failure to comply with any of these requirements could be dealt with as a breach by all five drug court jurisdictions (e.g., D1, s. 10; D3, s. 24).

The second mechanism used to monitor program compliance in all drug court programs was urinalysis testing and further offence monitoring. The types of drugs for which drug court programs tested were consistent across jurisdictions in that all Australian drug courts screened for five classes of drug: cannabis, cocaine, amphetamines, methadone and benzodiazepines. However, NSW was the only jurisdiction at the time of the data collection that tested for synthetic intoxicating drugs (D8; D9, Policy 9, Drug and Alcohol Use by Participants).

The frequency and timing of the tests differed across the five jurisdictions. For the jurisdictions of NSW, Queensland and Victoria (see Appendix N), the frequency and timing of the tests was contingent on the phase of the drug court programs (e.g., D5, s. 18ZM; D3, s. 31). Participants in SA and WA provided urine as directed weekly by the court. There was also some variation in how, and by whom, the testing was carried out. Table 5.5 outlines the differences in urine analysis identified in the document analysis between the various jurisdictions.

| Table 5.5 Authority and Location of Urine Collection and Analysis in the Five Jurisdictions |
|-----------------------------------------------|---------------|---------------|---------------|---------------|
| Urine analysis                              | NSW           | QLD           | SA            | VIC           | WA            |
| Authority to collect                        | Qualified nurse and DOCS | DOCS          | DOCS          | Qualified nurse and DOCS | DOCS          |
| Location                                    | Drug Court Registry (nurse) or in the field (DOCS)³ | In the field  | In the field  | Drug Court Registry (nurse) or in the field (DOCS)³ | In the field  |

*Note. DOCS = Department of Corrective Services compliance officers.

³ The Registrar, court or the case manager could endorse alternative arrangements, which may have included a drug test being given by a medical practitioner.

The tracking and monitoring of new offences were undertaken to ensure that the drug court program participants did not engage in criminal activity whilst participating on the program. The documents acknowledged that all jurisdictions identified new, on-program criminal charges from the arrest and charge records collected by the police representative on the drug court team. The police informed the court and the other members of the drug
court team of any new offence so that an appropriate response in the form of sanctions could be determined and enforced (e.g., D14; D16)

The third mechanism in the general drug court model under ‘compliance’ was the imposition of rewards for compliant drug court participants and sanctions for non-compliant participants. The document analysis revealed that the types of incentives and sanctions used by the drug court differed widely among the five jurisdictions.

The principal reward imposed by the drug courts for compliance across all jurisdictions was the public acknowledgement of success through applause. Reduction of any or all of imprisonment days, frequency of court appearances, case management sessions and drug urinalyses were the second most common types of rewards, and these were found in the jurisdictions of NSW, Queensland and Victoria (e.g., D9, Policy 4, Rewards and Sanctions; D6, D3, s. 31; D20). The analysis identified other ways that the court rewarded participants for compliance with the drug court program; Table 5.6 outlines some examples.

### Table 5.6 Examples of Rewards for Compliance

<table>
<thead>
<tr>
<th>NSW</th>
<th>QLD</th>
<th>VIC</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>• More flexible drug testing or court attendance</td>
<td>• Decrease in amount of any monetary sanction</td>
<td>• Reduction of community work days</td>
<td>• Food vouchers</td>
</tr>
<tr>
<td>• Decrease in the frequency of supervision, court appearances or other program obligations</td>
<td>• Change in course or treatment</td>
<td>• Court review quick list</td>
<td>• Movie tickets</td>
</tr>
<tr>
<td>• Allowance of return to work or study</td>
<td>• Decrease in attendance frequency at course</td>
<td>• Verbal praise</td>
<td>• Approval for excursions</td>
</tr>
<tr>
<td>• Removal of any curfew</td>
<td>• Decrease in community service</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note. DOCS = WA was excluded from the table, as the analysis identified that it only offered applause as a means for rewarding participants.*

The court had significant authority in all jurisdictions to sanction participants if it was satisfied that they had not adequately complied with certain provisions of their drug court program. These sanctions included both custodial and non-custodial sanctions.

The principal sanction mechanism imposed by drug courts for non-compliance across the jurisdictions of NSW, SA, Queensland and Victoria included increases in the frequencies of court appearances, case management sessions, drug testing, and the imposition of imprisonment days (i.e., days in custody) (e.g., D3, s. 31; D9, Policy 4, Rewards and Sanctions; D10). The analysis identified other ways that the court sanctioned participants
for non-compliance with their respective program, including a reprimand or warning from the judge (all jurisdictions), the imposition of a curfew (all jurisdictions), demotion to an earlier phase (NSW, QLD and VIC), the withdrawal of privileges (NSW, QLD, VIC and SA) the imposition of a fine (SA and WA) or an increase in community service hours (QLD, SA and WA). Evidence exists within the documents analysed to suggest a model for reducing custodial sanctions at the drug court jurisdictions in NSW, Queensland and Victoria (e.g., D1, s. 12; D5, s. 35A; D10; D12). The system was designed to increase defendant accountability. If a participant continued to comply with the drug court program they were, in theory, able to decrease their sanctions. For example, if a participant had accumulated 13 sanctions and then fully complied with their drug court program for six weeks, they would succeed in having all of their sanctions waived by the end of that period. This was not the case in the SA or WA jurisdictions. Table 5.7 summarises the process for reducing sanctions in the NSW, Queensland and Victoria jurisdictions.

<table>
<thead>
<tr>
<th>Weeks compliant</th>
<th>Sanctions reduced (custodial days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total possible reduction:</strong></td>
<td><strong>15</strong></td>
</tr>
</tbody>
</table>

As a general rule, participants in a drug court program in these jurisdictions would not go into custody until they had reached 14 sanctions (e.g. D11; D13; D15; D18).

The court in SA applied graduated sanctions for non-compliant behaviour. A point system was operated and points were awarded for minor non-compliance. Increasingly severe sanctions could be issued for more serious breaches of the participants’ drug court program. Points were allocated for non-compliance, which included failure to attend
treatment sessions, minor breaches of bail, admitted drug use or positive drug test results. These sanctions could include bail revocation and a period of incarceration. The points system for non-compliance specified a total that could provide an easy overview of progress. Unlike the other four jurisdictions, within the documents analysed for the SA drug court program, no evidence suggested that a process existed in SA that a participant who continued to comply with the program could, in theory, reduce their number of sanctions (D16, D17). Rewards and sanctions were administered in WA via a local ‘breach point system’. Similar to the system in the other drug courts in Australia, points were given for non-compliance and removed for good conduct. Drug court participants in the WA jurisdiction could be returned to custody during the drug court program as an informal custody sanction; however, this could only occur on a single occasion throughout the period of the participants’ drug court program. Custodial sanctions could be imposed by revoking bail because all WA Drug Court participants were subject to strict bail conditions. Participants returned to court and their bail was reset if they were willing to remain on the drug court program. The drug court had the power to revoke or change the bail conditions if it was satisfied that an offender was, had been, or was likely to be in breach of a bail condition (D21; D22).

5.2.5. Graduation and/or Successful Completion

Successful completion criteria for a drug court program varied between the five jurisdictions under review, but that primarily depended on whether the drug court program operated pre- or post-sentence. Pre-sentencing drug court programs had specified active periods, such as two years for the Victoria drug court programs (D5, s. 18ZF), whilst the NSW drug court program took at least one year or longer to complete (D6; D11). Each participant was required to engage in the complex matrix of treatment, case management and compliance monitoring as outlined above during this time. A review of the participant’s progress was undertaken when the operational period finished and consideration was then given to the imposition of a final sentence.

Participation in a drug court program was not equal to incarceration, nor was it a system of pre-adjudication imprisonment that would necessitate a sentence to be retrospective. Instead, involvement on the drug court program was dealt with in the same manner as when an offender was on bail in the community for an extended period with strict provisions. Thus, successful achievements whilst on the drug court program were taken into account in determining the final sentence; however, the final sentence could not be
greater than the initial sentence (D7; D12). Successful program completion was determined by the accomplishment of program goals. Sentencing or graduation was invoked when the court was satisfied that offenders had achieved their treatment and rehabilitation goals. The average time required to complete the three phases was 14 months in the Queensland drug court program, and the minimum time required was nine months (D13; D14). Appendix N outlines the graduation and/or completion requirements of a drug court program in the NSW, Queensland and Victoria jurisdictions, as identified in the document analysis. The drug court program operating period in other post-sentencing jurisdictions (WA and SA) was controlled by the provisions of the legislation (D17, D20; D22).

5.2.6. Termination, Unsuccessful Completion and/or Withdrawal

The document analysis identified an additional three possible pathways to exit a drug court program:

- the participant failed to comply with the requirements of their drug court program;
- the participant withdrew their involvement in the drug court program; and,
- circumstances were such that it was unlikely that the participant would make further progress in his or her rehabilitation and treatment.

Figure 5.3 outlines a flowchart of the three pathways to the end of a drug court program that were identified in the document analysis.

Drug court programs across all jurisdictions identified various reasons to terminate a participant’s involvement in the program before completion. These reasons included that the participant continued to re-offend while on the drug court program, failed to adhere to drug court program requirements (such as attending treatment sessions or court), had a pattern of positive drug tests, or requested to withdraw from the program (e.g., D3, s. 36; D10; D17).
<table>
<thead>
<tr>
<th>Pathway</th>
<th>Court Finding</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk to community</td>
<td>Terminate &amp; re-sentence</td>
<td>Custodial sentence</td>
</tr>
<tr>
<td>1. Program breached</td>
<td></td>
<td>Non-custodial sentence</td>
</tr>
<tr>
<td>Likely to progress</td>
<td>Return to program</td>
<td></td>
</tr>
<tr>
<td>Substantially complied</td>
<td>Terminate &amp; re-sentence</td>
<td>Certificate of achievement</td>
</tr>
<tr>
<td>2. Unlikely to progress</td>
<td></td>
<td>Custody</td>
</tr>
<tr>
<td>Did not substantially comply</td>
<td>Terminate &amp; re-sentence</td>
<td>Non-custodial sentence</td>
</tr>
<tr>
<td>Substantially Complied</td>
<td>Terminate &amp; re-sentence</td>
<td>Certificate of achievement</td>
</tr>
<tr>
<td>3. Participant withdraws</td>
<td></td>
<td>Custody</td>
</tr>
<tr>
<td>application</td>
<td>Did not substantially</td>
<td>Non-custodial sentence</td>
</tr>
<tr>
<td>Comply</td>
<td>Terminate &amp; re-sentence</td>
<td></td>
</tr>
</tbody>
</table>

Figure 5.3 Termination flow chart of a drug court program.
Termination of the drug court program in all five jurisdictions resulted in the sanctions being reactivated, that is, the ex-participant was required to serve the original prison sentence. The judicial officer was required to consider the extent of participation when reconsidering the initial sentence, including, for example, any rewards or sanctions that had been given to indicate either failure to meet the required standards of behaviour or exemplary behaviour. The term of imprisonment could not be greater than the term imposed in the initial sentence if the court sentenced the offender to imprisonment (e.g., D1, s. 12; D5, s. 35A).

In Queensland, the magistrate was required to reconsider the ex-participant’s initial sentence, vacate the initial order, and impose a final sentence in accordance with the legislation (D3, s.36). The Act provided that an application for termination of the participant could be made by the magistrate, the offender, an authorised corrective services officer or a prosecuting authority (D3, s. 35). The relevant policy document in NSW provided that:

The primary responsibility for identifying programs which should be considered for termination lies with the solicitors from the Office of the Director of Public Prosecutions and the Police Representative on the drug court team. (D9, Policy 6, Completion or Termination of Program)

The drug court magistrate in Victoria could cancel the treatment and supervision part of the Drug Treatment Order if he or she was satisfied, on the balance of probabilities, that the offender would not be able to comply with a certain condition attached to the order (D5, s. 18ZM). This could have been because the circumstances of the offender had materially changed since the order was made, the offender was no longer willing to comply with one or more conditions attached to the order, or because the continuation of the treatment and supervision part of the order was not likely to achieve one or more of the purposes for which the order was made (D20; D18). If the treatment and supervision part of the order was cancelled, the magistrate could either make an order activating some or all of the custodial part of the order or cancel the custodial part of the order and re-sentence the offender (D20).

The legislation in WA provided that if an offender was subject to a pre sentence order, the sentencing court (whether that was the drug court or another court) had to take into account the offender’s behaviour while subject to the order. The term ‘behaviour’ was not defined; arguably, a sentencing court would be required to take into account both positive and negative performance (D22; D23)
5.2.7. Operational Differences and Similarities

The generic model (see Figure 1.1) on which drug courts were predicated is drawn largely from the Therapeutic Jurisprudence approach, whereby a team of legal and health professionals forms a united front to assist the participants in their progress through the drug court program, with an emphasis on rehabilitation instead of punishment. Thus, the lowest common denominator for all drug court models was a court-imposed treatment regime, imposed as part of the sentence, which involved the participation of the judicial officer in the rehabilitative process. Australian drug courts, although sharing similar philosophical and political antecedents, employed different operational methodologies. These differences were in some cases marginal, such as being placed on a ‘quick list’ to progress up the order and appear before the judge in a timely manner, which was unique to the Victorian drug court program. In other cases, the differences were more fundamental, such as the different ways in which potential offenders were selected to access a drug court program.

Three significant operational differences between the various drug courts operating in Australia were identified by the analysis. First, the NSW, Queensland and Victoria Drug Court Programs operated post-sentence. Entrance to these programs required that offenders had been sentenced to a period of imprisonment, which was then suspended to enable program participation. The SA and WA drug court programs operated pre-sentence. The two pre-sentence programs operated on the basis of bail legislation. Post-sentence programs operated on the basis of drug court-specific legislation.

Second, offenders with convictions for violent offences were excluded in all jurisdictions except Victoria and sometimes NSW. Some jurisdictions also excluded individuals with convictions for sexual offences (NSW, Queensland and WA) or indictable offences (SA). The NSW drug court specifically excluded offenders with offences involving firearms, manslaughter or murder, but it also excluded offenders if their referred offence involved sexual offending or bodily harm. The Victorian drug court had no exclusions on criminal antecedents.

Third, offenders with illicit drug problems were the target of most drug court programs; however, offenders with licit drug problems were accepted in the NSW and Victoria drug court programs. The SA and Victoria drug courts target drug-related offending by requiring a nexus between the drug dependency and the relevant offences, but the remaining three jurisdictions simply target drug-dependent offenders.
Despite the differences that existed between jurisdictions, a number of underlying similarities were evident, mostly in relation to features that noticeably characterised them as drug courts. All drug court programs in Australia at the time of the review:

- required that an offender consented to enter and participate in the drug court program;
- responded to offenders who were likely to receive a court-imposed term of imprisonment (or who, in the case of the post-sentencing courts operating in Queensland, NSW and Victoria, had a custodial sentence imposed as part of the eligibility criteria for access to a drug court program);
- implemented a geographical boundary restricting access to a drug court program (generally, the boundaries imposed confined access to those offenders residing within the major cities and metropolitan areas);
- involved a collaborative partnership between the health-care system and the criminal justice system to service and treatment provision;
- were headed by a presiding authority appointed to engage in duties that were specific and unique to the drug court jurisdiction;
- had a scheme of graduated rewards and sanctions in place;
- developed working relationships between the judicial authority, the prosecution and the defence lawyers;
- engaged the participant in intensive drug treatment and offered access to a variety of extra support services;
- provided offenders with individual treatment plans detailing core and program conditions (these included not taking drugs, not committing offences, and the requirement to report to a case officer, appear in court and attend drug treatment regularly; it was also a condition of the SA drug court that offenders were placed on home detention while they completed the program);
- provided intensive judicial supervision, with offenders required to appear in court before the same magistrate or judge for regular reviews;
required participants to undertake repeated, ongoing and random urinalysis for
drug use, the results of which were regularly given to the court and could
provide grounds for termination from the drug court program;

continued for a minimum duration of at least one year, the exception being WA,
which was of six months minimum duration (median of 12 months); and

ended when the participant successfully completed the requirements of the drug
court program, asked to terminate their participation on the drug court program,
failed to comply with the drug court, or was assessed as unlikely to make further
progress in his or her treatment and rehabilitation.

5.2.8. Concluding Thoughts – Analysis of Secondary Data

The findings of the content analysis of the secondary data convincingly demonstrated that
drug courts have successfully abandoned the traditional adversarial approach of the court
system. The enhanced role of the judge was a key difference between drug courts and
mainstream courts. The research demonstrated that drug courts are characterised by
significant changes to how the judicial officer and the court operate. The drug court’s
primary function is to work collaboratively with partner agencies in case management
and program delivery for each offender. The judge maintains significant and ongoing
contact with the offender to enhance their rehabilitation, and the drug court judge stayed
involved with each case throughout the treatment process. The court’s role in case
determination is seen as secondary to rehabilitation.

Drug courts transform the way the criminal justice system traditionally deals with
criminal casework involving the drug-dependent offender. The traditional process is
adversarial, primarily legalistic, and emphasises the efficient but backward-looking
adjudication of claims, rights and responsibilities and involves few participants and
stakeholders. The transformed process of drug courts is collaborative, primarily
therapeutic and needs-based and emphasises forward-looking, post-adjudication problem
solving and dispute avoidance, with a wide range of participants and stakeholders. It is
aimed at efficient case processing and effective case outcomes to reduce or stop criminal
recidivism and drug use. The research demonstrated that, in addition to relying on
traditional court players, such as lawyers and solicitors, the drug court equally relied upon
drug workers, psychologists, social workers and others. Criminal justice agencies,
community groups, health care providers, social service providers and their representatives worked as a team to achieve the drug court outcomes.

5.3. Analysis of Observational Data – Drug Court of New South Wales

The practices adopted at the Drug Court of NSW were observed over 30 days within a three-month period in 2014. The researcher observed a number of cases that were in different phases of the program in order to witness and compare the different discourse, techniques and mobilisation of drug court specialists across the whole of the program.

The researcher was present for 1,354 court matters. This number includes legal hearings, ‘report backs’49, graduations and those drug court participants that were mentioned in their absence. The results for the observational phase of the research are expressed through the framework of the Generalised Drug Court Program Model (see Figure 1.1).

5.3.1. Assessment and Admission

During the observations conducted for this study, a total of 53 referrals were observed, and of these 62% (n = 33) were deemed eligible and appropriate for the purpose of accessing a drug court program. The remaining 38% (n = 20) of offenders were not granted access to a drug court program because they were deemed ineligible according to the legislative requirements of the court (n = 13) or were yet to be assessed (n = 7).

All 33 participants accepted into a drug court program were advised that they were expected to reduce drug use, stabilise their physical health and cease criminal activity prior to being released from custody and onto Phase 1 of the drug court program. They were also advised that they were required to undergo drug testing at least three times a week and to report back to the court once a week. When the participants progressed from Phase 1 to Phase 2 of the programs, they were all required to sign a form acknowledging the change in program requirements whereby participants were required to undergo drug testing twice weekly and report-back court appearances were to occur fortnightly. Participants were similarly required to sign an acknowledgment for a change in program commitments when they progressed from Phase 2 to Phase 3. The only variation was that court appearances were observed to reduce to once a month in Phase 3.

