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MAGISTRATES COURT DIVERSION PROGRAM

Overview of key data findings

Nichole Hunter
Helen McRostie

Attorney-General's Department

This Information Bulletin describes the rationale behind the introduction of the Magistrates Court Diversion Program, and the aims and objectives of the program. It also presents some of the findings from an evaluation of the pilot Magistrates Court Diversion Program undertaken by the Office of Crime Statistics on behalf of the Justice Strategy Unit of the South Australian Attorney-General's Department.

Introduction

The Magistrates Court Diversion Program (MCDP) commenced in the Adelaide Magistrates Court in July 1999. The initial pilot phase concluded on 30 June 2000, although the program has continued to operate beyond this time. This Information Bulletin describes the rationale behind the introduction of the MCDP, and the aims and objectives of the program. It also presents some of the findings from an evaluation of the pilot MCDP undertaken by the Office of Crime Statistics (OCS) on behalf of the Justice Strategy Unit of the South Australian Attorney-General's Department.

Background

In recent decades, there has been a growing awareness of the need to provide alternative methods of criminal justice processing for certain groups within the community. Initially concentrating on alternative approaches for dealing with young people (such as family conferencing), more recently the focus has expanded to include adults. The range of options has spread to encompass strategies such as the use of special interest courts for domestic violence matters and drug-dependent offenders. It is in this context that the needs of persons with impaired mental and/or intellectual functioning have been recognised as requiring a specialised approach (see Laing, 1999).

It has been acknowledged that many individuals arrested by police, appearing before the courts and detained in prisons suffer from a mental impairment (NSW Law Reform Commission, 1993; Jones and Coombes, 1990). Often, they become caught up in a 'revolving door' scenario, continually reappearing in the criminal justice system. The situation has been exacerbated in recent years by the shift away from institutional care to community based living for persons with a mental impairment, which has, for some people, seen an increase in homelessness and reduced access to treatment and support networks.

These problems are not restricted to South Australia and in response, a number of initiatives are being trialled both nationally and internationally. In the United States, mental health courts are now operating in a number of states, having been pioneered in Broward County, Florida in June 1997 (Goldkamp and Irons-Guynn, 2000). The United Kingdom has a number of diversionary assessment schemes located within the Magistrates Court, which are designed to facilitate early identification of mentally disordered defendants and their referral to appropriate treatment agencies (see Blumenthal and Wessely, 1992; Joseph and Potter, 1993; James, 1999). Several Australian jurisdictions have also introduced programs designed to provide alternative criminal justice responses to individuals with a mental impairment charged with criminal offences. For example, in Victoria, a Disability Co-ordinator has been appointed to the Melbourne Magistrates Court to assist Magistrates in the sentencing and management of people with a disability by ensuring that the court has access to relevant information. The court also has the services of an on-site psychiatric nurse who carries out assessments in response to requests from Magistrates. However, as yet, South Australia is the only state to have established a specialist court for defendants with a mental impairment.

The South Australian Pilot Magistrates Court Diversion Program

Origins of the MCDP

In South Australia the impetus for a specialist court for persons with a mental impairment came from two main sources: firstly, from the Chief Magistrate who recognised that the courts needed to better identify and deal with people with a mental impairment; and secondly, from the recommendations of the Operational Review of the *Criminal Law Consolidation Act* Mental Impairment Provisions (1995) undertaken by the Justice Strategy Unit (JSU, 2000).

To understand the rationale behind the introduction of the MCDP it is necessary to consider the historical development of the 'insanity defence'. This defence was introduced in the 19th Century, and if successful resulted in a finding of 'not guilty by reason of insanity'. However, as the accused was required to serve a period of indeterminate detention (at the 'Governor's Pleasure'¹) it was primarily used as a last resort, argued by those charged with only the most serious of offences, such as murder.

The Mental Impairment Provisions (Part 8A) of the *Criminal Law Consolidation Act* 1935 (CLCA) became operational in South Australia in March 1996 and altered the way in which the criminal justice system dealt with offenders found to be 'unfit to stand trial' or not guilty on the basis of being

¹ A person detained at the 'Governor's pleasure' was held indefinitely at a psychiatric facility. The period of detention could potentially be longer than the maximum sentence of imprisonment that could be imposed if the person was found guilty of the offence for which he or she was charged.

‘mentally incompetent to have committed an offence’.² This amendment introduced the requirement that a limiting term for detention or supervision be set, commensurate with the nature of the offence and not greater than would have been received if the person had been convicted. The establishment of a limiting term and the introduction of a broader range of sentencing options (rather than just detention) made the ‘mental incompetence’ defence a more viable option, not only for serious matters, but also for summary and minor indictable offences. In other words, this defence became attractive to defendants facing comparatively minor charges because they could no longer be detained for unspecified periods of time.

Not surprisingly, the Operational Review found that since the 1996 amendments, use of the ‘mental incompetence’ defence had increased substantially, particularly for lower court matters (Justice Strategy Unit, 2000). Consequently, some individuals accused of minor offences who chose to pursue a defence under Part 8A were caught up in a protracted and costly procedural and assessment process (primarily designed to be used by defendants charged with serious offences) which seemed disproportionate to the level of their offending behaviour.³ Further, other defendants who might have been eligible for a Part 8A defence were choosing not to pursue this option because of the complex and cumbersome nature of the process. The Review therefore proposed the establishment of a diversion program as a more viable option than the use of Part 8A for some individuals accused of minor offences.

