



**COURT DIVERSION INITIATIVES
CONFERENCE
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CARLTON CREST HOTEL BRISBANE QLD**

**Operational Models Update
Drug Diversion**

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Introduction

In April 1999 the Council of Australian Governments (COAG) endorsed the National Illicit Drugs Strategy (NIDS) package, providing \$220.464 M funding over four years. \$111.536M of total funding was allocated towards a Tough on Drugs in the Community component that gives priority to diverting illicit drug offenders into treatment. The Queensland government endorsed the NIDS.

In June 1999 the Ministerial Council on Drug Strategy endorsed guidelines for States and Territories developing initiatives aimed at diverting minor illicit drug offenders into assessment, education and treatment.

On 24 July 2000 the Queensland Cabinet approved the Queensland Illicit Drug Diversion Initiative (QIDDI). QIDDI aims to reduce the number of offenders appearing before the courts for possession of illicit drugs, provide incentives for minor offenders to address their drug use and increase access to drug education and treatment. The strategies described in QIDDI to respond to illicit drug offenders include:

- Establishing the Drug Court pilot - wholly funded by the Queensland government. This program deals with long term

treatment programs to drug dependent offenders with a serious criminal history.

- Establishing the Police Diversion Program - jointly funded by the Queensland government and the Commonwealth. This program diverts first time offenders charged with possession of small amounts of cannabis to education and treatment.
- Exploring the feasibility of a Court Diversion Program for minor drug offenders charged with possession of a small amount of illicit drugs.

The Commonwealth Minister for Health entered into a Deed of Agreement with the Queensland Minister for Health on 1 March 2001 agreeing to the QIDDI and the proposed funding. On the 19 March 2001 the Honourable Peter Beattie MP, Premier and Minister for Trade launched the QIDDI with the Prime Minister as a joint Commonwealth and Queensland Government initiative funded under the National Illicit Drug Strategy.

Commonwealth funding amounting to \$1.98 million was allocated for a Court Diversion Program.

Overview of the Court Diversion Program

Under the Court Diversion Program, an adult offender who meets the eligibility criteria for the program and whom the Magistrate considers is suitable for the program may be placed on a recognisance order with a special condition to attend a Drug Diversion Assessment and Education Session with an approved Queensland Health service provider. Those offenders who comply with the requirement to attend the session are deemed to have satisfied the conditions of the order, and have no conviction recorded. Non-compliance with the requirements of the Court Diversion Program results in the commencement of breach proceedings and may ultimately result in a warrant being issued and the offender returned to court for re-sentencing, although this is only done as a last resort.

A juvenile offender who meets the eligibility criteria may be directed by the Magistrate to attend the program. A juvenile is not placed on any court order, the matter is simply adjourned to a date to be fixed for them to comply with the Magistrate's direction.

Eligibility Criteria

Before the magistrate can sentence the offender to attend a drug assessment and education session, the offender must meet the eligibility criteria. These eligibility criteria (new sections 15C of the Penalties and Sentences Act 1992 and new section of the Juvenile Justice Act 1992) require that:

- (a) The offender pleads guilty to an “eligible drug offence”. An eligible drug offence is an offence against Drugs Misuse Act 1986, section 9 (Possessing dangerous drug) or section 10 (Possessing things). The quantity the drug must be the amount prescribed in the schedule of the Penalties and Sentences Act 1992. The magistrate must also be satisfied that the person possessed the drug for their personal use.
- (b) An offender is not an “eligible drug offender” if the person is, or has at any time been charged with a “disqualifying offence”.

“Disqualifying offence” is defined to mean;

- (i) an offence of a sexual nature,
- (ii) an offence against the Drugs Misuse Act 1986, sections 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs) or 9 (Possessing dangerous drugs), other than an offence that is dealt with summarily;

(iii) an indictable offence involving violence against another person, other than an offence charged under any of the following provisions of the Criminal Code-

- section 335 (Common assault),
- section 340(a), but only if the offence is the assault of another with intent to resist or prevent the lawful arrest or detention of the person or of any other person, or
- section 340(b)

(c) The offender consents to attending a drug assessment and education session.

(d) The offender will not be eligible for the Illicit Drugs Court Diversion Program if they have had two previous diversions (either under the Police Diversion Program or under the Illicit Drugs Court Diversion Program).

(e) A disqualifying offence will not affect eligibility if the conviction is one that the offender would be legally able to deny pursuant to the Criminal Law (Rehabilitation of Offenders) Act 1986.

