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Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000
Via email: lacsc@parliament.qld.gov.au

18 July 2014

Dear Sir / Madam

Re: Inquiry on strategies to prevent and reduce criminal activity in Queensland

Thank you for the invitation to prepare a submission to this inquiry.

This submission focuses on early intervention crime prevention strategies, and in particular, strategies to prevent crime by reducing recidivism through court-based rehabilitation programs.

My submission is informed by seven years researching and teaching criminal law, including criminal procedure and sentencing law, at Griffith Law School (2007-2013) and by my work to date on my doctoral thesis which relates to the use of therapeutic jurisprudence in mainstream courts for sentencing mentally impaired offenders.

This submission is made by me in a personal capacity and does not represent the views of any organisation of which I am a member.

Please feel free to contact me with any queries or for further information.

Sincerely

A handwritten signature in black ink that reads "M Edgely".

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LIST OF RECOMMENDATIONS

Recommendation 1:

that Queensland's Drug Courts be re-established at appropriate sites throughout the state

Recommendation 2:

that Queensland re-establish the Special Circumstances Court in Brisbane and establish other solution-focused courts for mentally impaired offenders at appropriate sites throughout the state

Recommendation 3:

following the model of the Neighbourhood Justice Centre Court, that Queensland establish community courts at appropriate sites throughout the state and especially in those areas where dedicated Drug Courts and Special Circumstances courts are not available

Recommendation 4:

that QMERIT be rolled out across Queensland into all Magistrates Courts with criminal caseloads and supported with appropriate services

Recommendation 5:

following the model of Victoria's CISP, that a mainstream solution-focused program be introduced into Magistrates Courts at appropriate sites and especially in those areas where dedicated Drug Courts and Special Circumstances courts are not available

Recommendation 6:

that implementation of programs follow best-practice guidelines and have regard to the scientific evidence base that support the programs' efficacy

INTRODUCTION - COURT-BASED REHABILITATION

A number of innovative court-based programs have been developed over the past few decades to reduce recidivism among different categories of offenders. While these programs are relatively novel, the role of the courts in seeking to promote rehabilitation of offenders is not. Traditionally, the courts used the sentencing function to advance the most important of criminal justice objectives, viz, the prevention and punishment of crime. The rehabilitation of offenders is one means by which the former purpose can be advanced. Demonstrably, that function has failed in relation to significant numbers of recidivist offenders who repeatedly cycle through the courts with offending patterns driven by substance abuse and or mental or psychosocial disabilities.

In 2012, the Queensland Government closed Queensland's solution-focused courts, the Drug Courts, the Special Circumstances List (for homeless and mentally impaired offenders) and the Murri Courts. The central contention of this submission is that courts can and should play a part in preventing reoffending as part of a multipronged, balanced set of measures to reduce recidivism.

This submission discusses:

1. The courts' role in the rehabilitation of offenders and the movement to adopt evidence-based methods with proven efficacy;
2. Solution-focused courts, (also known as problem-solving courts);¹ including:
 - 2.1. how solution-focused courts work;
 - 2.2. their recidivism reduction efficacy;
 - 2.3. their cost-effectiveness; and
 - 2.4. the community court model.
3. Recidivism-reduction programs delivered through the general criminal lists, i.e., so-called mainstream court programs, including their:
 - 3.1. recidivism reduction efficacy; and
 - 3.2. cost-effectiveness.
4. Challenges in implementation, including the need to ensure that programs are implemented faithfully with regard to the supporting evidence.

Properly funded and implemented, court-based solution-focused programs offer a range of community benefits including significant reductions in recidivism and costs savings across the criminal justice system. Solution-focused courts and mainstream programs are an appropriate inclusion in a balanced suite of crime prevention policy measures.²

¹ In Australia, the term 'solution-focused' courts is replacing 'problem-solving' courts because judicial officers want to avoid the implication that the court can or will solve the offenders' problems. The role of the court in these programs is as facilitator, to promote the offender's agency to resolve his or her own problems: Michael King, *Solution-Focused Judging Bench Book* (Australasian Institute of Judicial Administration Inc., 2009), 3-4.

² Steve Aos, Marna Miller and Elizabeth Drake, 'Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates' (Washington State Institute for Public Policy, 2006) <<http://www.wsipp.wa.gov/ReportFile/952>>.

1. THE ROLE OF THE COURTS IN REHABILITATION

It is long-established and uncontroversial law that courts are required to craft an appropriate sentence having regard to a limited class of legitimate criminal justice purposes (inter alia).³ These purposes - general and personal deterrence, denunciation, incapacitation, rehabilitation, and proportionate retributive punishment - are reflected in legislation in most Australian jurisdictions, including Queensland.⁴ When an offender has good prospects for rehabilitation, it is legitimate for courts to either impose a less punitive sentencing option or reduce the period of a punitive sentence.⁵ This benefits both the community and the offender.

The legitimacy of purposive sentencing suggests that courts should take more responsibility in appropriate cases to ensure that sentencing is directly concerned with *effectively* reducing recidivism through the use of evidence-based forensic practices.⁶

One challenge for courts is that claims made at sentencing about an offender's commitment to rehabilitate, even if made honestly and with the best of intentions, are self-serving and speculative.⁷ The burden of proving good prospects of rehabilitation rests with the offender.⁸ However, courts have long held the power to reduce the risks involved in sentencing based on promises of future reform. At common law, following an offender's conviction courts can adjourn a sentence hearing and impose appropriate rehabilitative conditions to a grant of bail, to allow an offender to demonstrate genuine progress towards rehabilitation. A final sentencing date can then be set, say, twelve months into the future, and if necessary, interim hearing dates can be set to ensure that the offender is complying with rehabilitative conditions.⁹ This type of common law order is known as a 'Griffith order' or a 'Griffiths remand'. Sentencing and bail powers in Queensland legislation are expressed broadly enough to permit courts to adopt this approach.¹⁰ The benefit of this type of order is that it capitalises on the stress of appearing in court and facing criminal sanctions to galvanize an offender's latent desire to reform.¹¹ The use of a Griffiths order, or the adjournment of final sentencing pending rehabilitative progress, removes the uncertainty of taking rehabilitation into account based on a promise. Proven rehabilitative success over a period is better able to justify a

³ *Veen v R (No 2)* (1988) 164 CLR 465, 476.