49 A “report back” is a short meeting between the participant and the judge during which the participant’s progress is reviewed.
Of the 33 offenders accepted onto the drug court program 22 (67%) were released onto a treatment plan within 30 days. The literature suggests that a link exists between drug court participants’ prospects of accomplishing the goals of a drug court and the facilitation of early release into the supervision of a drug court program. Carey et al. (2008), for instance, recommended that all eligible and appropriate offenders should be swiftly placed onto a drug court program. While they did not quantify or comprehensively define ‘swiftly’, the 30 day period observed by the researcher did not seem excessively slow, given the number of appointments that need to be arranged and completed before a treatment plan can be developed.

Carey et al. (2008) further recommended that both the prosecution and defence teams contribute to the assessment of drug court referrals if delays are to be avoided. This finding is concerned with the efficiency of the assessment practices adopted by stakeholders to aid early offender access to a drug court program. This research identified four initial assessment practices during the observation period that contributed to the timely placement of eligible offenders onto a drug court program. Three of these (identified as a) – c), below) were utilised in all 33 cases, while that identified as d) was utilised in 91% (n = 30) cases.

a) the screening process was aided by the use of a health standardised screening instrument;

b) a post-referral procedure existed whereby the court either summarily, or after a more limited hearing, decided the question of whether a potential participant was an ‘appropriate’ offender to participate on a drug court program; and,

c) a checklist criterion was utilised by the Police Prosecution for eligibility and appropriateness screening; and

d) Screening was conducted within one week of being referred to the drug court (91%, n = 30).

5.3.2. Initial Sentence

All 33 offenders who were deemed eligible and appropriate for the purposes of accessing a drug court program entered a plea of guilty at the court hearing, and the judge convicted and sentenced them. This sentence was then suspended in lieu of a custodial sentence and was commonly referred to as an ‘initial sentence’.

74
The reasons given by all sentencing judges for accepting participants into the drug court program were consistent with those found during the document analysis, including that the drug court program aimed to deliver tangible outcomes for a specified offender type. The target population was best described by one judge (designated Judge D), who commented that:

Firstly, I would like to apologise for the delay it has taken to get you before us today, however we needed to make sure you were the right person for the program. Concerns were raised that you may have been inappropriate to participate in a Drug Court Program due to the number of violent matters you have on your record in the past. Mr [name removed] this is not your first time you have offended, but you are not a violent person. The matters referred to by the prosecution are very much in the past, dating back to 1999. Based on this I don’t see you as a risk to the community now. I need to balance any risk of you being violent in the community with the need for you to have access to treatment. Fortunately, the legislation allows me to balance the two. Accordingly, I have determined that you are both eligible and appropriate to access a drug court program. (Judge D, Observation notes, Day 15)

The literature acknowledged the need for drug courts to make an appropriate response to the crime by effectively addressing the individual’s underlying drug disorder in order to achieve rehabilitation and reintegration outcomes. Studies outlined in Chapter Four reported that drug courts are recognised as mechanisms that allow such responses to be developed and implemented. Throughout the observation component, and in particular the 33 observed sentences, defence solicitors, when speaking on behalf of the participant, consistently acknowledged a need for the sort of balancing referred to by Judge D. However, they disagreed as to whether the associated considerations were weighted appropriately by the court. Of the twelve defence solicitors observed, all but three disclosed during submissions to the court at the initial sentence that access to a drug court program is a rare and unique opportunity that is uncommon within the general criminal justice system. This is consistent with the low number of people being referred to drug courts (in this case, n = 53 over the whole observation period), of whom only 33 were deemed eligible and appropriate for the purposes of accessing a drug court program. This finding is particularly significant because, as noted, the literature suggests that drug courts, as a diversional strategy, are used as a mechanism to satisfy the balance between responding to the crime and addressing the underlying drug disorder.

The judge typically discussed limitations in general terms in regards to treatment plan readiness for initial sentence. For example, one judge suggested the drug court could have a more profound effect on offenders with an increase in general services and supports:
Housing is a real issue for you Mr [name removed]. Unfortunately, similar people have appeared before me with the same issue. And we can’t accommodate your needs, so there is no highly suitable treatment plan for you. There are significant waitlists for housing within this area and we have tried our best. (Judge B, Observation notes, Day 9)

Another judge highlighted the need for more resources in the area of mental health:

I’m sorry [name removed] we are not in a position to assist you today. It is the case Mr [reference to Defence solicitor] that we certainly need more resources for people like [reference to offender]. The health workers have undertaken their assessment and there are simply no services that can help your client with his psychological disorder and a drug issue. We won’t be able to proceed to sentence today. (Judge A, Observation notes, Day 20)

In each example, the judge highlights the general lack of resources as a major impediment to the court’s ability to address participants’ underlying drug disorders and needs. These inadequacies are significant since homelessness and concurrent addictions are profound impediments to progress in addressing drug use. Equally important, they are recognised predictors of further criminal activity and, therefore, recidivism.

5.3.3. Treatment

The sentence decisions for the 33 offenders who were granted access to a drug court program demonstrated the range of treatment types offered by the NSW drug court program. Drug court participants could be assigned to abstinence or methadone treatment, both of which could be delivered in either a residential or community-based setting, or they could be assigned to suboxone or buprenorphine treatment, both of which could only be delivered in the community setting. Table 5.8 shows the number of participants per treatment type for those sentenced at the drug court and released onto their drug court program.

<table>
<thead>
<tr>
<th>Treatment type</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community – abstinence</td>
<td>6</td>
<td>18.2</td>
</tr>
<tr>
<td>Community – methadone</td>
<td>8</td>
<td>24.2</td>
</tr>
<tr>
<td>Community – buprenorphine</td>
<td>4</td>
<td>12.1</td>
</tr>
<tr>
<td>Community – suboxone</td>
<td>2</td>
<td>6.1</td>
</tr>
<tr>
<td>Residential – abstinence</td>
<td>7</td>
<td>21.2</td>
</tr>
<tr>
<td>Residential – methadone</td>
<td>6</td>
<td>18.2</td>
</tr>
</tbody>
</table>
As Table 5.8 indicates, methadone treatment in a community setting was the most common treatment type observed (24.2%), while community-based treatment with suboxone (6.1%) was the least common. Also, community-based treatments (60.6%) significantly exceeded residential-based ones (39.4%).

Most of those participants assigned to residential treatment were placed at one of three treatment providers: T1, T2 or T3. All three agencies provide controlled residential treatment for drug court participants, however T1 and T2 both deliver methadone-based treatments, while T3 supports drug court participants who are utilising abstinence only, that is, not prescribed any drug dependence withdrawal medication.

The literature in Chapter Four defines ‘drug rehabilitation’ in terms of the range of drug treatments. These include:

- residential rehabilitation programs;
- detoxification;
- drug counselling;
- medication; and
- intensive outpatient programs and outreach services.

The diversity of treatments defined throughout the literature reflects the fact that there is not a ‘one size fits all’ approach, with the needs of offenders varying depending on the severity of their dependence and where they are on their treatment journey. For example, of the 33 offenders released onto their treatment plan, all (100%) required counselling, while 14 (42.4%) needed a detoxification period within the first three months of their program\(^{50}\).

Of the 20 offenders who were not granted access to a drug court program because they were deemed ineligible according to the legislative requirements of the court, 12 (60%) were unable to access to residential rehabilitation program. This is consistent with the literature which highlights ‘long waiting lists’ for access to residential rehabilitation as a

\(^{50}\) Detoxification throughout the literature refers to a person withdrawing from drug dependency. Detoxification does not address underlying factors that contribute to substance abuse. Offenders have to be in custody in order to detoxify as part of the drug court program.
barrier to accessing a drug court program (Australian National Council on Drugs 2009, 2014; Ministerial Council on Drug Strategy, 2017). The wait time for a bed in accommodation into a residential rehabilitation program varied greatly, but could be up to three months. For example, T1 kept a wait list of no more than 25 people as a lengthier list would mean the time frame for entry would be even longer. Also, T2 advised that people on the wait list must call every two weeks to confirm that they wish to remain on the list, and if they do not make contact, they are removed from the list (Observation notes, Day 24). The need for more treatment services is apparent when the waitlist for residential rehabilitation facilities can stretch to three months. For example, one judge highlighted their concern for a general lack of drug court treatment facilities and services for pharmacotherapy offenders.

The reality is that a good percentage of offenders on this program who are in rehab like you [reference to graduating participant] require pharmacotherapy. You have been lucky enough to have their help. In the absence of more comprehensive rehabs to address all those issues that you have, then the drug court cannot happen. When you first tried to come on the program all of the rehabs were being used and were full with drug court participants, we were lucky to find you a spot and here you are today. (Judge B, Observation notes, Day 9)

While it is acknowledged that there is a range of different types of rehabilitation services that offenders can access as part of their treatment, this research has highlighted the need for more residential rehabilitation services providing holistic support to individuals, as well as the need for more rehabilitation beds to allow for more supervised rehabilitation treatment options.

5.3.4. Case Management

As noted above, the Drug Court of NSW requires that all participants on the drug court program return to court to report on their progress, commonly referred to as a “report back”. In total 218 report backs were observed, involving 190 different people. The observed report backs varied in length depending upon whether participants were graduating, transitioning from Phase 1 to Phase 2 or from Phase 2 to Phase 3, were to be incarcerated, were not present at the report back, or were to be sanctioned for not fulfilling the program requirements in the time period since the last drug court report back. An entire report back session lasted approximately two hours on each day observed, with the judge engaged in dialogue with each participant that attended for approximately three minutes (i.e., the judge spent three minutes out of the two-hour report back session engaged in dialogue with each participant).
Each report back session covered several categories of participants and provided insight into how participants were progressing on their drug court program. The specific categories included:

- completed Phase 1 or Phase 2;
- ‘applauses’;
- ‘to be incarcerated’; and
- graduating participants.

The ordering of these categories was standardised, with only a few situational exceptions (such as, those who were excused from being at court at the standard time (n= 12)). Prior to dealing with matters, the judge announced which category of persons was to be called. Participants were called by their full name. The following announcement illustrates the order of proceedings in the courtroom:

Can I please have custodies started to be brought up in a few minutes [Judge looks at the corrective officers at the cell door]. In the meantime, I will deal with Mr [name removed] and some of the participants who are here early and are doing well. He has had a good fortnight and we have a surprise for him today. [the participant had completed Phase 1 and it was anticipated he was going to Phase 2]. We will then deal with those that need to be released. We will have the graduation just before lunch. (Judge A, Observation notes, Day 2)

The report back process was observed to be more than a means to monitor participants' progress. It was also used in two other ways: to encourage participants to progress and for stakeholders to gain a deeper understanding of each participant’s progression on program.

As regards the first of these, it was used to encourage participants to learn about desired behaviours and how the drug court works by way of the experience of others. For example, during one observational session the Judge explained to a participant who was attending his first report back that “because you are new to this program, it is a good idea that we let you see how it operates and what is expected of you” (Judge C, Observation notes, Day 21). On the previous observation day, and with the same Judge, the researcher noted that a participant had arrived at the court early and was one of the first in the door that morning, yet he had been left until after 14 other participants had been called up before being given his turn. During this time he witnessed the entire spectrum of drug court report backs, including:
• two participants being released from custody and returned to the community after having served their sanctions;

• one participant being placed on an ‘abandonment clause’ (if the participant abandons their drug court program, the court may terminate the participants’ program in the absence of the participant);

• three participants being placed on an ‘honesty clause’ (if the participant is identified as having not admitted to drug use, then they are returned to custody to serve a sentence);

• one participant being placed on a Next Use to Serve order (if the participant uses a drug that is prohibited by the court, then they will return to custody)51; and,

• four separate participants receiving a round of applause, including one who was reassured that through satisfactory progression on the drug court program, an opportunity existed for her to prove her worth as a mother and perhaps obtain the support of the court to have access to her children restored (Observation notes, Day 20).

This research identified strong similarities between the drug court programs of NSW and Queensland regarding the order of report back proceedings. The literature reviewed concerning the Queensland Drug Court participants was that all those who appear at a particular court session are required to be seated in the courtroom in order to witness the way other participants are being dealt with (AIC, 2008; QDOJ, 2009). The participants are called in an order previously determined at the drug court team meeting. This is arranged so that participants are called first who have something to say that may benefit others or because the magistrate has something to say to one that will also be relevant to others (AIC, 2003; QDOJ, 2010). Attendance at court thus becomes an educational tool so participants can see that others are treated similarly and to give participants insight into the sorts of conditions that may be placed on them, depending on their actions. The literature was silent on this issue as it relates to the other three drug court jurisdictions.

The second way in which report backs were used as an educational tool was via the judge’s direct dialogue with each participant about their current progress through the

51 Next Use to Serve orders are discussed below.
Thirty-nine participants were observed to progress from Phase 1 to Phase 2 or from Phase 2 to Phase 3. Of these, 36 spoke at this juncture, with the majority (n = 30) talking openly about the changes they have made in order to be successful thus far and what had assisted them to comply with the drug court program requirements. The following list indicates some of the statements made:

- “I’m just pleased that I can now go to work. I didn’t like having that condition” [reference to not being able to work whilst on Phase One of the drug court program];

- “Now I get a clap from everyone, I have never had this before. I guess I also get sanctions, but that’s cool, I can work them off”;

- “Getting off drugs by going into detox was the best thing for me. Also, I think having the condition ‘not to commit another offence’ [reference to specific program clause] was always on my mind”; and,

- “The ability to change from living with my parents to [treatment facility removed] has been what got me here. I’m happy to consider other options [treatment options] if that's what you want me to do. I will do what you say because it’s working and you're the experts”.52

These statements affirmed the findings from the document analysis in that the structured progression system aligned the motivation of the participants with the court’s aims. The progression mechanism was similarly used to gently re-insert the participants back into the community and to provide adequate monitoring and surveillance in the early stages of their program.

5.3.5. Compliance Monitoring

Compliance was facilitated and encouraged by a number of techniques observed to be incorporated into the drug court program at the Drug Court of NSW. Some of these techniques were provided by the service and treatment providers who conducted the various drug rehabilitation programs. However, much of the work observed was facilitated by the structured nature of the court processes themselves. Such techniques included the imposition of not only negative consequences but also positive ones, as

52 All comments were extracted from notes recorded on observation schedules from days 1, 5, 11, 12, 15, 23 and 29.
relevant. Another aspect of the drug court program that aided the effort to monitor compliance was the use of specific orders or hearings to elicit desired behaviour from the participants. Two of the most prominent processes seen to be used by the Court were the Potential to Progress hearings (PTP) and the Next Use to Serve orders.

A PTP hearing aims to establish a participant’s potential to progress on the drug court program. However, the PTP hearing served as more than just an evaluative tool for determining future compliance; it also aimed to coerce compliance through the threat of termination from the program. Nevertheless, it was regularly conveyed to the participants as an opportunity to demonstrate their willingness to engage in the program. The researcher observed the court impose eight PTP orders. On six of those occasions, the Judge suggested the respective participants used it as motivation and framed it in positive terms.

The researcher also observed the court impose 16 Next Use to Serve orders. A participant on a Next Use to Serve order was on notice that the next time they used drugs they would be placed in custody. These orders were similarly used by the court to elicit compliance through the threat of a punitive sanction. Yet it, too, was framed in the language of opportunity on 13 occasions, as providing participants with the opportunity to prove to the court that they were able to engage with the program and that they were able to progress in the program towards graduation in the future.

The following courtroom conversation that occurred between a judge and a participant is an example of the NSW Drug Court’s attempt to use these orders to assist a drug court participant through a challenging period. The participant was a woman in her early thirties who had a 16-year history of offending and drug dependence. The participant was observed by the researcher on eight separate occasions throughout the observation phase of this research; she had been at the drug court for approximately one year when first observed. The following narrative occurred during the researcher’s sixth observation of the participant.

Judge: You’ve had two uses this week. Do you need to tell me something? You don’t have a history of not telling the court when you have used, yet I see a use that you have not told us about? Do I need to send you into custody?

---

53 The drug court may form the preliminary view that unless a participant can progress to the next phase of his or her drug court program by a nominated date, then his or her failure to achieve that progression by the nominated date demonstrates a lack of potential to progress on his or her drug court program. If the court forms such a preliminary view, then a date for progression or termination of program should be set. If the participant has not demonstrated the required potential to progress, then his or her program may be terminated for lack of potential to progress.
Participant: I don’t know what to say [looks towards the drug court team]. Surely I can do better out here than going in there [looks at the drug court door towards custody area]. I think you [drug court] can help me better than getting what I can get in there [traditional justice methods] you can help me with more things, stuff that is personal to me.

Judge: And really, we need to see you engage in a positive activity. You’ve got volunteer work starting next week. Your parole officers have been working hard to arrange this for you so you make sure you attend. You will need to show us next week at your PTP that you are engaging with the program.

Participant: I’ve arranged for childcare so I can attend.

Prosecutor: Your Honour, we have been hearing this for the last few months. She has been on the program for over four months and is still on Phase 1.

Judge: You will get 4 sanctions this week, which takes you to 10. I’m putting you on Next Use to Serve. You have one week to demonstrate that you are able to progress on the program.

Participant: I know I can do it. I won’t use at all this week and I will get there [reference to volunteer work]. Your Honour, also I was told that I could get to Phase 2 if I do some work, but I was wanting to know if I can still get to Phase 2 in a few weeks? That’s what I really want to do. I keep missing out on it because I can’t make it to work. It’s just hard trying to fit it everything in, that’s all. If you send them straight in [reference to prison], I’m not going to get any better

Judge: We won’t hold you back, but we don’t want to see you go too soon. It’s a vicious cycle with you, and jail doesn’t solve your problem, but there must be some consequence or penalty. Put it this way, you should still be punished. See you next week and we will talk about how to get you there. (Judge C, Observation notes, Day 16)

As proposed above, the drug court used the ‘Next Use to Serve’ as both a retributive measure for non-compliance with the drug court program the previous week and, simultaneously, as an opportunity for the participant to engage with the program54. Furthermore, the preceding passage demonstrates how both the Next Use to Serve provision and the PTP hearings complemented each other when used together. The description of these orders as ‘opportunities to engage’ essentially transformed them from a negative, retributive strategy that threatened either termination from the drug court program (via the PTP) or short-term custody (via the Next Use to Serve) into a tool for generating motivation to succeed on the program.

What this dialogue also demonstrates is the importance participants place on the attainment of their goals within the program. Here, the participant was visually distressed

---

54 The drug court may choose to place additional or special clauses in the programs of some participants, such as a ‘next use to serve’. This clause will usually be imposed as the necessary and appropriate response to perceived specific risk factors, or as the result of problem behaviour whilst on program. The present system permits participants to accumulate up to 14 days in custody prior to being actually placed in custody. Participants can reduce the prison time they have accumulated through good behaviour. If the participant is alleged to have breached a ‘next use to serve’ program clause, then the court will require the immediate serving of any custodial sanctions, but this does not necessarily mean termination from the drug court program.
about her behaviour not because, as numerous authors have argued, she has learned the rhetoric of remaining drug-free or has become somehow indoctrinated by the therapeutic ethos (Marlow, 2014a; 2014b; Stitzer, 2008). Instead, the participant is simply upset with her performance because it will now take her longer to achieve her goal of phase 2 on the program. It is a utilitarian aim that motivates this participant to succeed. The significance of the participant’s motivational impulses being grounded in the attainment of her goals and not in the attainment of the court’s therapeutic goals, per se, is that it highlights the importance of the structured nature of the program. While it is undoubtedly the case that the drug court uses the therapeutic language identified in the literature, the example of this participant demonstrates that the language does not necessarily manifest within the participant’s motivational impulses. Instead, the participants are more motivated by the attainment of the goals the drug court has developed through the structured nature of the program.

