

HOMELESS PERSONS COURT

DIVERSION PROGRAM PILOT

evaluation.



November 2007



CREATIVE SPARKS PTY LTD.

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Both the Evaluation Advisory Committee and the Program Steering Committee provided useful advice and insights into the evaluation as it unfolded.

Our thanks also to the seven people who agreed to be case study participants for the evaluation. They have been de-identified in this report but we hope realise that their stories were fundamental to an understanding of the impact of the court.

Over 40 people were interviewed for the evaluation. Our thanks to this group too for sharing their insights into the operation of the court.

Fiona Guthrie, Carolyn Mason, Shirley Watters and Elena Marchetti.

Terminology

The correct name of the pilot program is the **Homeless Persons Court Diversion Program Pilot**. In this report, for the sake of simplicity, it is referred to as the Homeless Persons Court or the Pilot, depending on context.

Executive Summary

This is an evaluation of the Homeless Persons Court. The court began operating in Brisbane in May 2006, on a pilot basis. The court sits for one day per week.

The court deals with homeless people¹ who have committed relatively minor offences which they are not contesting.

The overall objective of the court is to address the causes of an individual's offending behaviour. This is done by referring homeless people to accommodation, health or other support services that may be able to assist them. The court may make such a referral as a condition of bail or sentence. These bail and sentencing options are no different to those available in the general Magistrates' Court (but that court does not have access to the same range of service providers). A number of the service providers working with the Homeless Persons Court actually attend each sitting day. This allows services to link immediately with homeless people and establish relationships.

The Pilot was part of a raft of new services included in the Government's *Responding to Homelessness* initiative. At the same time, there were concerns that new public space offences introduced in the *Summary Offences Act 2005* (Qld), may lead to more charges being laid against homeless people.

What do we know about participants?

The Homeless Persons Court dealt with 215 people between May 2006 and September 2007, a period of 17 months. The common denominator with this cohort is the myriad, complex and long-standing problems they describe as contributing to their offending behaviour.

The majority of offenders were male (76%); the majority were also under the age of 40 (76%). Over 70% of participants self-assessed as having drug or alcohol problems and 60% self-assessed as having mental health issues: 45% of participants had both problems. 18% of participants had an intellectual disability. Around 85% were homeless for more than 20 days in the month preceding their offence. The most common offence was public nuisance, followed by drug-related offences, stealing and contravening a direction.

Given the nature of people accessing the court, there are unlikely to be any "quick fixes" in trying to address the underlying causes of offending behaviour.

Evaluation Question 1 - How Well is the Pilot Operating? (*The Process Evaluation*)

The Pilot, although operating somewhat differently to the original plans, is ensuring that homeless people are put in touch with services. The ability of the court, however, to provide ongoing support to homeless people, has been hampered by resource constraints.

The administrative underpinnings of the court, especially the court database, have not been adequate. This was highlighted during this evaluation by an inability to access reliable data.

At times, the court has also struggled to find appropriate referrals for participants. The most

¹ Homelessness is defined using the well-known Chamberlain and Mackenzie definition and includes people who are sleeping rough or do not have safe and secure housing.

common issues have been an inability to access crisis accommodation and mental health or substance abuse treatment services. On some occasions, a lack of access to transport has also been a barrier (for example, where a person cannot afford a fare to access crisis housing).

The service delivery model depends on a number of service providers. These include Legal Aid Queensland, the Queensland Police Service, Corrective Services, Queensland Health, Sisters Inside and Brisbane Youth Service. Without their involvement and support, the Homeless Persons Court could not operate. None of these services receive any ongoing funding for their involvement. Such a situation is not sustainable in the long term.

Evaluation Question 2 - Is the Service Delivery Model Appropriate? *(The Process Evaluation)*

There is a need for new approaches by the criminal justice system in dealing with homeless people, particularly those with complex needs. This group of offenders are often described as trapped in a “cycle of offending”. Although it is still early days, there is evidence from both this evaluation and those of other speciality courts that the involvement of the court is a catalyst for behaviour change for some offenders.

Defendants interviewed during the evaluation saw the court as being there to help them and offering a chance for change. They appreciated being listened to and involved.

The current service delivery model is pragmatic, with the court engaging with some offenders more than others, depending both on an individual’s matter and their willingness to be involved. The Homeless Persons Court is **not** a program like the Drug Court, where participants follow the same pathways and graduate between levels. Reflecting the nature of the client group, the way in which the court deals with offenders needs to be flexible.

There is much to recommend in the approach taken in Victoria, where some of their programs have direct access to accommodation services and brokerage funding. This means there is seamless service delivery and the service gaps, of the kind the Homeless Persons Court sometimes deals with, will be less likely. This is an approach that could be adapted for Queensland. The court for example may be able to come to an agreement with an accommodation provider to set aside a certain number of beds. The court will require some brokerage funding to do this.

Evaluation Question 3 - What is the Homeless Persons Court achieving? *(The Outcome Evaluation)*

Are referrals to service providers assisting offenders in addressing the causes of their offending behaviour (and ultimately reducing re-offending)? This is the objective of the Pilot.

We were unable to draw definitive conclusions about this for two reasons. First, there was a lack of reliable quantitative data about the number of people referred to service providers and the impact of those referrals. Second, the court has only been operating for a short time. Where there have been gains, it is impossible to predict if they will continue.

There is however some qualitative evidence from the case studies, short interviews with defendants outside the court and service providers, that some offenders are making progress in addressing the causes of their offending behaviour.

Success needs to be measured holistically. “Success” may be a person attending a counselling or treatment program when they have not done so in the past. Other people might reduce their drug use, improve their health, start taking medication for a mental illness, re-connect with family and so on. Some people may never re-offend; others may offend at a reduced rate

or in less serious ways. Some people may make significant progress right from the start; others may have a more “stop/start” experience and not begin to make any changes for some time. And others of course will make no progress and continue to offend.

The evaluation also found some evidence that fewer fines were levied and people were less likely to go to jail. Both outcomes are consistent with the aims of the court.

What should happen in the future?

We recommend the court be renamed the Homeless Persons and Special Circumstances Court and eligibility expanded to include people with impaired decision-making capacity. Nearly all of the homeless people who appear in the court have impaired decision-making capacity. It is incongruous that people with impaired decision-making capacity, but with secure housing, could not access the court in the future.

The evaluation highlighted a number of elements where changes could be made to improve the way the court operates, in the future.

- ◆ **Venue** — the new court, if possible, should operate from the new Magistrates’ Court building rather than the arrest courts complex. This will increase the legitimacy of the court as a separate specialty court and not an offshoot of the mainstream courts. Service providers and court staff will also be better placed to interact with defendants.
- ◆ **Staff** — the number of Court Liaison Officers should increase from one to three staff, to manage the work associated with a three day a week model. This would allow staff to take a greater role than at present in coordinating cases.
At least some of these staff should be female, reflecting the demographic of the client base. Some female defendants are uncomfortable interacting with a male.
- ◆ **Funding** — direct funding should be provided to the key service providers, and Memoranda of Understanding executed with them.
- ◆ **Administration** — the current court database needs to be updated or replaced so that adequate data is collected on court participants and staff need to be trained on its use. Defendants need to be tracked through the system, so the court knows at any one time, how many people it is managing. Once there is data on how many people are in the court, it may be necessary to limit referrals. Numbers definitely need to be monitored.
- ◆ **Eligibility** — the range of eligible offences should expand slightly, to include driving offences related to homelessness, such as where a person is sleeping in their car.
Defendants who wish to contest all charges will not be eligible for the court. However, a person who is pleading guilty to some charges and not guilty to other charges, will remain eligible and all charges will be heard in the court.
While the magistrate should retain discretion as to initial and ongoing eligibility, it needs to be enforced more strictly.
- ◆ **Magistracy** — Two or three magistrates should be available to sit in the court to provide back up. However, they must have skills and experience appropriate to this client group. Appropriate training should be provided. Other magistrates sitting in the court should have their own lists, to manage cases, if possible from start to finish.
- ◆ **Brokerage** — Brokerage funding of \$50,000 per annum should be available for the court to administer as it sees fit. Access to this relatively small amount of money would allow the court to overcome some of the current service delivery barriers it currently encounters.

At this point of time, we have not recommended a legislative base for the court. Given the operation of the court is still unfolding, this would be premature. It is a matter however, that could be considered at a later date.

Key Findings

This section sets out our key findings in dot point form. It has been prepared as an “at a glance” summary for decision-makers.

