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Value of a justice reinvestment approach to criminal justice in Australia:

A submission to the Senate Legal and Constitutional Affairs References Committee

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Trade and Investment, Regional Infrastructure and Services NSW for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

PIAC's work in the criminal justice system

PIAC has significant experience in relation to sentencing through its work with the Homeless Persons' Legal Service (HPLS), a joint initiative between PIAC and the Public Interest Law Clearing House (PILCH) NSW. The HPLS Solicitor Advocate provides representation for people who are homeless and charged with minor criminal offences. The role was established in 2008 to overcome some of the barriers homeless people face accessing legal services, including: a lack of knowledge of how to navigate the legal system; the need for longer appointment times to obtain instructions; and, the need for greater capacity to address multiple and complex interrelated legal and non-legal problems.

Since commencing in 2008, the HPLS Solicitor Advocate has provided court representation to 362 individual clients in 554 matters. From January 2010 to December 2012, the HPLS Solicitor Advocate provided court representation to 241 individual clients facing criminal charges. Of these:

- 48 per cent disclosed that they had a mental illness;
- 63 per cent disclosed that they had drug or alcohol dependency;
- 41 per cent disclosed that they had both a mental illness and drug/alcohol dependency;

- 72 per cent had either a mental illness or drug/alcohol dependency;
- 46 per cent disclosed that they have previously been in prison.

Value of a justice reinvestment approach to criminal justice

PIAC welcomes the opportunity to provide comment for the Senate Legal and Constitutional Affairs References Committee's Inquiry into the Value of a justice reinvestment approach to criminal justice in Australia.

PIAC's submission focuses on the need to ensure the diversion of people who are homeless, those with a mental illness or cognitive disability, and Indigenous people out of the criminal justice system. Where such diversion has not occurred, PIAC believes that sentencing options should be focused on addressing the underlying causes of criminal activity.

PIAC is strongly supportive of approaches to criminal offending that involve elements of diversion and deferral.

PIAC considers that there is a public interest in reducing recidivism and supports 'justice reinvestment' approaches that move funds away from more expensive, end-of-process crime control options, such as incarceration, towards programs that target the factors that cause offenders to commit crime. This reinvestment should take place both within and external to the criminal justice system. However, it is imperative that community service organisations, which generally are the core service providers of such programs, are adequately resourced.

There is also a need for specially tailored services to meet the complex needs of people with mental illness and intellectual disability. For this reason, PIAC considers that it is important that treatment and care under diversionary programs take a multi-disciplinary and multi-stranded approach.

Justice reinvestment and problem-solving justice

The term "Justice reinvestment" originated in the United States about 15 years ago, and refers to a variety of approaches to criminal justice policy reforms.[1] Justice reinvestment involves the development of an evidence-based, data-driven strategy to reduce the burden of imprisonment on society by reducing the number of people entering the criminal justice system in the first place, as well as lowering the numbers returning to custody via breaches of parole or reoffending.[2] It seeks to reverse what many have argued to be a failure of social policy: prisons becoming a stand-in health and welfare system for people with problems that society in general, and their local services in particular, have failed to deal with.[3]

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1 UK Parliament, Justice Committee (2009), Cutting crime: the case for justice reinvestment, Justice Committee First Report, House of Commons Select Committees, 2009, paragraph 9, available at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/9405.htm> (8 March 2013).

2 Allen, R. 'Justice Reinvestment: A new approach to crime and justice?', *Prison Service Journal*, Issue 176, pp 2-9.

3 Sara Hudson (2013), *Panacea to Prison? Justice Reinvestment in Indigenous Communities* (The Centre for Independent Studies, 2013), available at <http://www.cis.org.au/images/stories/policy-monographs/pm-134.pdf> (8 March 2013). <http://parliament.nsw.gov.au/prod/parlment/publications.nsf/0/25246662BD3F6E20CA25721F00126E2D/$File/FINAL%20&%20INDEX.pdf>.

Justice reinvestment essentially involves diverting funds away from the criminal justice system and towards measures that prevent people from offending in the first place. While the term can refer to re-direction of public resources away from the criminal justice and corrections system, towards areas such as education, housing and welfare, it has also come to embrace notions of therapeutic jurisprudence and 'problem-solving justice', which utilise court initiatives to divert certain vulnerable groups of people away from the criminal justice system, and to link them with appropriate services and supports when they do come in contact with the criminal system. 'Problem-solving justice' similarly requires redirection of public resources away from custodial responses towards criminal offending, and directing such resources to effective services and support options, including housing, job-training, education, treatment, etc. The overall aim is to reduce recidivism through early intervention and the provision of targeted support. The key feature of 'problem-solving justice' is that it operates predominantly within the framework of the criminal justice system.

In the US, several justice reinvestment initiatives have resulted in reductions in rates of imprisonment amongst disadvantaged groups, particularly in African-American communities.[4]

Texas

The Texas Legislature re-oriented its criminal justice system by putting more money into substance abuse treatment, diversion, and halfway houses. They reinvested US$241 million that would have been spent on building a new prison, and a further US$210 million the following financial year.

Kansas

Kansas is another place where justice reinvestment has worked well. The city set up a program for children of incarcerated parents, created a local job placement agency, diverted portions of the city's liquor tax revenue to be spent on substance abuse treatment, targeting problem and set up a summer program employing young people from problem areas to revitalise their neighbourhoods.

Kansas has already experienced a 7.5 per cent reduction in their prison population; parole revocation is down by 48 per cent; and the reconviction rate for parolees has dropped by 35 per cent.

Hawaii

In 2003, the Being Empowered and Safe Together (**BEST**) program was administered to smooth the transition of indigenous Hawaiian people from prison to the community, in order to reduce recidivism rates of ex-prisoners.[5] A review committee would determine the appropriate level of services for each person, whilst a housing coordinator would help locate accommodation. Other case workers identified other supports such as child care, training, transportation, and mentoring to help people stay out of prison. The cornerstone of BEST is a cultural renewal component, which uses Native Hawaiian culture as a means of promoting self-transformation and helping people move beyond the label "criminal." The courses are open to all people and classes include reading circles and family reunification cultural activities.

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4 Australian Human Rights Commission (AHRC) (2009), 'Justice reinvestment – A new solution to the problem of Indigenous over-representation in the criminal justice system' in *Social Justice Report* (2009).

5 Office of Hawaiian Affairs, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (2010).

According to a 2009 evaluation of BEST, its outcomes are promising.[6] BEST participants deemed "high risk" were shown to have a lower recidivism rate than "high risk" people who did not participate in BEST (47.1 per cent vs. 88.2 per cent). BEST participants are also less likely to be convicted of a new crime than non-participants. Twenty-four per cent of BEST participants were convicted of a new crime from June 2003 to June 2007, compared to 42.3 per cent of people who did not participate. In addition, the study shows a savings of US$13,643 per participant in terms of costs related to the criminal justice system and public safety.

PIAC is strongly supportive of problem-solving approaches to justice, particularly problem-solving courts. These approaches seek to reduce re-offending rates through early intervention and the provision of targeted support to defendants with multiple and complex needs. They have the potential to address underlying factors that may be contributing to their offending and re-offending.

The informal, flexible and interventionist features of these programs mean that they are better able to involve and support people with complex needs in the legal process.

In particular, problem solving courts

> [focus] on defendants … whose underlying medical and social problems (e.g. homelessness, mental illness, substance abuse) have contributed to recurring contacts with the criminal justice system. The approach seeks to reduce recidivism and improve outcomes for individuals, families, and communities using methods that involve ongoing judicial leadership; the integration of treatment and/or social services with judicial case processing; close monitoring of and immediate response to behaviour; multidisciplinary involvement, and collaboration with community-based and government organizations.[7]

PIAC believes that a key factor in the success of such approaches is their use of multidisciplinary teams who provide defendants with assessment, treatment, referral to services such as drug treatment, alcohol treatment, mental health counselling and housing support. In order to effectively implement a multidisciplinary approach, community services, which inevitably form the core of the service providers, must be adequately resourced to meet any additional casework referred by the courts.

Examples of problem-solving justice initiatives

Community court initiatives

Community courts are neighbourhood focused problem-solving courts that evolved from the US.[8] Their intent is to preserve, protect and defend the community. These courts provide meaningful rehabilitation opportunities for offenders, whilst seeking to make these offenders more accountable to the communities they serve.

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6 Marilyn Brown, Janet Davidson, Joseph Allen and Sherilyn Tavares (2009), Impact and Cost-Benefit Analysis of Hawaii's Serious and Violent Offender Reentry Initiative: The BEST Program (University of Hawaii, 2009)

7 Casey, P.M, Rottman, D.B and Bromage, C.G (2007) *Problem-solving justice toolkit*. National Centre for State Courts <http://www.ncsconline.org/D_Research/Documents/ProbSolvJustTool.pdf>.