Indeed, it is through the setting of goals that the drug court attempts to engender in participants a sense of engagement with the program. In much the same way as the PTP hearings, the progressive nature of the drug court provides an incentive for the participants to aim for. As one drug court judge commented at a graduation whilst discussing what he thought the participants’ motivations were for achieving graduation:

Judge: Many say [reference to offender], when I ask them what their motivations are to continue with the program even when faced with a PTP hearing, they generally say things like “I’m really keen to get on with things and do more, I’m keen to expand my freedoms, and get on with my life.” (Judge B, Observation notes, Day 15)

While this quote again demonstrates the positive approach participants have towards the PTP hearings, it also highlights the goal-orientation of the participants even when facing potential termination of their program. As one judge explained at another graduation, the setting of goals is an intentional move by the court to encourage engagement with the program:

I think it has became harder for you [graduating participant] to drift along on the program for a long, long time. I think there was only so long that you could concentrate on something as onerous as this drug court program. Only so many weeks of your life that you could do supervised urine tests. So after almost 2 years we reach an agreement now you’re either going to graduate by September or we’re going to stop [reference to PTP date]. I think this was a situation where we were all just lost energy and I think you did as well. I am sure you agree we’d just all been doing it for too long. (Judge C, Observation notes, Day 13)

Over the course of the observation period, the researcher was able to assess program compliance in relation to drug use. Data in the form of drug test results was verbally
reported in the courtroom. Urine tests for drug court participants were conducted by a qualified nurse from the drug court registry or by an officer from the Department of Corrective Services in all matters. Of the 218 participants observed, 107 (58%) tested positive to at least one drug prohibited by the drug court. The frequency and timing of the tests were observed to differ depending on the phase of the drug court program that the participant had reached. Common themes emerged from observing 83 drug court report backs that consisted of 46% (n = 38) Phase 1 participants, 28% (n = 23) Phase 2 participants and 26% (n = 22) at Phase 3 of the drug court program. Twenty-eight of the 38 Phase 1 participants observed had been urinalysis-tested a minimum of three times per week on a pre-programmed basis. Moreover, testing was organised so that it occurred with no more than a two day gap between tests (e.g., Monday, Tuesday, and Friday; Monday, Thursday, and Friday; Monday, Wednesday and Friday) (no other variation was acceptable). Sixteen of the 23 Phase 2 participants and 18 of the 22 Phase 3 participants had been urinalysis tested a minimum of twice per week, with a maximum of three days between tests (e.g., Monday and Thursday or Tuesday and Friday).

For the 107 reporting back participants who tested positive to at least one drug prohibited by the drug court, the custodial sentences imposed ranged between 1 and 14 days. A common practice was to suspend custodial sanctions until the participants had accumulated 14 days in sanctions, at which time they were directed to serve their time in custody. The average number of sanctions per participant was five days. These findings suggest, like the drug court jurisdictions of Queensland and Victoria, the NSW Drug Court activated short periods of the custodial time once sufficient days had been accumulated to be taken in 7 or 14 day blocks.

The utilisation of the drug test results as a mechanism for reinforcing the virtue of honesty was apparent and emphasised to all participants. Indeed, the importance of honesty was impressed upon all participants at the outset of their time in the program. As part of the initial sentencing process, the judge, without fail in the 33 (100%) initial sentence hearings observed during this research, emphasised both the need to engage and to be open and honest with the program. However, the initial plea for honesty was not the only time the court emphasised the need for this virtue. In the following excerpt between a participant and the judge, the researcher identified that it was not only the drug use per se but also the ability of participants to be honest about their use that was being monitored. This was the second time (of four) that this participant was observed.
The participant had previously been placed on an honesty warning, meaning that in the case of further dishonesty, he would be required to serve sanctions. The honesty warning was similar in many ways to a Next Use to Serve order, but the emphasis was on telling the truth about drug use, not about the use itself.

Judge: How are you this week?

Participant: Okay, Your Honour.

Judge: Well, an issue has arisen, we now have your test results back from [date removed], which tells us that you are not being honest. It's positive for speed. And, what’s worse, is that you're already on an honesty warning. We have been through this and told you that not admitting your uses is what will get you in trouble. You will get three sanctions and I want you to serve them from today.

Participant: I promise you I did not use, Your Honour. I don’t want to go in. What was the date? I swear I haven’t used since [date removed].

Judge: I am not interested. We will talk further when you come out of custody.

The participant was then taken into custody. (Judge A, Observation notes, Day 5)

Here, and in other observed instances, the judge’s focus was clearly more on the honesty of the participant and less on the drug use per se. Such an emphasis shifted the purpose of the drug tests from ‘merely’ checking for drug use to honesty about drug use. The transformation of the drug test effectively shifts the drug testing component of the drug court model from a monitoring device to a process that encourages engagement with the aims of the program. Like the ‘potential to progress’ and ‘next use to serve orders’, the utilisation of the concept of honesty as a governing technique, exemplified by the use of honesty warnings, seeks to build and establish a level of motivation within drug court participants whereby extrinsic motivations are internalised, in the hope that they will engage with the program. This highlights the use of therapeutic methods within the drug court model to reach the aim of reintegrating participants back into the community.

The Court used applause in the courtroom to further reinforce desired behaviours in a way similar to its utilisation of the motivational qualities of the progressive nature of the program, for example, the previously referenced PTP and the Next Use to Serve orders. However, the following exchange between a judge and a participant shows that the use of applause can be more than just a public acknowledgement of achievement. It can also be an endorsement to the participant that their behaviour and the life they are living is worth celebrating. The applause also reminds the (engaging) participant of the happiness one receives from a sense of achievement. It equally reminds those non-engaging participants that they are not receiving the congratulatory compliments given to others.
Judge: You have not used for a few weeks now. How do you feel?

Participant: Good.

Judge: I see you missed a test here, but you provided [drug test] at a doctor. This was a very sensible response to ensure that the test was done.

Participant: That’s right, Your Honour, I got the doctor to make sure he tested for the traces as well. It cost me extra to do this, but I thought I should. It is my responsibility, I know. Having to do this keeps me going. I need to do these things to get through [reference to the program], and I’m doing it.

Judge: That was a very wise decision. It took a lot of responsibility, that’s really good to see. We were supposed to have your PTP today but with the way you have been going, I am not sure we will need to, Miss [prosecutor]?

The Prosecutor asks for the PTP not to proceed and for the court to find that the participant does indeed have the ability to progress on the drug court program.

Judge: Well would the team support my recommendation that he proceeds to Phase 2?

The Drug Court team agrees to discuss progression to Phase 2 on the next occasion.

Judge: Well done again [name removed], you should be very pleased with this outcome

Participant: Thank you to you all [large applause from the courtroom], thank you [participant pointed towards the prosecutor]. (Judge B, Observation notes, Day 15)

This was a symbolically significant moment for the participant; he received a large round of applause for his efforts. His achievement was clear not only to him but also to the crowded courtroom, as the majority had also witnessed the participant being placed in custody only one month before for repeated dishonesty in regards to drug use. The message that a participant can turn their program from near termination into near progression through engagement with the program was reinforced not only by the successful PTP hearing but also by the large applause provided for efforts. These examples demonstrate that the sense of achievement provided through the simple act of a round of applause gives the participants a significant degree of motivation to continue to pursue the drug court program’s goals.

While the different courtroom elements of the drug court from applause through to PTP hearings are pivotal to aligning the aspirations of participants with those of the drug court, the techniques by which this alignment is achieved depended in no small way on the structure and consistency of the program. The NSW Drug Court was observed to generally be a predictable program, and one of the most striking features that underscores its predictability was the sanction system. It was observed by the researcher that the judge reinforced the predictability of the structured sanction system by regularly informing the participants of the sanction structure. This included how the sanctions were progressively
reduced through continual compliance and also how they were applied with a heavier hand as participants’ responsibilities increased with progression through the program.

The drug court team was never seen to address the court in regards to the number of sanctions a participant would receive for each type of breach (they instead suggested the amount but qualified it by stating that the end-decision was up to the judge’s discretion). Rather, the judge articulated the number of sanctions participants would receive for particular breaches at particular stages of their program. By way of illustration, the researcher observed 25 participants who progressed to Phase 2 of the drug court program, and the judge informed 22 of them (generally within the first fortnight of their Phase 2 experience) that if they missed a test on Phase 2, they would receive three sanctions, not one. The observed use of rewards and/or sanctions that increased or decreased the duration of an individual’s treatment program to encourage adherence to treatment and court rules was consistent with the practices of the other drug court jurisdictions in SA, Queensland, Victoria, and WA.

It could be argued that this consistency is what distinguishes the drug court from other courts in terms of its therapeutic value. This point is perhaps best highlighted in the following excerpt between a participant and a judge at a graduation:

Judge: I am really quite moved by what your treatment providers and what the team have done and what you have achieved. Drug treatment has helped you recover...so we can hopefully avoid you committing further crimes.

Participant: This is the only place I have really felt safe to come, you’re like my family to me.

The safety provided by that structure, as the judge elaborates, can be compared to a therapeutic relationship between a patient and a doctor:

Judge: It’s a bit like this Mr [name removed], you used to be chaotic, so we [Drug Court team] set up a happy framework for you. In simple terms, we tried to make you feel comfortable. Another way of looking at it, you saw the same doctor at the same place at the same time each week, with everyone trying to achieve the same goals. And look at what we have achieved. It may not be the same person [i.e. team member, each time] but it’s a team structure. Just like a doctor we required you to commit to your program and be here on a certain day and have tried to listen, show respect and be available. (Judge B, Observation notes, Day 15)

The literature suggests that participants are in a better position to foresee the consequences of their actions when consistency exists in staffing within the drug court team (Crea, Usher & Wild-re 2009, Kushner, 2014; Previtera, 2006). Additionally, permitting drug court team members to contribute to the sanctioning process ensures that sanctions are administered soon after the non-compliant conduct. Carey et al. (2008)
identified that the immediacy of imposed sanctions is allied with improved program completion rates. Given this, in terms of implementing identified assessment criteria, there may be value in soliciting data on the consistency with which the drug court program is delivered and administered to identify if any areas need improvement.

However, the structures that enable that predictability also include the discretion to vary it should that be warranted in a given situation. Thus, as the following example observed by the researcher illustrates, while structures like the sanction system provide a layer of consistency to the program, they can be altered if necessary. By way of background, the court has the discretion to direct a participant into custody irrespective of the number of sanctions they have had imposed against them. In practice, an informal 14 sanction threshold exists – 14 is commonly seen by the drug court team as the ‘tipping point’ after which custody should be imposed. On one occasion observed by the researcher the judge was aware that a participant had 10 sanctions and that this participant was going to admit another drug use. Notwithstanding that the drug use would not take the participant’s number of sanctions up to the usual 14-day threshold, the drug court team were of the view that the participant should go into custody and have a treatment review. The participant argued that she should not go into custody.

Participant: Please Judge, why am I going in [reference to custody]? I’m only on 12 sanctions. This is not right.

Judge: That is just a guideline [name removed]. If we were to leave you out in the community, this could end up bad. You can go into custody and we will see what we can do for you.

Participant: This is not fair, one use and I’m in. I have points left.

Judge: We will see you in a few weeks and discuss it then. (Judge C, Observation notes, Day 26)

The drug court has taken steps to ensure that, while consistent, it still has the necessary flexibility to impose the sentence and orders it sees fit in an effort to avoid ‘bad outcomes’. Related to the unspoken predictability of the accumulation of the sanctions is the common expression often used by judges during the observation period, ‘14 is not a magic number’\(^5\). This articulation infers that while the drug court program is predictable and structured, it still has the ability to invoke variability and impose sanctions it deems necessary.

---

\(^5\) The judge said words to this effect to 12 out of the 30 participants sent into custody for using drugs.
The overall aim of all these compliance monitoring tools – the positive reinforcements, the court-imposed orders, the possibilities for dialogue, reinforcing the virtue of honesty, the positive impact of ‘applause’, the consistency and the flexibility – is not only to align the motivations of the participants with the objectives of the program. More fundamentally, the drug court has developed a program that enables the individual the opportunity and capacity to demonstrate that they can engage in a different pattern of living. As one participant highlighted, the drug court does this by providing them with the tools to begin to change their current patterns of living, towards those patterns of living that the courts aim to engender:

Judge: How do you feel today [name removed]?

Participant: Happy to be here you know. I have been shown the tools to use, especially, because my biggest thing is depression you know. So now I can use what I have been taught to stop using [reference to drugs] and to stop you know, stealing cars and that. (Judge C, Observation notes, Day 13)

What can be said then is that through a variety of compliance monitoring tools, the Court sought to act upon the ‘capacity for action’ possessed by the participants. Through the utilisation of the participants’ own ability to act, the drug court is able to align the motivations of the participants with the overall aims and goals of the program that have previously been identified in Chapter Four (see Table 4.1).

5.3.6. Graduation and/or Successful Completion

Of the 218 report back matters observed by the researcher, 10 involved successful completion and therefore graduation from the drug court program in NSW. The researcher attended all graduation sessions over the three months of observation. There were approximately three participant graduates per month, each of whom received a non-custodial sentence. At each graduation ceremony, the judge wore formal judge attire, and announced the beginning of proceedings thus: “It gives me great pleasure to preside at this graduation ceremony of [graduating participant’s name] today”. The judge then restated the three objectives of the drug court program as outlined in the legislation:

The objectives of this Court are to reduce the drug dependency of eligible persons, to promote the re-integration of such drug-dependent persons into the community, and to reduce the need for such drug-dependent persons to resort to criminal activity to support their drug dependencies. The graduate [whilst looking at the graduate of the Drug Court program] is here today because he [or she] has achieved all these aims. (Judge C, Observation notes, Day 13)
The document analysis finding was that under the legislative test for graduation in Victoria, the drug court may, on its own initiative, cancel the treatment, supervision or custodial parts of a Drug Treatment Order if it considered a participant had, to date, fully or substantially complied with the conditions attached to the order and the continuation of the order was no longer necessary to meet the purposes for which it was made. The document analysis findings in NSW, as in Queensland, showed that it was left to the court to develop the graduation criteria as set out in the list of current phase requirements; however, the objectives of the legislation were the only criteria verbally referred to at all 10 graduations observed.

At all observed graduations, the graduating participants were provided a platform to voice their version of their life and experience of the drug court program. They were granted the opportunity to speak directly to the drug court team and invited guests 56 where they were observed to be treated with respect. The following excerpt between a participant and a judge at a graduation is presented by way of illustration. It demonstrates the NSW Drug Court’s efforts to create an atmosphere in which previously disenfranchised offenders could engage in open dialogue. Indeed, the emphasis on respect was observed to be a significant feature of the drug court process and one that resonated well with participants.

Judge: [name removed] it’s your turn now, step up to the microphone.

Participant: Okay, Your Honour. This court gave me a chance and yeah respect as you know, they’re no better than I am, they’re willing to throw their hand out and if they’re going to throw their hand out I’m not going to bite it, gosh no, not at this stage, I’d be crazy to do so. I didn’t think when I came out of jail I could do it you know. But it looks like I can. My life because of you all [reference to the Drug Court team] and the support of my family I can now lead a normal life.

Judge: [name removed]. You remind me of one woman who said to me after her graduation that she had just been treated as if, and I’ll use her words, I was a ‘junkie’, for 20 years and treated badly by everyone in authority, she had no intention of getting off drugs when she came to the program, she just wanted to stay out of jail. But treating her with respect, that was different, and that was the first time she thought maybe I can succeed here because it was different to how she had been treated for 20 years.

This graduating participant went on to talk about the Drug Court as the only place outside of jail that he felt ‘respect’. Indeed, he suggested that it was the feeling of “being listened to” that made him want to succeed and change his pattern of living. (Judge D, Observation notes, Day 28)

This illustration demonstrates that respect is an important element of the drug court model for encouraging reformation and achieving positive outcomes. The internalising of

---

56 At each graduation members of the drug court team and the participant were afforded the opportunity to invite guest, with each guest requiring approval from the Judge prior to attending.
respect, as highlighted earlier and again here, has occurred as a result of the structural arrangement and legislative base of the drug court that has enabled the participant to turn their life around.

5.3.7. Termination, Unsuccessful Completion and/or Withdrawal

In relation to the 40 terminations from the drug court program that the researcher observed, fourteen resulted from a determination by the judge that the relevant participant had no prospect of progressing due to their lack of performance. Twelve participants were terminated due to the risk they were perceived to pose to the community and six left the program of their own volition. The remaining eight simply did not show up to court and their participation was terminated in their absence, and a warrant issued for their arrest.

The researcher was able to identify further details in relation to participants’ ‘reasons’ for termination and unsuccessful completion from the drug court program via the reasons for termination or unsuccessful completion as stated by the sentencing drug court judges. These reasons essentially fell into two categories, individual and programmatic. Individual reasons related to the behaviours of individual drug court participants, while programmatic reasons concerned issues within the drug court program itself.

A lack of readiness and/or motivation to change behaviour and lifestyle (the judge often referred to this as “people, places, and things” during the sentence) was the most commonly cited individual obstacle to participation and success within the drug court program, as cited by the judges. This was identified in 14 of the 33 sentencing matters when the judge was observed to undertake a review of the participant’s progress on the drug court program and consideration was then given to the imposition of a final sentence. All judges acknowledged in all matters that the drug court program is rigorous, time-consuming, and intense – but that this was necessary in order to facilitate long-lasting, meaningful change in the participants’ lives. Additional individual obstacles to participation and success identified by the researcher from her observations include: excessive relapses and not being able to demonstrate the ability and/or willingness to make the necessary changes; lack of support system/s (e.g., no established relationships with people who are not drug-dependent); and relationship issues (e.g., unhealthy relationships with immediate family members).

Programmatic issues were the second most commonly cited individual obstacle to participation and success within the drug court program. This was observed in 10 of the
observed 33 sentencing matters. The key challenge cited in seven of these cases was the need to capture early engagement of the offender with the program. This point is perhaps best expressed in the following excerpt between a participant and a judge at a sentence:

Participant: I’m thankful for all the court has done for me. But Judge, like you said, I just can’t stop using [reference to drug use] with my friends. And I would not have used if I had of not met back with him as soon as I came out of custody. It was not a good start.

Judge: Well Mr [name removed] this program is not appropriate for everyone and not everyone can be successful. Recovery is different for everybody, and we [reference to the Drug Court team] couldn’t lock you into recovery. You were always honest with the court; however, you really did fail to engage in counselling early on. Also, I note I issued to warrants for you and in fact you were gone for three weeks early on in your program. Had we got a hold of you before you ran away you may not be going into jail today (Judge B, Observation notes, Day 9)

Early engagement produces better outcomes. Across the 33 sentences observed 19 included a custodial sentence and the remaining 14 received a non-custodial sentence. Of the 19 sentences involving a term of custody, 10 (52.6%) absconded\textsuperscript{57} from the program within the first three months. In contrast, of the 14 who received a non-custodial sentence only two (10.5%) had absconded from their drug court program within the first three months. This is consistent with the literature outlined in Chapter Two which supports the view that drug court participants who avoid absconding within the first three months after formally beginning their participation are significantly more likely to avoid a custodial sentence at the end of their drug court program. The ‘less than perfect’ record of the two participants who received a non-custodial sentence but had absconded during their first three months highlights the importance of according ‘multiple chances’ to those participants experiencing early problems. (Across the 10 graduations observed, nine participants had at least one positive drug test during their participation and six had more than three positive tests within the first three months of participation on the drug court program.)