In establishing the MCDP a range of models were considered before it was decided to opt for a scheme based in the Magistrates Court with court-based staff. Such a program, it was argued, would streamline the court processes by providing early identification and speedy intervention and would give individuals with a mental impairment the opportunity, while their matters were adjourned in court, to voluntarily address their difficulties through participation in a treatment and support plan.

Aims and objectives of the MCDP

The Magistrates Court Diversion Program was designed to better ensure that people with a mental impairment who come before the court have access to appropriate interventions that will assist in addressing their offending behaviour. It was predicated on the overarching principle that all persons should receive fair treatment before the law.

Underpinning this aim were a number of key objectives, namely:

- to provide assistance to the courts in the identification and management of cases involving persons with a mental impairment;
- to undertake timely and accurate assessments for defendants referred from the formal criminal justice system;
- to ensure effective interventions for persons found eligible for and consenting to participate in the diversion program which would:
 - address the person’s support or treatment needs; and
 - prevent further offending behaviour for persons participating in the diversion program;
- by providing an alternative, bring about a reduction in the use of Part 8A defences for street type or minor offences; and
- to facilitate the involvement of a broad(er) range of service providers from both the public and private sectors in meeting the care, support and treatment needs of people with a mental impairment in contact with the criminal justice system.

The target group

The program was designed to cater for persons with ‘impaired intellectual and/or mental functioning’ who had committed summary and/or certain minor indictable offences. To be eligible to participate in the pilot MCDP individuals had to meet the following requirements.

² This legislative change built upon the *Criminal Law Consolidation (Detention of Insane Offenders) Amendment Act 1992*, which came into operation in July 1992. This private member’s Bill made detention at the Governor’s pleasure less discretionary by removing the decision to release a detainee from the Governor in Council and placing it with the court.

³ To establish mental (in)competence the court hears any relevant evidence and representations from the prosecution and the defence and may require the defendant to undergo an examination by a psychiatrist or other expert with the results to be reported to the court. The court must also consider whether the objective elements of the offence are established. If the court is satisfied that the objective elements of the offence are established beyond reasonable doubt and on the balance of probabilities that the defendant was at the time of the alleged offence mentally incompetent to commit the offence, the court must record a finding that the defendant is not guilty of the offence and declare the defendant to be liable to supervision under Part 8A of the CLCA 1935.

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- First, the types of offences included were restricted to summary and certain minor indictable offences.
 - Second, individuals must have been assessed as having impaired intellectual and/or mental functioning. (To ensure that the program was as inclusive as possible the term ‘mental impairment’ was defined as ‘a mental illness, an intellectual disability, a brain injury, dementia or a personality disorder’).
 - Third, although the program was originally intended to operate as a statewide service, during the pilot phase it was limited to matters being dealt with in the Adelaide Magistrates Court.
 - Fourth, although defendants were not required to formally enter a plea before being accepted onto the program, they had to indicate that they would not contest the charges. (While it was never intended that defendants would be required to plead guilty, the requirement that defendants admit the objective elements of the offence was introduced early in the pilot program).

Operation of the MCDP

Three full-time staff members were employed to run the MCDP, including:

- a principal co-ordinator;
- a senior clinical advisor; and
- a mental health justice liaison officer.

One Magistrate was appointed to hear all cases referred to the MCDP.

Key features of the operation of the pilot program were:

- Persons with a suspected mental impairment who were charged with summary or certain minor indictable offences were referred to the diversion program as early as possible. The referral process was intended to be flexible, with police, solicitors, case managers, guardians, defendants, magistrates, police prosecutors and mental health services all able to make referrals.
- Once referred to the program, the defendant underwent an assessment to ascertain the presence and nature of any mental impairment. This assessment, coupled with any history available through mental health services or other sources, formed the basis for a report provided to the Magistrate. During this assessment phase, the defendant’s consent was obtained, with those not wishing to participate in the program being returned to the normal court processes.
- If considered suitable for the program, an individualised intervention plan was then developed. This plan focused on a number of issues, such as homelessness, drug or alcohol addiction as well as mental impairment, and outlined appropriate intervention strategies. In some cases this involved referral to new agencies and treatment options, while other clients had to comply with existing treatment. The plan also specified the anticipated length of time the defendant was required to remain with the program.
- Following assessment, the client appeared in the diversion court where the Magistrate (based on the assessment report and the nature and antecedents of the offence) decided whether the person was suitable for admission to the program. If accepted, the Magistrate adjourned proceedings for a set time so that the person could be referred for suitable intervention. At this stage, no plea was required but an undertaking that the objective elements of the offence were not in dispute was sought.
- During the course of a defendant’s involvement with the program regular review hearings were scheduled. Program staff obtained information on the client’s progress and compliance with the intervention plan via clinical reviews. Regular court review hearings were held where the defendant’s progress and compliance were assessed on the basis of the information provided by program staff. Non-compliance could result in extension or alteration of the program, or in extreme cases, termination of involvement with the MCDP.
- Finally, at the end of a set time, the defendant returned to court for a final determination hearing. At this hearing the program staff provided a final report detailing the progress of the client while on the program. A determination was then made by the Magistrate, taking into account the person’s commitment (or otherwise) to the agreed intervention plan.

A key feature of the program identified prior to its establishment was that participation was to be entirely voluntary. To some extent this was done to avoid prejudicing any future trial that the individual might become involved in. But more importantly, it reflected a clear philosophical stance, based on the rights of the individual to refuse treatment, and upon the premise that people are more

likely to succeed on such a program if they actively choose to be part of it, rather than being coerced into participating.

