

Chapter Five

General Court Intervention Programs



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General court intervention programs

As explained in Chapter One, court intervention programs are programs that use the authority of the court in partnership with other agencies to address the underlying causes of offending behaviour and encourage rehabilitation.¹ Court intervention programs can be broadly separated into two categories: specialist programs and general programs. Specialist programs focus on particular issues: drug courts aim to reduce drug-related offending and drug use; mental impairment programs deal with mental health issues; family violence programs aim to reduce family and domestic violence and protect victims; and Aboriginal courts aim to reduce offending by Aboriginal people and improve justice outcomes by providing a more culturally appropriate process. However, in order to achieve these objectives, specialist programs are required to consider all of the offender's circumstances and devise interventions to address a wide variety of coexisting issues that contribute to offending behaviour, including homelessness, substance abuse, interpersonal skills, mental health, education, employment and financial problems.

It is the eligibility criteria of specialist programs that disclose their primary focus. For example, in order to participate in the Intellectual Disability Diversion Program the offender must meet specific cognitive disability criteria; to participate in the Perth Drug Court the offender must have an illicit drug dependency. Specialisation is necessary because certain problems and issues require different offender management approaches and need staff with particular skills and experience.² For example, as discussed in Chapter Two, Australian drug courts predominantly target high-risk drug-dependent offenders who are facing imprisonment. This target group requires intensive monitoring and case management, not only by the court but also by community corrections, police and service providers. The nature of drug addiction requires an approach that recognises that minor lapses will occur and effective processes are required to respond to these lapses without abandoning the longer-term objectives. The Commission has made proposals in relation to various specialist programs in the preceding three chapters of this Paper.

At the same time, the Commission is aware that specialist programs cannot be available for every conceivable problem.³ Such an approach would be too costly and unnecessary. Not every offender requires a specialised approach. Some offenders may have substance abuse problems, but not to the level that requires a drug court intervention. Other offenders may have mental health issues but these are secondary to other problems such as gambling and homelessness. Further, specialist programs are impractical if there are insufficient numbers of potential participants to justify separate programs.⁴

General court intervention programs have developed as a way of facilitating court intervention where specialist programs are unavailable or inappropriate. Like specialist programs, they address the underlying causes of offending behaviour; but general programs are not restricted by their eligibility criteria to a target group of offenders with one particular issue. The Commission examines below two general court intervention programs in Australia – a model established in a Western Australian regional area and a Victorian model used in both metropolitan and regional courts. The Commission also discusses the Neighbourhood Justice Centre in Collingwood, Victoria – a community court model which employs general court intervention strategies.

1. See discussion under 'Characteristics of Court Intervention Programs', Chapter One.

2. It has been observed that specialisation is important because certain offender groups with similar problems require similar types or styles of intervention: Rottman D, 'Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialized Judges)?' [2000] *Court Review* 23.

3. In the United States there are a wide variety of court intervention programs (referred to there as problem-solving courts) including drug courts, family and domestic violence courts, mental health courts, community courts, re-entry courts, homeless courts, driving while intoxicated courts, and teen courts. In California there is a 'dating violence court' for juveniles: Wolf R, *California's Collaborative Justice Court: Building a problem-solving judiciary* (New York: Center for Court Innovation, 2005) 3. One jurisdiction has even introduced 'grade courts' for young people who are not performing well at school. In this context, it has been questioned whether so many different specialist courts are appropriate: Butts J, 'Introduction: Problem-solving courts' (2001) 23 *Law & Policy* 123.

4. For example, in some regional areas in Western Australia population levels are small and there may be a limited number of treatment programs and services available. In the Children's Court there are fewer potential participants because court intervention programs are appropriately directed to those young offenders who are facing an immediate custodial sentence: see discussion under 'Legal and Policy Issues: Young offenders', Chapter Six.

WESTERN AUSTRALIA – GERALDTON ALTERNATIVE SENTENCING REGIME

The Geraldton Alternative Sentencing Regime (GASR) commenced in August 2001.⁵ It has been described as a ‘therapeutic, holistic and team based approach to dealing with offenders’.⁶ The program was developed after a meeting—instigated by the local magistrate—between various local agencies.⁷ Originally the GASR was designed to target offenders with substance abuse problems but it was subsequently expanded to deal with a range of problems including alcohol, illicit drug and solvent abuse; domestic violence; gambling; and financial problems.⁸ The program was established without any significant extra funding (most agencies involved in the program drew upon existing resources); however, Legal Aid provided a duty lawyer and some drug treatment providers were given additional funding.⁹

The GASR was evaluated in 2004 and it was found that approximately 50% of participants who completed the more intensive stream of the program (the court supervised regime) had not reoffended since leaving the program.¹⁰ However, the evaluators stressed that reoffending rates on their own do not properly measure effectiveness – without an appropriate comparison group and detailed analysis of the level and nature of reoffending, these figures do not show the full picture.¹¹ Further, it was emphasised that many of the participants in the GASR had a long history of offending and traditional criminal justice sanctions had clearly not worked.¹² This is a common feature of court intervention programs that target high-risk offenders. Because of the background and

circumstances of these offenders a significant failure rate should be expected.

One clear positive outcome of the program was the high compliance rate – 70% of participants completed the program. This was considerably higher than the compliance rate for traditional court orders. From 2002–2003 statewide figures indicated that 53% of Intensive Supervision Orders and 62% of Community Based Orders were completed.¹³ The evaluation also found that 80% of participants surveyed by the evaluators felt that their physical and mental wellbeing had improved after participating in the program and all reported an ‘improvement in their motivation to stop offending’.¹⁴

It is noteworthy that the GASR attracted a high proportion (over 40%) of Aboriginal offenders. Across Australia, court intervention programs (other than Aboriginal-specific programs such as Aboriginal courts) tend to have low participation rates for Aboriginal offenders.¹⁵ Explanations for the high Aboriginal participation rate possibly include demographic factors; the involvement of local Aboriginal service providers (such as the Aboriginal Legal Service);¹⁶ and broad eligibility criteria that do not exclude problems often experienced by Aboriginal offenders.¹⁷

Despite the positive findings of the evaluation, it appears that support for the program has dissipated.¹⁸ In March 2008 the Commission was advised that while the program was still available, there were no offenders currently participating in the program.¹⁹ In May 2008, the Commission was told that the GASR had two participants.²⁰ Low participation in this program may be a consequence of the establishment of the Barndimalgu Court²¹ in Geraldton; however, the failure to secure ongoing

5. Cant R, et al, *Report on the Evaluation of the Geraldton Alternative Sentencing Regime* (2004) 1. The program was later adapted and extended to the Mullewa court: Geraldton Magistrates Court, *Alternative Sentencing Regime Manual* (2005) 1.

6. Cant, et al, *ibid*.

7. Geraldton Magistrates Court, *Alternative Sentencing Regime Manual* (2005) 26.

8. *Ibid* 1. The GASR has dealt with a range of offences including drug-related offences, drink driving offences, domestic violence offences and dishonesty offences: King M, ‘Innovation in Court Practice: Using therapeutic jurisprudence in a multi-jurisdictional regional magistrates court’ (Paper presented at the 21st Annual Conference of the Australian Institute of Judicial Administration, *New Challenges – Fresh Solutions*, Fremantle, 20 September 2003) 2.

9. King M & Duguid W, *Geraldton Alternative Sentencing Regime: First year self-evaluation* (2003) 6. Up until March 2003 the GASR used the stress reduction technique of Transcendental Meditation and this program received separate external funding of \$50,000: Cant R, et al, *Report on the Evaluation of the Geraldton Alternative Sentencing Regime* (2004) 41.

10. There were 35 offenders who had completed the court supervision regime at the time of the evaluation. The proportion of participants who reoffended (65-75%) was higher for the less intensive stream (brief intervention regime): Cant, et al, *ibid* 35.

11. The evaluators did not undertake such an analysis because they were unable to source reoffending rates for a suitable comparison group. The lack of available and accessible data in relation to the GASR participants was also noted: Cant, et al, *ibid* 35 & 38.

12. *Ibid* 38.

13. *Ibid* 12.

14. *Ibid* 18.

15. The evaluation found that 40% of the court supervision regime participants were Aboriginal and 50% of the brief intervention regime participants were Aboriginal: *ibid* 6. For discussion of Aboriginal participation in drug courts, see ‘Consultation Issues: Drug Courts - Aboriginal participation’, Chapter Two; and for discussion of family violence courts, see ‘Ensuring Broader Access to Family Violence Courts’, Chapter Four.

16. Morgan N & Motteram J, ‘Aboriginal People and Justice Services: Plans, programs and delivery’, LRCWA, *Aboriginal Customary Laws: Background Papers*, Project No. 94 (January 2006) 308.

17. For example, the Perth Drug Court excludes alcohol and solvent abuse: King M & Ford S, ‘Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The example of the Geraldton Alternative Sentencing Regime’ in King M & Auty K (eds), *The Therapeutic Role of Magistrates’ Courts* (2006) 1 *Murdoch University E Law* 9, 12.

18. The Commission was told that defence lawyers no longer refer offenders to the program and this may be due to its intensive nature and the fact that at the end of the program participants are still sentenced to a community-based sentence: Magistrate Steve Sharratt, telephone consultation (5 March 2008).

19. Magistrate Steve Sharratt, telephone consultation (5 March 2008).

20. Steve Ford, Geraldton Magistrates Court, telephone consultation (13 May 2008).

21. The Barndimalgu Court was previously called the Geraldton Family Violence Program. See discussion under ‘Geraldton Magistrates Court: The Barndimalgu Court’, Chapter Four.

resources for the GASR²² and the relocation of the founding magistrate have undoubtedly impacted upon the program.²³

Program operation

The GASR operates in the Geraldton Magistrates Court and the Geraldton Children's Court²⁴ and it has also been used for some offenders pending sentencing in the District Court.²⁵ In a similar way to the Perth Drug Court, the GASR uses a team-based approach to case manage offenders during the program. The program operates as a dedicated list one day a week and case management meetings are held before court.²⁶ The case management team is comprised of the magistrate; the police prosecutor, the community corrections or juvenile justice officer; and a Legal Aid duty lawyer or a representative from the Aboriginal Legal Service.²⁷ Case management meetings consider issues such as the treatment needs of the offender; the offender's degree of compliance with the program; and whether any requirements of the program should be changed. Like the Drug Court, any application to terminate an offender from the program is made in open court.²⁸

The GASR has two separate pathways: the court supervision regime and the brief intervention regime. The court supervision regime is the most intensive program. It is aimed at more serious offenders and uses regular judicial monitoring and case management meetings.²⁹ Offenders are required to appear in court and report to community corrections (or juvenile justice) weekly and attend various programs and appointments.³⁰ The court supervised regime usually lasts between four and six months. The brief intervention regime is aimed at less serious offences and uses judicial monitoring to a much lesser extent.³¹

A particular feature of the program during its first two years was the use of 'Transcendental Meditation' (TM).³² The evaluators of the GASR described TM as a 'simple, non-religious meditation' technique.³³ The program's founding magistrate (Dr Michael King) stated that TM is

based on the premise that by alleviating stress-related problems on the levels of mind, body and behaviour and promoting overall growth in life, the underlying causes of substance abuse and offending may be removed.³⁴