Overall Conclusion

- ◆ The overall conclusion of the evaluation is that the Homeless Persons Court should be made permanent. We recommend it should operate in Brisbane for three days per week.

Participants

- ◆ The court is targeting a group of homeless people with myriad, complex and long-standing problems. Over 70% of participants self-assessed as having drug or alcohol problems and 60% self-assessed as having mental health issues — 45% of participants had both problems. 18% of participants had an intellectual disability.
- ◆ The majority of offenders were male (76%); the majority were also under the age of 40 (76%). Around 85% were homeless for more than 20 days in the month preceding their offence. The most common offence was public nuisance, followed by drug-related offences, stealing and contravening a direction.

Impact of the Court

- ◆ The court’s intervention — by linking homeless people with service providers who may help them — is making a difference for at least some people. Given the lack of data, we could not estimate what percentage of people this might be.
- ◆ Success may range from no re-offending to reduced re-offending. It might also describe a number of other benefits, such as improvements in an individual’s health, attempts to address a drug problem, re-connecting with support networks, finding a job and so on.
- ◆ The evaluation also found some evidence that fewer fines were levied and people were less likely to go to jail. Both outcomes are consistent with the aims of the court.
- ◆ There are no quick and easy solutions for this client group. Whilst some people are making attempts to address the cause of their offending behaviour, other people do not engage with the court/service providers and may continue to re-offend.

Why is this Happening?

- ◆ Defendants said the court gave them an opportunity to change. They appreciated being listened to and treated with respect.

Recommendations for Change

- ◆ Funding should be provided for a permanent magistrate (with appropriate back up), for three Court Liaison Officers, for the key service providers and for some brokerage money.
- ◆ Court Liaison Officers should take a stronger case coordination role with participants.
- ◆ The eligibility criteria should expand to include people with impaired decision-making capacity, certain types of traffic offences and should not require defendants to plead guilty to all charges.

1 Introduction

This document is an evaluation of the Homeless Persons Court Diversion Program Pilot (the Homeless Persons Court or Pilot).

This section describes the aims of the Homeless Persons Court, the methodology used in the evaluation and the structure of the report.

1.1 Background to the Evaluation

The Homeless Persons Court began operating in May 2006.

The “primary objective of the pilot program is to assess the viability of diverting homeless people charged with public space offences to health, accommodation and other relevant services to address the underlying causes of their offending behaviour”.¹

Our consultancy was required to “evaluate the operation and outcomes of the pilot program in order to assess the viability of the program as an effective intervention in the cycle of offending, arrest and court appearances by homeless people, and provide recommendations for improving the program”.²

The evaluation was required to be separated into two components: a process evaluation, focusing on operational aspects of the court and an outcome evaluation, focusing on what was being achieved.

1.2 Scope of the Evaluation

Early in this report, it is important to clarify the scope of the evaluation. The Invitation to Offer required the evaluation to “examine the pilot program and, as far as it overlaps with the program, the **Special Circumstances List**” (our emphasis).³

The Special Circumstances List was introduced around the same time as the Homeless Persons Court. Defendants eligible for inclusion on the Special Circumstances List are homeless people with impaired decision-making capacity.

The aims of the Special Circumstances List and the Homeless Persons Court are the same. In practice, the two initiatives had melded into one, at least by the time this evaluation had begun. In this evaluation, a reference to the Homeless Persons Court includes the Special Circumstances List, unless specifically identified.

¹ Department of Justice and Attorney-General, Consultancy Invitation to Offer No: JAG-064/2006, 30 January 2007, 16.

² Ibid 16.

³ Ibid 16.

1.3 Research Questions

The research questions for the evaluation were guided by the program logic for the Homeless Persons Court. Program logic is a systematic and visual tool that describes how a program is expected to operate. The program logic sets out a logical hierarchy — “if a occurs, the result will be b. If b occurs the result will be c, and so on”. The components of a program logic are usually divided into inputs, activities/process, outputs and finally the ultimate intended outcomes or results. This is shown below:

INPUTS --> ACTIVITIES OR PROCESSES --> OUTPUTS --> OUTCOMES

A simple program logic for the Homeless Persons Court, showing the components relevant for the process and outcome evaluations are shown below.

OUTCOME EVALUATION	
outcomes	Homeless people less likely to re-offend.
	▲ Homeless people begin to resolve issues that are causing them to offend (for example, homelessness, substance abuse) .
	▲ Homeless people access the services/comply with diversion plan.
PROCESS EVALUATION	
outputs	▲ The magistrate assesses the individual’s situation. Either bail or a sentence is imposed. A diversion plan may be put in place.
processes	▲ Services that may be able to address the factors contributing to a person’s offending behaviour are identified.
	▲ Potential clients are assessed and eligibility is determined.
	▲ Potential clients are identified for diversion.
inputs	▲ Staff and other resources invested in the program

The research questions for the process and outcome evaluations are on the next page.

Process Evaluation

1. How well is the Pilot operating?
 - ◆ Resourcing and Management
 - ◆ Identification of Participants
 - ◆ Assessment and Eligibility
 - ◆ Service Providers
 - ◆ Sentencing and Diversion
 - ◆ Actual versus Planned Implementation
2. Is the service delivery model appropriate?

Outcome Evaluation

3. What results are being achieved by the Homeless Persons Court?
 - ◆ Sentencing Patterns
 - ◆ Service Provider Impact
 - ◆ Re-offending

1.4 Evaluation Tools

The main tools used in the evaluation are described below.

1.4.1 Interviews with Stakeholders

Forty-six people were interviewed about their views on the court. Interviewees included staff working in government departments, members of the magistracy (nine people including the Chief Magistrate and the Deputy Chief Magistrate), community organisations and court staff.

Representatives of the key agencies involved in service delivery at the court were all included: from government — the Queensland Police Service, Queensland Corrective Services, Legal Aid and Queensland Health; from the community — Brisbane Youth Service, Sisters Inside and HART 4000 and a number of other specialist agencies that interact with homeless people.

All interviews were face-to-face. Appendix 1 contains a list of those interviewed.

1.4.2 Short Interviews with Defendants

Seventeen defendants appearing at the court, participated in very short interviews with one of the evaluators who was at the court at the same time as their matter was heard. It was explained to interviewees that this court is a pilot. Their views were then sought as to whether the court was a good idea or not, and how it could be improved. Verbatim comments are included in Appendix 2.

1.4.3 Observation of the Court

We observed the operation of the Homeless Persons Court each week between late April and June (and at a couple of sessions over the remaining months in the evaluation). By way of comparison, some sessions in the general Magistrates' Court were also observed.

1.4.4 Data Analysis

The Homeless Persons Court has a specific Access Database with information on defendants. A de-identified version of that database was provided. This was used primarily to analyse demographic information. We also requested specific data on other relevant aspects of the court's operation.

1.4.5 Literature Review

A literature review informed the evaluation as a whole. The review covers:

- ◆ Understanding homelessness
 - defining homelessness
 - types of offences committed by homeless people
 - the underlying causes of offending behaviour by homeless people
- ◆ Court initiatives to address offending behaviour by homeless people
 - theoretical framework
 - Australian initiatives – generalist courts
 - Australian and overseas initiatives – speciality courts
 - Evaluations of speciality courts

The Literature Review is included as a stand alone document.

1.4.6 Visit to Victoria

Two of the evaluators visited Victoria for other work reasons at separate times. The evaluators took the opportunity to talk to staff involved in court initiatives in that state targeting similar client groups to the Homeless Persons Court. One member of our team also observed the operation of the Court Integrated Services Program (CISP) in the general Magistrates' Court.

1.4.7 Case Studies

Seven people were identified for the preparation of in-depth case studies. Once included in the evaluation, we followed their matters through the Homeless Persons Court and the participant was interviewed at various points. The case studies themselves are included in a stand alone document, accompanying this report. This document also distils the specific themes from the case studies.

1.5 Strengths and Limitations of the Methodology

The evaluation relied primarily on qualitative data, in particular the interviews with over 40 stakeholders, interviews with defendants and the seven in-depth case studies. The strength of such an approach is that the views of those involved with the Pilot were given sufficient weight. Strongly and widely held stakeholder sentiments should be documented. The views of defendants are also critical, since it is the impact of the intervention on them that is of most interest.

On the other hand, due to the lack of reliable quantitative data, it was not possible to confirm or otherwise, some of the observations and views of interviewees about program outcomes.

The main limitation of case studies as an evaluation tool is selection bias, with those who are positive about the court more likely to consent to be involved as case study participants. However case studies can illustrate in a practical and meaningful way how a program operates.