8 Center for Court Innovation, *Community Court* (March 2013) <http://www.courtinnovation.org/topic/community-court>

Community courts are able to make community-based treatment orders to deal with drug or alcohol dependency. Additionally, community courts are multijurisdictional, capable of dealing with several matters in the one hearing, which offers a swifter and more coordinated judicial response.[9]

Midtown Community Court (Midtown, New York, US)

Midtown Community Court (**MCC**) was established in New York in 1993 as an innovative response to the area's ongoing problems.[10] The traditional criminal system was largely ineffective: offenders would be arrested, processed, released, only to return to engage in the same disruptive behaviour. As such, a new approach was needed. Rather than take offenders elsewhere for processing by general courts, the MCC sought to have the offenders booked, arraigned and adjudicated by the local MCC. Instead of imposing traditional sanctions, Midtown judges had an array of sanctions and services at their disposal, which were not available in the general court system. These included community restitution projects, short-term educational groups, and longer-term community treatment orders for drug and mental health issues.

In 2009, 87 per cent of defendants at Midtown completed their community-treatment orders, compared to 50 per cent of defendants who were processed at the downtown criminal court. Although Midtown is less likely to use jail as an initial sentence, in order to ensure accountability, Midtown is more likely to impose jail as a secondary sanction, on those offenders who fail to comply with initial court orders. The pilot was a complete success – for the defendants as well as for the community.[11]

Red Hook Justice Center (Brooklyn, New York, US)

The Red Hook Justice Centre (RHJC) was launched in June 2000 as the first US multi-jurisdictional community court.[12] The RHJC handles Criminal, Family as well as Civil court matters. In hearing these cases together, the RHJC recognises that neighbourhood problems do not conform to the arbitrary jurisdictional boundaries of the modern court system. By having a single judge handle matters that are ordinarily heard by different decision makers at different locations, Red Hook offers a swifter and more coordinated judicial response.

RHJC has reduced the use of jail at arraignment in misdemeanour cases by 50 per cent. A door-to-door survey revealed that 94 per cent of local residents support the community court. Eighty-five per cent of defendants report that their cases were handled fairly by the Justice Center.[13]

Neighbourhood Justice Centre (Victoria, Australia)

The Neighbourhood Justice Centre (**NJC**), established in Collingwood, Melbourne in January 2007, is Australia's only community court. Based on the Red Hook Justice Center model, the NJC brings together:

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9 Center for Court Innovation, *Red Hook Community Justice Center* (March 2013) <http://www.courtinnovation.org/project/red-hook-community-justice-center>.

10 Center for Court Innovation, *Midtown Community Court* (March 2013) <http://www.courtinnovation.org/project/midtown-community-court>.

11 Ibid.

12 Center for Court Innovation, *Red Hook Community Justice Center* (March 2013) <http://www.courtinnovation.org/project/red-hook-community-justice-center>.

13 Ibid.

- a multi-jurisdictional court;
- support services such as mediation, counseling and mental health assessment, as well as victims assistance, housing, employment, alcohol and other drug support services; and
- community projects.

The Centre couples an explicit emphasis on restorative justice with a problem solving approach that addresses the causes of offending as well as the crime, aiming to lower the crime rate, increase accountability and keep people connected.[14]

Results from the evaluation of the NJC from March 2007 to 30 June 2009 indicates that the program has been a success.[15] 11,000 people contacted the Centre in its first year. Recidivism rates reduced by 7 per cent. In comparison to offenders from other courts, NJC offenders were 14 per cent less likely to re-offend. At the NJC, the completion rate for Community Based Orders is 75 per cent compared with a statewide average of 65 per cent. NJC clients reported very high levels of satisfaction with their experience, and showed greater confidence in the justice system, compared to other courts.

According to the Victorian Auditor-General, the NJC has had a positive impact on its clients and the community, making a positive contribution to the City of Yarra by providing support and services to address underlying causes of crime and disadvantage. In particular, it was noted that:

- NJC has improved participants' confidence and involvement in the administration of justice. This has generated a higher level of meaningful involvement in justice processes;
- NJC participants are more likely than those in traditional court processes to be provided with treatment and support services;
- There is a high level of community engagement through community development activities—for example, hosting events for culturally and linguistically diverse groups—and participation in a wide range of advisory and consultative bodies on local social and justice issues;
- NJC has contributed to the identification and resolution of local justice issues through targeted crime prevention initiatives, such as the Park Smarter campaign which informs motorists on how to prevent thefts from cars;
- There was an increase in interaction by other City of Yarra agencies in justice processes which led to better connections between the criminal justice system and the wider community.[16]

Generalist court initiatives

Court Integrated Services Program (Victoria, Australia)

The Court Integrated Services Program (**CISP**) began in November 2006 and operates at three Victorian Magistrates' Court venues. CISP provides short-term assistance with health and social needs with the aim of reducing the likelihood of reoffending. Defendants who have been charged but have not yet been sentenced can be referred to CISP, regardless of whether a plea has been entered. Through CISP, defendants can be linked to a range of community support providers.

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14 Neighbourhood Justice Centre, *From Collingwood to the World* (6 February 2012) <http://www.neighbourhoodjustice.vic.gov.au/>.

15 Victorian Government Department of Justice, *Evaluating the Neighbourhood Justice Centre in Yarra: 2007-2009* (February 2010).

16 Victorian Auditor-General (2011), Problem-Solving Approaches to Justice, Victorian Auditor-General's Report, April 2011, Victorian Government, 35.

CISP offers a multi-disciplinary team to link clients with community support services, including drug and alcohol treatment, crisis accommodation and mental health services.

CISP employs five case managers, each specialising in one of the following areas: drug and alcohol; mental health; disabilities; Indigeneity; and other. A defendant may be managed by one or more of the five case managers depending on their needs. Case management finishes when the defendant is sentenced or discharged (generally within four months).

CISP is an example of a generalist court problem-solving justice initiative. CISP targets a wide group of offenders, including those who have physical or mental disabilities or illnesses, drug and alcohol dependency issues, or lack social or family support systems – all of which contribute to their offending.[17]

According to the Victorian Auditor-General, CISP has significantly improved participants' physical and mental health during their period on the program by providing short-term assistance and access to treatment and community services. In addition, the Auditor-General found that CISP had an effect on reducing reoffending, improved bail compliance and court order completion rates.[18]

Problem-solving justice for specific disadvantaged groups

Homeless people

Homeless people and the criminal justice system

Several studies in Australia over the last ten years have found a strong correlation between homelessness, criminal offending, and experience of imprisonment.

A 2003 study of people released from prison found that being homeless and not having effective accommodation support were strongly linked to returning to prison. Sixty one per cent of those homeless on release returned to prison, compared to 35 per cent of those with accommodation.[19] According to the Australian Institute of Health and Welfare, in 2005/06, 12 per cent of clients of specialist homelessness services reported that they had spent time in the criminal justice system, and 11 per cent reported they had more than one experience of being incarcerated in a correctional facility.[20]

In 2008, an Australian Institute of Criminology reported on a 7 year survey of 24,936 police detainees, which found that 7 per cent of detainees reported primary homelessness or living in crisis accommodation at the time of arrest.[21] Most recently, a 2009 NSW Inmate Health Survey

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17 Magistrates' Court of Victoria, *Court Integrated Services Program (CISP)* (28 June 2012) <http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/court-integrated-services-program-cisp>.

18 Victorian Auditor-General, n 15 above, 32-33, 37.

19 Baldry, E., McDonnell, D,. Maplestone, P., Peeters, M 2003, *Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?* Australian Housing and Urban Research Institute (AHURI), as quoted in Australian Housing and Urban Research Institute (AHURI) 2004, 'The role of housing in preventing and re-offending' *Research and Policy Bulletin*, Issue 36.

20 Australian Institute of Health and Welfare (AIHW) 2007, *Homeless people in SAAP*, SAAP National Data Collection Annual Report 2005-06, Canberra.

21 Australian Institute of Criminology (AIC) (2008), 'Homelessness, Drug Use and Offending', *Crime Facts Info*. No 168, 15 April 2008.

reported that 11 per cent of survey participants were homeless prior to their current incarceration, and of those who had previous experience of prison, 30 per cent reported that they had experienced difficulties accessing stable accommodation within six months of their last release into the community.[22]

Homeless specific courts in Australia

Homeless-specific court initiatives are specifically developed for the homeless, to ensure their particular needs are adequately taken into consideration when they come in contact with the criminal justice system. The overarching aim is to administer a range of more suitable diversionary strategies and alternative sentencing options. Two such Australian initiatives are detailed below:

Homeless Person's Court (Queensland)

Established in May 2006, the Homeless Persons Court Diversion Program enables homeless people who have been charged with relatively minor public order offences to be diverted away from the mainstream criminal justice system, and into the Homeless Person's Court (**HPC**). Its aim is to end the cycle of homeless offending, by referring people to appropriate service providers that can address their accommodation, health and other needs. It is common for these service providers to attend court at each sitting, allowing homeless defendants to be linked immediately with the support that they need.

The operation of the HPC has been predominantly hampered by a lack of resources.[23] The Court is unable to provide ongoing support to homeless defendants, as it does not have sufficient funds to operate a case management model. Instead, it relies heavily on existing external government and community service providers. Without their involvement and support, the Court could not operate. These services do not receive any funding for their involvement. As such, critics are of the view that such a solution is unsustainable in the long term.