Consent was required at two key points in the process: first, the person had to agree to be assessed; and second, if considered eligible, they then had to consent to become a program participant. It was also possible for participants, once they had embarked on the program, to withdraw at any juncture. Hence, voluntarism was a key feature at all stages of the process.

Evaluation methodology

A number of methodologies were used to collect qualitative and quantitative data for the evaluation. However, the material presented in this Bulletin is primarily derived from the analysis of the MCDP database. For the purposes of the evaluation, data relating to all clients referred to the program during the pilot period, July 1999 to 30 June 2000, were extracted from the Diversion Program Information Management System maintained by program staff. To obtain information on offending and outcomes for defendants participating in the program, the diversion program database was linked to the courts and police databases held within OCS.

While not discussed in any detail in this Bulletin, qualitative data were collected via interviews with program clients and key stakeholders. In addition, the 36 Magistrates sitting in South Australian courts of summary jurisdiction were surveyed to elicit their views on the pilot program. Diversion program court sessions that took place during the pilot period were also observed. The remainder of the Bulletin summarises some of the findings from the evaluation.

Referrals to the MCDP

There were 201 referrals to the pilot MCDP between July 1999 and the end of June 2000. Of these 201 referrals, 123 went on to participate in the program and 78 did not participate. At the time at which the database was downloaded for analysis (September 2000), 76 participants had reached final determination, 38 were still in progress and nine had failed to complete the program. The following section details the number, source and outcome of all referrals received during the pilot period.

Number of referrals

As noted above, from the commencement of the pilot program in July 1999 until its conclusion on 30 June 2000 there were 201 referrals made to the MCDP. This figure involved 199 discrete individuals, as two defendants were the subject of two separate referrals within the study period. On average, the number of referrals received per month was 16.75. However, there were considerable monthly fluctuations. The highest number of referrals (n=26) was received in August 1999 and the lowest (n=6) in January 2000.

Nearly three quarters of those referred to the program during the pilot phase were male (146 out of 201). The age range of those referred spanned 55 years, with the youngest aged 18 years at the time of their referral, and the oldest aged 73 years. The average (mean) age at referral was 34.5 years, while the median was 31.6 years. Males referred to the program tended to be younger than females. The average age at referral for males was 32.9 years, compared to 38.5 years for females. This difference was statistically significant (t-test, $p < .05$).

Only seven (3.5%) of those referred to the diversion program during the pilot period were Aboriginal, of whom six were male.

Referring agent

According to the information recorded on the diversion program database, Magistrates initiated the majority of referrals (104 or 51.7%). Solicitors accounted for a further 40.9% of referrals. Officially, there were only eight referrals by police, and all of these came from prosecutors rather than operational police. Mental health service providers referred six clients to the program. There were no referrals received from guardians and there were no self-referrals.

Additional information on the referral process was obtained from the Magistrates' survey and stakeholder interviews. This anecdotal evidence suggested that, while Magistrates featured prominently as the referral agent in the official database, many clients were identified as possible candidates for the program by their defence counsel or police prosecutions, who then brought relevant details regarding the defendant's circumstances to the attention of the Magistrate. The Magistrate then

made a referral, based on the information submitted. This reliance on the advice received from defence lawyers and police prosecutors is not unexpected, given that Magistrates would be unlikely to have sufficient information to make referrals unless it was provided by prosecutors or defence counsel.

Referral outcomes

Of the 201 referrals to the diversion program received by 30 June 2000, 123 subsequently became program participants. Defendants referred to the diversion program were classified as participants if they had been:

- assessed as eligible;
- consented to take part; and
- were formally accepted on to the program by the Magistrate at their first hearing in the diversion court following assessment.

Of the 78 referrals that did not result in participation, the main reason for non-participation was 'ineligibility' for the program (see Table 1). Approximately four in ten non-participants fell within this category (42.3%). While not detailed in Table 1, the main reason for ineligibility was that the defendant was found to have no identifiable mental impairment (17 referrals). Other reasons for ineligibility were that the nature of the offending was outside the program criteria, the defendant intended to contest the charges, or the defendant was in custody or detained under the *Mental Health Act 1993*.

A further eight referrals were considered 'inappropriate', either because it was clear prior to assessment that they did not meet program criteria or because the defendant was too ill to give consent. If these eight are added to the 33 ineligible referrals, in total then, just over one half of all non-participants (52.6%) were considered to be unsuited for admission to the program.

The next largest group of non-participants were those who, for various reasons, could not be successfully engaged in the process. More specifically, there were 17 defendants (21.8% of all non-participants) who failed to attend appointments for assessment purposes, and five defendants for whom consent could not be established despite repeated attempts by the program staff to engage them. The inability to engage these individuals in the program was largely due to the particular difficulties they faced.

One of the most important issues around acceptance onto the program related to whether the individual consented to take part, as one of the key aspects of the program was that participation be totally voluntary. Although not all persons referred to the program had the opportunity to provide consent (some individuals were determined to be inappropriate prior to this stage), overall, the level of consent among those offered the chance to take part in the MCDP was high. Of the non-participants, 12 (15.4% of the total non-participants) refused to be involved, opting instead for their cases to be handled through the normal court processes. In addition to this group, two defendants who had initially consented and were assessed as eligible subsequently decided to have their matters finalised at their first diversion program court hearing rather than enter into the program. A third person, who was recommended for participation following assessment and had an intervention plan formulated, failed to appear in court for his first MCDP hearing, at which time a warrant was issued.