King has argued that the use of TM in 'offender rehabilitation has a sound theoretical framework supported by a growing body of research'.³⁵ He also asserts that TM is particularly beneficial for Aboriginal offenders.³⁶ The evaluators of the GASR reported that many of the participants and representatives from agencies involved were positive about the effects of TM. It was stated that 'TM has the capacity to enhance clear and non-reactive thinking and action'.³⁷ However, the evaluators also found that '[s]tatistically, participation in [TM] made no significant difference to whether someone completed [the GASR] or not'.³⁸ Funding for TM as part of the GASR program ceased in March 2003.³⁹

22. Chief Magistrate Heath has observed that the GASR has suffered from a lack of resources: Heath S, 'Innovations in Western Australian Magistrates Courts' (Paper delivered to the Colloquium of the Judicial Conference of Australia, 3 September 2005) 3. See also King M & Ford S, 'Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The example of the Geraldton Alternative Sentencing Regime' in King M & Auty K (eds), *The Therapeutic Role of Magistrates Courts* (2006) 1 Murdoch University E Law 9, 25.
23. Michael King and Lynton Piggott have stated that the department's attitude to the GASR was 'that it was the Geraldton Magistrate's project rather than a departmental project or a collaborative project between local agencies and the court': King M & Piggott L, 'Mirroring the Stages of Change in the Establishment of Problem Solving Courts' in Reinhardt G & Cannon A (eds), *Transforming Legal Processes in Court and Beyond* (Melbourne: Australian Institute of Judicial Administration, 2007) 170. See also Morgan N & Motteram J, 'Aboriginal People and Justice Services: Plans, Programs and Delivery', LRCWA, *Aboriginal Customary Laws: Background Papers*, Project No. 94 (January 2006) 314. Victorian Deputy Chief Magistrate Popovic has commented that early examples of court intervention in Victoria were 'personality driven': Popovic J, 'Mainstreaming Therapeutic Jurisprudence in Victoria: Feelin groovy?' in Reinhardt G & Cannon A (eds), *Transforming Legal Processes in Court and Beyond* (Melbourne: Australian Institute of Judicial Administration, 2007) 167.
24. By May 2004 there had been a total of five juvenile offenders who had participated in the program. This figure represented 8% of the total number of participants in that period (60): Cant R, et al, *Report on the Evaluation of the Geraldton Alternative Sentencing Regime* (2004) 10.
25. House of Representatives, Standing Committee on Legal and Constitutional Affairs, Evidence of Dr M King (18 November 2002) 418.
26. Geraldton Magistrates Court, *Alternative Sentencing Regime Manual* (2005) 8.
27. Ibid. Like drug court case conferences, the offender is not present. See further discussion 'Case Reviews: A non-adversarial approach', Chapter Two.
28. Ibid 12–13. The GASR uses a points system – each participant is given 20 points at the start of the program. Points are lost or regained for non-compliance or compliance. A zero balance results in termination.

29. Ibid 8.

30. Ibid 12.

31. The brief intervention regime lasts for about three months and participants are required to appear in court for monitoring after the first six weeks: ibid 19–20.

32. Ibid 5.

33. Cant R, et al, *Report on the Evaluation of the Geraldton Alternative Sentencing Regime* (2004) 2.

34. King M, 'Geraldton Alternative Sentencing Regime: Applying therapeutic and holistic jurisprudence in the bush' (2002) 26 *Criminal Law Journal* 260, 267.

35. King M & Ford S, 'Exploring the Concept of Wellbeing in Therapeutic Jurisprudence: The example of the Geraldton Alternative Sentencing Regime' in King M & Auty K (eds), *The Therapeutic Role of Magistrates Courts* (2006) 1 Murdoch University E Law 9, 25.

36. King M, 'Innovation in Court Practice: Using therapeutic jurisprudence in a multi-jurisdictional regional magistrates court' (Paper presented at the 21st Annual Conference of the Australian Institute of Judicial Administration, *New Challenges – Fresh Solutions*, Fremantle, 20 September 2003) 11.

37. Cant R, et al, *Report on the Evaluation of the Geraldton Alternative Sentencing Regime* (2004) iv.

38. Ibid 17.

39. Ibid 1.

Eligibility criteria

Consistent with other general court intervention programs, participation in the GASR does not depend on whether the offender has a particular defined 'problem'. For the more intensive court supervision regime, offenders are eligible to participate if they have a 'significant' alcohol or drug problem or another 'offending related problem'.⁴⁰ However, an offender is not eligible if he or she has any 'physical or psychological problems that would preclude participation' in the program.⁴¹ The GASR is not used for cases where the *only* appropriate option is a term of immediate imprisonment.⁴² However, the program does accept borderline cases; these offenders are given an opportunity to show why a term of immediate imprisonment should not be imposed.

A number of court intervention programs require that the offender has entered a plea of guilty or indicated an intention to plead guilty. Although the GASR usually applies to offenders who have pleaded guilty, the eligibility criteria enable the court to accept an offender who has been convicted after a trial provided the offender accepts that the 'behaviour was wrong'.⁴³ The program manual also states that the program can be used before a plea is entered, so long as there is a problem that gives rise to a 'real risk of offending' and the potential participant is prepared to address that problem.⁴⁴

Referral and court process

Referrals to the GASR can be made by a magistrate, a prosecutor, a defence lawyer or a community corrections or juvenile justice officer.⁴⁵ Depending on the seriousness of the offence and the level of intervention required, an offender assessed as suitable is placed on either the court supervision regime (regular judicial monitoring and case management) or the brief intervention regime (limited judicial monitoring). Offenders are encouraged to be actively involved in the process by direct communication with the judicial officer and by having input into the program requirements.⁴⁶ At the end of the program, if the offender has successfully complied, he or she will 'graduate'; at graduation the magistrate steps down from the bench, hands the offender a certificate and shakes his or her hand. Others present in the court then applaud the offender's achievements. Following this process the offender is sentenced.⁴⁷

40. Geraldton Magistrates Court, *Alternative Sentencing Regime Manual* (2005) 32.

41. *Ibid* 33.

42. King M, 'Geraldton Alternative Sentencing Regime: Applying therapeutic and holistic jurisprudence in the bush' (2002) 26 *Criminal Law Journal* 260, 261.

43. Geraldton Magistrates Court, *Alternative Sentencing Regime Manual* (2005) 33.

44. *Ibid* 38.

45. *Ibid* 8.

46. *Ibid* 4.

47. *Ibid* 17. This process is similar to the process used in the Perth Drug Court.

Powers of the court and program outcomes

The GASR operates without any specific legislative powers. Like the Perth Drug Court at its inception, the GASR uses the provisions of the *Sentencing Act 1995* (WA) to defer sentencing for up to six months and bail conditions are imposed requiring the offender to comply with the program during this period.⁴⁸ Failure to comply with the requirements of the program may result in the offender being arrested and brought to court. If this occurs the program manual suggests that the magistrate might remand the offender in custody until the next court date so that he or she can 'reflect on the situation, on the future and realise what is the endpoint of offending'.⁴⁹

For cases within the magistrates' jurisdiction, the court uses indicated sentences. The magistrate provides an indicated sentence if the offender does not participate or comply with the program and an indicated sentence if the offender successfully complies with the program. For example, the magistrate might say to the offender, 'if you do not complete the program you will be sentenced to 12 months' imprisonment but if you successfully complete the program I will suspend that sentence of imprisonment for 12 months'. The program manual emphasises that this process provides a 'powerful motivating factor for rehabilitation'.⁵⁰ Successful completion of the program results in a less severe penalty – some offenders who have participated in the GASR have been diverted from prison and others have been given community-based sentences or suspended sentences of a shorter duration.⁵¹

VICTORIA – COURT INTEGRATED SERVICES PROGRAM

The Court Integrated Services Program (CISP) is a three-year pilot program which commenced in November 2006. It was developed in response to the Victorian Attorney General's *Justice Statement* in 2004 which, among other things, aims to improve the justice system by addressing the offending behaviours of recidivist offenders who are mentally ill, intellectually disabled, drug-dependent or homeless.⁵² The CISP is presently available at three Victorian Magistrates Courts (Melbourne, Sunshine and Latrobe Valley) and, subject to an evaluation, it is expected that the program will be expanded across

48. *Ibid* 2.

49. *Ibid* 15. The Commission discusses the use of bail conditions to facilitate participation in court intervention programs under 'Legal and Policy Issues: Bail', Chapter Six.

50. *Ibid* 10.

51. King M & Duguid W, *Geraldton Alternative Sentencing Regime: First year self-evaluation* (2003) 1.

52. Attorney General of Victoria, *Justice Statement* (2004) 15 as cited in Courts and Programs Development Unit, Department of Justice Victoria, *Service Delivery Model for the Court Integrated Services Program* (2006) 2.

the state.⁵³ Specific funding of \$17.1 million was allocated for the development and implementation of the pilot program.⁵⁴

From 1 December 2006 until 30 June 2007 the program had a total of 1060 referrals. From these referrals, 871 assessments were undertaken and 668 people were accepted onto the program.⁵⁵ Since its inception the CISP has consistently received about 200 referrals per month and approximately 60% of those referred are accepted onto the program.⁵⁶

The program builds on and extends other Victorian court intervention programs, including the Court Referral and Evaluation for Drug Treatment Program (CREDIT).⁵⁷ The primary aim of the CREDIT is to address drug-related offending. In contrast, the CISP is a general court intervention program available for offenders with a variety of different problems. It provides a coordinated, team-based approach to address underlying issues such as drug dependency, homelessness, disability and mental health problems.⁵⁸ The stated aims of the program are to provide short-term assistance to offenders before sentencing; address the causes of offending through case management; provide priority access to services; and reduce reoffending.⁵⁹ It has been observed that:

The key characteristic of the model is the bringing of the support services together to work in a much more integrated, coordinated, team based approach that deals with the defendant from a holistic perspective.⁶⁰

The strategies which have been developed to support this collaborative process include the collocation of the team (at each court); the determination of clear roles and responsibilities for each team member; regular team meetings; and shared information systems.⁶¹

Program operation

The CISP is a pre-plea court intervention program: a plea of guilty is not a prerequisite for participation. The program usually lasts for four months. The CISP is only available in the Magistrates Court; however, because it is a pre-plea program it is able to accept participants who have been charged with more serious offences that must ultimately be dealt with in the County Court.⁶² Offenders facing the County Court can participate in the program while the charge(s) is still in the Magistrates Court. However, once the offender is committed to appear in the County Court the offender is unable to participate in the program.⁶³

At each of the three locations where the CISP operates there are a number of case managers. These case managers have experience dealing with a wide range of issues including drug and alcohol abuse; mental health problems; welfare needs; acquired brain injury; housing and homelessness; and Aboriginal issues.⁶⁴ In the Melbourne Magistrates Court there are 14 case managers who work with offenders on the program including 'team leaders' who are also responsible for the day-to-day management of the program.⁶⁵ The CISP has an overall program manager and a number of administrative staff attached to each court location. Most case managers are Department of Justice staff; however, the CISP has entered into contracts (following a tender process) with external agencies to provide case management services for participants with acquired brain injury and housing issues. Each offender is assigned a primary case manager, but other case managers may be involved in monitoring and assisting the offender on the program.⁶⁶

The CISP has control over its own budget and all costs associated with the program are paid out of this allocated funding (eg, the salaries of Department of Justice case managers and the contracted services of outside agencies). There is one full-time housing assistance case manager at both Melbourne and Sunshine; housing support services are purchased separately at Latrobe Valley. Similarly, there are two full-time case managers who provide services for

53. Magistrates Court of Victoria, *Strategic Plan 2005–2008*, 17.

54. Courts and Programs Development Unit, Department of Justice Victoria, *Service Delivery Model for the Court Integrated Services Program* (2006) 2. The CISP model enables the program to purchase services from other government and non-government agencies to ensure that high-risk participants get priority access into treatment and other services (11).