⁴ Penalties and Sentences Act (Qld) 1992 s 9(1).

⁵ *Dinsdale v R* (2000) 202 CLR 321; *R v Horne* [2005] QCA 218; *R v Jobsz* [2013] QCA 5; *R v Lyle* [2013] QCA 293.

⁶ Peggy Hora, 'Smart Justice: Building Safer Communities, Increasing Access to the Courts, and Elevating Trust and Confidence in the Justice System' (Government of South Australia, 2010) <<http://www.thinkers.sa.gov.au/Thinkers/Hora/finalrport.aspx>>, 26.

⁷ Judicial Commission of NSW, 'Judicial Views About Pre-Sentence Reports' (Judicial Commission of NSW, 1999), 45.

⁸ *R v Olbrich* (1999) 199 CLR 270.

⁹ *Griffiths v R* (1977) 137 CLR 293.

¹⁰ Bail Act 1980, ss 6, 8, 11, 11A; Criminal Code s 650.

¹¹ Astrid Birgden and Tony Ward, 'Pragmatic Psychology Through a Therapeutic Jurisprudence Lens: Psycholegal Soft Spots in the Criminal Justice System' (2003) 9(3/4) *Psychology, Public Policy and Law* 334, 334-335.

substantial sentencing discount than a somewhat speculative promise to use best endeavours, even when supported by a detailed intervention plan.¹²

Arguably, the most pressing rehabilitative need is among those categories of offenders who repeatedly cycle through the courts. The phenomenon known as the 'revolving door' refers to repeat offenders whose lives are characterised by substance abuse, social dislocation and a pattern of regular offending.¹³ Problems such as substance abuse and mental impairment (especially when combined with substance abuse) are known to have criminogenic tendencies, especially when co-occurring with other psychosocial dysfunctions, such as homelessness, poverty, unemployment, low educational achievements and inadequate pro-social familial networks.¹⁴ Revolving door offenders are collectively responsible for a disproportionate amount of crime. As their criminal record grows, inevitably they are imprisoned at public expense. After release from prison, many return to the community with their problems unresolved only to return to the same lifestyle and offending patterns. Because of their complex and multifarious psychosocial challenges, few of these offenders have the skills or knowledge to be able to organise the multi-pronged interventions necessary to successfully rehabilitate. That means that the power to make a Griffiths order is extremely limited in utility unless additional resources are brought into play. The next section discusses solution-focused courts, which is one way of appropriately and effectively channelling those resources.

2. SOLUTION-FOCUSED COURTS

Solution-focused courts aim to assist willing offenders to treat their underlying causes of offending by referring them to evidence-based interventions designed to resolve criminogenic dysfunctions. Solution-focused courts are one model of programmatic rehabilitation which has gained widespread international popularity over the past few decades.¹⁵ The first modern solution-focused court was a drug court which commenced in Florida in 1989.¹⁶ This court was followed in 1997, again in Florida, by

¹² *R v Horne* [2005] QCA 218.

¹³ Tara Warner, 'Closing the Revolving Door? Substance Abuse Treatment as an Alternative to Traditional Sentencing for Drug-Dependent Offenders' (2009) 36(1) *Criminal Justice & Behaviour* 89; Derek Denckla & Greg Berman, 'Rethinking the Revolving Door: A Look at Mental Illness in the Courts' (Center for Court Innovation, 2001) www.courtinnovation.org/sites/default/files/rethinkingtherevolvingdoor.pdf

¹⁴ Jason Payne and Antonette Gaffney, 'How Much Crime is Drug or Alcohol Related? Self-Reported Attributions of Police Detainees' (2012) 439 *Trends and Issues in Crime and Criminal Justice* 1, 1; Jason Payne, 'Recidivism in Australia: Findings and Future Research' (Australian Institute of Criminology, 2007) <<http://www.aic.gov.au/publications/current%20series/rpp/61-80/rpp80.html>>, xiii; Senate of the Parliament of Australia Select Committee on Mental Health, 'A National Approach to Mental Health: From Crisis to Community - First Report' (Parliament of Australia, Senate, 2006), 333, 335; Tamara Walsh, 'From Park Bench to Court Bench: Developing a Response to Breaches of Public Space Law by Marginalised People' (Faculty of Law, QUT and QPILCH Homeless Persons' Clinic and the Rights in Public Space Action Group, 2004), 25-29.

¹⁵ Richard Schneider, 'Mental Health Courts and Diversion Programs: A Global Survey' (2010) 33(4) *International Journal of Law and Psychiatry* 201; Michael King, 'Therapeutic Jurisprudence Initiatives in Australia & New Zealand & the Overseas Experience' (2011) 21 *Journal of Judicial Administration* 19.

¹⁶ Bruce Winick & David Wexler, *Judging in a Therapeutic Key* (Carolina Academic Press, 2003), 4.

the first mental health court (MHC).¹⁷ These courts were judicial initiatives, driven partly by judicial frustration with revolving door recidivism and partly by the desire of judges to help address the underlying causes of crime in their communities.¹⁸ It is a confronting conclusion from the fact of revolving door recidivism, that traditional sentencing options have failed in their rehabilitative, personal deterrence and community protection goals in relation to these offenders.