Table 1 Referral outcomes – primary reason for exclusion

Exclusion reason	Number	Percentage
Ineligible	33	42.3
Inappropriate referrals	8	10.3
Failed to attend appointments	17	21.8
Unable to engage/establish consent	5	6.4
Refused consent	12	15.4
Withdrew consent	2	2.6
Failed to attend court	1	1.3
Total	78	100.0

The remainder of this Bulletin considers the characteristics of those individuals who participated in the pilot diversion program, the nature of the intervention involved, and the outcomes received.

Characteristics of program participants

Of the 123 referrals that resulted in acceptance onto the program, 87 were male, while 36 were female. Table 2 shows the age and sex distribution of program participants. Although the number of females in some age categories is small, it can be seen that most were aged between 35 and 49 years at the time of their referral to the program. Approximately one third of male participants were aged 18-24 years, compared with about 6% of female participants.

Table 2 Age and sex of program participants

Age group (yrs)	Males No.	Females No.	Total No.
18-19	8	1	9
20-24	22	1	23
25-29	14	6	20
30-34	12	4	16
35-39	10	8	18
40-49	14	10	24
50-59	6	3	9
60 or more	1	3	4
Total	87	36	123

On average, program participants had completed 10.45 years of formal education. Over two-thirds (67.0%) were in receipt of a disability pension as their main source of income at the time they were referred to the program. The other main income category was unemployment benefits, which were received by 16.1% of participants. Almost one in three (31.4%) were living in Housing Trust accommodation, while 4.1% were listed as having no fixed abode. Four program participants were identified as Aboriginal.

Offence profiles of program participants

Number of charges

The 123 program participants faced a total of 687 charges at the beginning of their involvement with the diversion program.⁴ On average each participant faced 5.6 charges.

As highlighted in Table 3, 26.8% of MCDP participants had only one charge heard in the diversion program (41.7% of females and 20.7% of males). A further 43.9% faced between two and five charges. Therefore, in total, approximately 70% of program participants faced between one and five charges. At the other end of the spectrum there were three participants with twenty or more charges at the beginning of their involvement with the MCDP, including one male with 97 charges and one female with 71 charges.

Table 3 Number of charges per participant

No. of charges	Males	Females	Total participants	
	No.	No.	No.	%
1	18	15	33	26.8
2-5	43	11	54	43.9
6-10	15	7	22	17.9
11-20	9	2	11	8.9
20 or more	2	1	3	2.4
Total	87	36	123	100.0

⁴ Further charges, apart from those for which the defendant was initially referred, were sometimes brought into the diversion court during a defendant's involvement with the MCDP either because the person had re-offended while on the program or it was decided to consolidate other outstanding files in the one court.

Types of charges

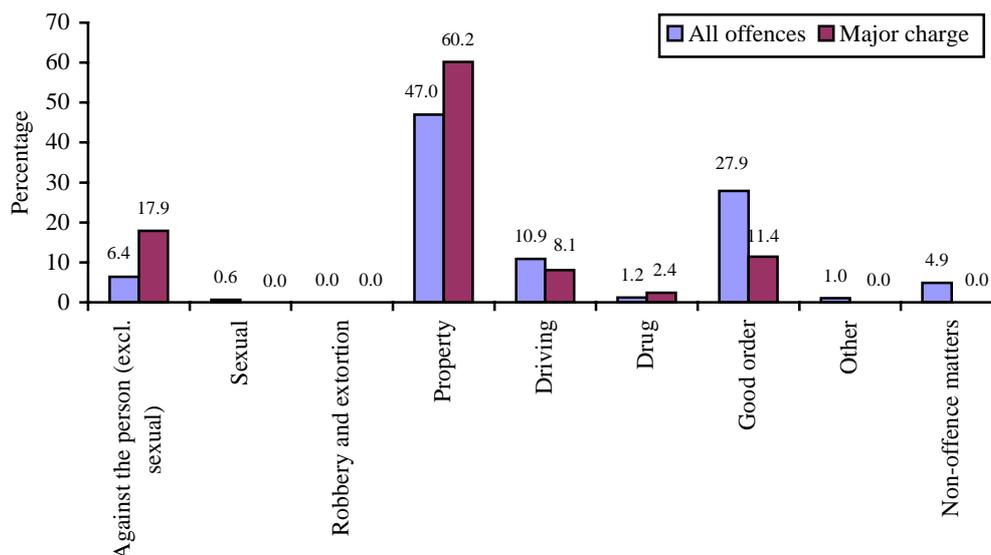
In the following section offences have been grouped into categories that correspond to the JANCO classifications system implemented on the Justice Information System and administered by the Office of Crime Statistics (an adaptation of the Australian Bureau of Statistics ANCO classification system). Major offence charged has been determined according to the JANCO classifications.

The 687 charges faced by program participants included 653 criminal offences and 34 non-offence matters. As indicated in Figure 1, almost one half of **all** offences laid against program participants were *against property* (47.0%) while just over one quarter involved an *offence against good order* (27.9%). *Driving offences* accounted for about 10% of all offences laid.

While all offences laid provides a comprehensive picture of the range of charges facing program participants, the major or most serious charge per participant gives a more accurate indication of the charge profile for discrete individuals. Of the 123 program participants, 60.2% (n=74) had an *offence against property* listed as the **most serious charge** (for 42 of the 74, the charge involved was *larceny*), followed by *offences against the person* (17.9%), *offences against good order* (11.4%) and *driving offences* (8.1%).