55. Magistrates Court of Victoria, *Annual Report 2006–2007*, 49.

56. Jo Beckett, Project Manager, CISP, telephone consultation (8 April 2008).

57. For further discussion of the CREDIT, see 'Victoria – CREDIT/ Bail Support Program', Chapter Two. In the three courts where the CISP is available it operates instead of the CREDIT program.

58. See Magistrates Court of Victoria, *Court Integrated Services Program* (October 2006) <www.magistratescourt.vic.gov.au> accessed 8 April 2008.

59. Ibid. The program aims to reduce reoffending by 15% by the end of 2008–2009: Magistrates Court of Victoria, *Strategic Plan 2005–2008*, 17.

60. Courts and Programs Development Unit, Department of Justice Victoria, *Service Delivery Model for the Court Integrated Services Program* (2006) 16.

61. Ibid.

62. The Victorian County Court is the equivalent of the District Court in Western Australia.

63. In Chapter Six the Commission proposes that an offender who has been committed to a superior court can be required to reappear before a magistrate for the purpose of judicial monitoring after being committed to appear in the superior court but before the first appearance in that court: see Proposal 6.4.

64. Magistrates Court of Victoria, *Annual Report 2006–2007*, 49.

65. Jo Beckett, Project Manager, CISP, telephone consultation (8 April 2008). The staff numbers are lower at the other courts. At Sunshine Magistrates Court there are five case managers (one is the team leader), an administrative position, one housing case manager and one acquired brain injury case manager. At Latrobe Valley Magistrates Court there is a team leader and three other case managers.

66. This means that if one case manager is unavailable another case manager can speak with and assist the offender: meeting with Jo Beckett, Project Manager, CISP (7 December 2007).

participants with acquired brain injury at Melbourne, one at Sunshine and a 0.5 position at Latrobe Valley.⁶⁷ It has been noted that budget control enables the CISP to 'broker' drug treatment services from approved external agencies if the offender is not already accessing appropriate services in the corrections system or through the Commonwealth funding scheme for drug diversion.⁶⁸ In the same way, some intellectually disabled participants will meet the requirements for funding from Disability Services but others (people with acquired brain injury) may not meet the funding criteria: hence the need for dedicated case managers to deal with participants with acquired brain injury.⁶⁹ The potential benefits of having budget control include more effective service provision; a reduction in administrative costs and delays associated with unnecessary funding applications; and more accurate analysis of cost effectiveness.

Eligibility criteria

As mentioned above, in order to be eligible to participate in the program it is not necessary for a plea of guilty to be entered.⁷⁰ Pre-plea programs enable early intervention and take advantage of the 'crisis' point of arrest: for some offenders this is the optimal time to intervene.⁷¹

Although a plea of guilty does not have to be entered, the eligibility criteria require that the person must either have a history of offending or a pattern of current offending that suggests the person is likely to reoffend. Further, the offender must have a physical or mental disability or illness; a drug or alcohol problem; or inadequate social, family or economic support that contributes to his or her offending behaviour. The matter before the court must 'warrant intervention to reduce risk and address needs' and the offender must consent to participation in the program.⁷²

Although the formal eligibility criteria provide that the offender must have been brought to court either by summons or on bail, it appears that many participants are assessed for suitability while they are in custody.⁷³ The program is generally aimed at offenders with a moderate to high risk of offending and, in practice, it appears that there are many participants who would not have been released on bail if they had not been assessed as suitable for the program.⁷⁴ In theory, the eligibility criteria enable participation irrespective of the type or seriousness of the offence – the only requirement is that the person has been charged with an offence.⁷⁵ However, people who are charged with offences that are so serious that bail must be refused are clearly excluded from the program.

Referral and court process

The CISP takes referrals from police officers, judicial officers, court staff, lawyers and support services. An offender may also self-refer to the program. At each court location there is a central assessment and screening process. During the assessment stage, program staff determine the intensity of intervention required based on the offender's level of risk and individual needs and develop an individual case management plan. Low-risk offenders who require some support are referred to appropriate community organisations for assistance and there is no further involvement with the CISP staff following the referral.⁷⁶ If a moderate to high-risk offender is assessed as suitable by program staff, the magistrate will make the final decision about participation. If accepted, the participant will commence the program on bail.⁷⁷ If the offender was in custody prior to being accepted onto the program, the CISP staff work to ensure that the offender is released from custody with sufficient support. For example, program staff will, if necessary, organise temporary accommodation; pay for methadone; liaise with Centrelink to assist the offender to obtain crisis payments; and provide food and travel vouchers.⁷⁸

67. Jo Beckett, Project Manager, CISP, telephone consultation (8 April 2008).

68. Courts and Programs Development Unit, Department of Justice Victoria, *Service Delivery Model for the Court Integrated Services Program* (2006) 12.

69. Ibid.

70. The Commission was advised by the program manager that the absence of a plea of guilty makes little difference to the operation of the program. For example, if an offender had pleaded not guilty to an offence of violence the CISP staff would not refer that offender to anger management counselling, but they could still address other issues such as a drug dependency, homelessness and financial problems. In any event, it appears that most participants admit their offending behaviour to program staff. For many participants the motivation to participate in the program is to receive a reduced penalty; for others (such as those who have pleaded not guilty) the motivating factor may be to obtain release on bail: Meeting with Jo Beckett, Project Manager, CISP (7 December 2007).

71. This is similar to the GASR which enables offenders to participate before a plea is entered provided they are prepared to address their problems.

72. See Magistrates Court of Victoria, *Court Integrated Services Program* (October 2006) <www.magistratescourt.vic.gov.au> accessed 8 April 2008.

73. Jo Beckett, Project Manager, CISP, email communication (4 January 2008).

74. Meeting with Jo Beckett, Project Manager, CISP (7 December 2007).

75. See Magistrates Court of Victoria, *Court Integrated Services Program* (October 2006) <www.magistratescourt.vic.gov.au> accessed 8 April 2008.

76. See Courts and Programs Development Unit, Department of Justice Victoria, *Service Delivery Model for the Court Integrated Services Program* (2006) 7.

77. The program does not operate with any specific legislation – the ordinary bail legislation applies. The *Bail Act 1958* (Vic) does not provide for any specific power to impose bail conditions to comply with the requirements of an intervention program; however, the Victorian Law Reform Commission has observed that 'bail conditions that require accused people to access support services, treatment or rehabilitation are an established feature of the Victorian bail system': Victorian Law Reform Commission, *Review of Bail Act*, Final Report (2007) 121.

78. Meeting with Jo Beckett, Project Manager, CISP (7 December 2007).

An important aspect of the program is judicial monitoring, although the degree of judicial monitoring is not as extensive as it is in some other programs such as drug courts and the GASR. The program protocol provides that the judicial officer *may* decide to monitor the offender's progress.⁷⁹ In practice it appears most participants appear in court once a month over the four-month program. At each of these court appearances a report is provided for the magistrate about the offender's progress.⁸⁰ Unlike specialist court intervention programs with dedicated judicial officers, some of the CISP participants may appear before a number of different magistrates during the program.⁸¹ For general programs operating in busy metropolitan courts this is understandable; unlike a drug court magistrate, who usually does not have any other court obligations, general magistrates have varying caseloads. Nevertheless, despite a lack of continuity in some cases, it appears that the majority of magistrates keenly monitor the progress of offenders, and provide appropriate praise and encouragement when required.⁸²

Powers of the court and program outcomes

The CISP lasts for four months and at the end of the program most participants will be sentenced by the magistrate. However, because participation in the CISP is not conditional upon entering a plea of guilty, some participants may have pleaded not guilty. If these participants are convicted after a trial the CISP will provide a report to the court for sentencing purposes. Reports about an offender's participation in the program are also provided to judges for more serious charges that are finally dealt with in the County Court.

As stated above, the availability of the program pre-plea means that offenders with superior court charges can participate before being committed to the superior court. Participation can commence soon after arrest and continue until the offender is committed to the superior court. However, because participation does not continue after the offender is committed to the superior court, there is a gap between completing the program and appearing in the superior court. In contrast, offenders who are being dealt with by the magistrate can 'move' immediately from the CISP program to other options such as a community-based sentence. While program staff would undoubtedly try to link participants with appropriate services as

part of an exit strategy, judicial monitoring and case management by the CISP staff does not continue once the charges are no longer within the jurisdiction of the magistrates courts.

Because of the different types of offenders accepted onto the program (ranging from those with a moderate to high-risk of reoffending) the court outcomes at the end of the program vary widely. Some offenders receive a shorter term of imprisonment than they would otherwise have received and others may effectively receive no further punishment. A typical outcome for the CISP participants is a suspended sentence or community-based sentence. In order to avoid unnecessary duplication, the CISP has developed protocols to ensure that there is an appropriate 'handover' between the CISP staff and the community corrections officer. Before these protocols were established, corrections staff sometimes required offenders to undertake assessments or treatment that had already been done while the offender was participating in the CISP.⁸³ Anecdotal evidence suggests that offenders who have completed the CISP are achieving better results on community-based sentences because the sentencing order represents a continuation of the positive steps made and achievements gained during the program.⁸⁴ Overall the program attracts a large number of offenders who would otherwise have been imprisoned and invariably participants receive a less severe sentence as a result of successfully complying and engaging with the program.⁸⁵

79. See Magistrates Court of Victoria, *Court Integrated Services Program* (October 2006) <www.magistratescourt.vic.gov.au> accessed 8 April 2008.

80. Meeting with Jo Beckett, Project Manager, CISP (7 December 2007).

81. Telephone Jo Beckett, Project Manager, CISP, telephone consultation (8 April 2008).

82. Meeting with Jo Beckett, Project Manager, CISP (7 December 2007).

83. Meeting with Jo Beckett, Project Manager, CISP (7 December 2007).

84. Jo Beckett, Project Manager, CISP, telephone consultation (8 April 2008).

85. *Ibid.*

Consultation issues

In the preceding section the Commission has examined different models for general court intervention programs. In this section of the Paper the Commission outlines the potential benefits of general programs in Western Australia and comments on specific operational issues. The Commission invites submissions and comments on any aspect of general court intervention programs, but especially seeks submissions on the areas covered in this section.