The quality of the available hard data was disappointing. It was sufficient to draw out broad themes around factors such as demography, but inadequate in attempting to get any in depth understanding of program outcomes. For example, we could not get reliable data on the number of people referred to various service providers and whether they had complied with the referrals.

At the broad level, the main difficulty for the evaluation was the short time in which the Pilot had been operating. This meant it was not possible to undertaken any analysis of pre or post program offending or track other outcomes for people involved in the court other than over a few months.

1.6 Evaluation Timeline

The time line below shows how the major components of the evaluation unfolded.

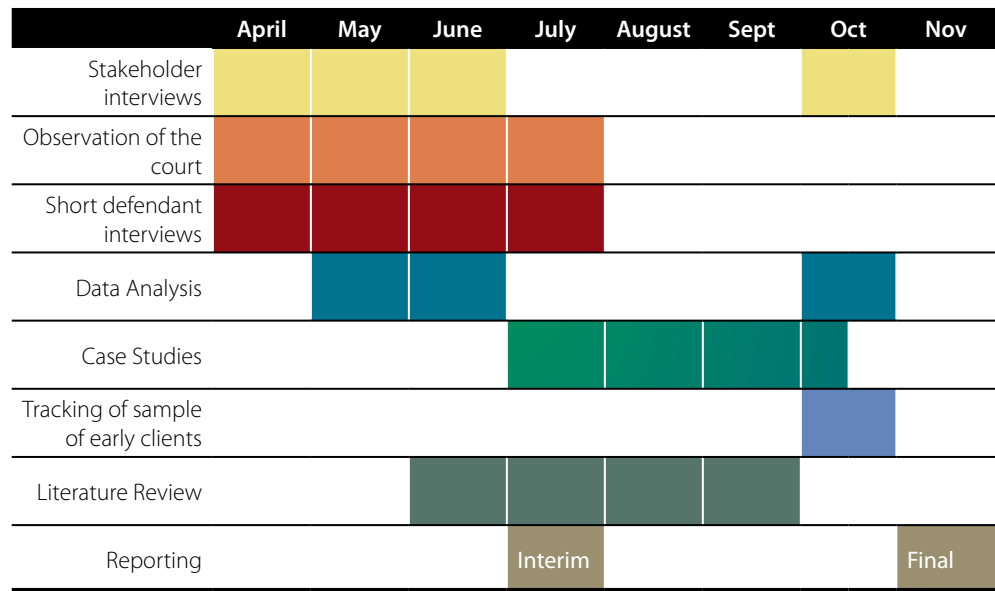


Figure 1: Evaluation Timeline

1.7 Structure of this Report

This report is structured as follows:

Section 1 Introduction	This section describes the aim of the evaluation and the methodology.
Section 2 About the Homeless Persons Court	This section describes the reason the court was set up, its funding and aims and how it operates.
Section 3 Operation to Date	This section sets out demographic and other data on participants and observations about the court's operation.
Section 4 How Well is the Program Operating?	This section answers the first evaluation question in the process evaluation.
Section 5 Is the Service Delivery Model Appropriate?	This section addresses the second evaluation question in the process evaluation.
Section 6 What Results are Being Achieved?	This section addresses the research question for the outcome evaluation.
Section 7 Conclusions and Recommendations	This section sets out our overall conclusions about the Pilot, describes the broad parameters of a revised court and includes a number of recommendations.

There are two stand-alone documents accompanying this report. These are the:

1. Literature Review;
2. Seven case studies illustrating the operation of the Homeless Persons Court.

2 Background and Operation of the Court

This section describes the reason the court was set up, its funding and aims and how it operates.

2.1 History and Rationale

The Homeless Persons Court Diversion Program Pilot was funded for two years and began operating in May 2006. The Pilot was part of a raft of new services included in the Government's *Responding to Homelessness* initiative.

The establishment of the Pilot reflected broad concerns within the Magistracy, government and the community sector about the treatment of homeless people in the criminal justice system. A number of people interviewed for this evaluation said that the current system was not working, with homeless people caught in a seemingly endless cycle of offending. Fines and imprisonment simply continued the cycle in the long run — there had to be a better way. Appendix 5, a short extract from *Disabled Justice* a report prepared for Queensland Advocacy Inc in May 2007, has a powerful example of how the “system” perpetuates such a cycle.

The initiative also aimed to ameliorate the possible impacts of the *Summary Offences Act 2005* on homeless people. The Act includes a range of public space offences, such as public nuisance, public drunkenness, trespass and wilful exposure. People who are homeless may be more likely to commit such offences, simply because they live in public space or spend a great deal of time in public space. Some homeless people may also exhibit erratic behaviour, due to mental health problems or substance abuse problems, again making it more likely they could be charged under this Act.

2.2 Aims of the Homeless Persons Court

The Pilot has six aims as set out in the original documentation:

1. supporting homeless people charged with offences which have an aspect of “public order” through the court process;
2. to divert homeless people from criminal justice systems through referral to services to address accommodation, health and other needs of homeless people which may be contributing to their offending behaviour;
3. to prevent the further entrenchment of homeless people in a cycle of offending and punishment;
4. to reduce the number of fines for these offences being made against people who have little or no capacity to pay;
5. to reduce the risk of imprisonment through fine default and ongoing offending;
6. to collect data on the numbers of homeless people coming before the Magistrates' Court in relation to minor offences, the representation and service needs of these defendants, the nature of these matters and their disposition.

2.3 Resourcing

Funding of \$306,000 was provided for the Pilot over a two-year period. The funding allowed for the:

- ◆ employment of a Court Liaison Officer. The role of the Court Liaison Officer is to assess potential court participants and support them through the court process;
- ◆ the establishment of a new position within the State Penalties and Enforcement Registry (SPER). This position focuses on making alternative arrangements for vulnerable and disadvantaged people to satisfy their SPER debts.⁴

In mid-2007, a temporary administrative position was created to assist the Court Liaison Officer. This position was funded internally within the Department of Justice and Attorney-General from savings in other areas.

No additional funding was provided to the core government agencies involved in operating the Pilot: the Magistrates' Court, the Queensland Police Service, Legal Aid Queensland and Queensland Corrective Services. These agencies absorbed the costs of the Pilot during this time. Similarly, no funding was made available for other service providers involved with the court.

The Special Circumstances List was never specifically funded.

2.4 How Does the Court Operate?

2.4.1 Overview

The Homeless Persons Court operates for one day a week (Thursday) in Court 3 at the arrest courts at the Roma Street Magistrates' Court. On occasion, the magistrate may hold a special hearing on other days to consider more complex cases.

The court deals with homeless people who have committed relatively minor offences and which they are not contesting:

- ◆ Homelessness is defined according to the well accepted Chamberlain and Mackenzie definition of primary, secondary or tertiary homelessness. This is discussed further in the Literature Review;
- ◆ Eligible offences include matters such as: public nuisance, begging, trespass, stealing, assault or obstruct a police officer, minor drug offences and procedural offences such as fail to appear or breach of bail. The offence must also have been committed within the area covered by the Brisbane Magistrates' Court. Some offences are explicitly excluded: these are offences of a sexual nature or involving serious violence.

The full eligibility criteria for the pilot are included as Appendix 3.

The court, either as a condition of sentence or bail, will usually refer a homeless person to specific support services. For example a homeless person may be required to see a drug

⁴ There were also legislative changes at around the same time that increased the options for satisfying a SPER debt. These included the making of a Good Behaviour Order. This order is available to people who are experiencing financial hardship and have a medical or psychiatric condition that prevents them from being able to pay or undertake community service work.

counsellor and referred to crisis accommodation. These referrals are aimed at addressing the causes of an individual's offending behaviour. This is a key component of the service delivery model.

The service delivery model therefore does not include any new sentencing or bail options, but gives the magistrate access to an increased range of services. Diversion to these services can be included as a condition of either bail or sentence.

2.4.2 A Practical Illustration

The practical operation of the Pilot, from the viewpoint of the majority of defendants, is shown visually on the next few pages. This process differs somewhat to what was originally planned, an issue that is discussed in the Process Evaluation (Section 5.1).

Jenny, the person appearing in these photographs, is a member of the Client Reference Group and posed for these photographs for illustrative purposes.

Step 1 - Referral and Assessment



Picture 1: *Jenny is being interviewed/assessed for eligibility by the Court Liaison Officer*

A defendant is referred to the Court Liaison Officer for assessment as to eligibility. Most referrals come from other magistrates. The Court Liaison Officer works five days per week. His role is to support people through the court system and assist the magistrate.