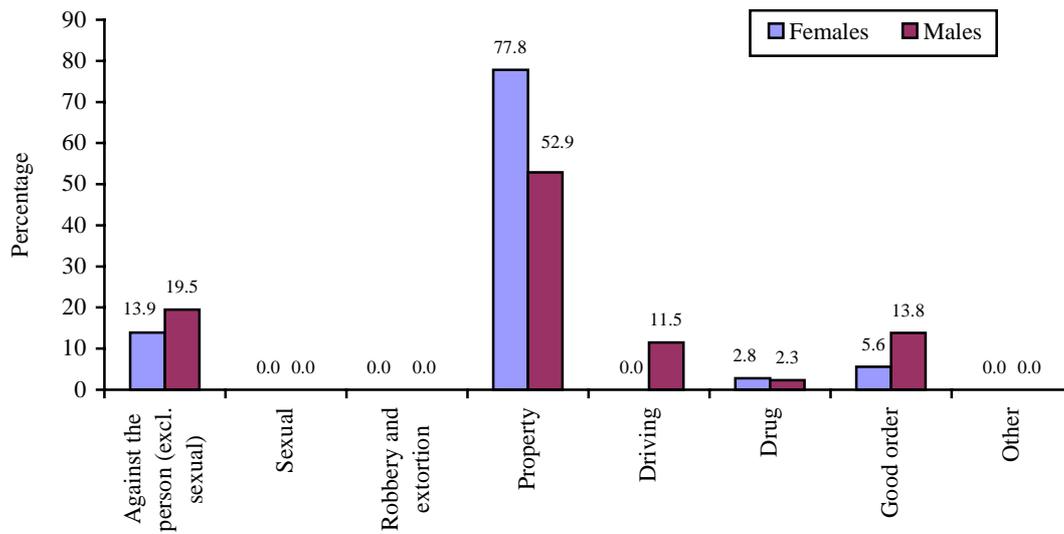
A comparison between **all** offences and the **major charge** for program participants indicates *offences against the person* and *property offences* account for a higher proportion of major charges than all offences, while *good order offences* account for a lower proportion.

Figure 1 A comparison between all offences and the major charge for participants



Despite many points of similarity, some differences were observed in the most serious charge laid against males and females accepted onto the program, as indicated in Figure 2. As shown, a much higher proportion of female than male participants had, as their major charge, an *offence against property* (28 of the 36 females compared with 46 of the 87 males). In contrast, the major charge profile for male participants was more likely to involve an *offence against the person*, an *offence against good order* or a *driving offence*.

Figure 2 Major charge laid against participants: a comparison between males and females



Primary mental impairment identified at the time of assessment

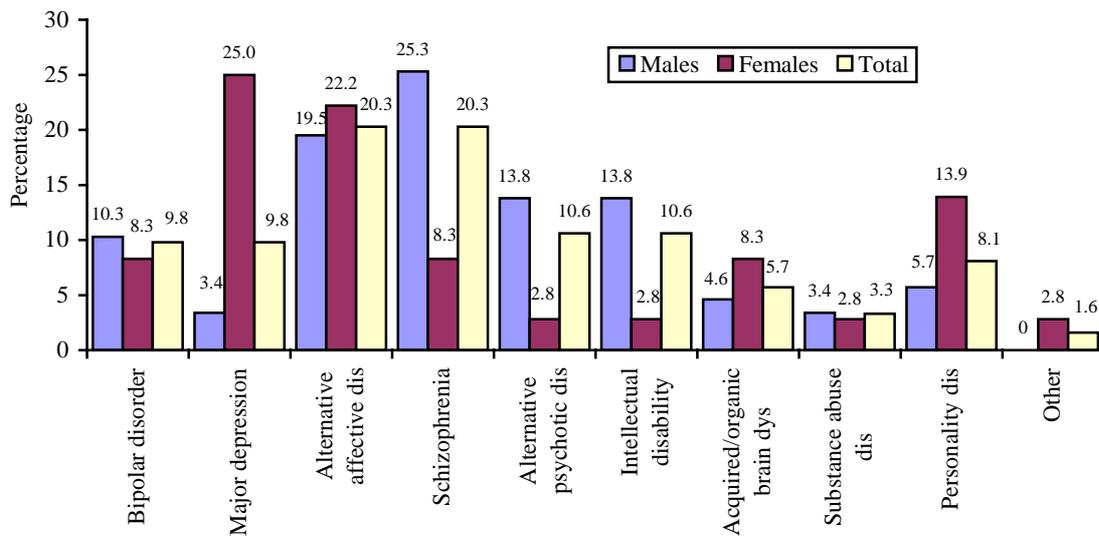
Figure 3 shows that the majority of defendants who participated in the diversion program (72.3%) were assessed as having a major diagnosis (or primary mental impairment) of some form of mental illness (as opposed to an intellectual disability or other form of mental impairment). Four out of 10 (40.6%) program participants suffered from either an alternative affective disorder or schizophrenia, with a further 19.8% diagnosed as having a bipolar disorder or major depression. The next most prevalent impairment category was that of a disability, with 10.6% of participants having an intellectual disability and 5.7% having acquired/organic brain dysfunction.

According to the program database, 8.1% of program participants presented with a personality disorder as their primary mental impairment. This is significant in that the inclusion of ‘personality disorder’ in the eligibility criteria for the program had been the subject of considerable debate during the planning stages, in part because of the difficulties inherent in the diagnosis and treatment of this condition.

While substance abuse in isolation was outside the criteria for inclusion in the program, this type of impairment was accepted in conjunction with another form of impaired mental or intellectual functioning. Substance abuse disorder was the primary diagnosis for 3.3% of participants. However, a further 35.3% of clients were assessed as having this type of disorder in addition to their primary diagnosis. The high number of clients assessed as having a substance abuse disorder is noteworthy given that dual diagnosis clients where substance abuse issues are involved were considered by stakeholders consulted during the evaluation as likely to encounter significant difficulties in accessing services.