Since the late 1990s, solution-focused courts have multiplied exponentially. In the US, as of 2013, there were 2800 drug courts¹⁹ and 397 MHCs,²⁰ with more in Canada,²¹ England,²² New Zealand, Brazil,²³ Europe and elsewhere.²⁴ In Australia, drug courts operate in most Australian jurisdictions except for Queensland, Tasmania and the two territories.²⁵ The term MHC is not generally used in Australia.²⁶ However, there are dedicated solution-focused court lists for offenders with mental impairments in Victoria,²⁷ NSW,²⁸ South Australia,²⁹ Tasmania³⁰ and Western Australia.³¹ Solution-

¹⁷ Ginger Lerner-Wren, 'Broward's Mental Health Court: An Innovative Approach to the Mentally Disabled in the Criminal Justice System' (2000) *Future Trends in State Courts*, 4.

¹⁸ Hora, above n 6, 10, 26. Hora is a retired judge of the Superior Court of California and a former Drug Treatment Court judge. In 2010 Hora spent twelve weeks in Australia for the Adelaide Thinker-in-Residence program: *ibid*, ii, iii. Greg Berman and John Feinblatt, 'Problem-Solving Courts: A Brief Primer' (2001) 23(2) *Law and Policy* 125.

¹⁹ <http://www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx>

²⁰ Gregg Goodale, Lisa Callahan and Henry Steadman, 'What Can We Say about Mental Health Courts Today?' (2013) 64(4) *Psychiatric Services* 298.

²¹ Emily Slinger and Ronald Roesch, 'Problem-Solving Courts in Canada: A Review and a Call for Empirically-Based Evaluation Methods' (2010) 33 *International Journal of Law and Psychiatry* 258

²² Jane Winstone and Francis Pakes, 'Process Evaluation of the Mental Health Court Pilot' (UK Ministry of Justice, 2010) <<http://www.justice.gov.uk/publications/research-and-analysis/moj/2010/mhc-process-feasibility-evaluation>>

²³ King, above n15, 19.

²⁴ E. Rely Vilić et al, 'Exporting Court Innovation from the United States to Continental Europe: Compatibility between the Drug Court Model and Inquisitorial Justice Systems' (2010) 34(1) *International Journal of Comparative and Applied Criminal Justice* 139.

²⁵ The Drug Court of Victoria operates in Melbourne: <https://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/drug-court>; The Drug Court of NSW operates in Sydney, Parramatta & Toronto: www.drugcourt.lawlink.nsw.gov.au; the Drug Court of South Australia operates in Adelaide: www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Drug-Court.aspx; The Perth Drug Court and the Children's Court Drug Court operate in Western Australia: www.courts.dotag.wa.gov.au/D/drug_court.aspx?uid=5227-1163-1055-5774.

²⁶ The reason that the term 'mental health courts' has not gained currency in Australia is to avoid confusion with, for example, Queensland's Mental Health Court, which is jurisdictionally distinct and not involved in sentencing.

²⁷ Magistrates Court of Victoria, 'Guide to Court Support & Diversion Services' (Magistrates Court of Victoria, 2011).

²⁸ Neil Donnelly, Lily Trimboli and Suzanne Poynton, 'Does CREDIT Reduce the Risk of Reoffending?' (2013) 169 *Crime and Justice Bulletin* 1.

²⁹ Grace Skrzypiec, Joy Wundersitz and Helen McRostie, 'Magistrates Court Diversion Program – An Analysis of Post Program Offending' (South Australian Office of Crime Statistics and Research, 2004) <http://www.ocsar.sa.gov.au/docs/evaluation_reports/MCDP2.pdf> .

³⁰ Michael Hill, 'Hobart Magistrates Court's Mental Health Diversion List' (2009) 18 *Journal of Judicial Administration* 178.

focused court models are also in use in a number of jurisdictions for family violence cases,³² prostitution offences,³³ war veterans courts, teen courts, truancy courts, welfare fraud³⁴ and community courts.³⁵ Western Australian Magistrate, Dr Michael King, has noted that solution-focused courts are now so widespread and that they have become 'an established part of the court systems of Australia, New Zealand, the United States, Canada, the United Kingdom and other common law jurisdictions'.³⁶

2.1 How solution-focused courts work

The identifiable features of solution-focused courts include early intervention, voluntary participation, personalised assessment, referral to community-based services, case management or liaison by a court-based officer, multi-disciplinary team-based collaboration, use of evidence-based methods, and monitoring of the offenders' compliance and progress towards agreed goals by a dedicated magistrate at regular review hearings.³⁷ In Australia, the preferred model has been a post-adjudication model which requires the defendant to plead guilty. Taking responsibility for offending conduct is an appropriate first step on the path to rehabilitation. If the offender substantially complies with and ultimately completes the program, his or her participation will be taken into account at sentencing to reduce or eliminate the need for a punitive sentence.³⁸

Programs have been implemented in solution-focused courts or solution-focused court lists, rather than the general lists, because the court adopts a more relaxed, less-adversarial procedural approach, which wouldn't be appropriate in mainstream court. The solution-focused approach usually involves a multi-disciplinary team led by the magistrate, which includes the offender's defence lawyer (often a dedicated Legal Aid lawyer who represents all or most defendants on the solution-focused list), a dedicated police prosecutor, and a forensic psychologist, social worker or corrections officer. In acknowledgment that rehabilitation of an offender is in everyone's interests, the team works together to recommend the most appropriate suite of interventions to achieve

³¹ WA has separate lists for people with mental illness and intellectual disability: a <www.magistratescourt.wa.gov.au/S/specialist_courts.aspx?uid=1152-1596-2359-5684>.