The Magistrate determines every case of the facts of that case. Even if an offender fulfils all eligibility criteria, the magistrate retains a sentencing discretion to determine if a section 19 recognisance is appropriate in the circumstances of a particular case.

SUMMARY OF ELIGIBILITY **CRITERIA**

MUST:

- BE CHARGED WITH S.9 AND /OR S.10 OF *DRUGS MISUSE ACT 1989* (NB: NO OTHER DRUG OFFENCES CAN BE PUT ONTO A COURT DIVERSION RECOGNISANCE);
- RECOGNISANCE MUST NOW BE A MINIMUM OF FOUR (4) MONTHS

MUST NOT:

- POSSESS AN AMOUNT OF DRUG THAT EXCEEDS 50 GRAMS FOR CANNABIS AND 1 GRAM FOR EVERY OTHER DRUG;
- HAVE BEEN CONVICTED OR HAVE PENDING A DISQUALIFYING OFFENCE; (NB: DOES NOT APPLY IF CHARGE IS MORE THAN 10 YEARS AGO IN A DISTRICT/SUPREME COURT OR 5 YEARS IN A MAGISTRATES COURT);
- HAVE PREVIOUSLY HAD 2 DIVERSION ALTERNATIVES (POLICE OR COURT DIVERSIONS)

DISQUALIFYING OFFENCES:

- AN OFFENCE OF A SEXUAL NATURE;
- INDICTABLE OFFENCES DEALT WITH OR TO BE DEALT WITH UNDER SECTION 5, 6, 8, OR 9 *DRUGS MISUSE ACT 1986*;
- INDICTABLE OFFENCES DEALT WITH OR TO BE DEALT WITH INVOLVING VIOLENCE AGAINST ANOTHER PERSON; EG. Assault occasioning bodily harm; grievous bodily harm; robbery with violence; DOES NOT INCLUDE COMMON ASSAULT OR SERIOUS ASSAULT.

The Pilot Program

The Pilot Program commenced on the 28th March 2003 located in the Brisbane Magistrates Court (comprising the Roma Street Arrest Court, the Central Magistrates Court and the Brisbane Childrens Court). The trial ran concurrently with the Police Diversion Program enabling the evaluations of both programs to occur at similar times.

The trial was conducted within a legislative framework and targeted offenders charged under the *Drugs Misuse Act 1986* with possession of small amounts of illicit drugs and utensils for personal use.

The Court Diversion program is consistent with the National Illicit Drug Diversion Framework.

Working Procedures of the Court Diversion Program

The Court Diversion Office is situated at Brisbane Roma Street Arrest Court and is the central contact point for the program, liaising closely with the Diversion Coordination Service.

The Program is managed by three staff members, one full time Court Diversion Manager, one full-time Court Diversion Officer and one full-time Court Diversion Support Officer. The duties of all officers are to service all Queensland Magistrate and Childrens Courts.

The process of the Court Diversion Team working in conjunction with Legal Aid in the Brisbane Magistrates Court has proved extremely effective in the developing and implementing the program as well as the speedy processing of offenders through the courts.

The main roles and responsibilities of the team are;

- Checking and identifying drug offenders from court lists and advising each Queensland Magistrates Courts of potential diversions;
- Assessing the eligibility of offenders;

- Data entry and administration, including recording all data from assessments, compliance and non-compliance documents, breach documentation, rescheduling and non-compliance letters, monthly statistics, general correspondence and filing;
- Client (Offender) Liaison, including explanation of the program to the offender and family, representation in court of unrepresented offenders, rescheduling of counselling sessions;
- Liaison with Duty Solicitors and private solicitors, liaison with the Department of Communities and their Court staff, scheduling and re-scheduling appointments through the Diversion Co-ordination Service; and
- Prosecution of all Brisbane Central Court District contraventions of the offenders' recognisance order.

Diversion Coordination Service

The Diversion Coordination Service (DCS) coordinates the diversion of offenders from all Queensland Magistrates Court to an approved Queensland Health service provider. The DCS also fulfils a similar role for the Police Diversion Program. The DCS is a secure information referral service that collects, stores, retrieves, collates and reports on service provider appointment details and data required by the Commonwealth. The DCS arranges bookings with service providers, provides them with essential information such as the number of previous diversions a client has received, and notifies relevant agencies of the compliance or non-compliance of diverted offenders.