Included in the graph under ‘Other’ is one client with a primary diagnosis of impulse disorder and one with Post Traumatic Stress Disorder (PTSD).

Figure 3 Identified mental impairment category – by sex



There were considerable differences in the mental impairment profiles for males and females. Although the numbers for females were quite small in some categories, a much higher percentage of female participants (25.0%) than males (3.4%) were identified as having major depression. Females were also more likely to have a primary diagnosis of acquired/organic brain dysfunction (8.3% compared to 4.6% of males) or personality disorder (13.9% compared to 5.7%). Conversely, a much greater proportion of male (25.3%) than female participants (8.3%) presented with schizophrenia as their primary impairment, while a higher percentage of males had an alternative psychotic disorder or an intellectual disability (13.8% of males compared to 2.8% of females in both categories).

The intervention plan

As previously indicated, once a defendant was accepted onto the program, an intervention plan was developed which specified the service providers to whom the client was to be referred. As the program is not itself a service provider, the role of program staff was to co-ordinate access to services and monitor client progress. The following section examines the nature of the intervention plans for those individuals who participated in the diversion program and the length of time participants were involved with the MCDP. It also considers the level of compliance with the requirements of the intervention plan by clients while on the program.

Agency involvement

One of the aims of the diversion program was to identify and assist defendants who may not previously have been involved with mental health or other service agencies, but whose offending was thought to be related to some form of mental impairment. Despite this objective, very few ‘new entrants’ to the mental health/welfare and social support systems were linked to service agencies as a result of their involvement with the pilot MCDP. In fact, 95.1% of those accepted on to the diversion program were listed as already involved with service agencies or practitioners at the time of their referral (refer to Table 4). Although six clients were listed as having no current service involvement, it is also possible that these individuals could have accessed a service agency in the past, but were not actively engaged with an agency at that stage. Overall then, there were very few clients who were not involved with health/welfare services at the time of their referral to the diversion program.

Table 4 Service involvement of program participants at the time of referral

Service involvement at time of referral	Number	Percentage
Yes	117	95.1
No	6	4.9
Total	123	100.0

While the number of ‘new entrants’ to the mental health/welfare system identified through the program was comparatively small, a significant percentage of participants already involved with services were referred to new agencies with which they were not currently involved. Table 5 indicates that one in three individuals had contact initiated with at least one ‘new’ agency as part of their intervention plan. For the remaining two thirds, participation in the diversion program consisted of maintaining existing links to services, and the monitoring of compliance with current treatment/support by program staff through periodic clinical reviews.

Table 5 Proportion of participants who experienced service involvement with ‘new’ agencies as a result of the program

Involvement with new services	Number	Percentage
Yes	41	33.3
No	82	66.7
Total	123	100.0

The range of agencies with which defendants were involved at the point of acceptance onto the program was quite extensive. The 117 clients who were involved with services at the time of referral were receiving 179 discrete ‘treatment contacts’ provided by a range of service providers (including public and private services, individuals and organisations). This gives an average of 1.53 ‘treatment contacts’ per client. In all cases, existing contact by clients with treatment agencies at the time of referral was maintained as part of the intervention plan devised by program staff.

According to the program database, as a result of participation in the program, 54 ‘new contacts’ were initiated. The ‘new contacts’ initiated through the program aimed to provide clients with additional support and assistance. ‘New contacts’ initiated through the diversion program and involved a number of different service providers. Thus, rather than a substantial number of clients being directed to any specific agency, the referrals initiated through the program were spread across a range of services. As well as initiating ‘new contacts’ with ‘existing services’ (ie. linking clients with a service which they had not previously accessed, but with which other clients were involved), the diversion program also linked into some agencies and programs that had not been providing services to any of the participants at the time of their referral to the program. In total then, a wide range of agencies was involved in providing services to program clients.

The counting rules used to determine the type of agency involvement an individual could have while on the program are illustrated in the case of Client A. Client A had been in contact with one of the Regional Mental Health Services (RMHS) and the Drug and Alcohol Services Council (DASC) at the time of his referral to the MCDP. This would have been counted as two discrete ‘treatment contacts’ with service providers for this person. Client A was also referred to other services while involved with the diversion program, therefore experiencing service involvement with ‘new agencies’. In this instance, he was referred to the Intellectual Disability Services Council (IDSC) and the Offenders Aid Rehabilitation Service (OARS). Client A was then counted as having two ‘new contacts’ as well as the two existing ‘treatment contacts’.

Monitoring compliance –the clinical reviews

This section considers the level of compliance by program participants with the requirements of the intervention plan. Such compliance is crucial to the overall assessment of a client’s engagement with the program and consequently the final outcome for that individual.

Program staff monitored the progress of clients by conducting clinical reviews at regular intervals during a client’s involvement with the program. For the purposes of the reviews, program staff contacted service providers and, on the basis of the information provided, made an overall assessment of compliance. This assessment could encompass a number of different elements, including taking medication as directed, keeping appointments or attending particular programs/groups. The measurement of compliance was very much influenced by individual circumstances. Were program staff were required to weigh an individual’s adherence with the requirements of the intervention plan against the particular difficulties facing that client, because it was considered to be unrealistic to expect high levels of compliance from certain clients. For example, due to the nature of their illness a client may have difficulty remembering and attending appointments but, given the limitations imposed by

their illness, might still be considered to be largely compliant with the program requirements. In interpreting the following information it should also be noted that some clients, such as those with an intellectual disability, are not 'treatable', and therefore the focus of the plan would be on providing access to appropriate support services.