The person who has been referred is assessed by the Court Liaison Officer and must consent to involvement in the program. The interview takes around 45 minutes and collects a great deal of information on a person's background.

At this point, a person may be referred to a service provider, usually crisis accommodation. (If not eligible for the pilot, the Court Liaison Officer may still attempt to refer a person to appropriate services). The Court Liaison Officer uses the information gained at the interview to write a report for the magistrate. This will be used when the person appears in court. The time between the initial assessment and a first court appearance can be a few weeks.

Step 2 - Hearing(s)



Picture 2: Jenny appears in court before the magistrate.

The defendant's matter is considered by the magistrate. A large number of defendants are represented by Legal Aid. The court hearing is longer than in the general Magistrates Court. The magistrate may, for example, ask defendants about their behaviour or personal situation and explore whether certain services could help them.



Picture 3: A service provider and the Court Liaison Officer at the court.

The magistrate may ask the Court Liaison Officer or one of the service providers at the court about the course of action proposed or to get further information about the defendant.

Often a case may be **adjourned** to a further date to allow the court to obtain more information, such as a mental health assessment, or referral to service providers. The offender will be placed on **bail**. Involvement with service providers may be a condition of bail. If bail is not imposed, the magistrate **sentences** the defendant. A condition of sentence may include diversion to certain service providers.

Step 3 - Paperwork



Picture 4: *Jenny signing a Good Behaviour Bond.*

The defendant is signing a Good Behaviour Bond at the court registry. This is a common sentence. Bonds often require a person to return to court to report on progress.

Step 4 - Follow Up Appearance



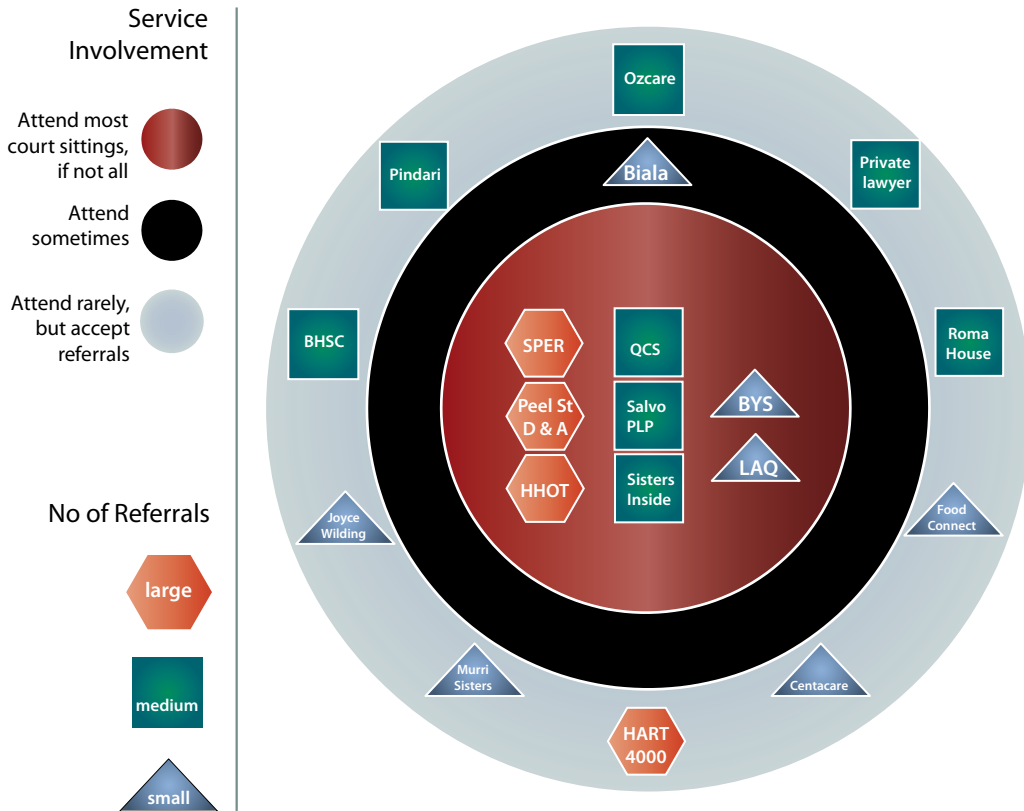
Picture 5: *Jenny returning to court as part of a condition of her Good Behaviour Bond*

Some defendants are required to return to court to advise of their progress, usually on a monthly basis. This is an opportunity for the magistrate to affirm and encourage any progress. If, for some reason, the referral is not working out the magistrate may vary the order.

2.4.3 Service Providers

The service providers associated with the Homeless Persons Court are shown in Figure 2 below, illustrating the dependency of the court on this network. (This is meant as a broad representation only as both the service providers and the number of referrals can change over time.)

Some service providers attend the court each week, such as Brisbane Youth Service and Sisters Inside. Others do not attend each week, such as HART 4000 a service centre for homeless people, but receive large numbers of referrals from the court. The important point is the wide range of services involved and that interaction can vary, depending on the provider.



BHSC	Brisbane Homeless Service Centre
BYS	Brisbane Youth Service
HHOT	Queensland Health - Homeless Health Outreach Team - mental health
LAQ	Legal Aid Queensland
Peel St D & A	Queensland Health - part of Homeless Health Outreach Team - drug and alcohol
QCS	Queensland Corrective Services
Salvo PLP	Salvation Army Personal Living Program
SPER	State Penalties Enforcement Registry

Figure 2: Mapping of the Service Provider Network Referrals Out

The Homeless Persons Court is not unique. The Literature Review⁵ notes that:

“A variety of new courts and justice practices emerged in Australia during the 1990s, including restorative justice conferences and many types of specialist or problem-oriented (also termed problem-solving) courts The term ‘problem-oriented courts’ is used to describe a variety of practices and there has, as yet, been no agreed definition of the term, nor has there been an agreement as to its underlying philosophy These courts are focused on responding to the ‘problems which may have contributed to an offender’s criminal behaviour’ by using social rather than legal solutions ...”

The program in Australia with the greatest similarity to the Homeless Persons Court is the Court Integrated Services Program (CISP) in Victoria. CISP targets people who have physical or mental disabilities or illnesses, drug and alcohol dependency or lack social or family support systems that contribute to their offending. The program operates as follows:⁶

“A case manager conducts an assessment of a defendant’s needs, taking into account the risk of re-offending, and rates them as requiring low, intermediate or intensive program resources. A report is presented to the magistrate who ultimately decides whether the defendant is eligible and suitable to be referred to the program. If a defendant is rated as requiring a low level of resources, they are referred to support services without any reporting requirements. If a defendant is rated as requiring an intermediate level of resources they are required to maintain fortnightly contact with the case manager; this increases to weekly if the rating is intensive. The provision of housing is an important part of the program and brokerage fees are often used to house a defendant in temporary accommodation while the community housing company finds more permanent housing.”⁷

CISP, unlike the Homeless Persons Court, operates through the general Magistrates’ Court,⁸ and targets a wider group of offenders.

There are also homeless person court programs in a number of states in the United States: California, Michigan, Texas, Arizona, New Mexico, Colorado, Utah and Washington. These courts, like the Brisbane Homeless Persons Court, focus on referral to community-based treatment services, rather than imposing sanctions such as fines, community service or custody.⁹

5 Section 2 Court Related Initiatives and Speciality Courts used to Address Offending Behaviour of People who are Homeless or at Risk of Homelessness

6 Section 2.2 of the Literature Review

7 Most of the information obtained about the CISP came from direct observations of the process and discussions with people involved in the program.

8 CISP operates from the Melbourne, Sunshine and Labrope Valley Magistrates’ Courts in Victoria.

9 Section 2.3 of the Literature Review.

3 Operation to Date

This section describes the operation of the court to date, including demographic and other descriptive data for participants and our observation of the court.

Data is for the period from the court's inception in May 2006, until the end of September 2007 (17 months). The data is from a specific Access Database maintained by the court. This database was developed for the Homeless Persons Court based on a database already in use by HART 4000, a community agency providing a service hub for homeless people.

As discussed at various places in this report, there are some concerns about the accuracy of this data, but it still provides an adequate understanding of overall trends.

3.1 Program Numbers

3.1.1 Actual Numbers

The Access Database for the court as at the end of September 2007, indicated that 188 eligible individuals have participated in the court.