THE BENEFITS OF GENERAL PROGRAMS

Like all court intervention programs, general programs address the underlying causes of offending behaviour in order to reduce crime. This benefits both the offender and the wider community. There are, however, a number of additional benefits that general programs bring to the justice system.

Increasing access to court intervention programs

One criticism of specialist court intervention programs (such as drug courts or mental impairment programs) is that they do not provide equal access to justice. In other words, not all offenders have the same opportunity to participate.¹ Entry into specialist programs is usually restricted in two ways. First, the offender must meet the required eligibility criteria by establishing the existence of the targeted problem. Second, participation is only available to offenders within the specified catchment area. For example, an offender can only participate in the Perth Drug Court if he or she has an illicit drug problem and is willing to reside in the metropolitan area for the duration of the program.

There are a number of different ways to increase access to court intervention programs. Specialist programs can be expanded by establishing new specialist programs for each of the multitude of underlying problems that lead to offending. Existing specialist programs can also be extended to more locations. Further, instead of specialist programs, court intervention could be 'mainstreamed' into general courts so that every Western Australian court has access to appropriate intervention programs.² Finally, access to court intervention programs can be

increased by providing for both specialist programs and general programs.³

After a detailed examination of existing court intervention programs in Australia, the Commission has determined that the best approach is the latter option; that is, a combination of specialist and general programs. In particular, specialist court programs for drug-dependent offenders, mentally impaired offenders, Aboriginal offenders and family violence offenders should continue. These programs have their own offender management approaches and special processes designed to suit the needs of the participants and the interests of the community.⁴ However, specialist programs can only exist where there is sufficient demand – for example, it would be too costly to establish a separate drug court or separate mental impairment program in every Western Australian magistrates court. The Commission believes that general programs (such as the CISP) are vital to maximise the opportunity for all offenders to participate in effective intervention programs. As Victorian Chief Magistrate Ian Gray has stated, the 'public will ultimately demand no less than equality of access to these improved justice services'.⁵

General programs are particularly appropriate for regional areas because population levels and available resources do not support the establishment

1. See discussion under 'Equality before the law', Chapter One.
2. Freiberg A, 'Problem-Oriented Courts: An update' (2005) 14 *Journal of Judicial Administration* 196, 214.

3. This is what occurs in Victoria. There are a number of specialist programs (eg. Drug Court, Family Violence Court, Koori Courts) but also general programs such as the CISP and the court intervention strategies used at the Neighbourhood Justice Centre. In New York, the Bronx Community Solutions project aims to integrate the problem-solving approach which has been used in community courts into all local traditional courts by providing for alternative options for non-violent offenders such as drug treatment, job training and mental health counselling – these options are available to every judge in the Bronx area: see <www.courtinnovation.org> accessed 13 April 2008. A recent report has urged consideration of general 'problem-solving courts' with the 'authority and resources to address multiple issues': Pritchard E et al, *Compulsory Treatment in Australia* (Canberra: Australian National Council on Drugs, 2007) xvi.

4. For example, the Perth Drug Court police prosecutor works with local police to monitor Drug Court participants using the Prolific Offender Management Unit in each district. This degree of monitoring is necessary bearing in mind that most participants in the Drug Court are facing a term of immediate imprisonment unless they comply with the program. It would not be necessary for less serious offenders. Aboriginal courts involve Aboriginal elders and other respected persons in the court process to ensure that proceedings and outcomes are more culturally appropriate and effective.

5. Gray I, 'Sentencing In Magistrates and Local Courts in Australia' (Paper presented at the National Judicial College of Australia and ANU College of Law, *Sentencing Conference*, February 2008) 9.

of a number of separate specialist programs.⁶ A further benefit of general programs is that they can be accessed by different jurisdictions. For example, the GASR is available for offenders appearing in the Geraldton Magistrates Court, the Geraldton Children's Court and for some offenders who are charged with offences that must be dealt with by the District Court. Establishing separate specialist programs in the Children's Court or superior courts is inappropriate because neither jurisdiction is likely to generate enough participants to maintain a specialised court or list that is restricted to a specific problem.⁷

Enabling early intervention

Many specialised court intervention programs require a plea of guilty or at least an indication that the matter is not likely to be contested. It has been suggested that programs require a guilty plea because in terms of rehabilitation and treatment it may be important for the offender to 'accept' wrongdoing.⁸ King has observed that participation in the Perth Drug Court by an offender with outstanding contested charges may 'compromise the court's requirement that participants be open and accountable for their offending'.⁹ A further reason for requiring a plea of guilty in the Perth Drug Court is the view that outstanding contested charges may disrupt the participant's commitment to the program. It is expected that participation in the drug court program will take precedence over all other obligations.¹⁰

A possible disadvantage of programs that require an admission of guilt is that some participants may feel compelled to plead guilty in order to access the benefits of the program.¹¹ General programs such as the GASR and the CISP do not demand an admission of guilt, but rather a willingness to address one or more underlying problems. This approach is possible with general programs because the intervention is not focussed on a specific issue. It would be difficult for drug court personnel to engage effectively with a participant who acknowledges that he or she has

a drug problem but does not accept that this drug problem leads to offending behaviour. In contrast, a participant in a general program may dispute a particular charge related to drug abuse but acknowledge that homelessness and mental health problems create a risk of future offending. Because a general program has flexibility, intervention can be targeted to the individual circumstances and adjusted when appropriate.

In reality, most general program participants will eventually plead guilty to all or some of their charges. However, the broader eligibility criteria enable participation to commence as soon as possible – the offender can begin treatment soon after arrest without waiting for legal advice and other matters to be determined.¹² It could be argued that pre-plea programs cause delay and therefore disadvantage the victim.¹³ But pre-plea programs do not discourage the entering of a plea; they simply enable early intervention while legal and other matters (that would ordinarily cause proceedings to be delayed) are attended to.¹⁴ Early intervention is beneficial because it can reduce the likelihood of an offender committing more offences while on bail and being remanded in custody.¹⁵ Once the offender enters a plea participation in the program can continue and intervention can be adjusted accordingly.

Saving resources

The establishment of general programs is the most cost effective way to increase the opportunity for participation in court intervention programs. As the Commission has explained, it would be too expensive for every regional and every metropolitan magistrates court to operate a drug court, a family violence court, an Aboriginal court and a mental impairment program.¹⁶ There would not be sufficient numbers of potential participants in each location to justify separate program staff and separate administrative structures.

6. King M & Duguid W, *Geraldton Alternative Sentencing Regime: First year self-evaluation* (2003) 4. See also Van De Veen S, 'Some Canadian Problem Solving Court Processes' (Paper presented at the 3rd International Conference on Therapeutic Jurisprudence, Perth, 7–9 June 2006) 67. In Chapter Three the Commission has concluded that court intervention for mentally impaired offenders in regional areas is best facilitated via general court intervention programs: see discussion under 'Addressing Offender Mental Health Issues in Regional Areas', Chapter Three.

7. That does not mean that offenders appearing in superior courts cannot participate in specialist court intervention programs that operate in a magistrates court.

8. Eardley T, et al, *Evaluation of the New South Wales Youth Drug Court Pilot Program*, Final Report (University of New South Wales Evaluation Consortium, 2004) 130.

9. King M, 'Perth Drug Court Practice' (December 2006) *Brief* 27, 27.

10. Meeting with Magistrate Pontifex (26 February 2008).

11. Freiberg A, 'Therapeutic Jurisprudence in Australia: Paradigm shift or pragmatic incrementalism?' (2002) 20(2) *Law in Context* 6, 19. This possibility was mentioned during preliminary consultations: Meeting with Catie Parsons, Legal Aid Commission (20 February 2008).

12. One program in New South Wales (MERIT) allows referrals directly by the police to facilitate the earliest intervention: Northern Rivers University Department of Rural Health, *Evaluation of the Lismore MERIT Pilot Program*, Final Report (2003) 63 & 83. Community courts also enable early intervention because support and services are not restricted to a particular stage of the criminal justice process.

13. See Northern Rivers University Department of Rural Health, *ibid* 83.

14. In relation to the GASR it has been observed that an early opportunity to participate in rehabilitation is appropriate because it may be some time before the matter is finally determined: King M & Duguid W, *Geraldton Alternative Sentencing Regime: First year self-evaluation* (2003) 5.

15. King M, 'Geraldton Alternative Sentencing Regime: Applying therapeutic and holistic jurisprudence in the bush' (2002) 26 *Criminal Law Journal* 260, 261.

16. King has suggested that general programs (he uses the term 'hybrid') are preferable for regional areas, smaller urban courts and jurisdictions with smaller populations: King M, 'Challenges Facing Australian Court Drug Diversion Initiatives' (Keynote address presented to the Court Drug Diversion Initiatives Conference, Brisbane, 25–26 May 2006) 7. That does not mean that specialist programs are inappropriate in some regional locations, for example the Kalgoorlie-Boulder Aboriginal Community Court.

Establishing a general court intervention program (with the potential for expansion throughout the state) with a central administrative structure can reduce costs. For instance, with the CISP there is one overall program manager and program staff are attached to each court location depending upon local needs. In the Western Australian context, a general program could operate from the metropolitan area (servicing all metropolitan courts) and be extended to a number of regional areas. The particular staffing needs would vary depending on the location – one area may require staff with experience in communicating with Aboriginal people and another may need a dedicated housing support officer because of a high number of homeless offenders. More program staff, some with special expertise, may be justified in the metropolitan area and, where necessary, specialists could be called upon for advice and assistance in smaller regional areas where staff with more general experience would be required.

Most (but not all) specialist programs operate as dedicated courts or lists. Where participant numbers are high this is the most efficient way of delivering court intervention programs because all staff and others involved in the case are at the same place at the same time. This avoids holding-up proceedings in general courts.¹⁷ For dedicated courts or dedicated lists potential participants are identified during normal court proceedings and referred to the relevant court. On the other hand, general programs can be accessed on a ‘needs basis’ and program staff can attend court as and when required. This is what occurs with the CISP program – staff attend the general magistrates court when a potential participant is identified.¹⁸

Improving and expanding knowledge

Because specialist programs usually operate as separate courts or as separate lists they often have dedicated judicial officers, police prosecutors and lawyers.¹⁹ There is a tendency for specialist programs to become dependent on the expertise of the individual judicial officer; if that judicial officer is on leave or relocates then another suitably qualified judicial officer must be found.²⁰ Similarly, police prosecutors and lawyers who have the expertise to work in specialist programs may not always be available. Judicial and professional training is one way of ensuring that there are sufficient and suitable

replacements. The establishment of general programs available throughout the criminal justice system is another way of improving the knowledge and experience of all judicial officers, police prosecutors and lawyers. General programs are potentially available to all courts and involve a number of different judicial officers, police prosecutors and lawyers. Exposure to these programs will increase awareness of their benefits and enable a better understanding of the social and psychological problems linked to offending behaviour.²¹

Moreover, the general criminal justice system could benefit from an expansion of the problem-solving approach used in intervention programs. Some key features of court intervention programs that have the potential to improve the overall administration of justice include a more collaborative approach between agencies and more effective communication between judicial officers and offenders.