³² Emma Birdsey and Nadine Smith, 'The Domestic Violence Intervention Court Model: A Follow-Up Study', 155 *Crime and Justice Bulletin*, 1.

³³ Jelena Popovic, 'Court Process and Therapeutic Jurisprudence: Have we Thrown the Baby out With the Bathwater?' (2006) 1 *Murdoch University Electronic Journal of Law - Special Series* 60, 71.

³⁴ Rachel Porter, Michael Rempel and Adam Mansky, 'What Makes a Court Problem-Solving? Universal Performance Indicators for Problem-Solving Justice' (Center for Court Innovation, 2010) <http://www.courtinnovation.org/sites/default/files/What_Makes_A_Court_P_S.pdf>.

³⁵ Victorian Department of Justice, Evaluating the Neighbourhood Justice Centre in Yarra 2007-2009 (2010), <www.neighbourhoodjustice.vic.gov.au/footer/publications/reports>.

³⁶ King, above n15, 21.

³⁷ National Association of Drug Court Professionals and Drug Court Standards Committee, *Defining Drug Courts; The Key Components* (Bureau of Justice Assistance (US), 2nd ed, 1997); Michael Thompson, Fred Osher and Denise Tomasini-Joshi, 'Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court' (Bureau of Justice Assistance (US), 2007) <http://consensusproject.org/jc_publications/essential-elements-of-a-mental-health-court>; Porter, Rempel and Mansky, above n34.

³⁸ Effie Zafirakis, 'Curbing the "Revolving Door" Phenomenon with Mentally Impaired Offenders: Applying a Therapeutic Jurisprudence Lens' (2010) 20 *Journal of Judicial Administration* 81, 86.

that goal. During the initial and follow-up hearings, the magistrate and the offender engage directly in two-way dialogue, even if the defence lawyer is present. The magistrate uses the opportunity to motivate the offender to greater efforts to achieve his or her rehabilitative goals. This is not just small talk - the magistrate is applying evidence-based psychological expertise to create a rapport, forge a therapeutic alliance and support the offender's reform efforts.³⁹ It is believed that magistrates are particularly well-placed to perform this role because of their social status and authority. Often, these offenders will have never experienced an authority figure taking a personal interest in their welfare. Accordingly, the magistrate's status enhances the subject's own feelings of self-worth. The subject will try harder to succeed because he or she wants to perform well for the magistrate, because that magistrate has treated the offender with respect and compassion and expressed confidence in the offender's self-efficacy.⁴⁰ Moreover, the magistrate has power over the final sentence. The possibility of a reduced sentence can act as leverage, helping the offender to internalise the desire to turn his or her life around.⁴¹

Studies have confirmed that judicial supervision is a vital element of the court-based solution-focused approach. A randomised controlled trial in the NSW Drug Court tested the proposition by assigning high-risk participants to either higher levels of judicial supervision (twice weekly) or judicial supervision as usual (weekly). The intensively supervised sample had an odds ratio of 0.57 of returning a positive drug test while on the program, compared to the control group.⁴² To express it another way, the intensively supervised sample were almost half as likely as the control group to be found to be using drugs. These findings are consistent with the findings of US studies, confirming that the judicial officer's supervisory role on a solution-focused program is correlated with the program's effectiveness.⁴³

2.2 Effectiveness

There has been extensive research into the efficacy of solution-focused courts and, in particular, into drug courts and MHCs. For many years, researchers were saying that more research was needed to prove the effectiveness of the solution-focused model in reducing recidivism. Of the hundreds of research studies, many were criticised for poor methodological design which undermined their findings.⁴⁴ But almost all experts now agree that the accumulated evidence is overwhelming - adequately funded and

³⁹ Michelle Edgely, 'Solution-Focused Court Programs for Mentally Impaired Offenders: What Works?' (2013) 22(4) *Journal of Judicial Administration* 207, 214.

⁴⁰ *ibid*, 216.

⁴¹ *Ibid*, 212-214.

⁴² Craig Jones and Richard Kemp, 'The Strength of the Participant-Judge Relationship Predicts Better Drug Court Outcomes' (2014) 21(2) *Psychiatry, Psychology and Law* 165.

⁴³ DB Marlowe et al, 'Matching Judicial Supervision to Clients' Risk Status in Drug Court' (2006) 52 *Crime and Delinquency* 52; DS Festinger et al, 'Status Hearings in Drug Court: When More is Less and Less is More' (2002) 68 *Drug and Alcohol Dependence* 151.

⁴⁴ Joy Wundersitz, 'Criminal Justice Responses to Drug and Drug-Related Offending: Are They Working?' (Australian institute of Criminology, 2007) <<http://www.aic.gov.au/publications/current%20series/tbp/21-40/tbp025.html>>, 48-49.

properly implemented drugs courts and MHCs do indeed reduce recidivism.⁴⁵ The American University Justice Programs Unit has collated the results (and methodologies) of 150 evaluations of US drug courts and has found that they support the general proposition that drug courts are effective in reducing recidivism when compared either to randomised control groups or to the offenders' own prior histories of offending.⁴⁶ The US National Association of Drug Court Professionals has declared the evidence - that drug courts significantly reduce drug use and crime, and that they do so with substantial cost savings - to be proven 'beyond reasonable doubt'.⁴⁷ Independent research in Australia has also confirmed that drug courts do reduce recidivism,⁴⁸ including Queensland's recently closed drug courts.⁴⁹