This number is most certainly under-estimated however. A later manual count by the Court Liaison Officer found records for 215 participants in total.¹⁰ The Court Liaison Officer believes that the number of eligible individuals may be under-estimated by as many as 50 people, as data for a number of clients may not have been entered. This was backed up by our analysis of the records for the early participants in the Pilot. The earliest date of assessment for a participant was in July 2006, even though the Pilot began in May 2006.

Based on the court database and manual records, between 55% and 60% of people referred to the court between May 2006 and September 2007 were found to be eligible.

3.1.1 Potential Demand

The Homeless Persons Court has been busy from day one. As noted in the Literature Review:

Homeless people are over-represented in the criminal justice system and have an elevated rate of recidivism, especially when compared with other minority groups.¹¹ In a study conducted in 2004, it was found that during a one month period, 60% of persons who attended the general **arrest** court in the Brisbane Magistrates' Court stated that they were either homeless or at risk of becoming homeless.¹²

A short analysis conducted for this evaluation confirms that demand for the court is potentially

¹⁰ We understand that subsequently this information was recorded, but it was too late for this evaluation. We think it unlikely that the overall trends reported in this section would change.

¹¹ Beth Midgley, 'Achieving Just Outcomes for Homeless People through the Court Process' (2005) 15 *Journal of Judicial Administration* 82, 82.

¹² Tamara Walsh, 'The Queensland Special Circumstances Court' (2007) 16 *Journal of Judicial Administration* 223, 230.

quite high. Court staff scanned the daily court list for a week and identified all the people listed who appeared to be homeless (no fixed address or living in a boarding house or similar address) and had committed eligible offences. This suggested that around seven people each day, from a total court list averaging 100 per day, would be eligible for diversion (7%). This would translate to 35 eligible people per week. The Homeless Persons Court is currently dealing with around 15 new clients per month.

3.2 Demographic and Other Descriptive Data

3.2.1 Data for the Pilot

The demography of the 188 people recorded in the database between May 2006 and September 2007, is as follows:

- ◆ the large majority are males (76%);
- ◆ the large majority are under the age of 40 (76%);
- ◆ around 10% are of Aboriginal or Torres Strait Islander background;
- ◆ around 85% were homeless for more than 20 days in the previous month;
- ◆ over 95% of people relied on government benefits for financial support (for example, a disability support pension).

Descriptively, there were no substantial differences between the people who were assessed as eligible and those assessed as ineligible — the majority were males, under the age of 40 and had mental health issues.

Eligible participants self-assess as having a number of health problems (many people have more than one problem):

- ◆ 60% said they had mental health issues;
- ◆ 72% said they had substance abuse problems (drug or alcohol);
- ◆ 45% said they had both mental health and substance abuse problems (dual diagnosis);
- ◆ 4% had an acquired brain injury;
- ◆ 18% had an intellectual disability;
- ◆ approximately one-third of people had had previous contact with the local mental health service.

Eligible participants also self-assess as having limited support networks. Most report limited contact with their families.

We did not collect detailed information on previous offending histories, but a brief analysis of some early files, the preparation of the case studies, our observation at the court and the experiences of the Court Liaison Officer suggest that many people have long histories of offending.¹³

The data above fleshes out the meaning of “homelessness”. People appearing in the Homeless Persons Court face more problems than a lack of stable and safe accommodation.

¹³ We analysed 25 files from the first few months of the court manually.

3.2.2 Comparisons with Other Cohorts

In August 2005, Legal Aid Queensland ran a Homelessness and Street Offences Project over six months. The project provided legal representation to homeless people (defined in the same way as for this Pilot), over a six month period. Demographic data for the group assisted by Legal Aid was very similar to the demography of those participating in the Pilot. Of the 60 court matters, 77% of defendants were male (76% for the Pilot); all but three clients in the Legal Aid project received a pension or benefit (95% for the Pilot) and about one-third had substance abuse problems (72% for the Pilot).

We did not attempt to compare the characteristics of the Pilot participants to that of the 233 individuals included in the evaluation of South Australia's pilot Magistrates Court Diversion Program targeting people with a mental impairment. The mental health status for this cohort was assessed by trained professionals, whilst the Pilot involves self-assessment and is at a broad level only. It was not possible to make comparisons where we were not comparing "like" with "like".

The most recent data on homelessness¹⁴ from the Australian Bureau of Statistics (ABS) is for the 2001 census: the 2006 data for this aspect has yet to be released. Only a comparison based on sex was possible between that data and the Pilot.¹⁵ The ABS count of the homeless for people living in boarding houses or improvised dwellings indicated 58% of homeless people were males and 52% females. The equivalent data for the Pilot was 76% males and 24% females.¹⁶

3.3 Referrals

As Figure 3 shows, the majority of defendants are referred by other magistrates, followed by Legal Aid Queensland. Interestingly, the third largest category is "individual". Anecdotally this category appears to be growing as homeless people learn about this court. (There may be more than one referral source for each person.)

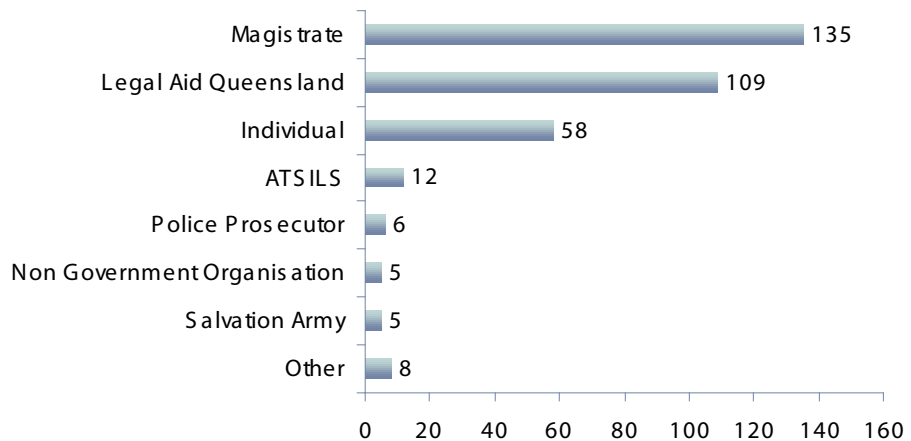


Figure 3: Referral Sources for Individuals Assessed for Eligibility for the Homeless Persons Court (May 2006 - September 2007) (There may be more than one referral source per person.)

¹⁴ Where homelessness is defined using the Chamberlain and MacKenzie definition of primary, secondary and tertiary homelessness.

¹⁵ The age categories used by the ABS differed to those used in this analysis. Incomes were shown for boarding house residents, and households only. Again it was not possible to compare like with like.

¹⁶ If people living with friends or relatives or in supported accommodation were excluded from the ABS data, leaving boarding houses and improvised dwellings only, the figure would be 68% males and 32% females.

Of the total people assessed by the Court Liaison Officer over the 17 months of the Pilot's operation 55% - 60% were eligible. Reasons for ineligibility are (in order): that the person had secure housing, had committed an ineligible offence or was contesting the charges.

The most recent data, for the six months April - September 2007 indicate this statistic is improving. This shows that 80% of those assessed, were eligible for the court. It seems that the number of ineligible referrals is decreasing, the longer the court is in place.

3.4 Offences

As Figure 4 shows, the most common offence was public nuisance. This was followed by dangerous drugs. (Most people are charged with more than one offence.)