Combining the need to accord ‘multiple chances’ to those experiencing early problems with the need for immediacy, the implication is that the early stages of participation are especially critical. In response to early drug relapses or participants abandoning their drug court program, the most productive response may be targeting extra resources and assistance (e.g., more frequent monitoring). The absence of this response can result in

\textsuperscript{57}For explanation purposes, ‘absconded’ is taken to be when the court has issued a warrant for the arrest of a participant as a result of non-attendance at court.
masking both a participant’s potential to improve over time and, therefore, their ability to successfully complete a drug court program.

5.4. Conclusion

This chapter presented the results of the analyses of the secondary data and of the observational data (qualitative and quantitative) to achieve research Objective Two. The amount of variability outlined in this chapter highlights the differences that can exist in drug courts across jurisdictions, even while all jurisdictions embody the generalised drug court model depicted in Figure 1.1. Observing the behaviour of drug court stakeholders has produced a thorough description of the process by which offenders enter drug courts and the type and quality of services that are delivered in a drug court program, thus furthering our knowledge of the unique aspects of drug courts that may impact on drug court program outcomes. The appearances before the judge, the appointments for treatment, drug tests and other activities form part of the delivery of the treatment effect. The results they produce, drug court success or failure, are overall drug court outcomes. This is the subject of the final chapter, Chapter Six, which draws conclusions and provides recommendations based on the results outlined in this chapter in an effort to answer the research question, what, besides a lack of reoffending, indicates successful completion of a drug court program? elements of the drug court process are linked to the successful completion of a drug court program?
6. Interpretations and Recommendations

6.1. Overview

Operating with community support and through partnerships between treatment providers and the criminal justice system, drug courts address drug dependence as a root cause of criminal behaviours. A drug court’s success depends heavily on adopting practices that distinguish it from a number of standard criminal justice processes (see Table 2.1), by implementing the drug court model with fidelity, and adhering to best practices identified in the components reflected in the Ten Key Components developed by the National Association of Drug Court Professionals58 and related literature. In Chapter One, the critical structural dimensions shared by the Australian drug court jurisdictions of New South Wales, South Australia, Queensland, Victoria and Western Australia were ascertained and expressed via a generalised model (see Figure 1.1). This enabled the researcher to develop a useful, element-based body of knowledge about the functioning of drug courts in Australia.

The challenge addressed by the research was to determine the relative contributions of the various elements of this model (i.e. does each element contribute to the overall impact of a drug court, and are some more important than others). A high priority, for example, was testing the assumption that the role of the drug court judge is a fundamental and core element of the model in producing positive treatment outcomes. Other core assumptions of the model needing critical examination related to the use of sanctions, the relative value of sanctions and rewards in the courtroom, and whether drug court participants are really motivated toward favourable progress by fear of going into custody rather than being genuinely responsive to those sanctions and rewards. Although there was abundant evidence attesting to the effectiveness of drug courts, much more work was needed to isolate which groups of offenders are best served by this approach and which particular elements of the drug court model are most relevant to positive outcomes. This final chapter draws conclusions about these issues based on the results outlined in the previous chapters, and through triangulation, directly answers the research question. The first section of this chapter makes a number of recommendations aimed at enhancing the identified elements of the Australian drug court process that are related to success. All recommendations are based on the information outlined in Chapter Four (section 4.2) and

58 See Chapter One, Ten Key Components.
Chapter Five (sections 5.2 and 5.3), unless otherwise stated. However, it is important to note that a specific recommendation may not be based solely on information corresponding directly to the relevant element. This is because conclusions about one element often have implications for others, due to the various causal relationships in play.

In Chapter Two, developed from the related literature, a causal analytic framework was proposed to guide consideration of the research question, “What, besides a lack of reoffending, indicates successful completion of a drug court program?” (See Figure 2.1). The model presented represented a first attempt to develop a causal model that can be used to assess the impact of various drug court treatment elements. As will become clear, the results of this research suggest that this version might warrant further analysis. Based on the research findings, the final section of this concluding chapter suggests an alternative causal model for conducting evaluations of drug courts. This model may provide the most useful analytic framework for assessing later offender behaviour because it incorporates outside factors, offender attributes and key elements of the drug court model.

6.2. A Key Conclusion

The intense emphasis on recidivism as the quintessential marker of success in the drug court setting was examined through a review of the available literature. Ultimately, it became evident that there is a disproportionate emphasis given to recidivism in research as compared to actual drug court practice. Bozza (2007) highlighted the centrality of recidivism in discussions of drug court outcomes and claimed that, “the only reason problem-solving courts exist is to respond to persons who have committed crimes, and if they do not significantly reduce recidivism, there is no reason for them to continue” (p. 117). As discussed in the first two chapters, drug courts were created for a multitude of reasons, including both structural and ideological issues pertaining to traditional case processing. Importantly, the observation component of the research did not indicate that recidivism reduction was the sole marker of success, whereas a number of evaluations exist in which the sole outcome referenced for success was recidivism. Furthermore, the operation of the drug court, the language used and practices observed seemed resistant, generally speaking, to heavily focussing on the recidivism rates of offenders in a drug court program.

However, once recidivism alone is discounted as the sole measure of drug courts’ success, it is challenging to determine a definition of such success that is likely to have wide support. Nevertheless, this research has taken steps to move discussion of the most
appropriate drug court assessment criteria away from criminal recidivism to a more inclusive and holistic approach. This specifically addresses the concerns raised by Belenko (1998) who acknowledged that gaps existed in the knowledge about other assessment criteria that required addressing. By way of this study, light has been shed on the processes that lead to successful drug court completion.

In large part, this has been due to the mixed method nature of this analysis, including its substantial reliance on the qualitative data. This enabled a wide-ranging study of individual cases involving various drug court services and outcomes, and thereby exposed the overwhelming impact that drug court programs have on program participants and other key stakeholders in addition to, or sometimes in place of, recidivism reductions. Although some of these benefits have been measured in past evaluations, such as the general health and well-being of the drug court participants and the reduction or cessation of drug use (see Appendix C), their identification as measures of drug court success has been muted at best.

6.3. Identified Key Elements

As explained previously, drug courts in general (including those in Australia) work within a therapeutic jurisprudence paradigm and therefore engage with offenders in a number of ways that differ from traditional criminal justice processes (see Table 2.1). According to Winick and Wexler (2003), “For therapeutic jurisprudence to be validated in the context of problem-solving courts” the distinctive elements of such courts need to be demonstrably “effective in promoting rehabilitation” (p. 105). Emphasised in this point are the “court processes themselves, as distinct from the rehabilitative programs ordered by the courts” (2003, p. 105). As the current study was not longitudinal, the effectiveness of the drug court processes in relation to participants’ rehabilitation could not be measured. However, both the document analysis and the observations in the NSW Drug Court allow conclusions to be drawn about the extent to which processes in Australian drug courts are consistent with rehabilitative ideals. These conclusions will be discussed in this section, organised around four distinctive elements of the drug courts (i.e. elements that differentiate them from typical criminal courts): (1) structure and accountability, (2) judicial relationship, (3) court capacity and, (4) rewards and sanctions. At the end of each discussion, relevant recommendations will be made based on evidence of best practice identified throughout this research that enhances drug court outcomes.
6.3.1. Structure and Accountability

The research revealed that drug courts provide participants with the *structure* and *accountability* which is relevant to achieving rehabilitative drug court outcomes. During report back sessions and at graduations, stakeholders identified the court’s processes for helping participants, rather than punishing them or setting them up for failure, as contributing to participant progression on the drug court program. In particular, this was reflected in statements made by the judges when sentencing an offender or at graduations. For example:

Judge: It was more important for us to see you regularly and have you talk to your counsellor to ensure you were on track to graduate today. I see your counsellor is here today, and like us, she did not want to see you go back to gaol. She wanted you out so you could build relationships, stop using drugs and head towards recovery. You did this all yourself by turning up, providing samples [reference to drug testing] and complying with all the conditions of the program. (Judge A, Observation Notes, Day 28)

Many drug court participants highlighted how accountability contributed to their success in that they were able to reduce their drug use because they were closely monitored by the court. By way of illustration, the following courtroom conversation occurred between a judge and a participant. It was the researcher’s fourth observation of this participant:

Judge: What do we have to do, or what can we do to help you to stop using?

Participant: Can you bring me back [reference to court] weekly instead of fortnightly, just to get back up on my feet?

Judge: Why would that help you?

Participant: Because I have to face you, and if I know that I may not use [reference to drug use]. (Judge C, Observation notes, Day 26)

However, notwithstanding the positive outcomes, some viewed specific program requirements (such as attending weekly court report backs) as onerous. This point is perhaps best highlighted in a statement by a participant at a graduation:

Participant: It was just so hard sometimes, you know. The only way I could give up drugs was to come here all the time. This was quite demanding. And having to keep up with all my appointments… well it was time consuming. Sometimes I think I just stopped using because you [Drug Court team] kept me busy. So, whilst I’m happy, it was hard. (Judge B, Observation notes, Day 15)

These mixed perceptions were expressed by the participants in the study by Fulkerson et al. (2012), as well as those by Roberts and Wolfer (2011) and Wolfer (2006) previously referred to in Chapter Two. Most importantly, this research is consistent with these
studies and points to the significance of the totality of the program rather than a specific component as the driver of its effectiveness (Roberts & Wolfer, 2011; Wolfer, 2006). One of the strongest similarities across the few qualitative studies conducted into drug courts relates to issues of accountability and structure. In the present study, and others previously identified (Fulkerson et al., 2012; Roberts & Wolfer, 2011; Wolfer, 2006), the participants stressed how accountability contributed to their success. While some drug court participants mentioned that fewer court meetings or home visits would be beneficial, most participants were observed to appreciate that the challenging structure of the program aided them in their drug-dependency recovery.

Linked to this is the idea that elements of a drug court model are engrained in rational choice theory (discussed in Chapter Two). The drug court model is contingent upon participants taking individual responsibility for their use and/or dependence. One of the key tenets of rational choice theory is that offenders should be held criminally responsible for their actions and that drug use should not be viewed as a mitigating factor – both of which are observed within the drug court participants. Participants must openly admit their drug use and repeatedly demonstrate their commitment to the process of recovery by submitting negative urine screens, successfully completing treatment programs and remaining in compliance with program conditions. There are elements of the recovery process that focus on increasing participants’ sense of motivation (the ability to remain drug-free) and stable (such as the employment requirement increasing participants' overall sense of responsibility). However, there are also additional elements of the drug court process (such as counseling) that target the underlying reasons why participants have continued the cycle of dependence.

6.3.1.1. Key Findings

- Drug courts have significantly better outcomes when they have a clearly defined phase structure and concrete behavioural requirements which encourage accountability for advancement through the drug court program (Fulkerson et al., 2012; Roberts & Wolfer, 2011).

- In relation to drug court participants, recidivism; and elimination or reduction of illicit drug use was definitionally problematic throughout the evaluations reviewed (e.g. AIC, 2003, 2005e; VICDOJ, 2004)
The purpose of rewarding participants for their accomplishments is to encourage further program advancement and put them on notice that the expectations for their behaviour have been raised accordingly (Wolfer, 2006).

6.3.1.2. **Recommendations**

1. **That program advancement is predicated on the achievement of important milestones that mark substantial progress toward the various statements of drug court aims/objectives implied within the five identified assessment criteria (see Table 4.1).**

   Program advancement should not be based simply on the length of time that participants have been actively participating in the program, the reduction of drug use or on the reduction of offending (Breaking the drug-crime nexus assessment criteria). This is borne from the observational research findings which highlighted the understanding that an offender can relapse and/or continue to use illegal drugs at any given time. Furthermore, many of the evaluations reported improvements in lowering drug use and offending rates. These evaluations, however, were limited in their capacity to measure the long-term sustainability of these results over the period of a drug court program.

2. **That drug courts in Australia consider**

   a. **decreasing the frequency of future treatment sessions, report back sessions and drug testing as a reward, and**

   b. **increasing treatment sessions and report back sessions as a sanction.**

   Given that some participants observed for this research viewed specific program requirements as onerous, it may be that treatment sessions, court sessions and drug testing are more of a burden for some participants than they are a benefit. The structure of a drug court program should support participants’ ability to make the behavior changes to a healthier and more responsible lifestyle. Too much structure, or too many requirements, can undermine a participant’s ability to keep a job, undertake family carer responsibilities or succeed in other ways. In relation to drug testing specifically, the current research found no association between increasing drug testing as a sanction and court outcomes. Drug testing is used to create
participant accountability. It is possible that less frequent drug testing encourages some participants to find ways to use between tests while reinforcing those who are committed to remaining drug free, leading to no clear effects on program outcomes. This is consistent with findings considered in a number of evaluations within the Governance and Participation satisfaction identified assessment criteria. Specifically, whilst drug courts differ in frequency of their drug testing, the evaluations highlighted that process is fundamental to the judicial supervision of participant compliance whilst also providing objective measures of treatment services (e.g. AIC, 2005e; NSWBOCSAR, 2011).

3. **Drug courts in Australia should create an extensive list of incentives and sanctions that utilise a variety of community resources.**

Drug courts were observed to utilise a synchronised strategy to govern drug court reactions to compliance. The courts have adopted an effective system of incentives and sanctions to promote each participant's capacity to account for his or her own actions. However, given that judges observed for this research identified a lack of resources as a challenge to drug court success, the range and variety of community-based incentives should not be limited. To guarantee that incentives and sanctions produce productive modifications in behavior, Australian drug courts should identify specific policies and goals for the use of the incentives and sanctions identified, thereby allowing the court to be in a position to apply the incentive and sanction practice in a way that is immediate, predictable, and consistent. This would facilitate achievement of numerous stated aims and/or objectives of the drug court identified in the Breaking the drug-crime nexus; Governance; and Participants satisfaction assessment criteria.

---

59 For this reason, the recommendation to increase drug testing as a form of sanction has been excluded. This analysis did not consider other factors such as participant risk level. Studies have found that lower-risk participants did better with less frequent court sessions while those at higher risk levels did better with more frequent drug court sessions (Marlowe, 2014a, 2014b).

60 As previously outlined in the literature in Chapter Four, once specified, sanctions must be certain to be effective (Marlowe 2008). To be certain in sanctioning requires close monitoring and vigilance on the part of program and treatment providers. Clearly specified sanctions that are certain to be applied are likely only to be effective if they can be imposed with immediacy because, according to Marlowe (2008), the behavioural effect of any sanction is “likely to degrade within only hours or days after an infraction has occurred” (Marlowe 2008, p. 110). For sanctions requiring the authority of judicial officer, there should be the capacity for status hearings to be rapidly scheduled if the participant is not already required to attend within a few days of a breach.
6.3.2. Judicial Relationship

This research identified that the relationship between drug team members and the drug court participant can be a contributing element to rehabilitative outcomes. When describing their relationships with their counsellor at graduations, participants used words such as supportive, caring, dedicated, and trustworthy. They reiterated the difference between traditional courts and drug courts, and acknowledged that these staff were willing to give them chances and go above and beyond for them.

The observational component of this research also revealed the importance of the judge in the effort to achieve positive rehabilitative drug court outcomes. While a traditional mainstream judge listens to the evidence presented in a case and then decides, a drug court judge is tasked with a much different role. The participants’ statements about the judge at graduation ceremonies reflected this altered role. The graduating participants commonly stated that the judge was fair, encouraging, and compassionate. Some of them also referred to the judge as having knowledge of drug dependence. Further, participants alluded to the importance of the judge treating them with respect and giving them a voice as a factor assisting them to achieve the aims of the program. For example one participant stated at a graduation ceremony “I’m glad you didn’t treat me like I was at a normal court [reference to mainstream jurisdiction]. There you are looked at like you’re not human and you don’t have a say. You [reference to judge] didn’t do that, that’s why I’m here today [reference to graduation]” (Observation Notes, Day 28).

6.3.2.1. Key Findings

- The findings of the current study in relation to the impact of the drug court team on participant outcomes are similar to those previously identified and discussed in the literature review and Chapter Four. This research of Australian drug courts and the studies conducted by Cosden et al. (2010) and Fischer et al. (2007), found that when compared to traditional courts, participants appreciated the personal relationships they formed with team members. It was also stressed by participants, in all three studies, how dedicated the team members were to their recovery efforts. While the participants in this research did not state outright that the judge was the most important treatment team member (as participants in the study by Fischer et al. (2007) did), participants did allude to the importance of the judge treating them with respect. A similar finding in both
studies was the judge’s praise that appeared to matter the most in regard to rehabilitative drug court outcomes.

- In addition, research has demonstrated that intensive court supervision of drug court participants decreases the risk of relapse among drug-dependent offenders on a drug court program (see NSWBOCSAR, 2011). In particular, research to date suggests that drug court participants have more positive outcomes if they attend court weekly (as a minimum) at the commencement of their drug court program (Carey et al., 2005; Carey & Finigan, 2003).

6.3.2.2. Recommendations

4. That each drug court judge should make their decisions only after considering input from multi-disciplinary drug court team members and the participants.

Given that participants observed for this research attributed much of their success in the program to the team members, the need for drug courts to have dedicated stakeholders who buy into the principles of the court and understand drug dependency and recovery is highlighted. Similarly, the participants appear to need to see the team members as being there for them in all facets of their recovery (such as employment, personal issues, social security, housing, education, health care, and mental health treatment). The participants need to see the team members as a provider for resources and social support. Judicial ‘report backs’ are regarded as a unique and important feature of drug courts that contributes to building the crucial therapeutic relationship between the judicial officer, the drug court team, and the drug court participant. As stated in the literature throughout identified assessment criteria for drug court success, there is strong evidence to suggest that more favorable drug court outcomes are achieved when regular, quality report back sessions that involves stakeholder participation is undertaken61.

61 By way of illustration, the New South Wales 2011 evaluation reasoned that drug court participants attend court for review at least weekly in the first phase of treatment with drug team members with the regularity tapering off with each consecutive phase of participation, and that judicial officers spend a sufficient length of time with participants to allow them to engage the drug court team, but no less than three minutes per participant (NSWBOCSAR, 2011).
5. That each drug court in Australia hold frequent ‘report back’ sessions to provide participants more opportunities for ‘voice’. Frequent ‘report back’ sessions increase participant contact with judges, which research has shown to be critically important.

The ability to participate in a case by expressing one’s viewpoint engages participants in the process of courtroom decision making. Such participation, as this research suggests, is a critical indicator of overall satisfaction with a court proceeding. The presence of voice, or lack thereof, was shown to affect a participant’s willingness to accept the decisions in a courtroom.

6.3.3. Court Capacity

The literature outlined in Chapter Four credited successful rehabilitation and reintegration outcomes to participants’ involvement with community resources and services which are designed to address underlying drug disorders and associated conditions. However, it is at the point of the initial sentence component of the drug court model (see Figure 1.1) that a significant shortage in the breadth and capacity of these critical resources becomes apparent. This point is perhaps best explained in a statement by a judge to an offender who was refused access to a drug court program:

Participant: I’m not getting it. What’s the problem here, why can’t I get on program?

Judge: Well there is a few issues Mr [name removed]. Firstly, you don’t have an address in the catchment area. We have tried to find you housing in the area and it is just not working. But the main one is that it appears that you may be dependent on a drug that we simply don’t test for. Therefore, we don’t have a suitable treatment plan for you. What this means is that you, unfortunately, have to go back to the local court and have your three matters dealt with there. (Judge C, Observation notes, Day 16)

In such cases as the one mentioned above, the court is prevented from embracing diversion as an option (i.e., the court is unable to proceed to initial sentencing). Access to a drug court program is a matter of strategy. The eligibility criteria prescribed by the relevant legislation or policy is based on the ability of the drug court to monitor adherence by the drug court participant with their explicit program conditions. The boundaries set out in the eligibility criteria (e.g., participants observed for this research were required to nominate a residential address within the drug court geographical service area) permits key stakeholders to supervise, monitor and assist those participants on a drug court program within accessible resources. What can be said then is that the eligibility criteria identifies the ideal, and in fact targets offenders for access the drug court program. It does
this within a framework of services that are presently existing for drug dependent offenders and within the boundary of any funding constraints. However, it is important that these eligibility criteria continue to be seen as responses to existing resources, and not as determinative in themselves. That is, attempts to increase the pool of available resources should constantly be made, to increase the number of offenders who can access a drug court program.