THE OPERATION OF GENERAL PROGRAMS

Eligibility criteria

If general court intervention programs are established for the purpose of increasing access to intervention strategies, then they must have broad eligibility criteria. Otherwise, access will be restricted in the same way that it is with specialist programs. In this regard, the Commission notes that the GASR does not allow offenders with psychological problems to participate. This exclusionary condition should arguably be removed. In contrast, the eligibility criteria for the CISP are very broad: so long as the person is at risk of reoffending and has a problem that can be addressed participation is permitted. The range of underlying problems targeted are extensive – drugs or alcohol; physical or mental disability or illness; and inadequate social, family or economic support. Other than family violence, it is difficult to envisage a ‘problem’ that would not fit within any of these categories.

Adequate resourcing and staff

The Commission has explained that general court intervention programs are a more cost effective option than a large number of separate specialist programs. Nonetheless, in order to operate effectively, general programs need access to a wide variety of treatment and support programs because general programs will attract participants with diverse problems. Unlike specialist programs, the full ambit of treatment needs will not be known until participants are assessed and accepted onto

17. Rottman D, ‘Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialized Judges)?’ [2000] *Court Review* 24.

18. If the program numbers for a general program are particularly high in one location, a separate list could be established (eg. GASR operates one day per week).

19. Although there are examples of specialist programs (eg. the CREDIT program in Victoria or the MERIT program in New South Wales) that are available to general courts: see discussion under ‘Other Drug and Alcohol Court Intervention Programs’, Chapter Two.

20. Rottman D, ‘Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialized Judges)?’ [2000] *Court Review* 24.

21. King M, ‘Problem-Solving Court Judging, Therapeutic Jurisprudence and Transformational Leadership’ (2008) 17 *Journal of Judicial Administration* 155, 173.

the program. In contrast, the treatment needs for participants of specialist programs can be predicted to some extent. For example, drug courts will need drug treatment options and family violence courts will need perpetrator programs. Therefore, general programs require staff with a range of experience and sufficient resources to engage services from external agencies (both government and non-government) as needed. Further, expansion of court intervention options to more courts by way of general programs will impact on judicial, prosecutorial and legal resources because court intervention programs require longer and more frequent court appearances.

Judicial monitoring

General programs such as the CISP can be accessed by any judicial officer in a participating court. For example, the CISP is available to any magistrate in the Melbourne Magistrates Court. It has been argued that it is preferable for the same judicial officer to be involved throughout the court intervention process.²² In a busy metropolitan court, such as the Perth Central Law Courts, this may not always be possible. Judicial officers are required to sit in different courts and undertake a variety of different matters including contested hearings and non-criminal work. Although the Commission agrees that judicial monitoring is likely to be more effective if a relationship between the judicial officer and the offender is established and maintained, it is important that all judicial officers are trained appropriately (see below) so that if necessary any magistrate could effectively monitor an offender's compliance with a program. It is important to ensure that an offender's review hearing takes place, instead of having it adjourned because a particular judicial officer is unavailable. Such delays are likely to undermine the effectiveness of judicial monitoring and inhibit swift responses to non-compliance.

Training

As stated above, specialist programs often have dedicated judicial officers and specialist lawyers and prosecutors. However, by their very nature general programs do not operate with specialist staff.²³ The evaluation of the GASR emphasised the importance of appropriate judicial training if the 'problem-solving' approach is expanded in Western Australia. It was stated that judicial training should include information about therapeutic jurisprudence;²⁴

information about available services for offenders; and skills training to assist judicial officers in their dealings with other agencies and offenders.²⁵ It has also been observed that:

Education programs for judicial officers and lawyers need to address this growing dimension of court work and the need to promote awareness of developments in the behavioural sciences relating to the interaction between judicial officer and participant and lawyer and client.²⁶

While the establishment of general programs will improve and expand the knowledge of court intervention strategies in the justice system, the Commission recognises that appropriate training for judicial officers, lawyers, prosecutors and others will be required if general court intervention programs are to be successful. In Chapter Six, the Commission proposes the establishment of a separate court intervention programs unit within the Department of the Attorney General. This unit could be responsible for, among other things, coordinating the training of all program and agency staff. In particular, the Commission believes that the coordinators of specialist programs should be responsible for training staff who work in general court intervention programs.²⁷ In the same way, specialist judicial officers, lawyers and prosecutors working in drug courts, family violence courts, Aboriginal courts and mental impairment programs could be involved in training other judicial officers, lawyers and prosecutors to ensure that there is a wider knowledge of how court intervention programs operate and the best way to engage with offenders to achieve program objectives. The Commission invites submissions about the training of judicial officers, lawyers and prosecutors.

CONSULTATION QUESTION 5.1

Training

The Commission invites submissions about the following matters:

- what type of training would be required for judicial officers, lawyers and police prosecutors if general court intervention programs were established in Western Australia; and
- which agencies or individuals should be involved in this training.

22. Freiberg A, 'Non-Adversarial Approaches to Criminal Justice' (Paper presented at the 10th International Criminal Law Congress' Perth, 21 October 2006) 11.

23. General programs (such as the CISP) may have some specialist program staff but they do not operate with specialist judicial officers, lawyers and prosecutors.

24. It has been observed that therapeutic jurisprudence is 'an attitude and process that can be taught and "mainstreamed"': Cannon A, 'Therapeutic Jurisprudence in the Magistrates Court: Some issues of practice and principle' in Reinhardt G & Cannon A (eds) *Transforming Legal Processes in Court*

and Beyond (Melbourne: Australian Institute of Judicial Administration, 2007) 133.

25. Cant R, Downie R, & Henry D, *Report on the Evaluation of the Geraldton Alternative Sentencing Regime* (2004) 26.

26. King M & Wager J, 'Therapeutic Jurisprudence and Problem-Solving Judicial Case Management' (2005) 15 *Journal of Judicial Administration* 28, 36. See also King M, 'Problem-Solving Court Judging, Therapeutic Jurisprudence and Transformational Leadership' (2008) 17 *Journal of Judicial Administration* 155, 173.

27. See Proposal 6.2.

THE COMMISSION'S PROPOSAL TO ESTABLISH A GENERAL COURT INTERVENTION PROGRAM

The Commission's examination of court intervention programs operating throughout Australia demonstrates that there are clear benefits of establishing general court intervention programs. General programs increase the opportunity for all offenders (especially those in regional areas and jurisdictions with smaller numbers of potential participants) to engage in court supervised treatment and intervention. Further, they enable appropriate intervention for those offenders who are unable to meet the eligibility criteria for existing specialist programs.

The Commission is of the view that the most useful model is the CISP – it has inclusive eligibility criteria and can easily be adapted for different jurisdictions. Further, the program should be sufficiently and independently resourced (by relevant government agencies) with a wide range of program staff and the power to 'purchase' or 'broker' services from external agencies (both government and non-government). This approach enables court intervention programs to be available to as many courts as possible without converting all of these courts into separate court intervention programs. The Commission has concluded that a general program should be established and piloted in the metropolitan area, in a regional area and in the Children's Court.²⁸ Subject to an independent evaluation the program could then be expanded statewide.

PROPOSAL 5.1

Establish a general court intervention program

That a general court intervention program be established in Western Australia at the earliest opportunity with the following features:

- The program be initially established as a pilot program in the Central Law Courts; in a regional magistrates court; and in the Perth Children's Court with the aim of extending its operation, subject to independent evaluation, to as many Western Australian courts as possible.
- The program be established as a justice initiative with joint resource responsibility from the Departments of the Attorney General, Health and Corrective Services.
- The program be sufficiently and independently resourced to purchase services from relevant non-government service providers on behalf of participants.
- The program be available, in principle, to any offender appearing in the applicable court. For those offenders facing charges that must be dealt with in the District or Supreme Court, participation in the program and judicial monitoring may continue until the first appearance in the relevant superior court pursuant to Proposal 6.4.²⁹
- The program eligibility criteria be broad, targeting a wide range of underlying problems including drug and alcohol abuse; physical and mental health issues; family and domestic violence; homelessness; and other social, economic or family problems.
- The program be available both pre-plea and post-plea.
- Participation in the program be on a voluntary basis and written consent to sharing of information among the court, relevant government departments and external service providers be obtained from the offender.³⁰
- Program participants be subject to judicial monitoring by way of regular court reviews and where possible the monitoring of each offender be undertaken by the same judicial officer.
- Anything done by the offender in compliance with the program be taken into account during sentencing and after successful completion of the program all sentencing options (including the option to impose no sentence) be available to the court. Unsuccessful participation in the program cannot be taken into account during sentencing.³¹

28. For a discussion of the Commission's approach to young offenders, see 'Young Offenders', Chapter Six.

29. Also, if appropriate, an offender could participate in the program after a Pre-Sentence Order has been imposed by a superior court.

30. In Chapter One the Commission seeks submissions about whether any legislative reform is required in relation to the sharing of information between agencies involved in court intervention programs: see Consultation Question 1.1.

31. See Proposals 6.6 & 6.15.

The Neighbourhood Justice Centre Court

The Neighbourhood Justice Centre (NJC) in Collingwood, Victoria (a three-year pilot project) opened on 8 March 2007.³² Before its commencement supporting legislation was passed.³³ The centre includes a multi-jurisdictional court (the NJC Court) and a number of on-site services available to members of the local community. The centre services the City of Yarra³⁴ and is aimed at preventing crime (by addressing the underlying causes of offending behaviour and finding solutions to local problems) and improving outcomes for offenders, victims and the community. The idea for the NJC was floated after the Victorian Attorney General, Rob Hulls, visited the Red Hook Community Justice Center in New York in 2004.³⁵ The proposal was further developed following a forum of magistrates, lawyers, academics, community members and government representatives convened by the Director of the New York Center for Court Innovation.³⁶ It was decided that the NJC would be based on the Red Hook model.³⁷ Because the establishment of the NJC was closely based on an overseas model, and because it

is the first and only Australian community court,³⁸ it is useful to briefly consider the development of community courts in the United States.

BACKGROUND

The development of community courts is linked to the concept of 'community justice'. Although there does not appear to be a settled definition of the concept,³⁹ it encompasses greater community involvement in justice issues. Wolf has explained that community justice means a justice system that involves the community and considers local issues and concerns.⁴⁰ At one extreme 'community justice' invokes ideas such as vigilantism. At the other, it involves merely improving public relations between community members and justice agencies. The community court model is at neither of these extremes – community courts aim to involve community members and agencies in crime prevention initiatives and in the delivery of justice; however, community courts are subject to and enforce the same laws as any other court.⁴¹

Community courts originated in the United States. The first, the Midtown Community Court, commenced in 1993; there are now over 30 community courts either operating or in planning stages in the United States.⁴² Community courts have since extended to a

32. The NJC building is a refurbished TAFE complex. The Commission visited the NJC on 5 December 2007. The ground floor includes a security desk, reception desk, meeting rooms and conference facilities. The first floor has the court and the court registry. Other floors have open-plan office space for various agencies and service providers, including non-government service providers such as the Salvation Army. The centre, including the court, is abundant with natural light and community art is featured throughout the building. The court and most of the meeting rooms are visible from the outside although there are a few meeting rooms with frosted windows for use by victims or other people who may be visibly distressed.