In spite of such difficulties, the overwhelming consensus is that the court has achieved its aims in providing more appropriate sentencing outcomes that take into consideration the particular difficulties faced by homeless people.[24] For example, fines and imprisonment are less likely in the HPC, compared to the general arrest court. From August to October 2006, 15 per cent of defendants were fined in the HPC, compared to 28 per cent fined in the general court. Of 108 matters finalised between May 2008 and September 2007, only 5 people were imprisoned.

Additionally there were a higher number of referrals to treatment programs and other social services in the Homeless Person's Court (31 per cent), compared to 20 per cent in the general arrest court.[25]

Although the court has been criticised for imposing 'softer' sentencing practices that do not reflect community expectations, Walsh suggests that the severity of sentencing should not be a key issue: the idea is for sentencing to be more appropriate for the cohort of people appearing in this court, being mindful of the fact that the HPC only deals with minor offenders – not serious and

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22 Corben, S and Eyalnd, S (2011), *NSW Inmate Census 2011*, Corrective Services NSW.

23 Creative Sparks, *Homeless Persons Court: Diversion program pilot – Evaluation* (2007).

24 Tamara Walsh, 'The Queensland Special Circumstances Court' (2007) 16 *Journal of Judicial Administration* 223, 229-230, 233.

25 Ibid, 223.

violent criminals. As such, the court has been viewed as largely successful in achieving its aims.[26]

Enforcement Review Program (Victoria)[27]

The second homeless-specific court initiative in Australia is the Victorian Enforcement Review Program (**ERP**). Developed by the Magistrates' Court of Victoria, it enables homeless defendants to apply to have their criminal matter and enforcement of accompanying fine, to be handled at the same time. Sentencing orders are tailored to meet the needs of the offender. For example, in lieu of a fine, a magistrate may require the offender to comply with a good behaviour order, or to attend a residential rehabilitation unit for a period of time.

Like the Homeless Person's Court in Brisbane, the Victorian ERP has been effective in changing sentencing practices in a way that is appropriate to defendants' needs, and more likely to address the underlying causes of their offending behaviour.[28]

Although there has been no formal evaluation of the ERP, anecdotal observations conclude that "the court process has a significant impact on participants" by empowering them to take a role in their case.[29] Defendants were also found to be more likely to attend court, and more likely to continue with court ordered treatment programs, as defendants were aware that they would receive an appropriate type of hearing, and an appropriate disposition.[30]

Homeless specific courts in United States

Homeless Court Program

Unlike Australia, the US has a long history of homeless-specific initiatives in the form of Homeless Court Programs (**HCP**).[31] The first was established in San Diego in 1989, and has since expanded into various states including California, Michigan, Texas, Arizona, New Mexico, Colorado, Utah and Washington.

Under the HCP initiative, homeless 'courts' are held at local shelters and community sites, and is a voluntary process. One of the major benefits of the program is accessibility: the court comes to the homeless people. These courts encourage defendants to take a proactive role in addressing their ongoing problems. Generally, traditional sanctions (such as fines and custody) are replaced with community-based treatment or services. Defendants who complete treatment or services prior to sentencing tend to have minor charges dismissed and, where appropriate, may have more serious charges reduced or dismissed.[32]

The US HCP has a high success rate – 90 per cent of cases are ultimately dismissed.[33] An evaluation conducted of the San Diego HCP between August 1999 and February 2001 found that

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26 Ibid, 223.

27 Magistrates' Court of Victoria, *Enforcement Review Program (ERP)* (13 December 2012) <http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/enforcement-review-program-erp>.

28 Tamara Walsh, n 24 above.

29 Jelena Popovic, 'Meaningless Versus Meaningful Sentences: Sentencing the Unsentenceable' (2006) 15 *Journal of Judicial Administration* 199.

30 Ibid.

31 American Bar Association, *Commission on Homelessness & Poverty* <http://www.americanbar.org/groups/public_services/homelessness_poverty.html>.

32 Ibid.

33 Steven R Binder (2002), *The Homeless Court Program: Taking the Court to the Streets* (American Bar.

it 'exceeded its expected benefits to participants'.[34] Forty-six per cent of graduates had secured permanent housing, 39 per cent had applied for a driver's license and 38 per cent were able to find stable employment.[35] Participants have commented: 'I feel better about myself ' and 'I feel more positive about the future'.[36]

An evaluation of the Santa Monica HCP found that from February 2007 to December 2012, 241 homeless people had participated in the program, with a 65 per cent graduation rate. Of those graduates, 65 per cent were placed in permanent housing.[37]

Similar to the Victorian ERP, HCP participants in the US are more likely to attend court, which saves law enforcement agencies the cost of arresting and jailing defendants who do not appear in court on their hearing dates. Additionally, the program has reduced recidivism. HCP participants are less likely to be arrested within 3 months following their hearing (14 per cent, compared to 20 per cent of non-participants).[38]

Specialist court initiatives available for homeless people in Australia

Specialist court initiatives are specifically established to address the needs of other vulnerable groups (e.g. people suffering from substance addiction). Although these specialist court initiatives do not directly target homeless people, it is important to note that many of the defendants who are eligible for these specialist initiatives, also frequently experience chronic housing needs. As such, discussion of these initiatives is relevant, given that the causes and complexities of homelessness often overlap with these other vulnerabilities.

Magistrates Early Referral into Treatment (NSW)

The Magistrates Early Referral into Treatment (MERIT) program is a three-month pre-plea diversion scheme based in NSW local courts. The program gives offenders the opportunity to address their underlying drug problems, by voluntarily working towards rehabilitation as part of the bail process. At the end of the program, the magistrate obtains a report detailing the participant's progress, whether the participant undertook treatment and whether treatment was effective. It may also contain recommendations for future treatment, which can assist the court to impose further ongoing treatment in sentencing.[39] The aim of the MERIT program is to reduce criminal offending associated with drug use. Importantly, the program is designed to allow defendants to focus on treating drug and related health problems independently from their legal matter.

Successful participation in the program may favourably impact the outcome of the defendant's impending court case, as it indicates a willingness and capacity for rehabilitation, and magistrates may take such factors into account on sentence. On the other hand, failure to complete the program does not necessarily adversely affect their sentence (as this would penalise the

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Association Commission on Homelessness and Poverty, 2002) 6.

34 Nancy Kerry and Susan Pennell (2001), *San Diego Homeless Court Program: A Process and Impact Evaluation* (San Diego Association of Governments, 2001) 3.

35 Steven R Binder, *The Homeless Court Program: Taking the Court to the Streets* (American Bar Association Commission on Homelessness and Poverty, 2002) 6.

36 Ibid.

37 City of Santa Monica, *Addressing Homelessness* (2013) Homeless Community Court <http://www.smgov.net/Portals/Homelessness/content3Column.aspx?id=25145>.

38 Nancy Kerry and Susan Pannell (2001), *San Diego Homeless Court Program: A Process and Impact Evaluation* (San Diego Association of Governments, 2001) 59-60.

39 Lulham, R (2009), The Magistrates Early Referral into Treatment Program, Crime and Justice Bulletin No 131, NSW Bureau of Crime Statistics and Research, 2.

defendant for entering into a voluntary treatment program in the first place). Rather, failure to complete MERIT gives insight into the likelihood of success of a future court-mandated rehabilitation program, enabling the final sentence to be better tailored to the defendants needs.

The following HPLS case studies demonstrate the benefits the MERIT program can bring to homeless persons:

HPLS Case Study 1

AW had become homeless after losing his full-time job because of a heroin addiction. He was facing charges for larceny for property worth approximately $30,000. He had made a number of previous attempts to access the MERIT program without success. He was sentenced to ten months imprisonment with a non-parole period of four months. The matter went to the District Court on appeal.

While on bail for the larceny offence AW was apprehended and charged with goods in custody. HPLS liaised with MERIT and this time AW was assessed as suitable. He committed to completing the MERIT program and received a glowing report at the conclusion of the treatment. As a consequence, the presiding judge placed him on a suspended sentence for the larceny offence. With respect to the goods in custody charges, the client received a positive pre-sentence report because of his participation in the MERIT program and was ordered to complete a period of community service and pay a fine.

Without the MERIT program AW would have received custodial sentences for both offences. He would not have received treatment for his heroin addiction and his downward spiral into chronic homelessness would likely have continued on his release from custody. Access to the MERIT program meant that he was able to address his drug addiction and face a future where he could realistically seek employment and rebuild ties with his children.

HPLS Case Study 2

NT was charged with stealing a number of LCD screens. He was sentenced in the Local Court to 10 months imprisonment. He appealed to the District Court on the ground of severity and commenced the MERIT program.

NT had not completed the program when the appeal was heard, but the Judge imposed a suspended sentence instead of full-time custody and he completed the MERIT program.

Prior to the appeal, NT committed further offences. When these matters came before the Magistrate, she ordered a Pre-Sentence Report from Probation and Parole. Due to the fact that he had completed the MERIT program, he was found to be eligible for a community service order and was sentenced to community service.

A 2009 NSW Bureau of Crime Statistics and Research (BOCSAR) evaluation of MERIT found that participants had a 12 per cent reduced offending rate, when compared with a similar group of non-participants.[40]

At present, MERIT is restricted to adult offenders with demonstrable problems with illicit drugs, in a limited number of locations. The recent closure of the Youth Drug and Alcohol Court has meant

[40] Ibid, 1.

that there is now a significant gap in appropriate diversionary services for young offenders with substance abuse problems.