As highlighted earlier in this research, the relationship between drug use and crime is the result of a complex system of causal relationships that varies from individual to individual and at different points in the life course. Importantly, by the time an offender reaches the point of being both high-risk and high-need, their criminal offending is likely the consequence of many different factors of which their drug use is just one. Consequently, the delivery of best-practice drug treatment as a single intervention is unlikely to be sufficient to encourage longer-term reductions in criminal offending and the prevention of drug use relapse. To this end, drug court programs require integrated treatment responses that recognise drug treatment as just one component of the treatment matrix aimed to address a more complex series of criminogenic needs.

6.3.3.1. Key Findings

- This is consistent with the need principle of Andrews and Bonta’s (2006) Risk-Need Model of Criminal Psychology. The need principle suggests that if offender treatment is to be effective then it should directly target the criminogenic needs of offenders, which in the case of many drug-dependent offenders is seen to be drug use (Andrews & Bonta, 2006; Schaffer, 2011; Ward & Marshall, 2007).

- Drug court participants have been defined as high-risk offenders who lack the necessary education, employment and life skills to adapt to a life without drug use and crime (Bean, 2002b; Belenko, Fabrikant, & Wolff, 2011; Hora, 2014). As such, drug court programs must recognise the importance of upskilling their participants with the necessary skills to navigate the complexities of life after drug court (Belenko 2001). Ideally, this means engaging offenders in the

---

62 ‘criminogenic needs’ is discussed in terms of the Risk, Need, Responsivity literature. See Chapter Two, Protection of the Community,
development of vocational skills, addressing educational deficits and improving daily living skills (such as cooking, budgeting, etc.).

6.3.3.2. Recommendations

6. That each drug court in Australia consider undertaking a needs assessment regularly for the purposes of clarifying the ideal characteristics of the population to be catered for, thereby encouraging access and equality for drug dependent offenders across Australia.

This is borne from the research findings which highlighted the challenges experienced by judges in the effort undertaken to expand and meet the requirements of drug dependent offenders in NSW. There are at least three ways in which the operation of drug courts in Australia could be expanded to divert additional target population away from the Australian criminal justice system, whilst also aiding their rehabilitation: expand their remit to include alcohol and any drugs that are not currently covered; expand the geographical accessibility of the program by reference to the usual place of residence of the offender and the location of the referring court; and undertake careful research to identify any implied or unstated criteria that are impacting unjustifiably on offenders’ eligibility for drug court programs.

7. Drug court participants in evidence-based treatment programs that address criminal thinking and attitudes should be a mandatory component of the drug court program. Furthermore, a comprehensive, individualised case plan should be developed for every drug court participant that addresses all of the offender’s criminogenic needs.

While it may be a significant factor, drug use alone is rarely the only contributory factor to an individuals’ offending behavior. In acknowledgement of other criminogenic factors also impacting upon a drug court participant’s assessed risks and needs, and to improve their chances of reduced drug use and offending, Accordingly, it is recommended that all criminogenic needs are dealt with in a holistic manner as part of the participant’s case management plan. The same issues apply as with access to drug treatment services. Although participants during the observational component were observed to be referred to relevant cognitive based offender behaviour programs, interventions
specifically addressing criminal thinking were minimally identified during the document analysis across the five drug courts in Australia. Accordingly, it is recommended that the means of addressing this issue are appropriately considered in developing the drug court model.

6.3.4. Rewards and Sanctions

The observation component of the research affirmed the findings from the document analysis that the application of rewards and sanctions allowed the drug court to develop a system that aligned the motivation of the participants with the court’s aims. The progression mechanism was similarly used to reintegrate the participants back into the community gently and to provide adequate monitoring in the early stages of their program.

Based on this, a general conclusion that could be made is that the application of rewards and sanctions in the drug court is consistent with Beccaria’s (1764) deterrence theory (previously identified and outlined in Chapter Two). Beccaria considered the certainty of punishment to be the most important quality of sentencing: “the certainty of punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity” (p. 34).

Beccaria asserts that any punishment that largely exceeds the reasonable punishment for a given crime is inhumane and may lead to further criminality. He believes that for punishment to attain its end, the evil which it inflicts has only to exceed the advantage derived from the crime in a marginally significant manner (Barkan, 2009). The overarching goal is to prevent offenders from engaging in crime (protection of the community) by implementing swift, certain, and severe sentences, and thus impacting their decision-making process.

In the drug courts, offenders are viewed as needing to be held responsible for their actions, including crimes. Drawing on Beccaria’s theory, this means that the structure and application of rewards and sanctions should be designed in such a way as to produce and maintain a positive relationship between criminal behaviour and punishment. It is believed that if participants are aware and knowledgeable of the negative impact their dependence has had on their lives and they are aware that breaches of program conditions are met with certain and severe sanctions, they will be less likely to relapse into both crime and drug use.
The literature further suggests that the impact of having a voice in the proceedings is dramatically reduced if the participant holds a perception that a magistrate has pre-decided the outcome (Brown, 2010; Diesfeld & McKenna, 2007; Harrell, 2001). It is through this process that one can see the strong links between the operation of the drug court model (see Figure 1.1) and the therapeutic jurisprudence approach outlined in Chapter Two. The three most important elements of the therapeutic jurisprudential approach are voice, validation and respect, as Winick (2002), an advocate of the therapeutic jurisprudence approach, has detailed. The act of applause is the most striking utilisation of the court space for the public acknowledgement of participants’ progress in a drug court program but Winick has argued that it is more than just the public acknowledgement (or validation) that provides participants with the motivation to alter the behaviour (2002). It is the interaction of all three elements of therapeutic jurisprudence (voice, validation and respect) that influence compliance within programs.

All three elements were evident in the courtrooms observed. Participants were provided a platform to voice their account of their life directly to the decision maker on a regular basis and have the chance to create a relationship. They also received validation when they complied with the conditions of their drug court program through the instant feedback loop from the ‘report backs’ with the judge orders. The judge and the entire court were there to listen and understand the participant at those moments. Lastly, they are provided with respect. These three components merged to create an environment where offenders were provided with a platform for open dialogue that created the possibility for participants to contest the assumptions made about them and their pattern of living while still encouraging compliance through the structured coercion of the program. Given this, the research of Australian drug courts confirms that the ability of the drug court to preserve program participants’ due process entitlements is an important element of the drug court model (see Figure 1.1) in that the possibilities for dialogue, combined with consistency and flexibility, act to promote public safety while protecting participants’ due process rights.

6.3.4.1. Key Findings

A substantial body of research highlighted throughout the current study on procedural justice or procedural fairness issues revealed that drug court participants are most likely to react favourably to an adverse judgment or punitive sanction if they believed fair procedures were followed in reaching the decision (see Chapter Four). The best outcomes
were achieved when offenders were (1) given a reasonable opportunity to explain their side of the dispute, (2) treated in an equivalent manner to similar people in similar circumstances and (3) accorded respect and dignity throughout the process (Goldkamp, 2010; King et al., 2009; Nolan, 2009).

6.3.4.2. Recommendations

8. That judicial discretion should not be applied in ways that create the perception of differential treatment amongst participants and/or uncertainty in relation to rewards and sanctions.

This is because certainty and procedural fairness are critical factors in behaviour modification programs.

9. That prior to entering an Australian drug court program, participants should be clearly informed in writing about the program’s rules; the specific behaviours that may trigger sanctions or rewards; the types of sanctions and rewards that can be imposed; the criteria for graduation or termination from the program; and the consequences that may ensue from graduation and termination.

This material should be verbally reviewed by defence counsel with the participants and should perhaps also be the subject of a formal colloquy between the judge and each participant. Such procedures help to ensure that participants understand the risks they are assuming by entering the program. This will serve to increase participants’ perceptions of fairness and predictability in the program, which will make them more likely to accept negative sanctions should they need to be imposed.

6.4. The Causal Order of the Drug Court Process

Chapter Two offers an analytic framework to guide consideration of the research question, “What, besides a lack of reoffending, indicates successful completion of a drug court program?” (See Figure 2.2). It first determined what drug courts are and then how they work. Chapter Five outlined those results. Moreover, the research question was practically addressed in two, logically sequential parts. Firstly, it identified success assessment criteria for Australian drug courts and applied those to the operation of the five Australian drug court jurisdictions of New South Wales, Queensland, South
Australia, Victoria, and Western Australia. Secondly, it identified elements of the drug court process that were related to successes from the perspective of drug court stakeholders, primarily their participants.

In relation to the research question, the research moved beyond the objective of drug court measures of effectiveness, reduced recidivism and costs to the criminal justice system. Both the document analysis and the observations component of this research identified that one overarching theme, the rehabilitative ideal, is linked to drug court success. Central to this theme are four notable elements, namely: structure and accountability, judicial relationship, court capacity, and rewards and sanctions. These four elements work together to create an environment that on the one hand uses a risk-based model to enhance compliance and community safety while on the hand encourages therapeutic engagement. These dual components of the drug court program manifest themselves in the day-to-day operation of the court whereby a tangible platform from which to view the intersection of risk of reoffending and therapy is created. The research distinguished the difference between instrumental drug court functions (the delivery of the drug court treatment experience) and drug court outcomes (how participants fare in the drug court process), thus it was able to demonstrate that the tested drug court model elements did not appear to make equal contributions to explaining outcomes, and some, such as treatment and court appearances before the drug court judge, may interact to produce effects on participant outcomes above and beyond their single contributions. These findings suggest the need for careful consideration of how instrumental drug court elements are measured and more focused examination of their interaction to produce the drug court effect. Drug courts were observed to use the structures of the court (and the wider structures of the services system that sits around the court) to achieve success. Specifically, through such processes as the Next Use to Serve orders, the potential to progress hearings, honesty warnings, the use of the progression through the phases and the use of applause, drug courts were observed to align the motivations of the participants with the overall aims and goals of the program; thereby achieving drug court success.

Drug courts were also observed to have developed a system that determines who, and importantly, how long an individual may receive the privilege of the therapeutic intervention based on the ongoing calculation of risk. In other words, the drug court operates whereby those offenders who fit particular criteria are provided with the privilege of acceptance into the program. However, that privilege is contingent on the continuation of a positive risk profile, determined by such matrices as the sanction system
and drug-testing regime. The drug court was observed to have the power to impose a range of risk-management tools for its continued supervision of participants to promote success on a drug court program, including (but not limited to): drug-testing, attendance at counselling, restrictions on residency, and most importantly the imposition of sanctions. These tools were observed to enable the court to monitor whether the provision of the therapeutic services it also provides continues to be a valid use of resources for each individual under the supervision of the program. The findings, however, raise questions for further analyses and, rather than being definitive, must be seen in the context of other findings from the retrospective evaluation of the five sites under review if inferences about drug court outcomes in each jurisdiction are to be impartially drawn. By way of illustration, the researcher found, in asking whether drug courts produced better results based on breaking the drug-crime nexus assessment criterion, that overall positive effects masked variation in cohorts from different periods of time. The data showed support for the suggestion that drug court participants display lower recidivism rates than those of comparable groups, they take longer to re-offend and their offending rate is less than it was prior to being afforded the opportunity to participate in a drug court program. However, the data are qualified by the finding of variation over time. A theoretical model of drug court impact to explain the sources of this variation, whether they were external, such as changes in law and policy or offender attributes, or traced to the internal workings of the drug court, remains unresolved. The research did highlight the challenges in isolating treatment effect in practice without randomisation. In particular, relevant differences between treated and comparison groups that may affect outcomes were often unknown or hard to effectively measure and control, undermining internal validity in the evaluations considered as part of this research, as such differences cannot be eliminated as explaining the observed result.

Nevertheless, these findings also suggest that variation in drug court outcomes may be explained by changes in the operation of the drug court and its ability to deliver the treatment and deterrent effects postulated by the collection of elements inside the drug

---

63 As outlined in the analysis undertaken in Chapter Four.
64 Data collection, timing of the evaluation and comparison groups were previously discussed in Chapter Two, Assessing the Impact of Drug Court.
65 For example, Chapter Four refers to a legislative amendment to a drug charge in South Australia in relation to cannabis in 2012; this could mean that any changes in pre-offending and post-offending may be a result of these external factors rather than a program effect.
66 For example, it was unknown whether the comparison groups in the 2006 Western Australian evaluation received substance abuse treatment or had levels of readiness and motivation to change comparable to those of the treated group (DOJ, 2006 pp. 14–16). The 2014 Victorian Drug Court evaluation similarly acknowledged that the data did not allow for a consideration of the effect of substance abuse on recidivism, and the comparison group did not necessarily have an offending history comparable to that of the treated group (KPMG, 2014, p. 73). Such factors can be expected to affect recidivism outcomes, and it is difficult to isolate the drug courts’ impacts without controlling them.
court operational model for Australia (see Figure 1.1). An understanding of the conditions under which drug courts operate effectively, then depends on the make-up of the offenders participating in the program, the influence of outside factors (such as policies, law and resources) and the effective functioning of selective drug court functions. Of these, appearances before the judge, treatment participation and sanctions appear to generate important effects on offender behaviour.

Figure 6.1 suggests an edited version of the basic causal model (represented by the coloured arrow)\(^6\) that may provide a more suitable analytic framework for assessing later attributes and instrumental components of drug court elements. Offender attributes and external factors influence drug court treatment measures directly and, later, offender behaviour directly and indirectly through drug court treatment. Later offender behaviour (reduced offending) is influenced by the drug court experience but also, itself, has an influence on treatment (which affects offending).

![Figure 6.1](image)

**Figure 6.1**
Measuring Offender Attributes, Drug Court Treatment Elements and Drug Court Outcomes – Model Explaining Drug Court Participant Behaviour

In summary, although there is enough encouraging evidence to support the aims and objectives of drug courts\(^7\), much more work is needed to isolate which groups of offenders are best served by this approach and which particular elements of the drug court model are relevant to positive outcomes. Participant populations among Australian drug courts differ in relation to drug of choice, level of drug dependence, legal issues, and life issues such as employment, education, and health needs. One of the strengths of the drug

---

\(^6\) A causal model of drug court impact was developed and was previously described in Chapter Two (see Figure 2.1 and Figure 2.2).

\(^7\) Chapter Four identified those stated or implied aims and/or objectives of the drug courts that could be considered success criteria.
court is its flexibility. Furthermore, analysis of possible first-order interaction effects found that, beyond the main effects of the drug court treatment variables, there are various other elements of the drug court program that undoubtedly work together to govern the participants in different (and more total) ways. Accordingly, the final recommendation for drug courts is that they remain flexible in practices so as to best fit their participants, their relationships among the collaborating agencies, and their environment. In this vein, drug courts can be informed by the developed drug court model (see Figure 1.1), identified assessment measures and identified outcomes in this research. This would help add depth to the discussion on drug courts that is often guided by the false assumption that all drug courts are essentially the same.

6.5. Future Research

Some criticism was raised in the literature concerning the lack of focus on the casual processes leading to outcomes and a general absence of qualitative data. This research has gone some way to filling these two gaps by identifying elements of the drug court process that are linked to the success of a drug court program. A substantial body of the findings provides clear and comprehensive evidence of just how ‘super beneficial’ drug courts can be to participants (participant satisfaction assessment criterion) and to the wider community (general society well-being assessment criterion) as well as to the economies (economic feasibility assessment criterion) of jurisdictions which implement them. When considered from the economic perspective, in terms of reduced drug use and recidivism (breaking the drug-crime nexus assessment criterion), there is an overwhelming body of evidence that Australian drug courts are successful, however there remains work to be done in refining processes and procedures and in defining and measuring success in ways that can be used to demonstrate the effectiveness of these programs. This research suggests that much of the success of a drug court can be attributed to the appropriate (therapeutic) implementation practices. It reinforces prior findings on implementation research and can be seen as useful in closing any disparity

---

69 This research has looked only at first order interactions, and only at interactions between two variable elements at a time. However, second order interactions, or interactions between three or more variable elements are also possible. Every adopted element of the drug court model (see Figure 1.1) has second and third order consequences to its implementation; i.e., these outcomes are different than the first desired outcome, yet they are directly related to the element. They are most often separated by time and space.

70 See Chapter Two, Assessment Criteria of Drug Court Program Effectiveness

71 Participant satisfaction was identified and discussed as an assessment criterion for drug court (see section 4.3.5).

72 General Society well-being was identified and discussed as an assessment criterion for drug court (see section 4.3.3).

73 Economic Feasibility was identified and discussed as an assessment criterion for drug court (see section 4.3.2).

74 Breaking the drug-crime nexus was identified and discussed as an assessment criterion for drug court (see section 4.3.1).

75 Chapter Two, Assessment Criteria of Drug Court Program Effectiveness discusses the drug court evaluations reported in the Australian literature (see section 2.6).
between a program potential and the actual outcome. Accounting for these crucial findings could mean the difference between success and failure. There are many variables factored into the drug court experience and it is unclear which combination of variables leads to successful drug court. Therefore, Figure 6.1 suggests a basic model that can take account of the sorts of factors just identified. More detail may allow for more nuanced relationships to emerge.

The results also have theoretical implications. Given the observation finding that drug courts’ impact on relapse outcomes, it seems that there is some deterrent effect because participants do have lower odds of relapse who are subject to more intensive supervision than those that don’t (see NSWBOCSAR, 2011). Regarding individuals’ rational choice processes, drug courts may influence offender costs/benefits analyses not only within the program (to avoid sanctions), but also post-program (to avoid relapse and further punishment) based on these results (see AIC, 2002; NSWBOCSAR, 2002b). However, the rational choice and deterrence frameworks underlying the drug court model may not be the best frameworks overall because drug court participants do not have lower odds of self-reported recidivism and re-arrest than non-participants (see AIC, 2012). More exploration of the specific reasons why drug court participants act as they do is an area for future research and theoretical development. Some factors, such as age, race, gender, and substance use history may be important to consider in terms of their relation to drug court outcomes. By understanding the relationships between these factors and program outcomes, stakeholders can better adapt the drug court program76 to offenders who are less likely to have positive outcomes, thereby achieving the sentencing principle aimed at protecting the community77.

---

76 This is consistent with the literature discussed throughout this research that suggest Australian drug courts are informed by the Risk, Need, Responsivity framework.

77 See Chapter Two, Protection of the Community
References


Australian Institute of Criminology. (2005c). Key findings from the drug use careers of offenders juvenile survey. Canberra: Australian Institute of Criminology.


Douglas, B & McDonald, D (2012). The prohibition of illicit drugs is killing and criminalizing our children and we are letting it happen. Report of the high level Australia roundtable, University of Sydney, Tuesday 31 January 2012.


Drug Court of New South Wales. (2005). Drug Court of New South Wales Annual Report. Sydney: Drug Court of NSW.


Drug Court of New South Wales. (2014). *Drug Court of New South Wales Annual Report*. Sydney: Drug Court of NSW.