33. *Courts Legislation (Neighbourhood Justice Centre) Act 2006* (Vic). This legislation created the Neighbourhood Justice Division of the Victorian Magistrates Court. The Commission refers to the NJC court (rather than division) for ease of understanding because it is a separate court building with a dedicated magistrate.

34. The City of Yarra was chosen as the site for the justice centre because it had the second highest crime rate in Victoria; available and effective services in the community; an available building; and a supportive local council: Meeting with Kerry Walker, Director, Neighbourhood Justice Centre (5 December 2007). See also Neighbourhood Justice Centre, *Court Operations and Procedures* (December 2007) 4.

35. Victoria Bar Association, Attorney General's Column, 'Success of Victoria's First Neighbourhood Justice Centre' (2007) 140 *Victorian Bar News* 9.

36. Freiberg A, 'Problem-Oriented Courts: An update' (2005) 14 *Journal of Judicial Administration* 196, 205. The New York Center for Court Innovation is an independent non-profit organisation that undertakes research and assists courts with problem-solving initiatives.

37. Ibid. The planning and implementation of the NJC was overseen by a Steering Committee with representatives from senior government, academia, justice agencies and local government: The Neighbourhood Justice Centre Project Team, *The Neighbourhood Justice Centre: Community justice in action in Victoria* (2007) 5.

38. Although they are called community courts, the Darwin Community Court and the Kalgoorlie-Boulder Community Court are more appropriately described as Aboriginal courts. The Darwin Community Court applies predominantly to Aboriginal offenders but does not exclude non-Aboriginal offenders: Community Court Darwin: Guidelines (2005). However, the Kalgoorlie-Boulder Community Court only applies to Aboriginal offenders who plead guilty. While these courts have some common characteristics with the community court model discussed in this chapter (such as increasing community involvement in the criminal justice system and dealing with the underlying causes of offending behaviour) the means by which this is done is quite different. Aboriginal courts involve Aboriginal community representatives sitting with the magistrate and providing cultural and other advice in relation to the offender. See discussion under 'Aboriginal Courts', Introduction.

39. Berman G, et al, 'Community Justice Centres: A US-UK exchange' (2005) 3(3) *British Journal of Community Justice* 5, 13; Berman G & Fox A, 'From the Margins to the Mainstream: Community justice at the crossroads' (2001) 22 *The Justice System Journal* 189, 191.

40. Wolf R, 'Community Justice Around the Globe: An international overview' (2006) 22(93) *Crime & Justice International* 4, 4.

41. See Berman G & Fox A, 'From the Benches and Trenches: Justice in Red Hook' (2005) 26 (1) *The Justice System Journal* 77, 80 & 85. Berman and Fox observed that during the planning stage for the Red Hook Community Justice Center it was made clear to the community that the centre is part of the New York criminal justice system and subject to the same rules as other courts.

42. See <www.courtinnovation.org> accessed 11 April 2008.

number of other international jurisdictions (including Australia, the United Kingdom, South Africa, Canada and the Netherlands).⁴³

Community courts have evolved in a number of different countries in response to similar problems: increased low-level crime; excessive case loads and delays within the criminal justice system; overcrowding in prisons; recidivism; and a lack of public confidence in the justice system.⁴⁴ However, it is important to bear in mind that each community court is necessarily different because it responds to local concerns and conditions. The Midtown Community Court aimed to respond more effectively to what is often referred to as 'quality-of-life' crimes (eg, prostitution, vandalism, shoplifting and fare evasion). Due to their high case loads, general courts in that area focused on more serious offending, and low-level offending often resulted in either fines or no further punishment because of time already spent in custody by the offender.⁴⁵ Members of the community (residents and business operators) and the police were frustrated at the lack of a meaningful response to these types of crimes.⁴⁶ In particular, that traditional sentencing outcomes did not address the causes of offending; so that when offenders were released from custody, they were soon rearrested for similar or more serious offending.

In contrast to the traditional approach, the majority of offenders dealt with by the Midtown Community Court are sentenced to 'community restitution' (such as sweeping the streets, painting over graffiti and cleaning local parks).⁴⁷ At the same time, a wide variety of service providers and agencies are located on-site to assist offenders with their problems.⁴⁸ After the first three years of operation the number of arrests for prostitution fell in the area by 56%

and for illegal vending by 24%.⁴⁹ Further, it has been reported that approximately 75% of offenders completed their community work obligations: the highest compliance rate in New York.⁵⁰

The Red Hook Community Justice Center (which started in 2000) has a slightly different emphasis. It was the first multi-jurisdictional community court (dealing with criminal, family, juvenile, domestic violence and housing matters)⁵¹ and the name 'community justice center' was chosen instead of 'community court' because community members believed that this name would more appropriately reflect the focus on providing services and programs to all community members.⁵² It has been stated that the 'emphasis at the Midtown Community Court was on cleaning up the local neighbourhood' while the Red Hook Community Justice Center adopted a broader approach providing a range of services for non-offenders.⁵³ Reported benefits of the Red Hook Community Justice Center include increased confidence in the justice system;⁵⁴ increased rate of compliance with court orders;⁵⁵ and reduced crime levels.⁵⁶

While the development of any community court should be based on local conditions and needs,⁵⁷ there are a number of common features to most community court models. Common features include partnerships with various agencies; engagement with the community; problem solving (for both offenders' and the community's problems); coordinated service delivery (usually by on-site services); a focus on low-level crime that affects the local community; and community restoration (through community work).⁵⁸

43. See <www.courtinnovation.org> accessed 11 April 2008. See also Wolf R, 'Community Justice Around the Globe: An international overview' (2006) 22(93) *Crime & Justice International* 4, 4–22. The Vancouver Downtown Community Court is expected to commence in 2008. The National Crime Council of Ireland recommended in 2007 that community courts should be established in Ireland with the first to commence in Dublin and then, after evidence of its success, community courts should be extended to other areas: National Crime Council of Ireland, *Problem Solving Justice: The case for community courts in Ireland* (2007) 6–7. Eleven community justice centres have been established in the United Kingdom since the first, the North Liverpool Community Justice Centre, opened in September 2005. The North Liverpool Community Justice Centre was also modelled on the Red Hook Community Justice Center: Freiberg A, 'Problem-Oriented Courts: An update' (2005) 14 *Journal of Judicial Administration* 196, 206.

44. Wolf, *ibid* 4.

45. Feinblatt J & Berman G, 'Community Court Principles: A guide for planners' (1997) 2. Prior to the commencement of the Midtown Community Court approximately 40% of offenders 'walked out of court without receiving either a meaningful punishment or any kind of help for their underlying problems': Berman G & Feinblatt J, 'Problem-Solving Courts: A brief primer' (2001) 23 *Law & Policy* 125, 130.

46. Berman G & Feinblatt J, *Good Courts: The case for problem-solving justice* (New York: The New Press, 2005) 62.

47. *Ibid* 63.

48. *Ibid*.

49. Berman G & Fox A, 'From the Benches and Trenches: Justice in Red Hook' (2005) 26 (1) *The Justice System Journal* 77, 79.

50. Feinblatt J & Berman G, *Community Court Principles: A guide for planners* (1997) 3.

51. National Crime Council of Ireland, *Problem Solving Justice: The case for community courts in Ireland* (2007) 22. The Red Hook Community Justice Center also has a 'youth peer court' where young people are trained as judges, lawyers and jurors to decide cases of low-level youth offending. Sanctions given by this court include community work, apologies and anger management: Berman G & Fox A, 'From the Benches and Trenches: Justice in Red Hook' (2005) 26 *The Justice System Journal* 77, 83.

52. Berman & Fox, *ibid* 80. Services provided include employment assistance, drug treatment, housing assistance, domestic violence support, youth and family services, education, mental health and mediation services: Phelan A, 'Solving Human Problems or Deciding Cases? Judicial Innovation in New York and its relevance to Australia: Part II' (2004) 13 *Journal of Judicial Administration* 137, 174–75.

53. Phelan, *ibid* 162.

54. A survey of over 1000 local residents in 2001 found that 68% were positive about the centre. A previous survey conducted before the centre was opened found that only 10% of residents were positive about courts in general: Berman G & Fox A, 'From the Benches and Trenches: Justice in Red Hook' (2005) 26 *The Justice System Journal* 77, 78.

55. *Ibid* 87.

56. *Ibid* 89. Although as at 2005 the Red Hook Community Justice Center had not been evaluated in terms of recidivism.

57. Feinblatt J & Berman G, *Community Court Principles: A guide for planners* (New York: Center for Court Innovation, 1997) 1.

58. Wolf R, 'Community Justice Around the Globe: An international overview' (2006) 22 (93) *Crime & Justice International* 4, 5–6.

It is apparent from these features that community courts incorporate, but are not limited to, problem-solving court interventions to address the underlying causes of offending behaviour. Community courts aim to improve outcomes for offenders, victims and communities with the main emphasis on criminal behaviour that affects the local community. Thus, in practice, many community courts focus on community service sanctions⁵⁹ and rehabilitative options.

The term 'court intervention program' as used by the Commission in this Paper is not synonymous with the community court model.⁶⁰ While community courts clearly aim to use the authority of the court in partnership with other agencies to address the underlying causes of offending behaviour and encourage rehabilitation, they also aim to solve local community problems. This is evident from models that provide on-site services to community residents who are not offenders. It is also evident in the fact that community courts are not only limited to criminal matters; community courts often deal with broader issues such as civil, family and housing disputes.

The same observations apply to the NJC in Collingwood. The aim of the NJC is to

respond to, and engage with, the community in addressing its issues and concerns, thereby creating a justice system which, over time, is more integrated, responsive, accessible and more effective in reducing crime, addressing the underlying causes of criminal behaviour and increasing access to justice.⁶¹

The NJC includes a multi-jurisdictional court as well as various on-site services and facilities.⁶² It has been estimated that approximately half of the centre's operations are related to the court and the rest are focused on 'community engagement, crime prevention, mediation, groups and targeted activities and individual matters raised by residents'.⁶³ As stated by the NJC project team, this 'is consistent with the view that the NJC includes a court but that it is not its sole defining feature'.⁶⁴ For the

purposes of this reference, the Commission's focus is on the intervention processes used by the NJC court; therefore, the following discussion considers those aspects of the NJC court that deal with the rehabilitation and monitoring of offenders.

PROGRAM OPERATION

The NJC offers a number of on- and off-site services 'designed to address the underlying causes of offending and prevent further crime'.⁶⁵ These services include housing and homelessness support, personal and family support, financial counselling, community corrections, juvenile justice, drug and alcohol counselling, mental health services, legal assistance and a Koori justice worker.⁶⁶ Service providers include government agencies and non-government organisations such as the Salvation Army, HomeGround (homelessness support) and the Victorian Association for the Care and Resettlement of Offenders.