MERIT is also available to offenders with alcohol problems.

CREDIT program (NSW)

Court Referral of Eligible Defendants into Treatment (CREDIT) is a court-based intervention program involving either voluntary or court-ordered participation by NSW adult defendants. The program was designed to contribute to the NSW Government's target of reducing "the proportion of offenders who re-offend within 24 months of being convicted by a court … by 10 per cent by 2016."[41] In order to meet its overall aim of reducing re-offending, CREDIT seeks to encourage and assist defendants appearing in local courts to engage in education, treatment or rehabilitation programs.

An evaluation of the pilot program by BOCSAR has shown a high degree of satisfaction amongst both stakeholders and participants.[42]

CREDIT links the defendant to a range of services (including accommodation, financial counselling, mental health support, domestic violence support, education, training, drug treatment, etc), thereby creating the capacity to address a broad range of issues that could be impacting on offending and re-offending. The program is also sufficiently flexible to vary the intensity of the services response in relation to the defendant's needs and risk of re-offending.

The following HPLS case studies illustrate the effectiveness of the CREDIT Program.

HPLS Case Study 3

DTX was referred to HPLS by Newtown Mission in May 2011, charged with assault.

When DTX was waiting at an ATM, an older man in front of him was taking an inordinately long time to obtain money. DTX was in a hurry and therefore told the man to hurry up. The man responded in a verbally aggressive manner. DTX realised that the man was simply playing with the keys on the ATM and again asked him to hurry up. When the man responded in an aggressive tone, DTX grabbed him and pushed him over.

DTX was charged with common assault. He had no criminal record; however, the assault was not minor. DTX disclosed that he had alcohol and anger management problems. Due to the nature of the assault, the Magistrate required DTX to demonstrate to the Court that he was obtaining assistance to resolve his alcohol and anger management issues. He was referred to the CREDIT program and in four months successfully completed the program.

On sentence, a s 10 bond was imposed, largely because the client had undertaken counselling and courses provided by CREDIT.

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41 NSW Government *A new direction for NSW: State plan* (2006).

42 Trimboli, L (2012), "NSW Court Referral of Eligible Defendants into Treatment (CREDIT) pilot program: An evaluation" *Crime and Justice Bulletin*, Number 159.

HPLS Case Study 4

KM was charged with theft and use of credit cards. She had a lengthy history of drug abuse and a lengthy criminal record for theft and fraud and had previously served terms of imprisonment.

Subsequent to the offence, KM had commenced a stable relationship and had made serious attempts to get off drugs. At the time of pleading guilty, it was clear that KM faced the real prospect of a further term of imprisonment. Given the change in her circumstances and her attitude, KM was referred to the CREDIT program. A program was developed for KM to obtain financial and drug counselling together with referral to self-development programs.

If KM successfully completes the program it is likely that an alternative to full-time custody may be imposed.

The big drawback of the CREDIT program is its limited availability. It currently operates at only two Local Courts in NSW – Burwood and Tamworth. BOCSAR has recommended that CREDIT be implemented on a state-wide basis.[43]

The program is also currently restricted to adults (aged 18 years or more). PIAC would welcome its expansion to include young offenders (aged 16 years or more), particularly in light of the recent closure of the Youth Drug and Alcohol Court.

PIAC is also concerned that the CREDIT program is of relatively short duration (around six months). This could result in some clients, particularly those with substance abuse problems, exiting the program before they are ready. PIAC recommends that the program be modified or expanded to allow for ongoing case management for clients with multiple and complex needs following their exit from the program.

Another limitation of the program identified in the BOCSAR evaluation was its limited ability to secure housing for participants. According to the evaluation:

> One of the greatest difficulties in each site was for accommodation-related services. This service type had one of the lowest referral success rates and gives some indication of the difficulties faced by CREDIT staff in securing appropriate accommodation for this client group.[44]

Lack of suitable long-term or temporary accommodation is likely to limit a client's ability to engage with services and hence their ability to successfully complete the CREDIT program.

NSW Drug Court

The NSW Drug Court has proven to be an effective means of diverting chronic, drug dependent offenders away from the criminal justice system, into rehabilitative treatment. A 2008 BOCSAR evaluation found the Court was more cost effective and more successful at lowering the rate of recidivism than prison. A distinct benefit of the Court is that it has the flexibility to allow for relapse as part of the recovery process.[45]

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43 Ibid 21.

44 Ibid 20.

45 Don *Weatherburn,* Craig *Jones,* Lucy *Snowball* and Jiuzhao *Hua* (2008)*, The NSW Drug Court: A Re-evaluation of its Effectiveness – Crime and Justice Bulletin No. 121* (NSW Bureau of Crime Statistics and Research, 2008).

To be eligible to be referred to the Drug Court, applicants must reside in appropriate accommodation. The accommodation is not deemed suitable if it is occupied, or frequented by people who appear to abuse drugs and alcohol or who reasonably appear to engage in criminal activity. Thus the Court may exclude homeless people, who do not, by definition, reside in stable accommodation. PIAC notes that in 2011 a Shared Access Operating Agreement was signed between the Drug Court of NSW and Housing NSW to provide housing and support to participants of the Drug Court Program in Western Sydney (effective until 2013). In the 12 months following the commencement of this Agreement, a total of 11 Drug Court participants have been referred.

In order to access the Court, the offender's usual place of residence must be within nominated local government areas. It is noted that many parts of the Sydney metropolitan area and regional NSW are not covered by the jurisdiction of the Drug Court. In addition, referrals to the Drug Court are not available for Children's Court matters.

Despite the high incidence of drug dependency among homeless people, they are often ineligible for referral to the Drug Court, as it requires stable residency, residency within the court's catchment area, or because they suffer from a mental condition that prevents participation. Homeless people, by definition, have no stable accommodation, and frequently suffer mental illnesses. Additionally, there are currently no places available for women.

Treatment Bonds under s 11 of the Crimes (Sentencing Procedure) Act 1999 (NSW)

Section 11 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) provides that if a court finds an offender guilty, it may adjourn sentencing for up to 12 months. The adjournment allows an assessment of the offender's capacity and prospects for rehabilitation or participation in an intervention program. Several HPLS clients have successfully completed treatment bonds under s 11 and subsequently became eligible for more remedial and therapeutic sentencing options when their charges returned to court.

However, it has been the experience of the HPLS Solicitor Advocate that the courts are often unwilling to defer a matter under s 11 to allow the offender to participate in an intervention and treatment program, as it requires the matter to come back before the court for sentence in light of the assessment from the treatment bond.

PIAC submits that there should be greater use of intervention and treatment options under s 11 of the Act, given that these can ultimately result in more flexible and therapeutic sentencing options for offenders with a history of alcohol or drug dependency. The HPLS case studies below illustrate how the successful completion of a s 11 treatment bond can widen the available options for appropriate remedial sentencing.

HPLS Case Study 5

GC was charged with a number of theft offences. He was initially placed on a s 11 treatment bond and the matter was adjourned for a period of 6 months to allow for a subsequent assessment as to how the treatment progressed. In the interim GC committed further offences of stealing. When the matter returned to Court for sentence, the Probation and Parole report yet again stated that he was not suitable for a community service order, due to drug use.

The Magistrate placed him on further s 9 good behaviour bonds, for two reasons:

1. Despite further offending, the client had gone reasonably well on his drug treatment program.
2. The Magistrate was of the view that placing the client on a s 12 suspended sentence was setting him up to fail. That is, given his history, there was a good chance he would offend again and would be in breach of a section 12 bond which would result in an automatic term of imprisonment.

The Court would have imposed a community service order if it could, but could not due to the report from Probation and Parole. The Court was of the view that a s 12 bond for stealing offences was harsh, thus it took a more meaningful and remedial option.

HPLS Case Study 6

DF was charged with supply prohibited drug, theft and a further possess prohibited drug charge. He was homeless and had a history of drug use. He was thus ineligible for a community service order.

The Magistrate was loath to impose a suspended sentence because it was setting DF up for failure. He was placed on a s 11 treatment bond. When the matter returns to Court and if he has no further offending, there is a reasonable prospect that a s 9 good behaviour bond may be imposed.

PIAC considers that adjournments, such as orders under s 11 of the Act, should be encouraged as part of the diversionary options available to NSW courts.

People with Mental Illness

People with mental illness and the criminal justice system

The over-representation of people with a mental illness in the criminal justice system is generally accepted, and confirmed by a number of studies:

- A 2001 Australian Institute of Criminology study found that of the approximately 15,000 people in Australian institutions for a major mental illness, one-third were in prisons.[46]
- According to NSW Correctional Health Services, in 2003, 74 per cent of NSW inmates had at least one psychiatric disorder[47] compared to the 22 per cent in the general population.[48]
- In 2003, in the twelve months prior to being arrested, 1 in 20 NSW prisoners will have attempted suicide,[49] and every day, approximately 4 people with schizophrenia are received into NSW prisons.[50]

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46 Australian Institute of Criminology (2009), 'Mental disorders and incarceration history', No 184, January 2009, Canberra. Available at <http://www.aic.gov.au/publications/current%20series/cfi/181-200/cfi184.aspx> (8 March 2013).