Gardner, E (2014). The grant is over – now what? Refinancing and redirection as real sustainability planning for your FDC. *Proceedings of the National Association of Drug Court Professionals, Anaheim, California, 30 May 2014.*


Law Reform Commission of Western Australia. (2004). Problem-oriented courts and judicial case management (Court Intervention Programs) (Project No. 96).


Moore, T. (2012, September 13). Diversionary courts fall victim to funding cuts. *Brisbane Times* [newspaper, p. 8].


South Australia Office of Crime Statistics and Research. (2006). *A profile of participants during its thirty-eight months of operations*. Attorney-General Department of South Australia.


Strategic Edge Consulting. (2009). Indigenous participation in the Western Australian diversion project evaluation – Barriers and strategies to participation in adult court diversion programs: Final report.


Western Australian Department of Justice. (2003a). *Community re-entry program for prisoners*. Perth: Western Australian Department of Justice.


LEGISLATION

Alcohol Court Act 2006 (NT)
Bail Act 1995 (SA)
Commonwealth of Australia Constitution Act 1900 (Cth)
Criminal Code Act 1995 (Cth)
Criminal Procedure Amendment (Circle Sentencing Intervention) Regulation 2003 (NSW)
Drug Court Act 1998 (NSW)
Drug Court Act 2000 (QLD)
Drug Legislation Amendment Act 2006 (QLD)
Drug Rehabilitation (Court Diversion) Act 2000 (QLD)
Magistrates Court Act 1989 (VIC)
Magistrates Court Act 2004 (WA)
Sentencing Act 1991 (VIC)
Sentencing Act 1995 (WA)
Sentencing (Amendment) Act 2002 (VIC)
Sentencing Legislation (Amendment and Repeal) Act 2003 (WA)
Sentencing Procedure 1999 (NSW)
Appendices

Appendix A: The Ten Key Components and Benchmarks

The Ten Key Components

Key Component 1
Drug courts integrate alcohol and other drug treatment services with justice system case processing.

Key Component 2
Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants’ due process rights.

Key Component 3
Eligible participants are identified early and promptly placed in the drug court program.

Key Component 4
Drug courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services.

Key Component 5
Abstinence is monitored by frequent alcohol and other drug testing.

Key Component 6
A coordinated strategy governs drug court responses to participants’ compliance.

Key Component 7
Ongoing judicial interactions with each drug court participant are essential.

Key Component 8
Monitoring and evaluation to measure the achievement of program goals and gauge effectiveness.

Key Component 9
Continuing interdisciplinary education promotes effective drug court planning, implementation and operations.

Key Component 10
Forging partnerships among drug courts, public agencies and community-based organizations generates local support and enhances drug court effectiveness (NADCP, 1997).
The Ten Key Components Benchmarks

Benchmark 1
Initial and ongoing planning is carried out by a broad-based group including persons that represent all aspects of the criminal justice system, the local treatment delivery system, funding agencies, the local community and other key policymakers.

Benchmark 2
Documents defining the drug court’s mission, goals, eligibility criteria, operating procedures and performance measures are collaboratively developed, reviewed and agreed upon.

Benchmark 3
Abstinence and law-abiding behaviour are the goals with specific and measurable criteria-marking progress. Criteria may include compliance with program requirements, reductions in criminal behaviour and AOD use, participation in treatment, restitution to the victim or to the community and declining incidence of AOD use.

Benchmark 4
The court and treatment providers maintain ongoing communication including frequent exchanges of timely and accurate information about the individual participant’s overall program performance.

Benchmark 5
The judge plays an active role in the treatment process including frequently reviewing of treatment progress. The judge responds to each participant’s positive efforts as well as to non-compliant behaviour.

Benchmark 6
Interdisciplinary education is provided for every person involved in drug court operations to develop a shared understanding of the values, goals and operating procedures of both the treatment and justice system components.

Benchmark 7
Mechanisms for sharing decision-making and resolving conflicts among drug court team members, such as multidisciplinary committees, are established to ensure professional integrity.
### Appendix B: Nomenclature Table

<table>
<thead>
<tr>
<th>Term</th>
<th>Applicant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Referral.</td>
</tr>
<tr>
<td>Description</td>
<td>An offender who is referred to the drug court.</td>
</tr>
<tr>
<td>Notes</td>
<td>• New South Wales – <em>Drug Court Act 1998</em> NSW, s.6.</td>
</tr>
<tr>
<td></td>
<td>• Queensland – <em>Drug Court Act 2000</em> QLD, s.16.</td>
</tr>
<tr>
<td></td>
<td>• South Australia – <em>Bail Act 1995</em> SA, s. 21B(3). Referral can be through a Magistrate, legal practitioner or a police officer.</td>
</tr>
<tr>
<td></td>
<td>• Victoria – <em>Sentencing Act 1991</em> VIC, s.18ZQ when the magistrate orders a drug treatment order assessment report.</td>
</tr>
<tr>
<td></td>
<td>Western Australia – <em>Sentencing Act 1995</em> WA, ss. 33A-33P.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Term</th>
<th>Court Attendance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Court Appearance (WA; SA), Review Hearing (VIC); Report Back (NSW; QLD); Status Hearings (USA).</td>
</tr>
<tr>
<td>Description</td>
<td>• The monitoring of a participants’ performance in a drug court program.</td>
</tr>
<tr>
<td></td>
<td>• A process that enables the stakeholders the opportunity to review the participants’ progress in treatment, including records of attendance, abstinence, and general program adherence, also qualifying the court the opportunity to impose rewards and sanction in response to participant fulfilment with program requirements (NADCP, 1997; Carey, Finigan, &amp; Pukstas, 2008; Jones, Kemp, &amp; Chan, 2013).</td>
</tr>
<tr>
<td>Notes</td>
<td>The literature has defined open communication between the judicial authority and the participant as a key element to the drug court success.</td>
</tr>
<tr>
<td>Term</td>
<td>Drug Court</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Synonyms</strong></td>
<td>Drug Treatment Court (DTC), Diversion Court, Adult Drug Court (ADC).</td>
</tr>
</tbody>
</table>
| **Description**      | • A specialised diversionary alternative to traditional case processing in this context, coupling community-based drug treatment with regular judicial supervision administered in a non-adversarial setting (Seigny, Fulehan, & Ferdik, 2013; Huddleston & Marlowe, 2011; Mitchell, 2011).  
• A drug court has been specifically designed to administer judicially supervised drug treatment and drug rehabilitation (Phelan, 2003). |
| **Notes**            | Drug courts do not operate in isolation and various models of drug court operation exist, however, all utilise the Ten Key Components (TKC) (NADCP, 1997).  
‘Drug Treatment Courts’ (DTC) is commonly used in the United States of America. |

<table>
<thead>
<tr>
<th>Term</th>
<th>Drug Court Program (DCP)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Synonyms</strong></td>
<td>Treatment Order, Intensive Drug Rehabilitation Order (IDRO), Drug Treatment Order (DTO), Intervention Program, Drug Court Regime (DCR) and Pre-Sentence Order (PSO).</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>The name of the legal order, which is given to the drug court participant, setting out the requirements of the court.</td>
</tr>
</tbody>
</table>
| **Notes**            | • New South Wales – Drug Court Program (Drug Court Act 1998 NSW, s.4, Drug Court of NSW Policies 1-13, 2013).  
• Queensland – Intensive Drug Rehabilitation Order (Drug Court Act 2000 QLD, s.20 (1)).  
• South Australia – Intervention Program (Bail Act 1995 SA, s.21B). South Australia’s Drug Court relies on provisions within the Act that allows defendants to be placed on extended periods of remand, which ensures sufficient time for program completion.  
• Victoria – Drug Treatment Order (Sentencing (Amendment) Act 2002 VIC, s 4(1)).  
• Western Australia – Drug Court Regime and Pre-Sentence Order (Sentencing Legislation (Amendment and Repeal) Act 2003 WA, ss.33A – 33C). |
<table>
<thead>
<tr>
<th>Term</th>
<th>Drug Dependency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Drug Addiction</td>
</tr>
<tr>
<td>Description</td>
<td>A compulsive need to use drugs in order to function normally. When such substances are unobtainable, the user experiences from withdrawal symptoms.</td>
</tr>
</tbody>
</table>
| Notes        | • For the purposes of the drug court, the definition does not include ‘alcohol’.  
• The definitions of ‘addiction’ and ‘dependence’ have evolved and continue to be debated. ‘Addiction’ is characterised by an inability to stop using a drug and function in society; and, sometimes, tolerance and withdrawal. ‘Dependence’ reflects a physical dependence, in which the body adapts to the drug, requiring more of it to achieve a certain effect. It has been argued that physical dependence may not accompany ‘addiction’ (Volkow, 2005). |

<table>
<thead>
<tr>
<th>Term</th>
<th>Graduate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Completion</td>
</tr>
<tr>
<td>Description</td>
<td>The standard expected for a participant to complete his or her program, and a level of compliance, which will be accepted to find that a participant has complied with a program.</td>
</tr>
<tr>
<td>Notes</td>
<td>Some jurisdictions require drug court participants to be drug-free before they can successfully graduate from the program, while in other jurisdictions defendants are considered to have completed the program if they participate in treatment for 12 months, even if they are still using drugs at the end of that period (AIC, 2007)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Term</th>
<th>Initial Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Suspended Sentence</td>
</tr>
<tr>
<td>Description</td>
<td>When an offender has been considered to be eligible and appropriate for a drug court program, he or she returns to the Drug Court, enters a guilty plea and is given a sentence that is suspended for the duration of their participation in the drug court program.</td>
</tr>
<tr>
<td>Notes</td>
<td>Some drug court jurisdictions operate as post-sentencing programs, while others are situated at the pre-sentence level, with defendants placed on bail in order to participate.</td>
</tr>
<tr>
<td>Term</td>
<td>Judicial Officer</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Synonyms</td>
<td>Judge, Magistrate, Judicial Officer.</td>
</tr>
</tbody>
</table>
| Description    | • The judicial officer presides over the court proceedings and monitors the appropriate application of incentives, sanctions and disciplines while maintaining the integrity of the court (Jones, Kemp, & Chan, 2013).  
• The judicial officer is the leader of a drug court team, linking participants to alcohol and other drug treatment to the criminal justice system (NADCP, 1997). |
| Notes          | • The judicial officers involved in some Australian drug courts are District Court judges and not magistrates.  
• Differences in terminology across international jurisdictions mean that most of the literature refers to the role of the judge in drug courts. |

<table>
<thead>
<tr>
<th>Term</th>
<th>Participant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Client, Drug Court Participant, Drug Offender.</td>
</tr>
<tr>
<td>Description</td>
<td>A person who has been granted access and is participating in a drug court program or a person who is subject to a Drug Treatment order (Dive, 2012; Sentencing Act 1991 VIC, s.18x-29).</td>
</tr>
<tr>
<td>Notes</td>
<td>In Australia, either legislation or policy defines the term ‘participant’ in each jurisdiction. In the United States of America, a person in a drug court program is referred to as a ‘client’.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Term</th>
<th>Rehabilitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Reintegraion, Drug rehabilitation.</td>
</tr>
</tbody>
</table>
| Description    | Where an offender is reformed to the point where they will not commit crimes again.  
The processes of medical treatment for drug dependency. |
| Notes          | Although there are two possible descriptions, the general intent for drug court is to enable the participant to cease drug use in order to avoid the legal consequences that can be caused (King, 2010; NADCP, 1997; LRCWA, 2008). |

<table>
<thead>
<tr>
<th>Term</th>
<th>Reward</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>A reward is imposed for participants that fulfill their drug court program requirements.</td>
</tr>
</tbody>
</table>
Some jurisdictions utilise provisions enacted by legislation to administer ‘rewards’. Can take many forms, including but not limited to, public acknowledgement of success, applause, and the waiving of suspended sanctions of imprisonment. The purpose of rewards is to encourage participants to complete treatment, comply with program requirements, and remain drug-free (Zweig, Lindquist, Downey, Roman, & Rossman, 2012; Carey, Mackin, & Finigan, 2012).

Term: Sanction

Description:
A sanction is imposed for breaches of the drug court program.

Notes:
Some jurisdictions utilise provisions enacted by legislation to administer ‘rewards’. Can take many forms, including but not limited to, custody for a limited time; more frequent urinalysis or court appearances; or mandatory detoxification periods. The drug court manages progressively increased sanctions for noncompliance through the administering of sanctions (NADCP, 1997; Stitzer, 2008).

Term: Screening

Synonyms: Initial Assessment, Indicative Assessment.

Description:
A preliminary process in determining an offender's suitability to participate in a Drug Court Program.

Notes:
- Screening typically consists of two steps. ‘Justice system screening’ to decide if the prospective participant meets predetermined eligibility requirements and ‘clinical screening’ to determine if the prospective participant has a substance abuse problem that can be addressed by available treatment services, and if there are other clinical features that would interfere with an individual’s involvement in treatment. (Peters, Pennington, Wells, Rosenthal, & Meeks, 1994).
<table>
<thead>
<tr>
<th>Term</th>
<th>Solution-Focused Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Problem-Orientated Court, Non-adversarial justice Court, Specialised Court, Problem-solving Court.</td>
</tr>
</tbody>
</table>
| Description             | • A court that seeks a more comprehensive resolution of the legal problem by resolving underlying issues such as substance abuse, intimate partner violence, mental health issues and other offending-related issues (Freiberg, 2000; Berman & Feinblatt, 2005; King, Freiberg, Bataol, & Hyams, 2009).  
• A court with exclusive jurisdiction authority in a field of law designed to deal with offenders who have in common a specific socio-legal problem (Hora & Stalcup, 2008; LRCWA, 2008).                                                                                   |
| Notes                   | Drug Courts are one example of Solution-Focused Courts. Other examples include domestic or family violence courts, mental health courts, homeless courts, alcohol courts, community courts, re-entry courts and veterans’ courts (USA).                                                                                                                                |

<table>
<thead>
<tr>
<th>Term</th>
<th>Team Meeting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Drug Court Team Meeting, Case Conference, Review Meeting, Pre-Court Case, Staffing.</td>
</tr>
<tr>
<td>Description</td>
<td>A meeting conducted to discuss the progress of participants on the case list for that day. The purpose of a team meeting is to identify and reach consensus among stakeholders on any issues concerning a participant and their drug court program. A team meeting will precede the sitting (Drug Court of NSW, Policy 1, 2013; NADCP, 1997).</td>
</tr>
<tr>
<td>Notes</td>
<td>In some jurisdictions, both ‘Team Meetings’ (to discuss individuals on a court list) and ‘Review Meetings’ (to discuss a particular drug court cohort) are conducted.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Term</th>
<th>Therapeutic Jurisprudence (TJ)</th>
</tr>
</thead>
</table>
| Description             | • The study of the role of the law as a therapeutic agent focused on the law’s impact on emotional life and psychological well-being (Hora, 2002; Wexler, 1995, 2010; Winick & Wexler, 1993, 2002).  
• The use of social science to study the extent to which a legal rule or practice promotes the health and interest of the people it affects (Slobogin, 1996; Roberts, 2012; Wexler & Schopp, 1992).                                                                                      |
| Notes                   | • While drug courts developed independently, the concept of TJ has been applied retroactively to explain the purpose and actions of drug courts.  
• All jurisdictions in Australia have acknowledged the contribution of TJ to the foundation and operation of drug courts. |
<table>
<thead>
<tr>
<th>Term</th>
<th>Terminated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Cancellation.</td>
</tr>
</tbody>
</table>
| Description| Where the drug court participant is unable to continue their participation in a drug court program. A program can be terminated for a number of reasons, including when:  
1. The participant has substantially complied with the program, the participant applies to have it terminated, the court decides that the participant is unlikely to make any further progress or that further participation poses an unacceptable risk to the community that the offender will re-offend (Dive, 2012; LRCWA, 2008). |
| Notes      | In some jurisdictions, the offender is returned to the mainstream court process where the original sentence is re-activated. In other jurisdictions, the drug court judicial officer can determine the sentence.  
2. When a program is terminated and dealt with by the drug court judicial officer, the court must reconsider the initial sentence. If appropriate, that sentence can be set aside and another sentence imposed in its place. (Drug Court Act 1998 NSW, s.12). |

<table>
<thead>
<tr>
<th>Term</th>
<th>Treatment Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>A plan for therapeutic intervention to address a participant’s drug dependency and related health needs (Drug Court of NSW Policies 1-13, 2013).</td>
</tr>
<tr>
<td>Notes</td>
<td>The formation of a treatment plan differs across jurisdictions, however, all treatment plans form part of the Courts orders and are periodically assessed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Term</th>
<th>Treatment Team</th>
</tr>
</thead>
<tbody>
<tr>
<td>Synonyms</td>
<td>Drug Court Team, Multi-disciplinary Team.</td>
</tr>
<tr>
<td>Description</td>
<td>A group of professionals (health and legal) who are primarily responsible for overseeing the day-to-day operations of the program and administering the treatment and supervisory interventions.</td>
</tr>
</tbody>
</table>
| Notes      | The core team comprises the judicial officer (judge or magistrate), the defence lawyer, the prosecution (Police and State authority), a health specialist and a community corrections or parole officer. In different jurisdictions, the make-up of the team varies.  
2. ‘Drug court team’, for an offender, means any of the following persons who are responsible for attending the drug court and providing reports to the drug court magistrate about the performance of the offender under the intensive drug rehabilitation order (Drug Court Act 2000 QLD, s.39A (2)). |
Appendix C: Drug Court Program – Performance Measures Used in Published Evaluations

The following five tables provide a summary of program elements and measures used to assess their effectiveness within the Drug Court jurisdictions of Victoria, Queensland, Western Australia, New South Wales and South Australia.

**Victoria**

*Outcome Measures (MCOV, 2014; VICDOJ, 2004 a-c)*

- Drug use (urinalysis over time – Baseline, 3, 6 months. Follow up surveys of participants on a drug treatment order).
- Compliance (Based on appointments).
- Health/employment (Baseline, 3, 6 months. Follow up surveys of participants on a drug treatment order).
- Recidivism (surveys and police data on convictions for further offences since the commencement of drug treatment order).
- Incarceration (drug court data).
- Cost-effectiveness (operation of drug court Vs. imprisonment (used NSW drug court evaluation methodology)).

*Limitations*

Small sample size and no graduates at time of evaluation. Majority were in Phase 1. Recidivism data may include convictions for offences committed prior to their drug court program. Also, could not analyse time to re-offend or changes in frequency of offending.

**Queensland**

*Outcome Measures (AIC 2003; 2005e; 2008)*

- Completers (Graduates and terminated/withdrawn).
- Health (interviews with drug court team members and participants. Drug court database – included short for 36 Health Survey responses and general; health and mental health assessments. Measured at entry and graduation stage).
- Drug use (urinalysis over time).
- Recidivism (Police data on offences involving a conviction. 2 measures of re-offending: time to the first offence and frequency of offending (pre and post)).

*Limitations*

No health outcomes measured post-program and very few measures for termination. Comparison group = eligible offenders who refused to participate. Small sample sizes.
### Western Australia

**Outcome Measures**
(UWS 2003; WADOJ, 2006)

- Recidivism (Tracked 3 of drug court participants over a 2-year period post-drug court involvement and compared with 2 other groups; prison post-released and other offenders at the end of their community based correctional order. This involved offenders who had either drug-related convictions or that drugs were noted as a significant issue in their life. They were further matched to the drug court group by applying similar selection criteria used by the program).
- Cost-benefit (Compared cost of drug court with cost of community or prison-based sanctions).

**Limitations**

- Courts, corrections and police database.