During a client's involvement with the program there was often some flexibility shown in terms of responding to non-compliance, with individuals given several chances to improve their level of engagement with services. Few clients were removed from the program on the basis of non-compliance. The vast majority of program participants (97.4%) were assessed as being compliant with the requirements of their intervention plan at the time of their first clinical review. This dropped slightly to around 90% at both the second and third review stages. The higher non-compliance rate recorded at the second review is consistent with the fact that most 'drop-outs' occurred at this stage. While the number of 'drop outs' was small (n=9), six of those who failed to complete left the program at the time of, or subsequent to, their second review.

In the event of doubtful compliance, programs were more likely to be extended, in order to maximise client engagement, rather than involvement with the program being terminated. As individuals would often come into the program with records of previous poor compliance with treatment services, the role of the program in many instances was to promote improvement in this area. Consequently, those clients not totally compliant with the program may have made some progress in this respect, compared with their past record.

Program length

The overall length of a program (defined as from the time of acceptance until finalisation of matters in court) varied depending on the circumstances of each individual. In determining the length of the program, the primary factor taken into consideration was the nature and complexity of the difficulties experienced by the client and the likely amount of time needed to allow a particular individual to become well engaged with services that met their needs. Therefore there was considerable flexibility in how long the program could be. However, there were also some complicating factors that impacted on the 'actual' program length; for example, clients who were considered to be non-compliant might have their program extended. For this reason there was sometimes a discrepancy between 'anticipated' (as set out in the intervention plan) and 'actual' program length.

When clients were first admitted to the diversion program, the intervention plan developed for each of them specified a program completion (final determination) date. The anticipated program length discussed below refers to the interval between the actual first hearing date in the diversion court (when a client is accepted on to the program) and the scheduled final determination date. The mean anticipated program length for participants was 133.5 days, with a minimum of 56 days and a maximum of 245 days. For the 76 clients who completed the program by September 2000, the mean actual time spent on the program was 136.1 days, with a minimum length of 63 days and a maximum 287 days (see Table 6).

Table 6 Program length (anticipated and actual) for program participants

	Anticipated length (days) (MCDP participants)	Actual program length (days) (MCDP graduates)
Mean	133.5	136.1
Minimum	56	63
Maximum	245	287
Number of clients	122*	76

* One client referred to the program at the end of the pilot period had not had an intervention plan developed (setting a final determination date) at the time the database was downloaded for analysis.

In 17 cases programs were extended, either due to issues associated with the clinical or treatment aspects of the program or because of a postponement of the final determination hearing for legal reasons, as outlined in Table 7. A particular point to note is the fact that in one instance, reoffending was used to justify an extension to the program, rather than expulsion from it. In the case of this individual the reoffending was deemed symptomatic of underlying difficulties, and so it was considered

that further assistance would be of greater benefit than returning this person to the normal court processes. Similarly, in two cases programs were extended due to non-compliance.

Table 7 Reasons for extension of the program

Reasons for extension	No. of cases
<i>Reasons associated with the program itself</i>	
non-compliance with program	2
re-offending while on program	1
delay in accessing suitable treatment services	1
deterioration in mental health condition – hospitalised	1
to facilitate transfer of treatment to a new practitioner	1
<i>Legal reasons resulting in deferral of final determination hearing</i>	
solicitor on leave/absent from final determination hearing	2
to allow legal negotiation between defence counsel and prosecution regarding case outcomes, or to allow prosecutions to seek approval to withdraw charge(s).	9
Total	17

There was some debate amongst stakeholders regarding the length of time clients should be involved with the program. It was generally agreed that there needed to be a balance between not making the program too onerous and disproportionate to the seriousness of the offence, and ensuring that the program was effective and that the individual had sufficient time to be linked into appropriate services. It was recognised this would vary on a case by case basis.

Outcomes and penalties

At the time of analysis, data pertaining to outcomes and penalties were available to 30 June 2000. This meant that court outcomes and penalties data related to only 58 of the 76 final determinations contained on the MCDP database (as 18 participants reached final determination between the end of June and September 2000).

All offences

Of the 58 individuals who had a final determination hearing prior to 30 June, 19 were female and 39 were male. At their final determination hearing, these 19 females were facing 159 charges, while the 39 males were facing 181 charges. This gives an average of 8.4 charges per female, and 4.6 charges per male. The higher average calculated for females was affected by the small number of females and the fact that one individual was facing 90 charges at her final determination hearing.

The court outcomes recorded for the 340 offences dealt with at final determination is presented in Table 8, together with a separate breakdown for males and females. In total, just over 70% of offences resulted in a finding of guilt. This included 61.8% where a conviction was recorded, and 9.1% where no conviction was recorded. In 17.3% of matters, the offence was not proceeded with, either because the police withdrew the charge, or it was dismissed for want of prosecution, or no action was taken.

As indicated in Table 8, 18 offences remained unfinalised at the ‘final determination’ hearing. These were offences that were not admitted to and were therefore referred back to the ‘normal’ Magistrates Court for adjudication.