47 "Psychiatric disorder" has been given the broad definition of "any psychosis, anxiety disorder, affective disorder, substance use disorder, personality disorder or neurasthenia" – Tony Butler & Stephen Alnutt (2003), 'Mental Illness Among New South Wales Prisoners', NSW Corrections Health Service, (2003), 15.

48 Tony Butler & Stephen Alnutt (2003), 'Mental Illness Among New South Wales Prisoners', NSW Corrections Health Service, 2.

49 Ibid, 3.

50 Ibid, 21.

From January 2010 to December 2012, the Homeless Persons' Legal Service (HPLS) Solicitor Advocate provided court representation to 241 individual clients facing criminal charges. Of these, 48 per cent disclosed that they had a mental illness.

According to the Australian Institute of Criminology, there are several factors that may explain why the number of people in NSW with mental illnesses who engage with the criminal justice system is disproportionately high. Some are social: the prevalence of homelessness and economic desperation among the mentally ill, the deinstitutionalisation and isolation of the mentally ill, and increased use of drugs and alcohol among the general population and among the mentally ill[51]. Others point to the paucity of services available to people with a mental illness: the inadequate rehabilitation of patients in mental health facilities, and the disconnect between mental health services and the courts.[52]

Mental health courts

Mental health courts are a type of problem-solving court that emerged in the US in the 1980s and in Australia in the 1990s. The aim of these courts is to address the personal psychological and medical factors and broader social factors that have led to the commission of a crime by a person with a mental illness.[53] The courts seek to stop the cycle of isolation, crime and incarceration by personally empowering people with mental illnesses and promoting education and social integration.

Mental health courts divert defendants with mental illnesses away from traditional criminal legal processes. Following voluntary screening and assessments, defendants participate in a judicially supervised treatment plan developed by mental health professionals and court staff.[54] In diverting offenders to treatment and rehabilitation rather than the prison system, mental health courts seek to reduce recidivism and therefore the representation of people with a mental illness in prisons.[55]

The effectiveness of mental health courts in the USA

The majority of studies of the effectiveness of mental health courts have taken place in the US, where such courts are widespread and relatively long-standing. Evaluations have concluded that mental health courts have had a significantly positive economic impact. For instance, the Pennsylvania mental health court in the US saves taxpayers approximately $3.5 million every two years.[56] In Oklahoma, the average annual cost of housing an inmate with mental health needs is $23,000, much higher than the $5,400 for putting the same inmate through the mental health court process.[57]

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51 James RP Ogloff, Michael R Davis, George Rivers and Stuart Ross (2007), Australian Institute of Criminology, 'The identification of mental disorders in the criminal justice system', No 334, March 2007, Canberra. Available at <http://www.aic.gov.au/publications/current%20series/tandi/321-340/tandi334.html> (8 March 2013).

52 Butler & Alnutt n 48 above, 49.

53 A. Freiberg (2011), 'Problem-oriented courts: Innovative solutions to intractable problems?' (2001) 11 *Journal of Judicial Administration* 8.

54 Council of State Governments Justice Center (2008) *Mental health courts — A primer for policymakers and practitioners*, New York, NY, 4.

55 D. Ryder, K. Kraszlan, D. Lien, E. Allen, T. Chiplin & S. Petsos (2001), 'The Western Australian court diversion service: Client profile and predictors of program completion, sentencing and re-offending' (2001) 8(1) *Psychiatry* 65.

56 A. Kaplan (2007), 'Mental health courts reduce incarceration, save money', *Psychiatric News* 24. Available at <http://www.psychiatrictimes.com/display/article/10168/54266?verify=0> (8 March 2013).

57 Oklahoma District Attorneys Council (2012), '2012-2016 Oklahoma State Strategy for the Edward Byrne Justice Assistance Grant', Planning Document. Available at <http://www.ok.gov/dac/documents/2012-2016%20State%20Strategy.pdf> (8 March 2013).

One study has found that participants had high levels of satisfaction with the mental health court procedure, reporting feelings of fairness and perceptions of low levels of coercion.[58] Two studies found that participation in the mental health court system led to improvements in broader social outcomes such as homelessness, hospitalisation and alcohol abuse.[59]

There have also been reports of reduction in recidivism as a result of the programs conducted by mental health courts in the US.[60] For example, individuals who complete the North Carolina rural mental health court program are 88 per cent less likely to reoffend than people who do not complete the program.[61] The rate of re-arrest of mental health court participants in the US generally is 47 per cent less than traditional court defendants.[62]

A reason for such dramatic change may be that the authority of the court system better encourages defendants to adhere to a treatment plan than would leaving such defendants to their own devices.[63] Another reason is that the collaboration between the courts and mental health services ensures that the latter are made accountable to the justice system, and treatment plans are thereby made more effective.[64]

Mental health courts in Australia

There are several mental health courts and comparable systems in Australia:

- South Australia's Magistrates Court Diversion Program
- Hobart Mental Health Diversion List
- Queensland Mental Health Court
- Victoria's Assessment and Referral Court (ARC) List, in collaboration with the Court Integrated Services Program (CISP)
- Magistrates' Court of Victoria Mental Health Court Liaison Service

These systems operate very similarly to one another. To illustrate, the South Australian Magistrates Court Diversion Program operates by prescribing a twelve-month treatment plan for

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58 N.G. Poythress, J. Petrila, A. McGaha & R.A. Boothroyd (2002), 'Perceived Coercion and Procedural Justice in the Broward Mental Health Court' (2002) 25 *International Journal of Law and Psychiatry* 517.

59 K. O'Keefe (2006), 'The Brooklyn mental health court evaluation — Planning, implementation, courtroom dynamics, and participant outcomes. New York: Center for Court Innovation; M. Cosden, J. Ellens, J. Schnell & Y. Yamini-Diouf (2005), 'Efficacy of a Mental Health Treatment Court with Assertive Community Treatment' (2005) 23 *Behavioral Sciences and the Law* 199.

60 E. Trupin & H. Richards, 'Seattle's Mental Health Courts: Early Indicators of Effectiveness' (2003) 26 *International Journal of Law and Psychiatry* 33; A. Christy, N.G. Poythress, R.A. Boothroyd, J. Petrila, S. Mehra, 'Evaluating the Efficiency and Community Safety Goals of the Broward County Mental Health Court' (2005) 23 *Behavioral Sciences and the Law* 227; M.E. Moore & V.A. Hiday, 'Mental Health Court Outcomes: A Comparison of Re-arrest and Re-arrest Severity Between Mental Health Court and Traditional Court Participants' (2006) 30 *Law and Human Behavior* 659; D.E. McNeil & R.L. Binder, 'Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence' (2007) 164(9) *The American Journal of Psychiatry* 1395; J.L.S. Teller, C. Ritter, M.S. Rodriguez, M.R. Menetz & K.M. Gil (2004), *Akron mental health court: comparisons of incarcerations and hospitalisations for successful and unsuccessful participants in the first cohort (The Stormer Report)*. Available at <http://www.consensusproject.org/mhcp/akron-mhc.pdf> (8 March 2013).

61 V.A. Hiday & B. Ray (2010), 'Arrests two years after a well-established mental health court' (2010) 61 *Psychiatric Services* 263.

62 Moore & Hiday, n 60 above.

63 H. Blagg (2008), *Problem-oriented courts: A research paper prepared for the Law Reform Commission of Western Australia Project 96*, Western Australia: Government of Western Australia; M.S. King (2006), *Problem-solving court programs in Western Australia*, Paper presented at the Sentencing Principles, Perspectives and Possibilities Conference, Canberra, Australian Capital Territory.

64 Blagg, n 63 above, 2.

defendants who participate voluntarily if they have been charged with a minor indictable or summary offence and have impaired intellectual or mental functioning arising from mental illness, intellectual disability, personality disorder, acquired brain injury or a neurological disorder including dementia. The plan is devised and supervised by a team of clinical advisors, clinical liaison officers and magistrates. Depending on the nature of the offences and whether the program is completed successfully, the Magistrate may dismiss the matter, convict without penalty, or impose a fine or a bond, though failure to perform satisfactorily in the program is not relevant to sentencing.[65] If a defendant appears to be unresponsive to the treatment, he/she may be referred back to the traditional court system.

Victoria's Assessment and Referral Court List operates similarly to the South Australian system[66]. It has the added advantage of collaboration with the Court Integrated Services Program, which provides case management for defendants, including psychological assessment and referral to treatment as well as general health, welfare, housing and disability services if required.[67] People with a mental illness often face concurrent issues regarding housing, employment, and physical health, and addressing these issues holistically as different aspects of a larger problem is crucial to achieving long-term improvement.

Evaluating mental health courts in Australia: recidivism

In Australia, 66 per cent of participants in the South Australian Magistrates Court Diversion Program have not reoffended in the twelve-month post-program period.[68] There has similarly been a 78.8 per cent reduction in reoffending following participation in the Hobart Mental Health Diversion List program.[69]

The biggest problem facing the installation of mental health courts throughout Australia is the absence of long-term evaluation of procedures and outcomes. Many evaluations only run for one or two years after a program.[70] In order to accurately assess the long-term impacts of mental health courts in terms of cost-benefit, reduction in offending and reduced recidivism, long-term, intensive reviews of the various mental health court models are required.[71]

Evaluating mental health courts in Australia: substantive criticism

The Hobart Mental Health Diversion List operates in much the same way as the South Australian system, but only people suffering "from a disturbance of thought, mood, volition, perception, orientation or memory that impairs judgment or behaviour to a significant extent" are eligible to participate – that is, people with cognitive disabilities are not included unless they have a

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65 *Criminal Law (Sentencing) Act 1988* (SA), s 10(6).