Evaluation of Pilot Program (Health Outcomes International Pty Ltd)

The evaluation of the pilot Court Diversion Program indicated that the program gained significant support from all those involved in its conduct, including Magistrates, prosecutors, defence counsel, service providers and offenders participating in the program. Such programs are necessarily opportunistic, in that they utilise a point of contact between an offender with a drug use problem and the judicial system as an opportunity to refer that person to a relevant health provider to assist them with their drug use. The impact such an intervention has varies with the readiness of the individual to respond to the opportunity provided. For some participants, the impact may be immediate and significant, while for others, its impact in the short term may be negligible, but have longer term implications when they decide to address their drug use. All those consulted in the course of the evaluation considered the program to be particularly valuable, and supported its expansion to a state-wide service.

The procedures and processes established during the pilot program were found to be both efficient and effective, with the compliance rate achieved being exceptionally high for this type of program. The goodwill and support already established through the pilot program assisted in promoting the program to other areas across the State at the commencement of the roll-out.

Roll-Out

Due to the positive evaluation of the pilot program, further funding was allocated for its state-wide roll-out. On the 1st July 2005 the program was rolled-out concurrently across all 106 Queensland Magistrates and Childrens Courts.

Some existing processes were modified and new processes created to accommodate the state-wide rollout. These included;

- the preparation and distribution of training packages containing relevant legislations, court forms and procedures to all duty solicitors, private solicitors, courts, magistrates and police prosecutors,
- the preparation and distribution of brochures and posters to all courts in Queensland,
- a workshop held in Brisbane for all Legal Aid Duty Solicitors in Queensland,
- training teleconferences for court staff for all court districts in Queensland,
- presentation to the Magistrates at their conference in May 2005,
- training sessions for police prosecutors in relation to conducting breach proceedings for court diversion,

- alteration of general administration procedures, forms and spreadsheets to accommodate state-wide data management autonomy,
- the assessment process usually conducted by the Court Diversion Team, is now carried out by the duty solicitors in each court.

STATISTICS

The next set of tables represents the total diversions, breaches, reschedules and compliance rates for the pilot program and also the state-wide roll-out of the program. As displayed in the tables, a total of 5848 assessments were completed. Of these assessments 646 were either not eligible or not accepted by the magistrates for court diversion. Therefore, 5202 offenders were diverted into a Court Diversion Assessment and Education Session. Of these 5202, 190 were juvenile offenders. The compliance rate remains at a very high 91% with only 385 offenders returned to court for non-compliance of their order.

PRE-ROLL-OUT ASSESSMENTS	
Roma St	2103
Childrens	95
George St	51
TOTAL	2249

TOTAL PILOT PROGRAM ASSESSMENTS 2249

POST-ROLL OUT ASSESSMENTS - 2005						
MONTH	July 05	August 05	Sept 05	Oct 05	Nov 05	Dec 05
Magistrates	269	437	362	334	442	242
Childrens	12	13	8	16	10	8
TOTALS	281	450	370	350	452	250
YEARLY TOTAL	2153					

2006				
MONTH	Jan 06	Feb 06	March 06	April 06
Magistrates	316	518	307	264
Childrens	11	9	10	11
TOTALS	327	527	317	275
YEARLY TOTAL	1446			

TOTAL POST-ROLL OUT ASSESSMENTS 3599

TOTAL DIVERSIONS (to April 2006)				
Assessments Diverted (Juveniles)	5202 (190)	▶	Completed	4525
Assessments Not Eligible/Not Accepted by Magistrate	646		Non-Completed	473
Total Assessments	5848		Pending	204

Total Completed Breaches	385
Pending Breaches	85
Post-Roll-Out Re-Schedules	745
Total Re-Schedules	1520

Overall Compliance Rate	91 %
Overall Reschedule Rate	29 %
Roll-Out Reschedule Rate	21 %

**COURT DIVERSION COMPLIANCE ANALYSIS:
1 January to 31 March 2006**

In the three month period from January to March 2006 the analysis tables below demonstrate the attendance rate between male and female, indigenous and non-indigenous, various age groups and regions.

Sex	Attended	Did not attend	Both	Compliance Rate
Male	763	95	858	89%
Female	196	40	236	83%
TOTAL	959	135	1094	88%

Indigenous Status	Attended	Did Not Attend	Both	Compliance Rate
Not Indigenous	899	117	1016	88%
Aboriginal	54	17	71	76%
Torres Strait Islander	6	1	7	86%
Aboriginal & Torres Strait Islander	0	0	0	N/A
TOTAL	959	135	1094	88%

Age Groups	Attended	Did Not Attend	Both	Compliance Rate
10 to 13	1	0	1	100%
14 to 16	18	7	25	72%
17 to 19	219	35	254	86%
20 to 25	345	56	401	86%
26 to 30	124	18	142	87%
31 to 35	119	7	126	94%
36 to 45	107	10	117	91%
46 to 54	24	2	26	92%
55 plus	2	0	2	100%
TOTAL	959	135	1094	88%

Region	Attended	Did Not Attend	Both	Compliance Rate
Urban	876	119	995	88%
Rural	80	16	96	83%
Remote	3	0	3	100%
TOTAL	959	135	1094	88%

The table below indicates that the shorter the period of time between the assessment and the education session, the higher the compliance rate.