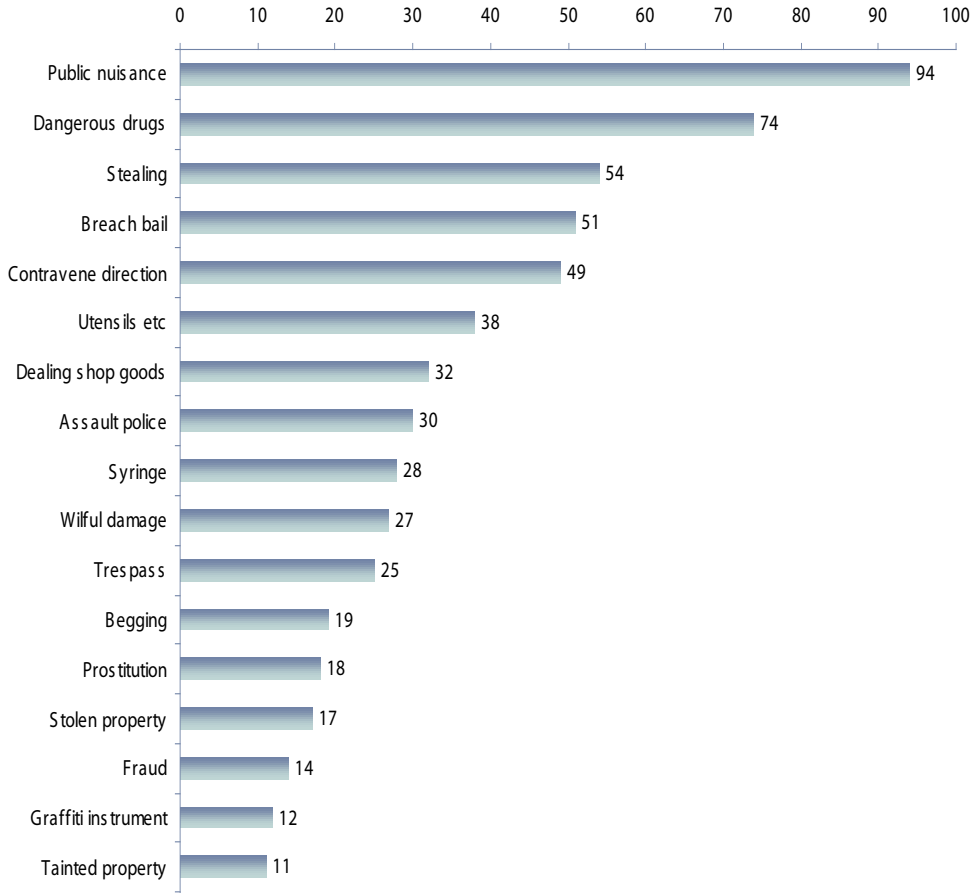


Figure 4: Number of Clients by Type of Offence (n = 188) between May 2006 - September 2007 (individuals may have more than one offence)

3.5 Penalties

Figure 5 below shows the penalties imposed since inception by the court. It relates to the 109 people whose matters had been finalised to the end of September 2007. This data is from the specific database maintained by the court. Note that more than one penalty can be imposed. The "other" category includes 10 separate types of penalties, for example there are three suspended sentences. Restitution

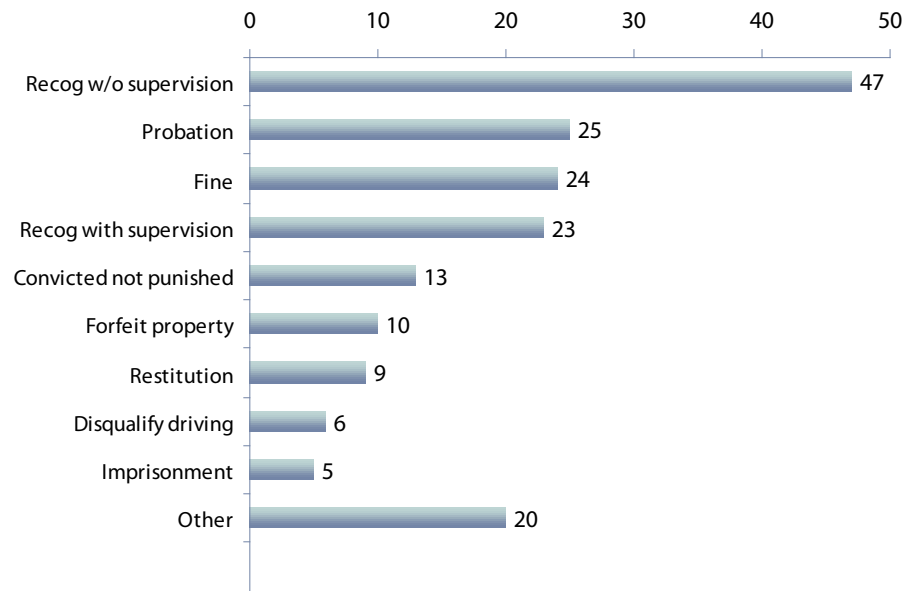


Figure 5: Number of Offenders Finalised (n = 109) by Number of Penalties between May 2006 - September 2007 (individuals may have more than one penalty)

3.6 Our Observations about how the Court Operates

Members of the evaluation team attended approximately 20 separate sittings of the Homeless Persons Court. This gave us a good insight into the day-to-day operation of the court. By way of comparison, two of the evaluators also observed the operation of the generalist Magistrates' Courts for around 30 minutes on three occasions.

3.6.1 Physical Operation

The court is a busy place. It appeared chaotic to us and would almost certainly be experienced that way by anyone who was attending the court for the first time.

The magistrate in the Homeless Persons Court also hears excess matters from the general Magistrates' Court list. These matters can be intermingled and this adds to the busyness of the court. As well, the court itself is located next to the Legal Aid duty lawyer offices which serve all three courts. This means there are many people milling outside the Homeless Persons Court, who are not appearing in that court. This often creates confusion about the operation of the court.

3.6.2 Clients Accessing the Court

As noted in Section 3.2, the majority of defendants are on low incomes, do not have secure housing and suffer from mental illness, intellectual disabilities or substance abuse (sometimes in combination).

It is not surprising therefore that some defendants appearing before the court, have an unkempt appearance and have clearly been living rough for some time. On occasion, some defendants appeared to be under the influence of alcohol and drugs.

3.6.3 Managing Clients in the Court

The Court Liaison Officer prepares a list of the names of the new defendants appearing for that particular day, together with a list of people who are expected to return to court.¹⁷ A short report on the background of new defendants is provided to the magistrate. Even though this report may touch on possible diversion options, in practice it is the magistrate who actively decides on appropriate referrals. This is done in the court itself, in discussion with all parties.

In comparing actual court appearances to listed court appearances, it was clear that many people did not turn up at the court. We discuss this later in the evaluation.

During the evaluation, there were four volunteers, most of whom attended the court each week to assist. These volunteers were all young law students and clearly played a useful role. The volunteers introduced themselves to defendants, helping to keep track of who was in attendance and who was not. Under the direction of the Court Liaison Officer, they provided defendants with information about court processes and other tasks as requested, for example, locating a service provider who was not in the court at the time, or showing a person where to go to complete paperwork. The volunteers also provided some of the introductions for the evaluation team to potential case study participants.

¹⁷ This is based on a manual search of files in the court registry.

Toward the end of the evaluation, the service hub for homeless people, HART 4000, was funded for a Peer Mentoring Project to train people to provide peer support to program participants. Members of this Project started to also attend the court.

3.6.4 Service Providers

The attendance of service providers at the court varied. Some service providers were there each week: staff from Queensland Health Homeless Health Outreach Team¹⁸, Sisters Inside, Brisbane Youth Service, the Salvation Army, Queensland Corrective Services; whilst others attended sporadically.

At times the magistrate would ask for the views of a specific provider, but they were not present, either because they were not at the court that day or were already talking to a defendant. These absences do not significantly affect the operation of the court and the magistrate, together with the Court Liaison Officer if necessary, works around them.

3.6.5 Confidentiality

Confidentiality is an issue for the Homeless Persons Court for a range of reasons.

Like the general Magistrates' Court, the Homeless Persons Court is open to the public. We observed one case where the magistrate closed the court at the request of the defendant who was uncomfortable with some of the people who were present. This is of course the exception, not the rule.

Some of the service providers advised us that they were reluctant to discuss the personal details of their clients in an open court. This could occur where the magistrate was attempting to develop an appropriate diversion plan.

Service providers could generally only talk to their clients or conduct an assessment in the public waiting areas outside the court itself. The two small interview rooms that are available are usually being used by Legal Aid lawyers.

3.6.6 The Experience of Defendants

Defendants were always treated with respect and their stories and opinions listened to carefully by the magistrate. Giving the defendant an opportunity to be involved, to the extent they wish, provides more depth and insight into an individual's circumstances than is the case in the general Magistrates' Courts. In the general Magistrates' Courts a defendant's matter is presented primarily through a lawyer making submissions on their behalf.

The magistrate clearly takes the defendant's circumstances into account when developing a diversion plan and will often request the input of service providers in the court room or the Court Liaison Officer.

On a couple of occasions, the presiding magistrate left the bench and came to the Bar table to talk to a defendant. This occurred in one case, where a defendant had hearing and sight difficulties and in another when a person returning on a Good Behaviour Bond wanted to

¹⁸ In the last few months of this evaluation, the mental health team did not physically attend, but as agreed under the Memorandum of Understanding were available to conduct assessments if necessary.

show the magistrate some jewellery she had made.