66 Magistrates' Court of Victoria, *Assessment and Referral Court List* (26 June 2012). Available at <http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/assessment-and-referral-court-list-arc> (8 March 2013).

67 Magistrates' Court of Victoria, *Court Integrated Services Program (CISP)* (28 June 2012). Available at <http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/court-integrated-services-program-cisp> (8 March 2013).

68 G. Skrzypiec, J. Wundersitz, H. McRostie (2004), 'Magistrates Court diversion program — an analysis of post-program offending', Office of Crime Statistics and Research South Australia. Available at <http://www.ocsar.sa.gov.au/docs/evaluation_reports/MCDP2.pdf> (8 March 2013).

69 Esther Newitt & Victor Stojcevski (2009), *Mental Health Diversion List Evaluation Report*, May 2009, Tasmania, p. 6.

70 N. Wolff & W. Pogorzelski (2005), 'Measuring the Effectiveness of Mental Health Courts: Challenges and Recommendations' (2005) 11(4) *Psychology, Public Policy and Law*, 539; L. Roberts & D. Indermaur, 'Key Challenges in Evaluating Therapeutic Jurisprudence Initiatives' (2007) 17(1) *Journal of Judicial Administration* 60.

71 Blagg, n 63 above, 28.

concurrent diagnosis of mental illness.[72] This means that they have no court-based diversion option, and are treated in the same way as people without a cognitive disability in being punished for criminal wrongdoing, though their capacity, understanding and motive may be quite different.

However, of crucial importance is the quality and variety of treatment services available through the mental health court system – there is no sense in including people with cognitive disabilities if there are no appropriate services for them and/or they have already tried (with little or no success) the services that the court recommends. Evaluation of the South Australian Diversion Program found that 95.1 per cent of participants had already been involved with health and welfare services in the community prior to joining the program.[73] The mental health court system is entirely reliant upon the services that already exist in the community, and care must be taken to ensure that offenders are not sent to services that are ineffective.[74] Conversely, this aspect of the mental health court system may hold providers of such services accountable for the delivery of better quality treatment.[75]

A general disadvantage of the mental health court concept is that it is reactionary in nature: it only becomes available as a rehabilitative tool *after* a person has been charged with an offence, rather than work to prevent the commission of offences.[76] In addition, there is no requirement that an offender's mental illness or cognitive disability be the cause, or even one of the causes, of their offending. Putting a person through a treatment program may give them the required support for their condition but unless the condition led to the offending, the treatment may not prevent them from reoffending in future.

There are also concerns that people who participate in these "voluntary" programs do not in fact do so voluntarily. A 2010 study found that between 58 and 82 per cent of participants did not understand the program to be voluntary and felt that they were obligated to participate.[77] Similarly, a majority only understood "the basics" of court procedure rather than the nuances.[78] The two trends are likely to be linked: a lack of education regarding the criminal legal system and alternatives to it render the "voluntary" participation of offenders a mere construct. In reality, participation cannot truly be voluntary unless the participants are fully informed as to the procedures and consequences that they face. This requires greater communication from the officers of the court, clinical advisors and lawyers with participants.

That participants face conviction of a minor indictable or summary offence only, is the sole requirement for selection into a mental health court program. There is exists no list of requirements that increase or decrease a participant's likelihood of being selected. One study has found that the selection of participants from the general court list falls to magistrates.[79] Another study has found that magistrates make these selection decisions based on their personal

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72 Magistrates Court of Tasmania (2010), *Hobart Mental Health Diversion List Procedural Manual*, Version 1.2, p. 6.

73 N. Hunter & H. McRostie (2001), *Magistrates Court Diversion Program: Overview of key data findings*, South Australia: Office of Crime Statistics and Research, p. 10.

74 E. Richardson & B. McSherry, 'Diversion Down Under – Programs for Offenders with Mental Illnesses in Australia' (2010) 33 *International Journal of Law and Psychiatry* 249, at 255.

75 Blagg, n 63 above, 7.

76 Christine M. Sarteschi, Michael G. Vaughn & Kevin Kim (2011), 'Assessing the Effectiveness of Mental Health Courts: A Quantitative Review' (2011) 39 *Journal of Criminal Justice* 12, at 13.

77 A.D. Redlich, S. Hoover, A. Summer & H.J. Steadman (2010), 'Enrolment in Mental Health Courts: Voluntariness, Knowingness, and Adjudicative Competence' (2010) 34 *Law and Human Behavior* 91, at 97.

78 Ibid.

79 R. Boothroyd, N.G. Poythress, A. McGaha & J. Petrila (2003), 'The Broward Mental Health Court: Process, Outcomes and Service Utilization' (2003) 26 *International Journal of Law and Psychiatry* 55.

knowledge of a defendant's history.[80] This raises the concern that defendants who are perceived to be "difficult to treat" may be sidelined, and offenders with less serious mental health issues or a cleaner history perceived to be more suited to the rehabilitative model of the mental health court.

There is also the concern that singling out people with mental illnesses and cognitive disabilities for participation in mental health courts is discriminatory and has a net-widening effect, bringing such people into contact with more diverse forms of assessment, supervision, regulation and correction than they would otherwise.[81] It could also cause increased stigmatisation and marginalisation of such groups of people. [82] It has been suggested that such impacts could be reduced by providing employment programs as part of the twelve-month treatment, to foster the personal empowerment of participants.[83]

Evaluation of the South Australian Diversion Program also found that only 3.5 per cent of participants in the first year of the program were of Indigenous background, a very low figure when compared to the proportion of Aboriginal and Torres Strait Islander people represented in the criminal justice system.[84] Although this may be partly because a large number of Indigenous offenders may wish to participate in the Nunga court system instead[85], this statistic points to a crucial need to address whether mental health court systems are sufficiently inclusive of Indigenous people, and whether the treatment services on which these systems rely, take into account the needs of people of Indigenous cultural backgrounds.

Specific sentencing options to address mental illness

Section 32 and 33 orders under the Mental Health (Forensic Provisions) Act 1990 (NSW)

In NSW where there is no mental health court, the only diversionary measures available to the courts arise under the *Mental Health (Forensic Provisions) Act 1990* (*MHFPA*). Section 32 applies where the Magistrate of a local court finds an offender to be developmentally disabled, suffering from a mental illness or suffering from a mental condition for which treatment is available at a mental health facility. Section 33 applies where an offender is a "mentally ill person".

Both provisions provide that the Magistrate may rely on the provisions of the *MHFPA* rather than the general criminal law, for example by diverting the offender to a mental health facility rather than directing them to the criminal legal ramifications of the offence for which they have been charged. However, this is only enlivened if the Magistrate feels that such action would be "appropriate".[86]

The NSW Law Reform Commission as part of its reference *People with cognitive and mental health impairments in the criminal justice system*, concluded that only a small percentage of matters before the Local Court are dealt with under ss 32 and 33 of the *MHFPA*. In 2007,

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80 Moore & Hiday, n 60 above.

81 Roberts & Indermaur (2006). n 70 above.

82 R.D. Schneider, H. Bloom & M. Heerema (2007), *Mental health courts: Decriminalizing the mentally ill*, Toronto: Irwin Law, p. 95.

83 K.A. Rasinski, P. Woll & A. Cooke (2005), 'Stigma and substance use disorders', *On the Stigma of Mental Illness: Practical Strategies for Research and Social Change*, P.W. Corrigan (Ed.), Washington, DC: American Psychological Association.

84 M. Burvill, S. Dusmohamed, N. Hunter & H. McRostie, 'The Management of Mentally Impaired Offenders Within the South Australian Criminal Justice System' (2003) 26 *International Journal of Law and Psychiatry* 13, at 21.

85 Ibid 22.

86 *Mental Health (Forensic Provisions) Act 1990* (NSW), s 32.

341,896 charges were finalised in the Local Court, with only 3,941 being dealt with under these powers.[87] The failure of these agencies to exercise these diversionary procedures can also be seen in the disproportionate number of people with a mental illness or cognitive impairment in the criminal justice system. A 2011 report found that 87 per cent of young people in custody in NSW had a psychological disorder, with over 20 per cent of Indigenous young people and 7 per cent of non-Indigenous young people in custody being assessed as having a possible intellectual disability.[88] Further, in 2008, following a study of 2700 people in the Australian prison system, it was found that 28 per cent of the prisoners experienced a mental health disorder in the preceding 12 months, 34 per cent had a cognitive impairment and 38 per cent had a borderline cognitive impairment.[89]

These figures are supported by the casework of the HPLS Solicitor Advocate.