One criticism of the body of evaluative drug court research was the wide range of effect sizes, which was interpreted in some quarters to mean that the overall body of research was insufficiently reliable.⁵⁰ Another criticism was that poor design or poor standards of treatment in some programs led to poorer than expected outcomes, which in meta-analyses would skew outcomes of other programs which faithfully implemented evidence-based practices.⁵¹ A 2009 meta-analysis by Gutierrez and Bourgon addressed these critiques by only including for analysis studies with an acceptably rigorous methodological design. The study found that the average effect size of these more rigorous studies was 8.4%, i.e., the drug court offenders reoffended at a rate 8.4% less than members of control groups who were processed as normal through the general criminal lists.⁵²

⁴⁵ For example, see: Goodale, Callahan and Steadman, above n20; Vilić et al, above n24, 144; King, above n15, 23; Michelle Edgely, 'Why do Mental Health Courts Work? A Confluence of Treatment, Support & Adroit Judicial Supervision' (2014) *International Journal of Law and Psychiatry*,

⁴⁶ American University Justice Programs Unit, 'Recidivism and Other Findings Reported in Selected Evaluation Reports of Adult Drug Court Programs Published: 2000 – Present' (American University Justice Programs Unit, 2014) <<http://jpo.wrlc.org/handle/11204/34>>

⁴⁷ Douglas Marlowe, 'Research Update on Adult Drug Courts' (2010) *Need to Know* 1, 1.

⁴⁸ For example, Don Weatherburn et al, 'The NSW Drug Court: A Re-evaluation of its Effectiveness' (2008) 121 *Crime and Justice Bulletin* 1; Bronwyn Lind et al, 'New South Wales Drug Court Evaluation: Cost-Effectiveness' (NSW BOCSAR and Centre for Health Economics Research and Evaluation, 2002) www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_pub_dtoh#drug_court, accessed 28 November 2009> 40, 48, 54; Elissa Corlett, Grace Skrzypiec and Nicole Hunter, 'Evaluation Findings: Offending Profiles of SA Drug Court Pilot Program 'Completers'' (Office of Crime Statistics and Research (SA), 2005), 18; Department of Attorney-General (W.A.), 'A Review of the Perth Drug Court ' (Department of Attorney-General (W.A.), 2006), 25.

⁴⁹ Jason Payne, 'The Queensland Drug Court: A Recidivism Study of the First 100 Graduates' (Australian Institute of Criminology, 2008) 53; Tony Makkai and Keenan Veraar, 'Final Report on the South East Queensland Drug Court' (Australian Institute of Criminology, 2003), 41.

⁵⁰ Gutierrez and Bourgon note that meta-analyses with weighted effect sizes have found positive results (i.e., reductions in recidivism) ranging from 7% to 12.5%: Leticia Gutierrez and Guy Bourgon, 'Drug Treatment Courts: A Quantitative Review of Study and Treatment Quality' (Public Safety Canada, 2009) <<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2009-04-dtc/2009-04-dtc-eng.pdf>>, 1. See also the 2006 meta-analysis by Aos et al which also selected only the most rigorous studies for analysis. Aos et al used a different methodology but also found that drug courts reduce recidivism by 8%: Aos, Miller and Drake, above n2, 8.

⁵¹ Ibid, 2.

⁵² Ibid, 12, 13.

Gutierrez and Bourgon then assessed treatment quality in these drug courts by measuring the adherence of the treatment programs to the Risk Needs Responsivity (RNR) model of offender rehabilitation. RNR is a well-accepted model of offender rehabilitation which is backed by numerous studies confirming its efficacy.⁵³ The RNR model has three defining principles:

- Risk - the intensity of intervention is matched to the offender's risk of reoffending;
- Needs - the program is customised to meet the offender's criminogenic needs; and
- Responsivity - the program is customised to suit the offender's personal learning style.⁵⁴

The drug courts in question varied according to whether they implemented none of the three RNR principles, or only one or two. In terms of reductions in recidivism, adherence to none, one or two of the RNR principles corresponded to 5%, 11% and 31% respectively.⁵⁵ Clearly, adherence to the requirements of evidence-based programs results in increased efficacy.

The evidence in relation to MHCs, although less voluminous, is equally cogent. There are myriad studies of individual MHCs which demonstrate their effectiveness,⁵⁶ along with meta-analyses,⁵⁷ and longitudinal studies.⁵⁸ Again, the Australian experience

⁵³ D.A. Andrews, James Bonta and J.S. Wormith, 'The Risk-Need-Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention?' (2011) 38(7) *Criminal Justice and Behavior* 735, 736.

⁵⁴ *ibid*, 735.

⁵⁵ *Ibid*, 12.

⁵⁶ There are too many to cite, but among those from the past decade are: Shelli Rossman et al, 'Criminal Justice Interventions for Offenders With Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York - Final Report' (2012) <<http://www.urban.org/publications/412603.html>>; Kelly Frailing, 'How Mental Health Courts Function: Outcomes and Observations' (2010) 33 *International Journal of Law and Psychiatry* 207; Marlee Moore and Virginia Hiday, 'Mental Health Court Outcomes: A Comparison of Re-arrest and Re-arrest Severity Between Mental Health Court and Traditional Court Participants' (2006) 30(6) *Law and Human Behavior* 659; Kelly O'Keefe, 'The Brooklyn Mental Health Court Evaluation: Planning, Implementation, Courtroom Dynamics, and Participant Outcomes' (Center for Court Innovation, 2006) <www.courtinnovation.org>; Merith Cosden et al, 'Evaluation of the Santa Barbara County Mental Health Treatment Court with Intensive Case Management' (University of California, 2004) <<http://consensusproject.org/downloads/exec.summary.santa.barbara.evaluation.pdf>>.