Table 8 Court outcomes for those offences dealt with at the final determination hearing

Court outcome	Males		Females		Total	
	No.	%	No.	%	No.	%
Guilty – with conviction	99	54.7	111	69.8	210	61.8
Guilty - without conviction	29	16.0	2	1.3	31	9.1

Dismissed for want of prosecution	1	0.6	0	0	1	0.3
No action taken	0	0	15	9.4	15	4.4
Withdrawn	29	16.0	14	8.8	43	12.6
Application granted #	10	5.5	10	6.3	20	5.9
Application withdrawn #	2	1.1	0	0	2	0.6
Unfinalised	11	6.1	7	4.4	18	5.3
Total	181	100.0	159	100.0	340	100.0

Applications involving restoration of drivers licence, costs etc.

The offence outcomes for males and females were generally similar and, given the small numbers of individuals involved, any differences cannot be given too much weight. The proportion of offences found guilty was comparable for both groups (70.7% compared with 71.1% respectively), as was the proportion of offences which, for whatever reason, were not proceeded with (16.6% and 18.2% respectively). However, more female offences had a conviction recorded than was the case for males (69.8% compared with 54.7% respectively).

Of the 10 offences involving Aboriginal defendants finalised in the diversion court over the study period, six resulted in a finding of guilt with a conviction recorded. However none of these offences attracted a penalty. The other four offences were dismissed or withdrawn at the final determination hearing.

Major charge

The above discussion focused on outcomes for **all** offences dealt with at the final determination hearing. However, because each person may be facing more than one charge, such an analysis does not indicate how many defendants had at least one finding of guilt. In Table 9, the outcome for only the **most serious charge** per case is considered.

As shown, of the 58 defendants who had a final determination hearing during the pilot period for whom data are available, almost six in ten were found guilty of their major charge. This included 46.6% where a conviction was recorded. Conversely, 34.4% had the major charge either withdrawn or dismissed, or no action was taken. However, in two of these cases a finding of guilt was recorded for a second or lesser charge. There were three cases where the major charge was not finalised.

Because of the small number of female defendants who had a final determination hearing during the pilot stage, calculating percentages is not a valid exercise. However, over one half of female defendants (11 out of 19) recorded a guilty outcome for the major charge, while eight defendants had no further action taken in relation to the major charge. Of the 39 males, the majority (six in ten) were found guilty of the major charge while conversely, one in three had the major charge withdrawn.

Table 9 Court outcomes for the major offences dealt with at the final determination hearing

Court outcome	Females No.	Males No.	Total No.	%
Guilty – with conviction	9	18	27	46.6
Guilty - without conviction	2	5	7	12.1
Dismissed for want of prosecution	0	1	1	1.7
No action taken	1	0	1	1.7
Withdrawn	6	12	18	31.0
Application granted #	0	0	0	0
Application withdrawn #	0	1	1	1.7
Unfinalised	1	2	3	5.2
Total	19	39	58	100.0

Applications involving restoration of drivers licence, costs etc.

Number of offences ‘proved’ per individual

Overall, of the 58 individuals who had a final determination hearing in the diversion court 38 were found guilty (with or without conviction) of a total of 241 separate offences. This gives an average of 6.3 ‘proven’ charges per individual. At one end of the spectrum, just over four in ten defendants were found guilty of either one or two offences. There were three defendants with more than 10 charges proved against them, including one defendant (a female) who had 90 charges, all involving breaches of restraining orders.

Outcomes by offence type

Table 10 indicates that, irrespective of the type of offence involved, the likelihood of a guilty outcome was relatively high, while the likelihood that the charges would be withdrawn was relatively low. For example, 11 of the 17 ‘*against person*’ offences resulted in a finding of guilt, as did 7 of the 8 *drug offences*, 32 of the 40 *driving offences*, 129 of the 155 *good order offences*. The one notable exception was *property offences*. Of the 104 such offences, 56 resulted in a finding of guilt, while 30 were not proceeded with.

Table 10 Final determination outcomes per offence category

	Offence category (numbers)							Total
	Against the person	Sexual	Property	Driving	Drug	Against good order	Non-offence matters*	
Guilty-conviction	7	1	43	32	3	122	2	210
Guilty-no conviction	4	0	13	1	4	7	2	31
Dismissed/no action/ withdrawn	5	1	30	2	1	18	2	59
Application granted#	0	0	7	2	0	5	6	20
Application withdrawn#	1	0	0	0	0	0	1	2
Unfinalised	0	0	11	3	0	3	1	18
Total	17	2	104	40	8	155	14	340

Applications involving restoration of drivers licence, costs etc.

* Involve breaches of bond, restraining order matters etc.

Major penalties imposed per individual

Overall, the most frequently imposed major penalty⁵ received by those who completed the program was that of a bond (either supervised or unsupervised). Of the 31 defendants who received a penalty at their final determination hearing, 15 received a bond (the major penalty most frequently received by both males and females). While none of those individuals who completed the program received a custodial term, 10 defendants were given a suspended term of imprisonment. No penalty was imposed on seven defendants. Only two defendants received a fine and one received a Community Service Order (CSO).

Table 11 Major penalties imposed per case

Major Penalty	Males No.	Females No.	Total No.
Suspended imprisonment	8	2	10
Community Service Order	1	0	1
Bond (with or w/o supervision)	9	6	15
Fine	2	0	2
Other order	3	0	3
No penalty	4	3	7
Total	27	11	38

Conclusion

This Information Bulletin outlines some of the findings from the evaluation of the first year of operation of the Magistrates Court Diversion Program. A more comprehensive evaluation report has now been finalised and will be published in the near future. Further evaluation will also be undertaken, with the next stage focusing on recidivism rates of program participants and the expansion of the program to other courts.

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⁵ Major penalty is the most serious penalty handed down per case, with immediate imprisonment ranked as the most serious penalty and no penalty as the least serious.

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