> **HPLS Case Study 7**
>
> JK was homeless. He was initially found guilty of criminal offences, especially offensive language, offensive conduct and goods in custody. His consumption of alcohol and methylated spirits increased. He was charged with wielding a knife in a public place, the ninth such charge on his record since 2001. On many occasions he had received a short prison sentence and then was back on the street. In recent times, his matters had been diverted from the correctional system through the use of ss32 and 33 of the Mental Health (Criminal Procedure) Act. However, none of his underlying issues had been addressed.
>
> The Solicitor Advocate worked with a treatment provider to ensure that a treatment plan for JK was put together that would have an impact on his long-term situation, not just his short-term legal problem. This meant that when JK received a good behaviour bond, he was released, not back to the streets, but straight into long-term accommodation with 24-hour support and medical care.

A number of reasons for the apparent underutilisation of ss. 32 and 33 orders have been postulated:

1. Reliance on Magistrates' discretion

The Magistrate of a Local Court has complete discretion to determine what is the most appropriate means of dealing with an offender who comes within the meaning of sections 32 and 33[90] (ie. whether to proceed under the provisions of the *MHFPA* or under general sentencing provisions). In exercising his or her discretion, the Magistrate is to balance the public, interest in requiring such an offender to face the criminal law for the protection of the public against the public interest in treating the conduct of the individual. Other relevant considerations are the seriousness of the offence, the defendant's criminal history and available sentencing options.[91]

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87 NSW Department of Attorney General and Justice, *NSW Criminal Court Statistics 2007*, Bureau of Crime Statistics and Research, (10 January 2012) <http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_crime_stat> at 28 May 2012>.

88 Indig, Devon, Vecchiato Claudia, Haysom Leigh (2009), *2009 NSW Young People in Custody Health Survey: Full report,* Justice Health and Juvenile Justice, (2011);

89 Baldry, Eileen (2008), *A critical perspective on Mental Health Disorders and Cognitive Disability in the Criminal Justice System*, (2008).

90 *Mental Health (Forensic Provisions) Act 1990* (NSW) s 36.

91 *DPP v El Mawas*; *Mantell v Molyneux* (2006) 68 NSWLR 46.

A more stringent list of considerations that a Magistrate should and should not take into account may provide greater guidance to Magistrates in exercising their discretion. A helpful example is section 334(3) of the *Crimes Act 1900* (ACT), which provides a list of factors that a Magistrate must consider when deciding whether to make a diversionary order against an offender with a mental illness. The list includes the period for which the mental illness is likely to continue, the antecedents of the accused, and the effectiveness of any previous diversionary orders against the accused.[92]

2. The language of the provision

The phrase "treatment … available at a mental health facility" presents two problems:

Firstly, the emphasis on 'treatment' may imply that only those mental health services that result in a definitive cure or solution for a mental health problem can be considered. This is particularly problematic for people with a cognitive disability or, to use the language of s 32, the "developmentally disabled". Such conditions remain constant throughout a person's life and cannot be cured by treatment, as opposed to some episodic mental illnesses, but rather require ongoing support and behaviour intervention.[93] Indeed, when the legislation was drafted, the then Minister for Justice referred to the possibility of a defendant "recovering" after committing an offence but prior to appearing before a Magistrate.[94] He thus suggested that the use of the word 'treatment' was intended to connote a cure or long-term solution, and thereby exclude the application of s 32 to those defendants whose engagement with health services would be unlikely to result in any such cure or solution.

Secondly, 'mental health facility' is a narrow category that does not include broader community-based services that may aid in the rehabilitation of people with mental health problems, and which particularly excludes services that support people with a cognitive disability. The inappropriateness of referring people with a cognitive disability to a mental health facility has the potential to seriously reduce the number of s 32 orders that may be made for such people. Broadening the term to 'health facility' may mitigate this effect.

It is important to acknowledge, however, that it is meaningless to refer people with a cognitive disability to health facilities if such services do not actually exist in the community. The impact of any potential changes to this part of the legislation therefore requires a thorough examination of the services available to people with a cognitive disability, how they can be improved, and how they can be incorporated into the s 32 scheme.

The term 'developmentally disabled' has not been defined in the legislation. The NSW Law Reform Commission has stated that it is a broad term that encompasses cognitive disability and conditions such as cerebral palsy.[95]

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92 *Crimes Act 1900* (ACT), s 334(3).

93 Intellectual Disability Rights Service (2008), 'Enabling Justice: A Report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System', Intellectual Disability Rights Service, 31 & 34.

94 Second Reading Speech, Mental Health (Criminal Procedure) Amendment Bill 2005 (NSW) *NSW Legislative Council Hansard* (29 November 2005) at 20087.

95 NSW Law Reform Commission (1994), *People with an Intellectual Disability and the Criminal Justice System:Courts and Sentencing Issues*, Discussion Paper 35 (1994) 16.

3. Comorbidity and section 32 orders

Comorbidity is the presence of more than one disease or disorder in a person. A 2003 study by the Australian Institute of Health and Welfare found that 57 per cent of surveyed people with an intellectual disability had a comorbid mental impairment. Where the intellectual disability manifested in a severe or profound limitation, the rate of comorbidity was 62 per cent.[96] Given its prevalence in the general population, it is unsurprising to find high rates of comorbidity among people who come into contact with the criminal justice system.

People with cognitive disability

People with cognitive disability and the criminal justice system

The over-representation of people with cognitive disability who come into contact with the criminal justice system has been established in several studies. A 1997 study found that 23.6 per cent of defendants at NSW Local Courts met the criteria for intellectual disability, with an additional 14.1 per cent in the borderline range of ability.[97] More recently, a 2009 study sampled a group of 60 people appearing before NSW Magistrates Courts, finding that 12 per cent represented with low scores for adaptive behaviour and intellectual functioning.[98] This number is more than four times the proportion of people with intellectual disability and/or cognitive impairment in the general population.[99]

That these are mere indicators of intellectual disability and not standard tests for cognitive disability is an example of the difficulty in obtaining reliable data.[100] Throughout the criminal justice system, there is little to no procedural guide with regard to recognising people with a cognitive disability. It follows that there are few systems in place for identifying the need to divert these people towards rehabilitative, long-term alternatives to sentencing and imprisonment, which themselves are few and far between.

People with cognitive disabilities are in danger of not having their disabilities recognised by employers and of being discriminated against because of their disabilities, and thus face great difficulty in gaining long-term employment. This can lead to reliance on social services, which may not be readily available, or which require communication and information-processing skills that people with cognitive disabilities might lack.[101] Lack of income and support networks

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96 X Wen (2008), *Disability in Australia: Intellectual Disability*, Bulletin 67 (Australian Institute of Health and Welfare, 2008) 11.

97 Susan Hayes, (1997) 'Prevalence of Intellectual Disability in Local Courts' (1997) 22(2) *Journal of Intellectual and Developmental Disability* 71, at 73 and 81.

98 K. A. Vanny, M. H. Levy, D. M. Greenberg & S.C. Hayes (2009), 'Mental Illness and Intellectual Disability in Magistrates Courts in New South Wales, Australia' (2009) 53(3) *Journal of Intellectual Disability Research* 289, at 294.

99 S.C.Hayes (2000), *Ability Screening Index (HASI) Manual*, University of Sydney: Department of Behavioural Sciences in Medicine; J Cockram (2005), 'People With An Intellectual Disability in the Prisons' (2005) 12 *Psychiatry, Psychology and Law* 163.

100 The American Psychiatric Association defines 'mental retardation' (ie 'intellectual disability) as consisting of three co-existing elements – 'significantly subaverage general intellectual functioning' (ie an IQ of 70 or below), 'significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, selfdirection, functional academic skills, work, leisure, health and safety' and onset before 18 years of age: American Psychiatric Association (2000) *Diagnostic and Statistical Manual of Mental Disorder: DSM-IV-TR* 41.

101 Intellectual Disability Rights Service (2008), n 93 above, 14.

exacerbates the tendency to offend, with particular emphasis on 'survival crimes' such as evading transport fares.[102]

The difficulty in identifying cognitive disability has meant that there are no specific problem-solving justice initiatives in Australia. While other problem solving initiatives such as the Victorian Court Integrated Services Program (see above) may be accessible to people with cognitive disability, as the following HPLS case studies indicate, these people are often at risk of falling through the gaps in relation to the various schemes and initiatives that are available.

HPLS Case Study 8

JT is a 48 year old. He has a long history of chronic alcohol dependence, with sporadic engagement in the criminal justice system for minor charges related to alcohol use. He also has mental health issues but his diagnosis is unclear, with the alcohol abuse overriding any definitive mental health diagnosis. Most recently, JT was charged for calling police on a large number of occasions whilst intoxicated and threatening self-harm. Due to his alcohol dependence, mental health services are unwilling to assist him, which makes a section 32 application more difficult. HPLS were able to get him in to the MERIT program, however it is clear that he has cognitive impairment due to his alcohol abuse and yet no cognitive assessment has ever been undertaken for JT. Without such an assessment, JT consistently falls through the cracks in relation to any possible diversion or court-based support programs, as he is only recognised as having an alcohol dependence issue.

HPLS Case Study 9

HL was charged with a serious assault. When he was 11 years old, HL sustained brain damage in a car accident. As a consequence, HL had a low IQ, with low stress thresholds, which made him prone to violence. As the cognitive deficit was not developmental HL did not come within s32(1)(a).