⁵⁷ Christine M. Sarteschi, *Assessing the Effectiveness of Mental Health Courts: A Meta-Analysis of Clinical and Recidivism Outcomes* (Doctor of Philosophy Thesis, University of Pittsburgh, 2009) <<http://d-scholarship.pitt.edu/9275/1/CMSarteschiAug2009Dissertation.pdf>>; Lauren Almquist and Elizabeth Dodd, 'Mental Health Courts: A Guide to Research-Informed Policy and Practice' (MacArthur Foundation and The Council of State Governments (US) Justice Center, 2009) <http://consensusproject.org/issue_areas/mental-health-courts>.

⁵⁸ Henry Steadman et al, 'Effect of Mental Health Courts on Arrests and Jail Days - A Multisite Study' (2011) 68(2) *Archives of General Psychiatry* 167; Padraic Burns, Virginia Aldige Hiday and Bradley Ray, 'Effectiveness 2 Years Post-exit of a Recently Established Mental Health Court' (2013) 57(2) *American Behavioural Scientist* 189; Virginia Aldige Hiday and Bradley Ray, 'Arrests Two Years After Exiting a Well-Established Mental Health Court' (2010) 61(5) *Psychiatric Services* 463; Dale McNeil and Renee Binder, 'Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence' (2007) 164(9) *American Journal of Psychiatry* 1395; Rossman et al, above n56.

has been that, like their US counterparts, MHCs have been effective in reducing recidivism.⁵⁹

2.3 Cost-Effectiveness

Research has also demonstrated that drug courts and MHCs are cost effective.⁶⁰ Although drug court and MHC programs can be expensive, they save money in the medium and long term. Many US studies have demonstrated that drug courts and MHCs are cost-effective because of the costs saved from reduced levels of offending. For example, a study of the cost-effectiveness of the Nevada County Drug Court measured the costs of drug court participation (including treatment, case management, drug testing, law enforcement agencies' and court time, and sanctions). The costs were calculated on a per graduate basis and per participant. In calculating the costs-savings, the value of saved imprisonment, probation, arrests, prosecutions and court processing was quantified and taken into account. Over a two-year period, Nevada County Drug Court graduates had an 18% recidivism rate compared to a control group's recidivism rate of 67%. When the non-completers were included, the drug court participant recidivism rate was 20%. Per participant (i.e., including non-completers) the drug court costs were \$9,429. The costs incurred by the control group were \$25,673.⁶¹ The drug court participants saved the community costs of approximately \$16,000 per participant. Another US study conducted a cost-benefit analysis, this one using meta-analysis of 57 drug court studies with well-matched control groups. The average per participant benefit to taxpayers was \$4,767 (in 2006 dollars).⁶²

US costs are not directly comparable to the Australian context. Fewer detailed costs studies have been undertaken in Australia, however, one detailed study of the NSW Drug Court was undertaken.⁶³ Like the US studies referred to above, the NSW study found that drug court was more cost effective than traditional case processing and sentencing in preventing future offending, although the effect size, while significant, was

⁵⁹ Skrzypiec, Wundersitz and McRostie, above n29; Esther Newitt and Victor Stojcevski, 'Mental Health Diversion List Evaluation Report' (Magistrates Court Tasmania, 2009) <http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/mental_health_diversion>

⁶⁰ For a sample of the US studies on cost-effectiveness, see: Judicial Council of California and the Administrative Office of the Courts, 'Research Summary: California Drug Court Cost Analysis Study' (2006) <<http://www.courts.ca.gov/3082.htm>>; M. Susan Ridgely John Engberg, Michael Greenberg, Susan Turner, Christine DeMartini and Jacob Dembosky, 'Justice, Treatment, and Cost: An Evaluation of the Fiscal Impact of Allegheny County Mental Health Court' (RAND Corp., 2006) <http://www.rand.org/content/dam/rand/pubs/technical_reports/2007/RAND_TR439.pdf>; Shannon Carey and Mark Waller, 'California Drug Courts: Costs and Benefits: Phase III: DC-CSET Statewide Launch Superior Court of Nevada County Nevada County Drug Court Site-Specific Report', (California Administrative Office of the Courts 2009); Shannon Carey, Michael Finigan, Dave Crumpton and Mark Waller, 'California Drug Courts: Outcomes Costs and Promising Practices: An Overview of Phase II in a Statewide Study', (2006) 3 *Journal of Psychoactive Drugs* 345; A Detailed Cost Analysis in a Mature Drug Court Setting: A Cost-Benefit Evaluation of the Multnomah County Drug Court, (NPC Research 2004) <<https://www.ncjrs.gov/pdffiles1/nij/grants/203558.pdf>>.

⁶¹ Carey and Waller, *ibid*, 8.

⁶² AOs, Miller and Drake, above n2, 8, 9.