Time from Referral to Appointment	Attended	Did Not Attend	Both	Compliance Rate
Less than 1 week	205	23	228	90%
1 to 2 weeks	207	20	227	91%
2 to 3 weeks	142	21	163	87%
3 to 4 weeks	150	17	167	90%
4 to 8 weeks	189	35	224	84%
More than 2 months	66	19	85	78%
TOTAL	959	135	1094	88%

The data below has been taken from a sample group of 200 diverted offenders (100 with no previous criminal history and 100 with previous criminal history) aged between 19 and 25 and 50 juveniles offenders for the first 2 years of the pilot program (March 2003 to March 2005). The recidivism rates clearly indicate that those offenders that enter into the program without previous criminal history have a much lower rate of recidivism than those with previous criminal history. The analysis of these statistics also indicates that juveniles have a higher recidivism rate than adult offenders who complete this program.

ADULT RECIDIVISM (Diverted without previous criminal history)

NO REOFFENDING	67 %
REOFFENDING – TOTAL	33%
• Drug Only	5%
• Other Only	11%
• Property Only	3%
• Drug & Other	6%
• Property & Other	3%
• Drug & Property	1%
• Property, Drug & Other	4%
• Violence	0%
• Sexual	0%

ADULT RECIDIVISM (Diverted with previous criminal history)

NO REOFFENDING	37 %
REOFFENDING – TOTAL	63%
• Drug Only	5%
• Other Only	12%
• Property Only	7%
• Drug & Other	11%
• Property & Other	8%
• Drug & Property	4%
• Property, Drug & Other	12%
• Violence	1%
• Drug, Property, Violence & Other	3%
• Sexual	0%

JUVENILE RECIDIVISM

NO REOFFENDING	28%
REOFFENDING – TOTAL	72%
• Drug Only	8%
• Other Only	8%
• Property Only	6%
• Drug & Other	2%
• Property & Other	6%
• Drug & Property	0%
• Property, Drug & Other	28%
• Violence, Property, Drug & Other	14%
• Violence	0%
• Sexual	0%

Future Directions

Since its inception as a pilot program in March 2003, the Court Diversion Program has gained significant support from all those involved in its conduct and practices and procedures. So much so that the program was funded to roll-out state-wide on the 1st July 2005 with future funding for the continuance of the program until 2008.

Currently, further legislation is being sought for the addition of offences under Section 10(4) (fail to take reasonable care of a syringe) and 10(4A) (fail to dispose of a syringe) of the *Drugs Misuse Act 1986* as eligible offences for court diversion. This additional legislation has the full support of the Chief Magistrate.

Conclusion

As a pilot program commencing in March 2003, the procedures and processes associated with the Court Diversion Program were shown to be working effectively and efficiently and with its positive evaluation in September 2004, further funding was provided for the program to roll-out state-wide on the 1st July 2005.

The Diversion Coordination Service is an integral part of the program, by coordinating with all Queensland Magistrates Courts in referring all offenders ordered to complete a Court Diversion and Education Session to an approved Queensland Health Service provider.

To date, 5848 offenders have been assessed by the program, with 5202 being diverted into a Court Diversion Assessment and Education Session and only 385 offenders returned to court for non-compliance of their court order. The over-all compliance rate is a high 91%.

The tables for recidivism have shown that those offenders that enter the program without previous history have a much lower rate of recidivism than with those with criminal history. Therefore the impact of Court Diversion on young offenders without a prior history can only be seen by the community as positive in helping to reduce the rate of recidivism.

Since 2003, the Court Diversion program has increasingly gained support from all stakeholders including Magistrates who viewed the program as a valued alternative to the traditional judicial process by offering participants the opportunity to access information and treatment services that they may not otherwise access. Duty solicitors as well as police prosecutors were of the view that the program has its potential benefit to both participants and the broader community at large.

When the Court Diversion Program commenced in 2003, the expectations were guarded. The program grew quickly and has increased in its popularity with all stakeholders concerned including magistrates, police prosecutors, solicitors and the offenders themselves. The diversion numbers have far exceeded our original expectations. With funding continuing to 2008, we can only envisage greater rehabilitation for all those charged with a minor drug offence.