Indigenous People

Indigenous people and the criminal justice system

Aboriginal and Torres Strait Islander (ATSI) people are heavily overrepresented in Australian prisons, making up 27 per cent of the prison population.[103] ATSI people in custody have almost doubled since 1991. ATSI youth make up 50 per cent of juvenile offenders, and the detention rate of ATSI youth is 28 times higher than non-ATSI youth. One quarter of the entire imprisonment expenditure ($650 million) is spent imprisoning ATSI adults each year.[104] The NSW Audit Office reported that the 2011 daily cost of supervising ATSI juvenile offenders in detention was $652 per person, or $237,980 annually.[105]

According to the Aboriginal and Torres Strait Islander Social Justice Commissioner, once incarceration rates reach a certain level in a community, there is a 'tipping point' where

102 Ibid.
103 Sarah Hudson, n 3 above.
104 Australian Human Rights Commission (2009), n 4 above.
105 House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing time – time for doing: Indigenous youth in the criminal justice system* (Commonwealth of Australia, 2011).

imprisonment fails to reduce offending and instead causes it.[106] When large numbers of a community are in prison, imprisonment becomes part of the socialisation process and is 'normalised.' The prospect of prison loses much of its deterrent effect.[107]

Justice reinvestment for Indigenous people

It is clear that the traditional criminal justice system is failing to address the needs of ATSI people. Socioeconomic factors such as poor educational attainment and unemployment are strong determinants of Indigenous offending.[108] The NSW Inmate Health Survey found that unemployed ATSI people are 20 times more likely to be imprisoned than those who are employed.[109] Additionally, lifestyle factors such as drug and alcohol abuse is present in up to 90 per cent of all Indigenous contact with the criminal justice system.

Problem solving approaches for Indigenous people in Australia

Circle Sentencing (NSW)

Circle sentencing was introduced to NSW in February 2002, as a way of managing the crime rate among the indigenous population. It is an alternative sentencing process for adult Aboriginal offenders, which takes the process out of the traditional court setting, and allows involvement of the offender's community, in a culturally appropriate way. In a circle sentence, the offender, magistrate, community elders and (on occasion) the victim and support people for the offender and/or victim sit in a circle to discuss the circumstances and impact of the offence, and determine a sentence tailored to the offender. Circle sentencing has the full sentencing powers of the court.[110]

In 2007, the Cultural and Indigenous Research Centre Australia conducted an evaluation of the circle sentencing program.[111] The evaluation methodology included a comprehensive qualitative approach, with face-to-face interviews and group discussions with participants and stakeholders in each location circle sentencing was held. Overall, the program was found to be successful on several levels – surveys of key participants (e.g. offenders, victims, lawyers, community representatives and support persons) revealed high satisfaction. Recurring themes of respondents included: reduced barriers between courts and Aboriginal people; improved support for Aboriginal offenders and victims, which promoted healing and reconciliation; increased confidence and empowerment of Aboriginals in the community; and more relevant and meaningful sentencing options for Aboriginal offenders.

Circle sentencing has been criticised as being a strain on judicial resources, as cases often require a hearing process in which many participants are expected to play an active part, often resulting in a whole day of hearing before the sentence is handed down.[112] In addition, according

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106 Mick Gooda (2012), 'The necessity of justice reinvestment' (Speech delievered at the Koori Prison Transition Forum, Preston, 29 June 2012) <http://humanrights.gov.au/about/media/speeches/social_justice/2012/20120629_koori.html>.

107 Sarah Hudson, n 3 above.

108 Ibid.

109 Australian Human Rights Commission (2009), n 4 above.

110 Elena Marchetti and Kathleen Daly (2007), 'Indigenous sentencing courts: Towards a theoretical and jurisprudential model' 29 *Sydney Law Review* (2007) 416-443.

111 NSW Attorney General's Department (2008), *Evaluation of circle sentencing program report* (Cultural and Indigenous Research Centre Australia, 2008).

112 Ivan Potas, Jane Smart, Georgia Brignell, Brendan Thomas and Rowena Lawrie (2003), *Circle Sentencing in NSW: A review and evaluation* (Judicial Commission of New South Wales, 2003).

to the BOCSAR review, circle sentencing had no effect on recidivism rates. However, BOCSAR does acknowledge that reducing recidivism is just one objective of the circle sentencing process. Their review notes notes that in all likelihood, the scheme is achieving its other objectives, such as strengthening informal social controls that exist in Aboriginal communities:

> Circle sentencing may have a crime prevention value that cannot be quantified through immediate changes in the risk of reoffending for individuals. As such, it should not be concluded that circle sentencing has no value simply because it does not appear to have any short-term impact on reoffending." [113]

Koori Courts (Victoria)

Koori Courts were introduced in Victoria in 2000, and are similar to circle sentencing courts in NSW. They are less formal; the Magistrate sits at a table with the other participants; the defendant will often sit with their family; and proceedings are conducted in plain English.[114] Koori Courts have increased Indigenous Australian's access to justice by making the Western legal system more meaningful and less culturally alienating.[115] This has been done by involving elders and respected persons who advise the magistrate on the best sentencing option and often speak directly to the accused. It is more meaningful to come face-to-face with an authority figure of one's culture than an authority figure of a foreign culture.

Unlike criticisms of NSW circle sentencing, Koori Courts have been successful in reducing recidivism. A 2005 review of the Koori Courts found that they had decreased repeat offending rates to 12.5 per cent, compared to the general Indigenous re-offending rate of 29.4 per cent.[116]

Youth Cautioning and Diversion Project (Victoria)

Victoria's Youth Cautioning and Diversion Project is an example of an attempt to reduce the over-representation of Indigenous Australian youth in the criminal justice system.[117] From July 2000 to June 2001, research indicated that police cautions given to Indigenous Australian young offenders were under-utilised – Indigenous young offenders received 10-15 per cent fewer cautions in most crime categories than non-Indigenous young offenders.[118] This was a concern, given that cautioning is a means of diverting children away from the justice system. Studies have shown there is a higher chance of reoffending amongst court-processed juveniles, than those who received a caution.[119]

The Police Cautioning and Youth Diversion Program was implemented, which requires a caution to be given whenever appropriate, accompanied with a follow-up procedure after the caution is issued.[120] A follow-up meeting is held with the offender, police representative, family or community member, Koori Educator and any other individual involved. The purpose of this

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113 Jacqueline Fitzgerald (2008), *Does circle sentencing reduce Aboriginal offending? – Crime and Justice Bulletin No. 115* (NSW Bureau of Crime Statistics and Research, 2008).

114 Magistrates' Court of Victoria, *Koori Court* (28 June 2012) <http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/koori-court>.

115 Victorian Aboriginal Legal Service (2007), 'The Indigenous Australian Community' (Presentation at Victoria University, October 2007).

116 Bridget Mcasey (2005), 'A critical evaluation of the Koori Court Division of the Victorian Magistrates' Court' 10(2) *Deakin Law Review* (2005) 654.

117 Victorian Aboriginal Legal Service, Submission to the Drugs and Crime Prevention Committee in response to the 'Inquiry into Strategies to prevent high volume offending by young people', 23 September 2008.

118 Victorian Aboriginal Legal Service (2003), *Police Cautioning of Indigenous Juvenile Offenders in Victoria* (2003).

119 D. Challenger (1981), 'Comparison of official warnings and court appearances for young offenders' 14 *Australian and New Zealand Journal of Criminology* (1981) 165-169.

120 Victorian Aboriginal Legal Service, n 115 above.

meeting is to monitor the progress of the offender since receiving the caution. Follow-ups can continue for up to three months.

An evaluation of the program found a significant increase of cautioning rates for both first-time offenders and those with prior contact with the police. Ninety-four per cent of individuals did not re-offend after completing the follow-up program.[121] The pilot commenced in March 2007, was deemed successful. The Program has since been rolled out to six other locations.

Conclusion

PIAC welcomes the opportunity to have input into the Senate Legal and Constitutional Affairs References Committee inquiry into Justice Reinvestment. The inquiry presents as a timely opportunity to consider alternative strategies in responding to the needs of vulnerable groups in the community who disproportionately have contact with the criminal justice system.

This submission has detailed some of the Australian and International examples of justice reinvestment and problem-solving justice initiatives that have had significant positive effects on the communities in which they have been implemented, as well as exemplifying the cost-benefit advantages of pursuing justice reinvestment and problem solving justice strategies, in place of more stringent, correctional service-based strategies in responding criminal offending in marginalised and disadvantaged groups.

Problem-solving justice initiatives can have significant value for responding to criminal offending for people who are homeless, Indigenous people, people with mental illness and people with cognitive disability. The strategies can make a significant contribution to making our communities safer, and encouraging people who would be otherwise at high risk of reoffending, becoming positive actors in the social and economic life of our society.

At the heart of successful implementation of justice reinvestment and problem-solving justice initiatives is the need to adequately resource the community services needed to support the relevant therapeutic programs, including housing services, drug and alcohol services, welfare services, education and training, and employment services. Justice reinvestment calls for public funding for resourcing such services to be prioritised over funding more traditional criminal justice correctional responses.

[121] Victorian Council of Social Service, 'Divert young people from the justice system' *State Budget Submission 2013-14* (2013).