Some defendants had trouble understanding the process, but were usually assisted by Legal Aid staff or the court volunteers.

3.6.7 Comparing the Homeless Persons Court to the General Magistrates' Courts

The court hearing process in the Homeless Persons Court is markedly different to that in the general Magistrates' Courts. The hearings in the Homeless Persons Court take much longer as the magistrate may talk at length to the defendant, service providers, the prosecution and the defence about a particular situation.

As noted above, the focus of the hearing is on developing appropriate referrals that will work for the defendant. The general Magistrates' Courts in contrast, has a much faster flow and processes matters as quickly as possible.

On the odd occasion, we observed magistrates in the general Magistrates' Courts who were brusque in interacting with defendants (not necessarily defendants who may have appeared to be homeless).

3.7 Interest in the Community

The establishment of the Homeless Persons Court has generated strong interest within relevant segments of the community. An academic at the University of Queensland has undertaken some research into the court already (see the Literature Review).¹⁹ The Courier Mail newspaper published a feature article on the court in February 2007.²⁰ There have also been a number of prominent visitors to observe the court's operation. These include Queensland's Attorney-General, the Governor of Queensland and an Eisenhower Fellow visiting Australia, Andrea Cabral.

¹⁹ Dr. Tamara Walsh

²⁰ Elizabeth Allen, 'Balancing Act for Scales of Justice', *The Courier Mail*, February 24-25, 2007, 70.

4

HOW WELL IS THE PILOT OPERATING? (*Process Evaluation*)

This section addresses the broad evaluation question “how well is the Pilot operating”.

The analysis is based on assessing the relevant components of the program logic for the court (steps 1 - 5). The program logic is set out in Section 1.3 Research Questions.

4.1 Resourcing

4.1.1 Court Liaison Officer Role

“The Court Liaison Officer is an incredible resource, valued by all parties, but under a lot of pressure.” (Service provider interview)

People using the court are initially assisted by the Court Liaison Officer. This was seen as a vital role by the large majority of stakeholders. The majority of defendants interviewed outside the court (see Appendix 2) said that the staff and services associated with the Homeless Persons Court try to help them. Stakeholders were similarly positive, but noted that the Court Liaison Officer role was too busy for one person to handle.

Five of the seven case study participants were positive about the role of the Court Liaison Officer, while one had had no contact and one was uncomfortable. She would have preferred to have interacted with a female. The need for a female Court Liaison Officer was suggested by stakeholders interviewed, including at the meeting of the Stakeholder Reference Group we attended.

The role of the Court Liaison Officer is to “provide support and advice” to participants and “liaise with the service and treatment providers in relation to the participant’s progress.”²¹ The Court Liaison Officer also attends a number of regular meetings with various stakeholder groups, attends the court when it sits and is involved in the usual reporting and administrative requirements of the position.

We estimated that the Court Liaison Officer deals with around 15 new people entering the court each month²² and that there are approximately 60 active participants in the program at any one time.²³

We also came to the view that the position is overloaded. Managing this number of people at any one time, and allowing for other functions, means very little time can be set aside for follow up or support.

21 Section 14.2 of the Homeless Persons Court Diversion Program Protocol, 5 October 2006.

22 Because of concerns about the completeness of data entry in the first few months of the program, this average is for March 2007 - September 2007 inclusive.

23 Our observation and the experience of the Court Liaison Officer is that people are involved with the court for around three months on average. With 15 new clients per month, the ongoing workload is around 60 clients.

Conclusion

- ◆ The Court Liaison Officer is over stretched.
- ◆ Some female defendants are likely to be more comfortable dealing with a female Court Liaison Officer.

4.1.2 Administrative Systems and the Court Database

The Homeless Persons Court list each week consists of new referrals and people returning on Good Behaviour Bonds and on bail. From week to week, the numbers can vary widely. For the 17 weeks of data we analysed,²⁴ numbers varied from a low of 10 people to a maximum of 31 people, with an average of 21.²⁵ There are two main concerns:

- ◆ first, the system in place to manage the number of new referrals to the court appeared to be ad hoc;
- ◆ second, the “bring up” system for people returning on Good Behaviour Bonds is a manual one. This meant there was no easily obtainable data on compliance with such orders (a manual analysis was done for this evaluation, reported on later).

There are numerous places in this report where we refer to problems in accessing adequate data. This is partly due to human factors: error in data entry or simply lack of time to enter data. The more fundamental issue however, is in the design of the database. It was developed originally for HART 4000, a service centre for homeless people with case management and community development functions. It was adapted, relatively cheaply, for the Homeless Persons Court. This meant however, that the “add on” components, such as additional demographic details about participants, referrals outwards and compliance monitoring are not tailored for the court’s use.

The database needs to be more intuitive, with fewer data redundancies and screens that force answers (so that all information is collected and errors minimised). It should also link to the database used by the courts and the police in relation to offences. This would reduce data entry time and improve consistency.

We understand the Department of Justice and Attorney is in the process of introducing a new specialty court database system. Depending on its design, these problems may be overcome in the future. Some specific training for court staff, about the operation of the new database will be needed.

Conclusion

- ◆ Administrative systems for managing and monitoring client throughput and information are not adequate.
- ◆ The current management database is not adequate.

²⁴ From May to September 2007. Some weeks were missing. As noted in numerous places in this report, the quality of the data was poor.

²⁵ Because of gaps in the data, splitting the numbers between people returning to the court and new clients is not reported. This information had only been collected for some weeks not all.

4.1.3 Initial Set Up

Government Departments noted that the Pilot had clients before systems and processes were developed, and before other elements of the Government's *Responding to Homelessness* were in place, particularly the homeless service hubs. The first few months of the Pilot's operation, by all accounts were chaotic at times. For example, it seems that data on up to 50 initial clients may not have been entered into the Access Database maintained by the court.

Conclusion

- ◆ Set up of the Pilot may have benefited from a longer lead time.

4.1.4 The Program Steering Committee

A Program Steering Committee was set up at the inception of the Pilot. This body is chaired by the Department of Justice and Attorney-General and includes representatives of the key government agencies involved in the court and the magistracy. Unfortunately not all of the government agencies have regularly attended. More regular attendance may have helped to resolve some of the operational issues for the Pilot as they arose.

Conclusions

- ◆ The Program Steering Committee has played an important oversight role, but unfortunately not all agencies have participated equally.

4.2 Identification of Participants

4.2.1 Initial Identification

As noted in Section 3.3 Referral Sources, most people are referred to the court by magistrates or Legal Aid Queensland. Each day the Court Liaison Officer prepares a list of **potential** referrals from each daily court list. This is based on information about an individual's charges and their address, for example, if shown as "no fixed address" or at a boarding house or in crisis accommodation. The list is given to Legal Aid Queensland, prosecutors and each presiding magistrate. The Court Liaison Officer also conducts awareness sessions for Magistrates about the Homeless Persons Court. Identification of many potential clients therefore occurs within the Magistrates' Court itself.

The third most common referral source is the individual themselves, presumably reflecting an awareness amongst homeless people about the existence of the court. One could expect this referral source to grow over time, as word-of-mouth increases awareness.

The analysis of potential demand conducted for this evaluation described in Section 3.1.2 and the experience of the Court Liaison Officer, indicate that some people who may be eligible for the Homeless Persons Court are not referred to it. There are a range of reasons:

- ◆ the busy nature of the Magistrates' Court;
- ◆ the defendant wants to deal with the matter on the day, rather than being referred;
- ◆ some people may not seek legal representation;
- ◆ some people do not appear and the matter is dealt with *ex parte*.

It was not possible to estimate which category, if any, was the most common.

In a practical sense, the fact that some people are not referred (or given the opportunity), is not an issue as the court could not adequately deal with larger numbers than at present. It is an issue however from an equity viewpoint.

Conclusions

- ◆ Identification of potential defendants in the Magistrates' Courts is adequate, although some people slip through the gaps.

4.2.2 Identification of Re-Offenders

Some people who have appeared in the Homeless Persons Court will later re-offend. There is no systematic way for identifying that these individuals have previously been dealt with by the Homeless Persons Court. It would be preferable for a considered decision to be made by the relevant magistrate as to whether individuals in this category, should be referred back to the Homeless Persons Court or not. This would also be consistent with the Homeless Persons Court Diversion Program Protocol which envisages a person committing further offences either on bail or after sentence, to have their matter re-listed.