### New South Wales

**Outcome Measures**
(NSWBOCSAR, 2002b, 2002c, 2008, 2011)

- Completers (Database)
- Drug use (Interviews and urinalysis)
- Health & Well-being (Entry, and 3 follow-ups at 4-month interviews. Compared well-being to other populations – general & prison population)
- Cost-effectiveness (Measured in terms of reducing recidivism among drug-dependent offenders compared to mainstream system. Used cost and rate of recidivism to determine).
- Recidivism (Based on re-conviction rate (time to re-offend for any offence and property, drug and person offences). Two comparison groups: Compared those drug court to matched comparison group who were ineligible due to prior violent conviction or reside outside of drug court catchment area. Compared comparison group to drug court completers. Drug use and sanction imposition. A non-blinded randomised controlled trial to test the effect of intensive justice supervision on early-phase substance use and sanctioning rates).

**Limitations**

- In Health & Well-being study few had reached Phase 3 or graduated.
- Had best comparison group due to the demand for drug court program exceeding supply.
South Australia

**Outcome Measures**
(SAOCSSR 2005; 2005; 2012)

- Completers (Graduates and terminators).
- Drug use (urinalysis over time – doesn’t consider changes in drug type).
- Recidivism (Frequency and severity of offending pre-and post-involvement of drug court program). This is measured based on criminal events that resulted in a police apprehension. Minimum 6 months post-completion. Each participant was matched on his/her pre and post offending time. Incarceration time was excluded.

**Limitations**

No control group due to inability to identify and match with offenders processed through processed through mainstream court that had a drug-related offending. Program small sample size.
### Appendix D: SF-36® Health Survey (Version 1.0)

**Your Health and Well-Being**

This survey asks for your views about your health. This information will help keep track of how you feel and how well you are able to do your usual activities. Thank you for completing this survey.

For each of the following questions, please mark an X in the box that best describes your answer.

#### 1. In general, would you say your health is:

- Excellent □
- Very good □
- Good □
- Fair □
- Poor □

#### 2. Compared to five years ago, how would you rate your health in general now?

- Much better than five years ago □
- Somewhat better than five years ago □
- About the same as five years ago □
- Somewhat worse than five years ago □
- Much worse than five years ago □

#### 3. The following items are about activities you might do during a typical day. Does your health now limit you in those activities? If so, how much?

<table>
<thead>
<tr>
<th>Activity</th>
<th>Yes, Limited a lot</th>
<th>Yes, Limited a little</th>
<th>No, not Limited at all</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vigorous activities, such as running, lifting heavy objects, participating in strenuous sports</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Household activities, such as using a ladder, painting a window frame, bowling, or playing golf</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Lifting or carrying process</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Climbing several flights of stairs</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Climbing one flight of stairs</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Standing, kneeling, or crouching</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Holding a book</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Holding or stroking a infant</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Holding or dressing yourself</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Walking up and down stairs</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Lifting objects</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Taking a bath</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Drinking from a cup</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Eating without help</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Getting to sleep</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

#### 4. During the past 4 weeks, have you had any of the following problems with your work or other regular daily activities as a result of your physical health?

- □ Yes □ No

- Can't keep up with what you want to do because you feel not as well as you used to □

- □ Yes □ No

- □ Yes □ No

- □ Yes □ No

#### 5. During the past 4 weeks, have you had any of the following problems with your work or other regular daily activities as a result of any emotional problems (such as feeling depressed or anxious)?

- □ Yes □ No

- □ Yes □ No

- □ Yes □ No

#### 6. During the past 4 weeks, in what extent has your physical health or emotional problems interfered with your normal social activities with family, friends, neighbors, or groups?

<table>
<thead>
<tr>
<th>Extent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all □</td>
</tr>
</tbody>
</table>

#### 7. How much bodily pain have you had during the past 4 weeks?

<table>
<thead>
<tr>
<th>Severity</th>
</tr>
</thead>
<tbody>
<tr>
<td>None □</td>
</tr>
</tbody>
</table>

#### 8. During the past 4 weeks, how much did your health interfer with your normal work (including both work outside the home and housework)?

<table>
<thead>
<tr>
<th>Extent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all □</td>
</tr>
</tbody>
</table>
Appendix E: Signed Research Protocol

RESEARCH PROTOCOL

Justice, Rehabilitation and Reintegration: Capturing ‘success’ of Drug Courts in Australia

This agreement is made on (insert date) by and between the Drug Court of New South Wales and Mrs Amanda Clarke.

Misuse by the researcher of knowledge and/or information gained may jeopardise the operational effectiveness of the Drug Court of New South Wales and other agencies (internal and external) with whom the Court interacts, therefore, it is a requirement that the researcher comply with this agreement.

Restrictions:

- All data obtained will be coded and no personal details identifying Drug Court participants will be recorded or used as part of the research.
- The researcher is not permitted to attend Drug Court team meetings.
- The researcher will not engage in any activity related to her employment.
- If a Drug Court team member objects to their contribution being included in the research, either prior, during or at the reporting stage, then the entire session for which they were observed will not be used for the purposes of the research.
- The research will remain on the Drug Court management meeting agenda as determined by the Senior Judge of the Drug Court and the researcher.
- A copy of the dissertation will be provided to the Drug Court team members who participated in the research.
- Drug Court team members will be expected to engage in their ordinary duties and are to be observed as a collective group.
- The researcher is required to ensure that methodology is purely observational in a ‘public’ setting and that there is no interaction with Drug Court participants.

Participating Jurisdiction: All three courts operating under the Drug Court of New South Wales (Parramatta, Sydney and Hunter) are eligible to participate in the observational phase of the research. Attendance dates will be provided, in writing via email, to the Register of the Drug Court of New South Wales.

Proceedings Eligible for Written Recording: Subject to the consent process, the researcher may record (in writing only) every case proceeding on the drug court daily list by the researcher.
Drug Court Participant Consent – It is the Drug Courts preferred practices that consent for non-invasive observational research is not sought from Drug Court participants (i.e. observational researchers are not encouraged to approach and/or acquire Drug Court participant consent).

On-going Consent: Regardless of party consent, the presiding Judge has full discretion to determine that a case proceeding, either in full or in part, should not be observed and/or recorded in writing.

Principal Researcher, Ms Amanda Clarke

[Signature]

3 / 4 / 19 Date

Senior Judge of the Drug Court of New South Wales, Roger Dive

[Signature]

3 / 4 / 19 Date
Appendix F: Signed Terms of Agreement with Police Prosecutions Command

Ms Amanda Clarke
4 Vivaldi Place
Beaumont Hills NSW 2153
Australia

Tuesday, 11 March 2014

Dear Ms Clarke

Research Application – Doctoral research – Dr Policing and Security: Justice, Rehabilitation and Reintegration: Capturing ‘success’ of Drug Courts in Australia

I am pleased to inform you that, following consultation with the Commander, Police Prosecutions Command, your application to undertake doctoral research on the above topic has been approved, subject to your agreement with the terms set out in this letter and the attached risk management agreement.

This approval constitutes agreement that the NSW Police Force will act as a participating case study for this research project.

The NSW Police Force understands that any information participants supply to you as part of this research project will be treated as confidential, and that the Police Force will not have access to any individual content. We do require that the Police Force will be given access to aggregated data and generalised findings at the conclusion of the project.

Please note that this approval is contingent on your agreement to our standard conditions:

- That you obtain formal approval for this project from the Senior Judge of the Drug Court
- That you adhere to ethical research practice as set out the Ethics Committee application and approval, in particular maintaining the confidentiality of any information collected and the anonymity of any involved persons, respecting the principles of informed consent for all participants.
o Any data collected is to be used only for this research program and associated academic activities, and is not to be released to any person or used for any other purpose without express written permission.

o In due course the NSW Police Force will require, as a condition of the grant of this approval, receipt of a final version of the Thesis with an executive summary in plain language. We will place the thesis in the NSW Police library, and use the information therein as we see fit, but, of course, with due respect to the moral rights of the author. While the NSW Police will be happy to receive recommendations, we remind you that we are under no obligation to implement them.

o Breaches of these conditions may lead to consultation with the project supervisors at The Charles Sturt University and withdrawal of this grant of approval.

In addition to these standard conditions, please see the attached risk management agreement which takes into account specific issues related to this project. Please arrange to have this document executed by Chief Superintendent Trichter and yourself.

Please send me an email or letter indicating your agreement with these general conditions and a copy of the executed risk management agreement. Good luck with your project, and please let me know if I can assist in any way.

Yours sincerely

[Signature]

Dr Chris Devery
Manager, Executive Development and Research.
Appendix G: Approval Letter

9 May 2014

Ms Amanda Clarke
4 Vivaldi Place
Beaumont Hills NSW 2155

Dear Ms Clarke,

Thank you for the additional information forwarded in response to a request from the Human Research Ethics Committee.

The Committee has now approved your proposal entitled “Justice, Rehabilitation and Reintegration: Capturing ‘success’ of Drug Courts in Australia” for a twelve month period from Justice, Rehabilitation and Reintegration: Capturing ‘success’ of Drug Courts in Australia. The protocol number issued with respect to this project is 2014/061. Please be sure to quote this number when responding to any request made by the Committee.

You must notify the Committee immediately should your research differ in any way from that proposed.

You are also required to complete a Progress Report form, which can be downloaded from www.csu.edu.au/research/forms/ehrcep_annrep.doc, and return it on completion of your research project or by 9/05/2015 if your research has not been completed by that date.

Please don’t hesitate to contact the Executive Officer on telephone (02) 6338 4628 or email ethics@csu.edu.au if you have any enquiries.

Yours sincerely

Julie Hicks
Executive Officer
Human Research Ethics Committee
Direct Telephone: (02) 6338 4628
Email: ethics@csu.edu.au

Cc: Dr Gerd G. Heuer
Appendix H: Observation Schedule

Program: Drug Court of New South Wales
Observer: Amanda Clarke
Locations: Parramatta / Sydney / Hunter
Date: __________________________
Session Start Time: ______________________
Session Ending Time: ______________________
Number in court list: ______________________
Team members present: ______________________

Program Setting

- Physical environment of the jurisdiction and its surroundings
- People present during the operation of the court

Social Setting

- Manner in which key stakeholders organise themselves
- Where the stakeholders sit in relation to Drug Court participants
- Patterns of:
  I. Communication
  II. Collaboration
  III. Decision making
  IV. People’s characteristics
  V. Social interaction

Activities / Participant Behaviours

- Responsibilities of Drug Court participants
- Roles of key stakeholders
- Patterns of responses (judicial and otherwise) to participant behaviour
- Legal hearing descriptions
- Legal outcomes
Informal Interactions / Unplanned Activities

- How participants and court stakeholders interact

Language Used/Comments/Quotes

- Participants
- Key stakeholders
- Patterns of alternate use of language

Non-verbal Communication

- Dress
- Expression
- Mannerisms
- Physical contact (between key stakeholders and participants)

General Alternate Behaviour

- Absences of otherwise usual experiences in the New South Wales mainstream criminal justice system
Appendix I: Drug Court of New South Wales Boundary Maps

Figure I.1 Drug Court of NSW – Parramatta
Figure 1.2 Drug Court of NSW – Hunter
Figure I.3 Drug Court of NSW – Sydney
Appendix J: Participant Information Sheet

PARTICIPANT INFORMATION SHEET

Justice, Rehabilitation and Reintegration: Capturing ‘success’ of Drug Courts in Australia

Researcher: Mrs Amanda Clarke (Bpolicing, MLshipMgt (Policing), MA(CrimIntel)). Current student in the Doctor of Policing and Security Programme.
Project Supervisor: Dr Garth den Heyer (DpubPol, MSc, MSS, BBS, Dip. Pol.). Lecturer, Australian Graduate School of Policing, Charles Sturt University. Manager: National Security for the New Zealand Police. Senior Research Fellow with the Police Foundation in Washington, DC.

Before you decide whether or not you wish to participate in the study, it is important for you to understand why the research is being done and what it will involve. Please take the time to read the following information carefully and discuss it with others if you wish.

Invitation
You are being invited to participate in a study that will attempt to examine the role that drug courts play in the wider Australian criminal justice system. The study is being conducted by Mrs Amanda Clarke from the Australian Graduate School of Policing at the Charles Sturt University, Australia.

1. What is the purpose of the study?

Utilising two methodological approaches, the collection and analysis of the secondary data; and qualitative analysis grounded on observational data, this research project will undertake a critical examination of the drug court movement and its role in the Australian criminal justice system. The research will do this by positioning Drug Courts within the larger context of the social, political, and contextual frameworks within which they operate and by analysing the operational and administrative frameworks that constrain them. As a result of this analytical process a number of criteria, against which outcome measurements and impact statements can be made, will be developed. These criteria will then be tested against the relevant drug court literature. The final step will be to undertake an assessment of the possibility of mainstreaming a particular Drug Court model to become an integral component of the Australian criminal justice.

2. Why have you been invited to participate in this study?

Actual observation of the Drug Court of NSW is one of the supporting data sources for this research project. It is not the primary data source. Through 30 days of observation over a three-month period, the researcher will be observing the practices at the Drug Court of NSW (Parramatta, Sydney and Hunter locations). You have been identified as a
member of a Drug Court team that may be working in the courtroom during this observation phase of the project.

3. What does this study involve?

If you agree to participate, your involvement will be limited to normal court practices and will not involve any additional tasks beyond usual working duties. The research involves the study of customary legal practices in the ordinary legal setting where public attendance is permitted and does not involve observation of a drug court team meeting, therefore it has been assumed that there are no risks to stakeholders’ employability, and confidentiality is ensured.

The observation technique used will be semi-structured, using an observational schedule to ensure consistency in the observation of the various courts. The observation schedule will list activities, processes, and communications that are observed in the Drug Court. Examples include the physical and social environment of the court, the activities and behaviours of the Drug Court team and the informal interactions used by the team members. The schedule will assist to analyse the ways in which the court utilises the various tools at its disposal and will enhance the understanding of connections concerning the fundamental justifications for the Drug Court operation. Further, the observational approach can be used to assist the researcher to negate or confirm the indicia for success that will be recommended and determined through literature analysis.

The research involves the study of normal legal practices and Drug Court management methods conducted in the everyday legal setting. The purpose of the observational visits is to obtain valuable information that would supplement, endorse and allow cross-referencing of the data available from various published reports. The researcher will conduct the observation phase of the researcher as a non-participant observer, that is, whilst 'off-duty' and not engaged in any activity related to employment with the New South Wales Police Force.

4. Are there risks and benefits to me taking part in this study?

There will be no benefits to you in participating in this research. Further, it is not anticipated that your participation in the research will involve any risks to you, either personally or professionally. Should you have any concerns about your involvement, please contact the Human Research Ethics Committee whose contact details have been provided below.

5. How is the study being paid for?

The study is entirely self-funded by the researcher.

6. Will taking part in this study (or travelling to) cost me anything, and will I be paid?

If you choose to participate there will be no associated financial cost.

7. What if I don't want to take part in this study?

Participation in this research is entirely your choice. Only those people who give their informed consent will be included in the project. Whether or not you decide to participate,
is your decision and will not disadvantage you. If you do decide to participate, you may withdraw from the project at any time without giving a reason and have the option of withdrawing any data, which identifies you.

8. What if I participate and want to withdraw later?

There are no consequences to you if you choose to participate in the research and later withdraw.

9. How will my confidentiality be protected?

It is not intended to attribute any behaviour observed in the Courtroom to you, i.e. the research will not disclose your name, background, role and involvement in the drug court, in fact, disclosure of your details is not required as part of the study and individuals will not be identified. Therefore, your details will only be known to the researcher and supervisor, and will be stored securely in hard copy and/or electronically. Steps will be taken to anonymise information and data observed so that your organisation cannot be identified or yourself as an individual. Notwithstanding that every effort will be made to protect your anonymity, this may not be possible due to the specific role you play within the courtroom. Data used for analysis will be retained for at least 5 years and will be securely held by the researcher.

10. What will happen to the information that is observed by the researcher?

A copy of the dissertation will be emailed to you following grading by the Charles Sturt University. Any identifying data obtained through the observational component of the research will be removed prior to publication and, in the highly unlikely chance where an individual may be identifiable, explicit consent will be obtained before publication can proceed. In such cases, all findings from the study will be presented using pseudonyms for individual participants and locations. The dissertation outcomes will be disseminated to government policymakers and stakeholders that are involved in the implementation and application of drug courts. This is particularly the case with those key stakeholders involved in the delivery of health and legal services to Drug Courts in Australia with a view that the study outcomes will be circulated to members within their agency.

11. What should I do if I want to discuss this study further before I decide?

If you would like further information, please contact the chief investigator, Mrs Amanda Clarke on 0410637635 or via email on Clarke.amanda@bigpond.com.

12. Who should I contact if I have concerns about the conduct of this study?

Charles Sturt University’s Human Research Ethics Committee has approved this study. I understand that if I have any complaints or concerns about this research I can contact:

Executive Officer
Human Research Ethics Committee
Office of Academic Governance
Charles Sturt University
Panorama Avenue
Bathurst NSW 2795
Phone: (02) 6338 4628
Email: ethics@csu.edu.au

Any issues you raise will be treated in confidence and investigated fully, and you will be informed of the outcome
Thank you for considering this invitation. This information sheet is for you to keep.
Appendix K: Consent Form

CONSENT FORM

Justice, Rehabilitation and Reintegration: Capturing ‘success’ of Drug Courts in Australia – The Second Generation

Researcher: Mrs Amanda Clarke (Bpolicing, MLshipMgt (Policing), MA(CrimIntel)). Current student in the Doctor of Policing and Security Programme.

Project Supervisor: Dr Garth den Heyer (DpubPol, MSc, MSS, BBS, Dip. Pol.). Lecturer, Australian Graduate School of Policing, Charles Sturt University. Manager: National Security for the New Zealand Police. Senior Research Fellow with the Police Foundation in Washington, DC.

- I agree to participate in the above research project and give my consent freely.
- I understand that the project will be conducted as described in the Information Statement, a copy of which I have retained.
- I understand I can withdraw from the project at any time and do not have to give any reason for withdrawing.
- I consent to participate in the observation phase of the project whereby the researcher will be recording practices currently adopted at the Drug Court of New South Wales.
- I consent to the written recording of this information.
- I understand that my personal information will remain confidential to the researcher.
- I have had the opportunity to have questions answered to my satisfaction.

NOTE: The Charles Sturt University Human Research Ethics Committee has approved this project. If you have any complaints or reservations about the ethical conduct of this project, you may contact the Committee through the Executive Officer:

The Executive Officer
Ms Julie Hicks
Human Research Ethics Committee
Tel: (02) 63384628
Email: Ethics@csu.edu.au
NOTE: Participants can re-visit their decision to participate in the observational phase of the research project.

Signature: ................................................................................................................. Date:........

Name: ........................................................................................................................