⁶³ Lind et al, above n48.

not large. Subsequent amendments to the NSW Drug Court practice improved screening, lowered the threshold for removing non-performing participants, and increased levels of monitoring and support. The result was that rates of recidivism improved. With the new practice protocols, the drug court participants were 17% less likely than controls to commit any offence; 30% less likely to commit a violent offence; and 38% less likely to commit a drug offence; during the follow-up period.⁶⁴ A second cost-effectiveness study in 2008 found that the changes in drug court practices resulted in lower costs, saving \$2,465 per participant, and the improved recidivism outcomes increased costs-savings across the criminal justice system. It's worth recalling that there are also significant gains which cannot easily be quantified, including improved health outcomes for participant offenders, reduced levels of victimisation and increased community amenity.⁶⁵

Recommendation 1: that Queensland's Drug Courts be re-established at appropriate sites throughout the state

Recommendation 2: that Queensland re-establish the Special Circumstances Court in Brisbane and establish other solution-focused courts for mentally impaired offenders at appropriate sites throughout the state

2.4 The Community Court Model

Another model worthy of consideration as a supplement to solution-focused courts for targeted groups of offenders, is the community court model. There is one such court operational in the Melbourne suburb of Collingwood, serving the city of Yarra.⁶⁶ The Neighbourhood Justice Centre Court (NJC) hears criminal cases involving residents and civil cases that affect the local community. The provision of a dedicated magistrate promotes stability and allows for decisions to be informed by strong local knowledge. A range of community services are co-located at the court, which supports the use of the solution-focused approach for offenders and others, supports victims and transforms the court into a community hub.⁶⁷

An evaluation found that over the 2008 / 2009 period:

- recidivism rates over an 18 month follow-up period were 34%, compared to 41% for a comparison group dealt with in mainstream courts - a 7% reduction.
- the completion rate of community-based orders was 75%, compared to a statewide average of 65%.
- NJC offenders completed an average of 105 hours of unpaid community work, compared to a statewide average of 68 hours.
- comparing crime in the city of Yarra in the two years prior to establishment of the NJC, with crime in the two year period after establishment, crime had fallen by 12%,

⁶⁴ Weatherburn et al, above n48, 8-9.

⁶⁵ Stephen Goodall, Richard Norman and Marion Haas, 'The Costs of the NSW Drug Court' (2008) 122 *Crime and Justice Bulletin* 1, 13, 14.

⁶⁶ New York also has a community court, the Red Hook Community Justice Center in New York.

⁶⁷ See: <http://www.neighbourhoodjustice.vic.gov.au/> .

including falls of 38% in car thefts; of 26% in residential burglaries; and of 20% in other (commercial) burglaries.⁶⁸

Recommendation 3: following the model of the Neighbourhood Justice Centre Court, that Queensland establish community courts at appropriate sites throughout the state and especially in those areas where dedicated Drug Courts and Special Circumstances courts are not available

3. MAINSTREAM COURT PROGRAMS

A number of rehabilitation programs are also delivered from mainstream Magistrates Courts, i.e., the general criminal lists. There are many of these programs in Australia, known by their acronyms as CREDIT, MERIT, CISP, POP, STIR, IRP, CARDS AND CADAS. In Queensland, there is the Queensland Courts Referral (QCR), the Court Diversion Program and Queensland Magistrates Early Referral into Treatment (QMERIT). Satisfactory performance on the program will be taken into account and may result in a sentence reduction or in some cases, the discharge of the matter. These programs have generally produced positive results.⁶⁹

3.1 MERIT

The most intensive of these programs in Queensland is QMERIT, which is available in the Redcliffe and Maroochydore Magistrates Courts to offenders with an illicit drug problem related to the charged offence. The program lasts 12 - 16 weeks, but can be extended in special circumstances.⁷⁰ QMERIT underwent a process and impact evaluation in 2006. The report has not yet been released.

The MERIT (NSW) program is a drug diversion initiative now available in the 65 NSW Local Courts with the busiest criminal caseloads. MERIT provides three months of drug and alcohol abuse treatment to defendants whilst on bail. An evaluation study followed MERIT participants for two years after being accepted onto the program. Compared to members of a control group, MERIT program completers were 12% less likely to reoffend; MERIT participants (including non-completers) were 4% less likely to reoffend.

Recommendation 4: that QMERIT be rolled out across Queensland into all Magistrates Courts with criminal caseloads and supported with appropriate services

3.2 CISP

Victoria's Court Integrated Services Program (CISP) is Australia's most flexible mainstream solution-focused program. CISP is offered in Magistrates Courts at Melbourne, Sunshine and the La Trobe Valley to recidivist offenders with drug or alcohol problems, mental impairment, homelessness, disability, or inadequate familial

⁶⁸ Department of Justice (Vic) Evaluation Steering Committee and Neighbourhood Justice Centre, 'Evaluating the Neighbourhood Justice Centre in Yarra: 2007-2009' (Department of Justice (Vic), 2010) <<http://www.neighbourhoodjustice.vic.gov.au/footer/publications/reports>>.

⁶⁹ King (2011), above n , 26.

⁷⁰ *Practice Direction # 2, QMERIT Program*, 24 Jan. 2008, 14.2.

support which has contributed to their offending. The breadth of the target group is managed with a multi-disciplinary case management team located in the court building who refer the CISP participants to services such as drug and alcohol rehabilitation, mental health treatment, housing and other services related to their psychosocial and criminogenic needs. A qualified case worker conducts a risk assessment which is used to assist the Magistrate to determine the most appropriate of three available levels of intervention. The lowest risk group, Community Referral, receive simple referrals (as the name suggests), with no case-management or judicial monitoring. A placement into the Intermediate or Intensive levels will determine the degree of supervision and perhaps also the duration of participation, up to the four months maximum.⁷¹

An evaluation found that a sample of 200 CISP completers over the two-year follow-up period, had 10% lower recidivism rates than a matched control group.⁷² An economic evaluation conducted a cost-benefit analysis based on that 10% reduction in recidivism. Benefits were assessed using scenarios which respectively assumed the 10% reduction remained constant for 30 years, five years and (involving no assumption) just the two year period of the evaluation. Using that most conservative two-year period, on a net present value basis, the CISP saved taxpayers \$2,091,574, which equates to a cost-benefit ratio of 1.7. Most of that saving involved saved costs of imprisonment. Naturally, if the recidivism rate of CISP completers remained lower than comparable offenders beyond the two-year period, the savings would be greater.⁷³