Representatives from most of these agencies are physically located in the centre. The NJC pays the salaries for these positions (some full-time and some part-time) from its own budget. Having control over its budget has enabled the centre to respond effectively to the needs of its clients and has minimised administrative and bureaucratic processes.⁶⁷ The Commission was advised during its visit to the NJC in December 2007 that this arrangement works well because external agencies are more willing and able to be involved if they are not required to directly bear the cost. From the centre's perspective, agency staff are located at the centre and under its day-to-day direction.⁶⁸ The benefits of this arrangement for offender rehabilitation cannot be overestimated. For example, the Commission was told that generally local mental health services can be very difficult to access but by having the external mental health worker on-site, the centre has direct and speedy access to these services.⁶⁹

There are different processes at the centre that feed into the court proceedings. Offenders may be referred to the Screening, Assessment and Referral Team (SART) either by the court or by other sources such as lawyers and police.⁷⁰ The SART has four

59. It has been observed that community reparation work should be challenging for the offender and beneficial to the local community: National Crime Council of Ireland, *Problem Solving Justice: The case for community courts in Ireland* (2007) 18 & 32–34.

60. Similarly, it has been observed that community courts are only partly problem-solving: Freiberg A, 'Problem-oriented Courts: An update' (2005) 14 *Journal of Judicial Administration* 196, 204–205.

61. The Neighbourhood Justice Centre Project Team, *The Neighbourhood Justice Centre: Community justice in action in Victoria* (2007) 3–4. Many of the centre's objectives are common to the general objectives of court intervention programs including the objectives of reducing re-offending, reducing crime, increasing offender accountability, increasing compliance with court orders and increasing public confidence in the justice system. Other objectives of the centre include increasing community participation in the criminal justice system, increasing the amount of unpaid community work, resolving local justice issues and modernising the court system.

62. The NJC also engages with various off-site service providers.

63. The Neighbourhood Justice Centre Project Team, *The Neighbourhood Justice Centre: Community justice in action in Victoria* (2007) 13.

64. *Ibid.*

65. Neighbourhood Justice Centre Brochure.

66. Neighbourhood Justice Centre, *Court Operations and Procedures* (December 2007) 31; The Neighbourhood Justice Centre Project Team, *The Neighbourhood Justice Centre: Community justice in action in Victoria* (2007) 18–31. Other services available at the centre include crime prevention, victim support, interpreting, mediation and dispute settlement.

67. Meeting with Kerry Walker, Director, Neighbourhood Justice Centre (5 December 2007).

68. The NJC entered into contractual arrangements with external agencies before the centre opened for business.

69. Meeting with Kerry Walker, Director, Neighbourhood Justice Centre (5 December 2007). See further discussion of resourcing issues under 'Statement Two: Adequate resources', Chapter One.

70. Although SART will accept referrals from any member of community even if they are not involved in court proceedings at the centre.

members with expertise in social work, mental health, and drug and alcohol abuse. Its main functions are screening and assessment; case monitoring; counselling; referrals to other service providers; and data collection.⁷¹ The SART will undertake relevant assessments and begin providing assistance to the offender prior to the offender's appearance in court. A report is prepared for court and often the offender's caseworker will speak directly to the magistrate during court proceedings.⁷² If the offender is sentenced to a community based order, the SART will hand the matter over to community corrections staff; for a period of approximately four weeks both the SART and community corrections will be involved with the offender. This process ensures that the work undertaken by the SART is not duplicated by corrections staff.

The court may also be informed about an offender's circumstances from the neighbourhood justice officer and neighbourhood juvenile justice officer. These are legislated but undefined positions⁷³ and, currently, one person occupies both roles. The neighbourhood justice officer has been heavily involved in the development of 'problem-solving meetings' at the centre.⁷⁴ These meetings are held in the presence of the offender, their legal representative and various other agencies, but in the absence of the magistrate.⁷⁵

The neighbourhood justice officer convenes the problem-solving meeting as an independent facilitator. In addition to the offender's lawyer, service providers who are involved with the offender (and any corrections staff who are also involved) will attend the meeting with the aim of identifying and addressing the underlying causes of offending behaviour.⁷⁶ The offender has a central role to play; the meetings are conducted in such a way as to encourage the offender to be honest and open.⁷⁷

If problem-solving meetings are held pre-sentence, the plans or outcomes reached at the meeting are taken into account during sentencing. The Commission was also advised that problem-solving meetings are used post-sentence. For example, community corrections staff may refer an offender to a problem-solving meeting if he or she appears close to breaching a community based order. The meeting will attempt to resolve the current issues and prevent breach proceedings.

The NJC has also developed a 'restorative justice' project featuring conferencing for adults aged 18–25 years and involving victims, offenders and the community. It is anticipated that the program will receive its first referrals in May 2008.⁷⁸ The objectives of the program include improving victim satisfaction and participation in justice; increasing the offender's accountability; rehabilitating and reintegrating offenders into the community; and increasing community confidence in the justice system. Offenders may be diverted to a restorative justice conference by the police, or alternatively they may be referred to the conference after pleading guilty and the outcomes reached at the conference will be considered in sentencing.⁷⁹

The problem-solving meetings and the restorative justice project reflect the legislative principles enacted to support the NJC. The *Courts Legislation (Neighbourhood Justice Centre) Act 2006* (Vic) was assented to in August 2006.⁸⁰ The stated purpose of this legislation was to establish the Neighbourhood Justice Division of the Magistrates Court and the Children's Court and to 'provide for the jurisdiction and procedure of those Divisions with the objectives of simplifying access to the justice system and applying therapeutic and restorative approaches in the administration of justice'.⁸¹

Eligibility criteria

There are specific legislative provisions in relation to the court's criminal jurisdiction dealing with eligibility considerations.⁸² Eligibility is principally determined

71. The Neighbourhood Justice Centre Project Team, *The Neighbourhood Justice Centre: Community justice in action in Victoria* (2007) 20.

72. Meeting with Marita Delany, Manager, SART (5 December 2007); Observations of NJC court (5 December 2007).

73. Section 4Q of the *Magistrates Court Act 1989* (Vic) provides that during sentencing proceedings the NJC court may be informed by a neighbourhood justice officer (or in the case of young offender by a children's neighbourhood justice officer: see *Children and Young Persons Act 1989* (Vic)).

74. Meeting with Jay Jordens, Neighbourhood Justice Officer (5 December 2007).

75. 'Problem-solving meetings' are also used at the North Liverpool Community Justice Centre: McKenna K, 'Evaluation of the North Liverpool Community Justice Centre' (2007) Ministry of Justice Research Series 12/07 (2007) iv. These meetings are different from case reviews held in drug courts because in the latter the magistrate is present and the offender is not involved, see 'Case Reviews: A non-adversarial approach', Chapter Two.

76. The police prosecutor rarely attends problem-solving meetings because it was thought that police presence may discourage the offender from being completely honest. Information from the meeting can only be passed onto the court with the offender's consent: Neighbourhood Justice Centre, *Court Operations and Procedures* (December 2007) Attachment B.

77. Meeting with Jay Jordens, Neighbourhood Justice Officer (5 December 2007).

78. Kerry Walker, Director, Neighbourhood Justice Centre, email communication (17 April 2008). A program convenor has been appointed and staff have commenced training.

79. Meeting with Heing Lim, Project Manager, Restorative Justice Project (5 December 2007).

80. This legislation amended the *Magistrates Court Act 1989* (Vic); *Children and Young Persons Act 1989* (Vic) and the *Children, Youth and Families Act 2005* (Vic). The legislation has a sunset clause to reflect the pilot nature of the NJC and is to be repealed on 31 December 2009. Subject to an independent evaluation, the legislation may be made permanent.

81. This is the first time that legislation in Australia has explicitly referred to the concept of therapeutic jurisprudence: Douglas K, 'Therapeutic Jurisprudence, Restorative Justice and the Law' (2007) 32(2) *Alternative Law Journal* 107. It has been noted that this is the first time that the concept of restorative justice has been 'enshrined' in Victorian legislation: Bassett L, Neighbourhood Justice Centre Project Team, *Restorative Justice – Background and Discussion Paper* (2007) 2.

82. Section 4O(2)(b) of the *Magistrates Court Act 1989* (Vic) sets out the civil jurisdiction of the Division and its jurisdiction under the *Crimes (Family Violence) Act 1987* (Vic).

by the offender's residential status. In order to come within the criminal jurisdiction of the NJC court the accused must reside in the City of Yarra; be a homeless person charged with committing an offence in that area;⁸³ or be an Aboriginal person 'with a close connection' to the City of Yarra and be charged with committing an offence in that area.⁸⁴ Approximately 50% of offending in the City of Yarra is committed by non-residents and therefore the court does not deal with all local offending.⁸⁵ The NJC court has the same powers and jurisdiction as any other magistrates court, except that the NJC court cannot undertake committal hearings or deal with certain sexual offences.⁸⁶

Eligible persons do not have to consent to being dealt with by the NJC court. If eligible, an offender will be automatically required to appear in the NJC court.⁸⁷ However, the aspects of the court process that involve court intervention (such as attending a problem-solving meeting) are voluntary.

Referral and court process

The court is legislatively required to operate with 'as little formality as possible' and must be 'as expeditious' as the proper consideration of the case will allow.⁸⁸ It is also provided that the court should be conducted in such a way that all parties understand the proceedings.⁸⁹ In its observations of the NJC court in December 2007, the Commission found that these principles were demonstrated by the court's practices. In particular, the magistrate took time to explain the proceedings and court outcomes and spoke directly to the offender about his or her circumstances.

As mentioned above, offenders may be referred to the SART for an assessment or to a problem-solving meeting. The outcomes reached during the assessment or the meeting are considered by the NJC court. The NJC court uses judicial monitoring both pre- and post-sentence. Offenders who have been given community-based sentences are often

required to return to court every six to eight weeks for a review. Before sentencing, the court will regularly review the offender's progress and ensure that the offender's circumstances are stable.⁹⁰

POWERS OF THE COURT AND PROGRAM OUTCOMES

The only sentencing power specific to the NJC court is an extension of the deferral of sentencing power in s 83(A)(1)(a) of the *Sentencing Act 1991* (Vic). Usually, a magistrates court can defer the sentencing of an offender who is aged at least 18 years but under 25 years for a period of up to six months. Section 4Q(3) of the *Magistrates Court Act 1989* (Vic) provides that the NJC court may defer sentencing for this period even if the offender is 25 years of age or older.

Compliance with intervention programs used by the NJC court is considered during sentencing. During the Commission's visit in December 2007 a young male offender who had been charged with two counts of possession of heroin was placed on a community based order after successfully engaging in a problem-solving meeting.⁹¹ The offender had significant mental health issues and a drug dependency and, as a result of the problem-solving meeting, steps had been taken to address these issues. The community based order was for 18 months and the offender was required to undertake 100 hours of community service. The offender was also required to reappear in court some weeks later for a review by the magistrate.

CONSULTATION ISSUES

Some of the strategies used by community courts to address the underlying causes of offending behaviour can be categorised as a form of general court intervention. Community courts do not restrict intervention to particular problems. However, community courts have other aims – they have the jurisdiction to deal with non-criminal matters; they deal with contested matters; and they provide assistance to various members of the community including victims and non-offending residents. In the following section the Commission considers a number of issues concerning community court intervention with a view to encouraging submissions about the viability of establishing a community court in Western Australia.