Please provide your contact details below:

<table>
<thead>
<tr>
<th>Phone</th>
<th>Email</th>
<th>Facsimile</th>
<th>Mail</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please make a copy of this form for your own records, and return the completed form by one of the methods outlined below:

<table>
<thead>
<tr>
<th>Phone</th>
<th>Email</th>
<th>Mail</th>
</tr>
</thead>
<tbody>
<tr>
<td>0410637635</td>
<td><a href="mailto:Clarke.amanda@bigpond.com.au">Clarke.amanda@bigpond.com.au</a></td>
<td>C/O Police Prosecutions Command NSW Police Force Locked Bag 5102 Parramatta, NSW 2154</td>
</tr>
</tbody>
</table>
### Appendix L: Collection of Observation-based Data

| Day | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
|-----|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| Court | P | P | H | S | P | P | H | S | H | P | P | S | P | H | S | H | S | H | S | H | S | H | S | H | S | P |

| # Court Matters | 52 | 45 | 55 | 34 | 45 | 41 | 53 | 49 | 32 | 45 | 56 | 47 | 62 | 31 | 47 | 43 | 32 | 53 | 36 | 49 | 38 | 34 | 52 | 38 | 32 | 53 | 31 | 45 | 41 | 51 |

### On Program Events

| Entered phase 1 | 2 | 2 | 1 | 2 | 0 | 3 | 1 | 1 | 0 | 0 | 1 | 2 | 1 | 0 | 2 | 1 | 1 | 1 | 1 | 2 | 0 | 0 | 1 | 0 | 1 | 1 | 2 | 0 | 0 | 3 |
| Progress to phase 2 | 1 | 2 | 0 | 0 | 3 | 2 | 0 | 0 | 3 | 1 | 1 | 0 | 3 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 2 | 0 | 0 | 1 | 0 | 0 | 0 |
| Progress to phase 3 | 0 | 0 | 2 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 1 |
| Termination Application | 3 | 1 | 1 | 1 | 3 | 1 | 2 | 0 | 0 | 0 | 1 | 2 | 1 | 0 | 4 | 0 | 2 | 1 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 2 |
| Sanctions Imposed | 76 | 49 | 19 | 46 | 19 | 53 | 32 | 12 | 21 | 32 | 45 | 34 | 22 | 33 | 28 | 24 | 27 | 44 | 27 | 24 | 32 | 39 | 49 | 34 | 43 | 29 | 23 | 21 | 26 | 42 | 24 | 38 |
| Sanctions Removed | 15 | 12 | 15 | 29 | 24 | 24 | 14 | 23 | 14 | 19 | 14 | 12 | 17 | 16 | 19 | 16 | 23 | 10 | 23 | 14 | 23 | 32 | 32 | 23 | 26 | 32 | 11 | 22 | 9 | 16 |
| Put into Custody | 3 | 2 | 0 | 1 | 2 | 1 | 4 | 1 | 2 | 0 | 5 | 2 | 3 | 1 | 2 | 1 | 3 | 2 | 3 | 0 | 1 | 3 | 2 | 1 | 0 | 1 | 1 | 3 | 0 | 4 |

### Terminations

| Self | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Terminated (no prospect of progressing) | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 2 | 0 | 0 | 1 | 1 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Terminated (risk to the community) | 0 | 1 | 0 | 3 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |

### Completions

| Graduated | 0 | 2 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 1 |
|--------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Non-custody sentence imposed  | 1      | 2      | 1      | 0      | 0      | 1      | 0      | 0      | 1      | 1      | 0      | 0      | 1      | 0      | 0      | 1      | 0      | 1      | 0      | 0      | 0      | 1      | 0      | 0      | 2      | 0      | 0      | 1      |        |
| Custodial Sentence Imposed    | 1      | 0      | 2      | 0      | 2      | 0      | 0      | 1      | 2      | 2      | 1      | 0      | 1      | 0      | 1      | 0      | 0      | 1      | 1      | 0      | 0      | 0      | 1      | 0      | 0      | 0      | 0      |        |
| Terminated bench warrant issued | 0      | 0      | 1      | 0      | 0      | 1      | 0      | 0      | 0      | 1      | 0      | 0      | 0      | 1      | 0      | 1      | 0      | 0      | 0      | 0      | 2      | 0      | 0      | 0      | 0      | 1      | 0      |        |
Appendix M: Example Participant and Program Requirements

The following table outlines some examples of the various participant and compliance requirements for each of the Drug Court Programs in the five Drug Court jurisdictions of New South Wales, Queensland, South Australia, Victoria, and Western Australia.

<table>
<thead>
<tr>
<th>Conditions</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Report to the court on specified dates.</td>
</tr>
<tr>
<td></td>
<td>Participate in a specific program and to abide by the rules and regulations of that program.</td>
</tr>
<tr>
<td></td>
<td>Provide a urine specimen as directed by either their case manager, treatment provider or court.</td>
</tr>
<tr>
<td></td>
<td>Attend counselling sessions as required.</td>
</tr>
<tr>
<td></td>
<td>Attend a bridging program at a specified location.</td>
</tr>
<tr>
<td></td>
<td>Attend the drug court registry for urinalysis.</td>
</tr>
<tr>
<td></td>
<td>To reside as directed.</td>
</tr>
<tr>
<td></td>
<td>To attend educational/vocational and recreational programs.</td>
</tr>
<tr>
<td>QLD</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Attend drug court when required by the drug court to do so.</td>
</tr>
<tr>
<td></td>
<td>Not to commit, whether in or outside the state, another offence punishable on conviction by imprisonment during the time that the order is in force.</td>
</tr>
<tr>
<td></td>
<td>Report to a specific community correction centre or another specified place within two clear working days after the order is made.</td>
</tr>
<tr>
<td></td>
<td>Undergo treatment for drug dependency as specified in the order, by the drug court or by a specified community correction officer.</td>
</tr>
<tr>
<td>SA</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Comply with the home detention period set by the court.</td>
</tr>
<tr>
<td></td>
<td>Undertake withdrawal management, including inpatient detoxification if necessary.</td>
</tr>
<tr>
<td></td>
<td>Provide a urine specimen as directed.</td>
</tr>
<tr>
<td>VIC</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Obey all lawful instructions from the drug court team and the specified Community Corrections Officer.</td>
</tr>
<tr>
<td></td>
<td>Submit to medical, psychiatric, or psychological assessment as specified in the drug treatment order.</td>
</tr>
<tr>
<td></td>
<td>Non-associate with a specified person.</td>
</tr>
<tr>
<td></td>
<td>Submit to drug and/or alcohol testing as specified in the drug treatment order.</td>
</tr>
</tbody>
</table>
| WA | Compliance/participation  
|    | Compliance  
|    | Compliance/participation  
|    | Participation  
|    | Compliance  
|    | Participation  

- Signed contract for a four-month program.
- Appear in drug court either fortnightly or once per month or as directed by the magistrate.
- Provide urine as directed each week.
- Attend counselling sessions as directed.
- Comply with all reasonable direction of the drug court.
- Provide a report to the drug court outlining your individual progress.
Appendix N: Drug Court Program Progression

The three tables below (Tables N.1, N.2 and N.3) outline the progression of the New South Wales, Queensland and Victoria Drug Court Programs as identified in the documents analysed. Each table includes the phase title, goals, duration and the principal means of achieving the specific phase goals. It also lists the criteria for graduation and/or completion of a Drug Court Program.

Drug Court Program Structure

Table N.1 Drug Court Program Structure – New South Wales

<table>
<thead>
<tr>
<th>PHASE I — INITIATION AND STABILISATION</th>
<th>PHASE II — CONSOLIDATION</th>
<th>PHASE III — RE-INTEGRATION</th>
<th>GRADUATION</th>
<th>SUBSTANTIAL COMPLIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Goals</td>
<td>Principal Goals</td>
<td>Principal Goals</td>
<td>Principle Goals</td>
<td>Principle Goals</td>
</tr>
<tr>
<td>• Cease using drugs</td>
<td>• Remain drug-free</td>
<td>• Remained drug-free</td>
<td>• Progressed into Phase 3, and have maintained the standards set for progression to that stage</td>
<td></td>
</tr>
<tr>
<td>• Stabilise physical health</td>
<td>• Remain crime-free</td>
<td>• and accept a drug-free lifestyle</td>
<td>• Engagement in treatment: The participant should have demonstrated a willingness to identify and deal with any significant life issues in counselling.</td>
<td></td>
</tr>
<tr>
<td>• Cease criminal activity</td>
<td>• Stabilise social and domestic environment</td>
<td>• Remained crime-free and accept a crime-free lifestyle</td>
<td>• Achieved the re-integration goals that have been set and reviewed during the program.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Develop life skills including job skills</td>
<td>• Stabilise social and domestic environment</td>
<td>• For at least three months there must be no drug use.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Address major life issues</td>
<td>• Gain employment or be employment ready</td>
<td>• Must not have committed any crime during the last six months that, if taken to court, could be punished by a term of imprisonment.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Maintain good health</td>
<td>• Be fiscally responsible</td>
<td>• Significant periods of abstinence, and a demonstration of having learned skills to deal with relapse.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• must not have committed any crime during the last six months that, if taken to court, could be punished by a term of imprisonment.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Should have achieved and currently be maintaining the standard set for Phase 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Should be currently actively engaged in treatment, and have identified significant life issues</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Securing and maintaining housing</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Securing and retaining income</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Accessing medical treatment</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Stabilising relationships</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Completion of outstanding court orders such as a Community Sentence Order, Intensive Correction Order or Home Detention order.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Significant periods of abstinence, and a demonstration of having learned skills to deal with relapse.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• must not have committed any crime during the last six months that, if taken to court, could be punished by a term of imprisonment.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Should have achieved and currently be maintaining the standard set for Phase 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Should be currently actively engaged in treatment, and have identified significant life issues</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Securing and maintaining housing</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Securing and retaining income</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Accessing medical treatment</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Stabilising relationships</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Completion of outstanding court orders such as a Community Sentence Order, Intensive Correction Order or Home Detention order.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Significant periods of abstinence, and a demonstration of having learned skills to deal with relapse.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• must not have committed any crime during the last six months that, if taken to court, could be punished by a term of imprisonment.</td>
<td></td>
</tr>
<tr>
<td>Average Duration</td>
<td>Average Duration</td>
<td>Average Duration</td>
<td>Time in Treatment</td>
<td>Time in Treatment</td>
</tr>
<tr>
<td>------------------</td>
<td>------------------</td>
<td>------------------</td>
<td>-------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Three Months</td>
<td>Four Months</td>
<td>Five Months</td>
<td>At least 12 Months on Program</td>
<td>At least 12 months and at least 9 months of that time actively in treatment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Principal Means of achieving goals</th>
<th>Principal Means of achieving goals</th>
<th>Principal Means of achieving goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Commence and fully participate in a treatment program</td>
<td>• Continue to fully participate in a treatment program as updated (as necessary)</td>
<td>• Complete all requirements of the treatment program</td>
</tr>
<tr>
<td>• Assign Probation and Parole Officer</td>
<td>• Undergo counselling</td>
<td>• Complete counselling</td>
</tr>
<tr>
<td>• Development case management plan</td>
<td>• Complete Life Skills Management Program</td>
<td>• Complete Life Skills Management Program</td>
</tr>
<tr>
<td>• Terminate criminal associations</td>
<td>• Attend court fortnightly</td>
<td>• Attend court monthly</td>
</tr>
<tr>
<td>• Commence and fully participate in case management program</td>
<td>• Submit urine sample once per week</td>
<td>• Submit urine sample once per fortnight</td>
</tr>
<tr>
<td>• Attend court weekly</td>
<td>• Participate in home visits by probation &amp; Parole officer</td>
<td>• Participate in home visits by probation &amp; Parole officer</td>
</tr>
<tr>
<td>• Submit urine samples 3 times per week</td>
<td>• Participate in educational and/or vocational training courses</td>
<td>• Participate in educational and/or vocational training courses</td>
</tr>
<tr>
<td>• Participate in home visits by Probation and Parole officer</td>
<td>• Pay or make arrangements to pay outstanding court fines and fees</td>
<td>• Pay or make arrangements to pay outstanding court fines and fees</td>
</tr>
</tbody>
</table>
## Table N.2 Drug Court Program Structure – Queensland

<table>
<thead>
<tr>
<th>PHASE I – ILLICIT DRUG-FREE</th>
<th>PHASE II – CONSOLIDATION</th>
<th>PHASE II – RE-INTEGRATION</th>
<th>GRADUATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Goals</td>
<td>Principal Goals</td>
<td>Principal Goals</td>
<td>Principal Goals</td>
</tr>
<tr>
<td>• Stabilise physical health</td>
<td>• Remain illicit drug-free</td>
<td>• Acceptance of drug-free, crime-free lifestyle</td>
<td>Before a person can graduate and be said to have achieved the aims of the Act, a person must complete all three phases of the program. As a participant nears the end of each phase, an assessment is ordered by the magistrate to ascertain whether and to what degree each aim of that phase has been met. If participants take any longer than four months in one phase, a re-assessment is ordered to determine if there is anything more or different that can be done to assist the participant or whether a party will apply for termination of the program. If a participant has met all the aims of all three phases, he or she is allowed to graduate.</td>
</tr>
<tr>
<td>• Commitment to the court program</td>
<td>• Remain crime-free</td>
<td>• Remain illicit drug-free and crime-free</td>
<td></td>
</tr>
<tr>
<td>• Eliminate illicit drug use</td>
<td>• Stabilise domestic and social environment</td>
<td>• Stabilise domestic and social environment</td>
<td></td>
</tr>
<tr>
<td>• Eliminate criminal activity</td>
<td>• Commence developing life skills</td>
<td>• Commitment to the court program</td>
<td></td>
</tr>
<tr>
<td>• Identification of outside support systems</td>
<td>• Improve education and vocational skills</td>
<td>• Improve employment prospects and be employable</td>
<td></td>
</tr>
<tr>
<td>• Stabilise accommodation</td>
<td>• Address major life issues</td>
<td>• Improve financial management skills</td>
<td></td>
</tr>
<tr>
<td>• Significant sanction-less period</td>
<td>• Maintain good health</td>
<td>• Plan or complete family reunification</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Maintain commitment to the court program</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Plan for family reunification</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Significant sanction less period</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Average Duration</th>
<th>Average Duration</th>
<th>Average Duration</th>
<th>Time in Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-6 Months</td>
<td>3-6 Months</td>
<td>3-6 Months</td>
<td>At least 12 Months on Program</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Principal Means of achieving goals</th>
<th>Principal Means of achieving goals</th>
<th>Principal Means of achieving goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekly court attendance</td>
<td>Fortnightly (possibly reducing) court attendance</td>
<td>Monthly court attendance</td>
</tr>
<tr>
<td>Twice weekly drug testing plus random test</td>
<td>Weekly (possibly reducing) drug testing plus random tests</td>
<td>Twice fortnightly drug testing plus random tests</td>
</tr>
<tr>
<td>Twice weekly case manager contact (at court, where directed or receive visits)</td>
<td>Fortnightly case manager contact (at court, where directed or receive visits)</td>
<td>Fortnightly case manager contact (at court, where directed or receive visits)</td>
</tr>
<tr>
<td>Full participation in core and elective treatment and elective programs</td>
<td>Continue full participation in core and elective treatment and Health programs</td>
<td>Continue full participation in treatment, health and life skills program</td>
</tr>
<tr>
<td>End all criminal associations</td>
<td>Perform community service as directed</td>
<td>Make arrangements to finalise all outstanding court matters (e.g. fine, restitution)</td>
</tr>
<tr>
<td>Graduation assessment (incl.</td>
<td>Graduation assessment (incl. goal setting and treatment planning</td>
<td>Complete community service as directed</td>
</tr>
</tbody>
</table>

176
<p>| goal setting and treatment planning |  |  |</p>
<table>
<thead>
<tr>
<th>PHASE I — STABILISATION</th>
<th>PHASE II — CONSOLIDATION</th>
<th>PHASE III — RE-INTEGRATION</th>
<th>GRADUATION</th>
<th>COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Goals</td>
<td>Principal Goals</td>
<td>Principal Goals</td>
<td>Principal Goals</td>
<td>Principal Goals</td>
</tr>
<tr>
<td>• Stabilise accommodation arrangements</td>
<td>• Strive to be drug-free.</td>
<td>• To be relatively drug-free and accept a drug-free lifestyle</td>
<td>• Sustained periods of abstinence from drug use</td>
<td>• Satisfactory compliance with the requirements of Phase 2 or above</td>
</tr>
<tr>
<td>• Stabilise income arrangements</td>
<td>• Remain crime-free</td>
<td>• Remain crime-free and accept a crime-free lifestyle</td>
<td>• Maintenance of independence from criminal and drug-using peer group</td>
<td>• Reduced contact with criminal peer group/co-offenders</td>
</tr>
<tr>
<td>• Stabilise physical, dental and mental health</td>
<td>• Consolidate social and domestic environment</td>
<td>• Maintain sustainable social and domestic environment</td>
<td>• No further offending in the previous six months</td>
<td>• No further offending in the previous three months</td>
</tr>
<tr>
<td>• Reduce drug use</td>
<td>• Develop life skills including job skills</td>
<td>• Maintain general health and well-being</td>
<td>• Demonstrated fiscal responsibility</td>
<td>• Demonstrated reliability and punctuality in attendance</td>
</tr>
<tr>
<td>• Cease criminal activity</td>
<td>• Identify major life issues and identify strategies to address</td>
<td>• Address major life issues.</td>
<td>• Maintenance of physical and mental health and well-being</td>
<td>• Maintenance of stable accommodation according to need</td>
</tr>
<tr>
<td></td>
<td>• Improve general health and well-being</td>
<td>• Gain employment or return to study</td>
<td>• Demonstrated reliability and punctuality in attendance</td>
<td>• Development of a comprehensive Exit Plan in consultation with the DCV team</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Must be fiscally responsible</td>
<td>• Maintenance of stable accommodation</td>
<td>• Addressing immediate physical and mental health concerns</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Development of a comprehensive Exit Plan in consultation with the DCV team</td>
<td>• Demonstrated control over drug use; and making of some progress towards achieving all the treatment goals of the current phase</td>
</tr>
</tbody>
</table>

In the event of a lapse, has shown the ability to successfully implement relapse prevention measures.
<table>
<thead>
<tr>
<th>Average Duration</th>
<th>Average Duration</th>
<th>Average Duration</th>
<th>Average Duration</th>
<th>Average Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three Months</td>
<td>Three Months</td>
<td>Six Months</td>
<td>At least 12 Months on Program</td>
<td>At least 12 Months on Program</td>
</tr>
</tbody>
</table>

### Principal Means of achieving goals

<table>
<thead>
<tr>
<th>Principal Means of achieving goals</th>
<th>Principal Means of achieving goals</th>
<th>Principal Means of achieving goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Commence and actively participate in drug treatment</td>
<td>Continue to actively participate in updated drug treatment program plan</td>
<td>Continue/complete all requirements of drug treatment program plan</td>
</tr>
<tr>
<td>• Assigned to CCS Drug Court Case Manager</td>
<td>Commence and actively participate in 'life skills' programs which may include financial/budget, vocational/educational, cognitive skills training, parenting/relationships, life skills, counselling etc.</td>
<td>Continue/complete 'life skills' program plan</td>
</tr>
<tr>
<td>• Development of detailed case management plan</td>
<td>Attend court fortnightly</td>
<td>Attend court monthly (minimum)</td>
</tr>
<tr>
<td>• Terminate criminal associations</td>
<td>Submit random urine tests</td>
<td>Submit random urine tests</td>
</tr>
<tr>
<td>• Commence and actively participate in case management program</td>
<td>Participate in home visits by CCS Drug Court Case Manager</td>
<td>Participate in home visits by CCS Drug Court Case Manager</td>
</tr>
<tr>
<td>• Attend court weekly</td>
<td>Pay or make arrangements to pay all outstanding debts</td>
<td>Seek/gain employment or commence an educational/vocational training program</td>
</tr>
<tr>
<td>• Submit random urine tests</td>
<td>Develop new leisure activities</td>
<td>Develop Termination of Order Transition Plan</td>
</tr>
<tr>
<td>• Participate in home visits by CCS Drug Court Case Manager</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Have stable accommodation/income</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>