Recommendation 5: following the model of Victoria's CISP, that a mainstream solution-focused program be introduced into Magistrates Courts at appropriate sites and especially in those areas where dedicated Drug Courts and Special Circumstances courts are not available

4. IMPLEMENTATION CHALLENGES – FIDELITY TO THE EVIDENCE-BASE

In implementing these programs it is important to maintain fidelity with the scientific evidence-base. As noted above, the dominant theory of offender rehabilitation is the Risk-Need-Responsivity (RNR) theory, which has a proven track record of achieving significant reductions in recidivism.⁷⁴ Implementation can be assistance by adherence to internationally recognised best practice guidelines.⁷⁵ In the context of court-based solution-focused methods, it is widely believed that they are effective because they bring together a number of complimentary factors.⁷⁶

⁷¹ See generally: Stuart Ross, 'Evaluation of the Court Integrated Services Program' (2009) www.magistratescourt.vic.gov.au/publication/evaluation-court-integrated-services-program.

⁷² Ibid, 113-114.

⁷³ PricewaterhouseCoopers, 'Economic Evaluation of the Court Integrated Services Program (CISP): Final Report on Economic Impacts of CISP' (Department of Justice (Vic), 2009) www.justice.vic.gov.au/resources/2fec5953-83ef-40ef-9c34-1fb4b86b9565/, 1921.

⁷⁴ Andrews, Bonta and Wormith, above n53, 736.

⁷⁵ National Association of Drug Court Professionals and Drug Court Standards Committee, above n 37; Thompson, Osher and Tomasini-Joshi, above n 37.

⁷⁶ Edgely, above n 39, 45.

- Eligibility: The programs are properly targeted at offenders likely to benefit from the particular program. Effectively, this is the *Risk* principle at work. The most intensive programs are suited to high-risk recidivist offenders. First time offenders are better placed in low intensity programs.
- Personalised Assessment: The intervention program is customised according to the offender's criminogenic needs and personal learning style (ie, *Needs and Responsivity*).
- Sentence Leverage: The offender's overt or latent desire to change is coalesced because the threat of punishment can be leveraged against the implicit promise of a community-based sentence, helping to ensure that the offender personally commits to follow a supervised program of reform.
- Psychological Expertise: Where programs involve judicial monitoring, the role of the judicial officer is to motivate and supervise the offender and forge a therapeutic alliance. It is believed that a dedicated judicial officer is more likely to succeed because first, as the judicial officer gets to know the offender and his or her circumstances, that magistrate will be better able to judge what type of cognitive and affective tactics will be effective; second a dedicated magistrate is more likely to successfully apply motivational interviewing and learnings from the trans-theoretical stages of change model, than magistrates who use these techniques less regularly.
- Case management: for intermediate and high-risk offenders, ensuring that the mix of services is kept appropriate to the offender's circumstances, thereby promoting the *Needs and Responsivity* principles.
- Monitoring: through random and regular drug screening helps keep offenders on track and aids accountability.
- Appropriate services: This is a vital element of success. It can be tempting to assume, for example, that one drug rehabilitation program is much like another. That is not the case. Drug treatment needs to be targeted depending on the type of drug/s involved, the depth of the addiction, and the nature of co-morbidities, if any. For example, it is well-accepted that offenders with a mental illness or acquired brain injury will have much better outcomes with integrated drug treatment services.⁷⁷
- Duration: The higher the offender's risk and the more complex the needs, the more likely it is that a longer period of intervention will be necessary.⁷⁸

In times of economic stringency, it is important to avoid the temptation to cut back on elements of programs, putting at risk those aspects that make it work. For example, one of the more expensive aspects of delivering solution-focused programs is judicial time.⁷⁹ The NSW CREDIT program involves solution-focused lists in Burwood and Tamworth for offenders with multiple and complex needs, including substance abuse and mental impairment. The program was designed to help meet the NSW Government's target of reducing recidivism by 10 per cent by 2016.⁸⁰ Perhaps in an

⁷⁷ Heather Proudfoot et al, 'Chapter 6: Comorbidity and Delivery of Services' in Maree Teesson and Heather Proudfoot (eds), *Comorbid Mental Disorders and Substance Abuse Disorders: Epidemiology, Prevention and Treatment* (Commonwealth Department of Health and Ageing, 2003) , 133.

⁷⁸ Carol Flesler, 'Building Trust and Managing Risk: A Look at a Felony Mental Health Court' (2005) 11(4) *Psychology, Public Policy and Law* 587, 590, 592.

⁷⁹ Weatherburn et al, above n 48, 13.

⁸⁰ Lily Trimboli, 'NSW Court Referral of Eligible Defendants into Treatment (CREDIT) Pilot Program: An Evaluation' (2012) 159 *Crime and Justice Bulletin* 1, 1, 2.

attempt to minimise the cost of judicial time, CREDIT effectively transferred the role of forging a therapeutic alliance to a case manager by allowing for a maximum of three judicial status hearings over a six-month period, even for those offenders with the highest level of risk.⁸¹ An evaluation of the CREDIT program using matched controls showed no discernible effect on recidivism.⁸² The evaluation drew no firm conclusions about the reason/s, but, given the evidence of the importance of the judicial role to the solution-focused method,⁸³ one viable hypothesis would be that there was inadequate provision for judicial supervision.

Recommendation 6: that implementation of programs follow best-practice guidelines and have regard to the scientific evidence base that support the programs' efficacy

⁸¹ Ibid, 5, 6.

⁸² Donnelly, Trimboli and Poynton, above n 28, 9.

⁸³ Jones and Kemp, above n 42; Marlowe et al, above n 43; Festinger et al, above n 43.

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