83. A homeless person residing in crisis accommodation in the City of Yarra is also eligible for the NJC court even if charged with an offence committed outside the area.

84. *Magistrates Court Act 1989* (Vic) s 4O(2)(a).

85. See Neighbourhood Justice Centre Project Team, *The Neighbourhood Justice Centre: Community justice in action in Victoria* (2007) 7. During preliminary consultations the Commission was advised that this issue will need to be considered in the future because there are probably a significant number of non-residents who commit offences in the City of Yarra who nevertheless have a connection (through family or friends) with the area. However, if the criminal jurisdiction was included to cover non-residents who committed offences in the City of Yarra at least one further magistrate would be required: Meeting with Magistrate David Fanning, Neighbourhood Justice Centre (5 December 2007).

86. *Magistrates Court Act 1989* (Vic) s 4O(4).

87. If there is a plea of not guilty the matter will often be referred to the Melbourne Magistrates Court because the NJC court does not have the capacity (because there is only one magistrate) to undertake lengthy hearings: Meeting with Magistrate David Fanning, Neighbourhood Justice Centre (5 December 2007).

88. *Magistrates Court Act 1989* (Vic) s 4M(6).

89. *Magistrates Court Act 1989* (Vic) s 4M(7).

90. Meeting with Magistrate David Fanning, Neighbourhood Justice Centre (5 December 2007). The Commission was advised by a Legal Aid lawyer that the problem-solving meetings were a very good way of ensuring that offenders are ready to comply with a community-based sentence before being placed on an order: Meeting with Serge Sztrajt, Victorian Legal Aid (5 December 2007).

91. A report from SART had also been provided to the court.

Equality of access to court intervention

Like the general court intervention programs discussed above, community courts promote equality of justice. Community courts can structure intervention strategies based on the individual needs of an offender, rather than limiting participation to offenders with a particular targeted problem. In the location where a community court exists all offenders have the same opportunity to participate in court intervention and receive appropriate treatment and services. However, equality of access to court intervention is necessarily only achieved at a local level. It has been observed that community courts give rise to concerns that sentencing outcomes and justice may vary from one neighbourhood to another.⁹² At the same time, community courts are usually established in neighbourhoods with a disproportionately high crime rate and an entrenched level of other social disadvantage⁹³ and, therefore, they arguably aim to reduce inequality.

Appropriate outcomes

The idea of community justice has been loosely linked to concepts such as 'mob rule' and 'community vengeance'.⁹⁴ However, sentencing decisions are made by the judicial officer not members of the community. Nonetheless, some practices are questionable. At the Midtown Community Court offenders are required to wear bright blue vests while undertaking 'visible' community service projects such as painting over graffiti, sweeping the streets and cleaning local parks.⁹⁵ The Commission questions whether such a practice is appropriate and emphasises that it does not occur at the NJC.

Nevertheless, because of the dual goals of addressing the offender's problems and providing restoration to the community, there is a risk that sentencing outcomes in a community court may be more onerous than sentences imposed in traditional courts. Berman and Feinblatt have observed that community courts sometimes come across as 'hard on crime' in relation to minor offending.⁹⁶ Before the Midtown Community Court was opened there was concern that the 'emphasis on paying back the community would lead to punishment for offenders who otherwise might have been released with no sanction'.⁹⁷

92. Feinblatt J, et al, *Neighbourhood Justice: Lessons from the Midtown Community Court* (New York: Center for Court Innovation, 1998) 14.

93. Ibid.

94. Berman G, et al, 'Community Justice Centres: A US-UK exchange' (2005) 3(3) *British Journal of Community Justice* 5, 11.

95. See <www.courtinnovation.org> accessed 29 April 2008.

96. Berman G & Feinblatt J, *Good Courts: The case for problem-solving justice* (New York: The New Press, 2005) 70.

97. Feinblatt J, et al, 'Neighbourhood Justice: Lessons from the Midtown Community Court' (New York: Center for Court Innovation, 1998) 10.

As described above, an offender who successfully engaged in problem-solving meetings at the NJC received an 18-month community based order with a requirement to complete 100 hours of community service for two charges of possession of heroin. In comparison, a typical penalty for possession of heroin in a traditional court is a fine.⁹⁸ This comparison usefully demonstrates the difference between traditional and community courts. The traditional court sentence may constitute punishment – but does not rehabilitate because it does not address the offender's problems. In addition, if the offender is unable to pay the fine, imprisonment may eventually be imposed.⁹⁹ It is noteworthy that the decision to participate in problem-solving meetings and engage in appropriate treatment belongs to the offender. Although some offenders dealt with by the NJC court may have received more onerous sentences¹⁰⁰ than they would have done in a traditional court, it does not appear that any offender has appealed a sentence imposed by the NJC court. Because of the appropriate support given to offenders both before and after sentencing, these offenders appear to be satisfied with the outcome and value the continued assistance given by the centre.¹⁰¹

It should be emphasised that the intervention by the NJC court continues both before and after sentencing; what occurs before sentencing is not necessarily as intensive as it may be in other court intervention programs. Attending one or more problem-solving meetings is not the same as participating in a drug court program for 12 months. One would expect a greater sentencing reduction for more onerous pre-sentencing interventions. The Commission proposes in Chapter Six that anything done in compliance with a court intervention program should be taken into account during sentencing. This proposal enables a sentencing court to give proper weight to what has been done and what has been achieved during any court intervention program: if a community court was established in Western Australia it would be subject to this legislative direction.¹⁰²

Resources

Because community courts adopt a problem-solving approach across the board court proceedings take longer; however, as was evident from the Commission's visit to the NJC court, more effective communication and intervention in the early stages are likely to save time later on. Further, the inter-

98. Meeting with Serge Sztrajt, Victorian Legal Aid (5 December 2007). The Victorian Sentencing Manual states that offences of possession are usually dealt with by way of a non-custodial sentence; a quoted English case states that fines will usually be imposed for offences involving possession of drugs: Judicial College of Victoria, *Sentencing Manual* (2005) [27.11.2.2].

99. See eg *Sentencing Act 1991* (Vic) s 62(10)(b).

100. At the same time the Commission was told that imprisonment is rarely imposed by the NJC court.

101. Meeting with Serge Sztrajt, Victorian Legal Aid, NJC (5 December 2007).

102. See Proposal 6.6.

agency collaboration at community courts is effective because staff are physically working side-by-side.¹⁰³ Contested matters can be effectively negotiated between prosecution and defence; treatment plans can be instigated even before the offender first appears in court; and clear and effective communication between the judicial officer and the parties results in less wasted court time caused by adjournments, breaches of orders or non-appearances.¹⁰⁴

Despite the potential for improved efficiency, community courts are clearly expensive to establish. The allocated budget for the NJC over four years is \$23.7 million.¹⁰⁵ The need for a designated building with sufficient space to accommodate the various agencies and provide community facilities requires significant up-front costs.

Eligibility criteria

An important issue for any community court is defining its eligibility criteria. At the NJC eligibility is primarily related to residence; therefore, it is not essential that the offence was committed in the local area. A potential problem exists in relation to offences committed outside the local area. If the matter is contested, police and witnesses may be required to travel long distances for the court hearing.¹⁰⁶ However, it is apparent that contested hearings are uncommon at the NJC and if a hearing is likely to take a significant amount of time the matter is transferred elsewhere.

The requirement for residence, to some extent, contradicts the focus of community courts in responding to local crime and local problems. The NJC does not usually deal with local crime committed by non-residents. On the other hand, it could be argued that the centre is a community resource and should only be available to local residents and others with a sufficient connection to the area.

Should Western Australia establish a community court?

Community courts began in the United States and it has been argued that they may not be appropriate for Australia.¹⁰⁷ In particular, community courts in the United States emerged in response to ineffective outcomes for low-level crimes. Phelan has argued that

It is not readily apparent that there is a need in Australia for a community court like the one at Red Hook and, given the cost of the model, it seems unlikely that a full community court would be sustainable in Australia.¹⁰⁸

Yet a full community court is now operating in Australia and community courts are increasing throughout the world. Although the NJC is based on the Red Hook model, community courts in Australia can adapt to local needs and conditions. For example, the Midtown Community Court and the Red Hook Community Justice Center in the United States are limited to 'minor misdemeanour offences'.¹⁰⁹ In contrast, the NJC court has almost the same criminal jurisdiction as any other magistrates court in Victoria, including jurisdiction to hear offences such as robbery, assault, burglary, fraud and stealing. Clearly the NJC is not limited to low-level 'quality-of-life' offences like its American counterparts.

The potential for community courts to reduce crime and improve outcomes for offenders, victims and the community is significant. Arguably, the community court model encapsulates many of the key features of court intervention programs: inter-agency collaboration; efficient access to services; personalised and direct communication between the judicial officer and the offender; and a holistic response to social problems that lead to crime. Importantly, the collocation of staff and service providers on-site is the ideal way to maximise the benefits of court supervised rehabilitation programs. However, because community courts are clearly expensive to establish, the Commission invites submissions about the viability of establishing a pilot community court in Western Australia.

103. It is imperative that there are clear protocols between various agencies to facilitate effective collaboration and information sharing. The first of three evaluation reports of the NJC noted that staff reported concerns about the way in which various agencies involved in the centre were equipped to resolve differences and that there needs to be a 'clear communication strategy within the Centre': Halsey M, et al, *Evaluation of the Neighbourhood Justice Centre, City of Yarra: Executive summary of the first interim report* (Melbourne: Brotherhood of St Laurence & The University of Melbourne, 2007).

104. Meeting with Magistrate David Fanning, NJC (5 December 2007).

105. Attorney General Rob Hulls, *Neighbourhood Justice Centre for Collingwood*, Media Release (22 August 2005).

106. Victoria, *Parliamentary Debates*, Legislative Assembly, 18 July 2006, 2292 (Mr Cooper).

107. Phelan A, 'Solving Human Problems or Deciding Cases? Judicial Innovation in New York and Its Relevance to Australia: Part III' (2004) 13 *Journal of Judicial Administration* 244, 258.

108. Ibid.

109. Phelan A, 'Solving Human Problems or Deciding Cases? Judicial Innovation in New York and Its Relevance to Australia: Part II' (2004) 13 *Journal of Judicial Administration* 137, 163.

CONSULTATION QUESTION 5.2

Establish a pilot community court

The Commission invites submissions as to whether a pilot community court (similar to the Neighbourhood Justice Centre) should be established in Western Australia. Further, the Commission invites submissions about

- the most appropriate location for the court;
- the appropriate jurisdiction for the court;
- the eligibility criteria for the court including whether eligibility should be determined by reference to residence and/or where the offence was committed;
- the range of services that should be available on-site;
- whether the centre should have control over its own budget; and
- the most appropriate way to establish court intervention programs or strategies within the court.

See Chapter Six for the Commission's proposals regarding the legislative and policy framework for all proposed court intervention programs, including the proposed general court intervention program as discussed in this chapter.