Conclusions

- ◆ People who have appeared in the Homeless Persons Court and later re-offend, should, at the discretion of the magistrate, be returned to it. This would mean that past participation in the Homeless Persons Court needs to be flagged on an individual's criminal record.

4.2.3 Interaction with the Arrest Courts

The original program design envisaged the sitting arrest court magistrate identifying people for diversion when they appeared in that court. It was planned that the Court Liaison Officer would then assess them almost immediately and develop a diversion plan. Also, up to five people a week with impaired decision-making capacity would be referred to the Special Circumstances List to have their case heard.

In practice, the busyness of the court has meant that magistrates divert homeless people straight to the Special Circumstances List. Magistrates in the arrest courts do not have the time to interact with defendants in the same way as occurs in the Homeless Persons Court. Even if a homeless person is identified, it may not be possible for the Court Liaison Officer to assess them then and there, simply because he may not be at the court at that time. As well, not everyone who is potentially eligible for the Homeless Persons Court wants to be referred to it. The Court Liaison Officer and some of the magistrates said that some people just want their matter dealt with on the spot so it is over and done with.

In our view, this departure from the original plan acknowledges that diversion at the arrest court stage is not workable for this target group. Behavioural change often requires the more intensive and ongoing involvement of the court. As well, the attendance of service providers at the time a referral is made is often extremely important for some people, enabling on-the-spot linkages.

If an arrest court diversionary option were to be effective, it would need to target a relatively homogenous group of offenders and provide them with the same diversionary option,

making the case clear-cut and relatively quick to deal with. This approach would not suit many of those accessing the Homeless Persons Court, who have more complex problems.

Conclusions

- ◆ Diverting homeless people to service providers at the time they appear in the arrest court, (rather than adjourning the matter to the Homeless Persons Court/Special Circumstances List for a later hearing), has not occurred to any great extent.

4.2.4 Referral Processes

The Access Database maintained by the Homeless Persons Court indicates that around 500 people have been referred to the court, but roughly only 300 were actually assessed by the Court Liaison Officer.²⁶ What had happened to the missing 200 people?

Initially we had assumed this drop off reflected the nature of the client group. After referral from the general Magistrates' Court it may not be surprising that many people forgot to return to court at all, or came to a different court on a different date. The Court Liaison Officer spent some time analysing the relevant data. This showed that around 60 people had not been recorded as having been assessed, when in fact they had. A further group had appeared in the court, and although not assessed by the Court Liaison Officer, had followed through on the referral. The net result, once the numbers are adjusted, is that 40 people (8%) appeared to have slipped through the gaps. Again, it is not surprising that this could occur. It is an issue that is probably inherent in the service delivery model — as discussed above, diversion at the time of appearing in the arrest courts has not been effective in practice.

Conclusions

- ◆ The majority of people adjourned from the general Magistrates Court end up appearing in the Homeless Persons Court.

4.3 Assessment and Eligibility Criteria

4.3.1 Assessment

"The reason people present in the program is the tip of the iceberg and if they let you see a bit more, then there is ten times the issue there to be exposed ... As soon as you say you care, well how much are you going to provide to them? Where are you going to draw the line?" **(Service provider who attends the court regularly)**

The assessment process is time-consuming. Not all of the information elicited is actually ever used and even in this evaluation (one of the reasons some of the data was collected in the first place), it was hard to access. An example was data on previous mental health problems. Prima facie this is useful information. In practice, the way it was recorded meant it was unreliable.

The assessment process however is an important component of the program and helps in establishing a relationship between the Court Liaison Officer and the defendant. As the quote

²⁶ Data as at the end of September, 2007.

above illustrates, a presenting problem is often just the beginning.

Conclusions

- ◆ The assessment process should be reviewed to ensure that the right information is collected and this information is all recorded in the database.

4.3.2 Eligibility - General

“For a homeless person, a pen knife is a household item they need to survive on the streets. But they can get picked up for going armed in public ... there needs to be more understanding and more understanding shown by police, in exercising their discretion.” (Interview with service provider)

Current eligibility extends to people who are homeless, have committed defined minor offences and are not contesting the charges. The eligibility criteria however have been a continuing issue for program staff and were raised in interviews by service providers, the judiciary and the Queensland Police Service. We heard both that eligibility was too narrow and too broad.

Debate has ensued over the interpretation of “homelessness”, the type of offences that should be eligible, how to deal with people who commit eligible and ineligible offences, whether “not guilty” pleas should be possible and so on. In short — over every aspect of the criteria.

As the quote at the beginning of this section illustrates, some stakeholders also had concerns about the “legitimacy” of some of the public space and public nuisance offences that ended up in court. Others argued that eligibility should be broadened to include all summary offences and/or extended to a wider range of people, such as those who had impaired capacity, but were not necessarily homeless.

There has also been discussion about whether eligibility has been “stretched” for some individuals. Some examples of cases where some interviewees believed the boundaries had been pushed too far included:

- ◆ offenders with ineligible offences and eligible offences being allowed into the court (one of the case study participants was in this category). The Homeless Persons Court Diversion Program Protocol is silent as to how a defendant who has committed both eligible and ineligible offences should be treated;
- ◆ the definition of “homelessness” being loosely interpreted (the specific example was of a person classed as homeless, because they were about to move interstate);²⁷
- ◆ people staying in the court process, despite committing either more serious offences or more offences of a similar nature. (Three of the case study participants committed further offences whilst we were following their matters. All offences were of a similar nature.)

Conclusions

- ◆ It is probably impossible to ever determine a watertight and simple set of eligibility criteria for a program of this nature. There are always going to be shades of grey, where judgment and interpretation will be required.

²⁷ Note that we are reporting what we were told and cannot verify the detail of this specific matter.

4.3.3 Determining Eligibility

The Queensland Police Service argued that initial eligibility should be by consent of the prosecution, the defence and the court. To our knowledge, there is no other court that operates this way in the Queensland jurisdiction.

Another issue concerning the determination of eligibility, is where a defendant commits further offences whilst either on bail or after sentence. The Protocol requires the matter to be re-listed for sentence. This is on the basis however that “minor breaches need not necessarily be actioned.”²⁸ The magistrate is left to decide whether a person who re-offends should stay in the program. This is consistent with the functions of the magistracy.

Conclusions

- ◆ The determination of eligibility should remain with the magistrate.

4.3.3 Eligibility - No Contest

At present, to be eligible for the court, a person must plead guilty or not contest the charges. This was a matter of contention. Several interviewees argued that from an access to justice perspective, requiring a defendant to plead guilty or not contest the charges in order to access services that may assist them, is unfair. Two of the case study participants were uncomfortable about their inability to contest the charges.

A project conducted by Legal Aid Queensland in 2005, where homeless people committing minor offences were given access to legal representation in the court, found that 11% of charges were not proved.²⁹

The Queensland Police Service said that the no contest criteria should remain. If defendants were to contest charges it would change the nature of the program and place additional resource imposts on officers.

In our view there is merit in the access to justice arguments. We note also that similar programs in Victoria do not require a guilty plea. On the other hand, this court is a specialist jurisdiction targeting specific offenders. A person who pleads not guilty to all charges is not indicating a willingness to participate in the program.

Conclusions

- ◆ On balance, a reasonable approach would be to expand the eligibility criteria to defendants who wish to contest some charges, but not all. Defendants who are contesting all charges would be not eligible.

²⁸ See sections 15.1, 15.2 and 15.3 of the Homeless Person’s Court Diversion Program Protocol.

²⁹ Legal Aid Queensland, Homelessness and Street Offences Project, August 2005, 21.

4.4 Service Providers

4.4.1 Access to Service Providers by the Court

"The sad fact is that many people are not classed as high need by the service system. But this isn't because they don't need support. Its because there aren't enough resources to go round and resources have to be limited in some way." (Government stakeholder)

"The problem with couch surfing is that you often overstay your welcome, but there is no where else to go." (Cassie, case study participant)

A key aspect of the service delivery model is that there are adequate and high quality services available for referral to by the court. This is not always the case.

Finding crisis accommodation is an ongoing difficulty posed for the court. This was also illustrated through the case studies. At the end of the case study observation period, only three of the seven participants were in what would be described as relatively secure housing: Geoff and Cassie were in accommodation owned by Brisbane Housing Company and Don was at home with his mother.

On the other hand, Florence was housed in the private rental market and finding the payments difficult to meet, Eve was in a boarding house, Brian was homeless and Adam was in crisis accommodation and applying for community housing. The majority of case study participants therefore would still be classed as homeless — their housing situation remains tenuous. Potentially this increases their risk of re-offending.

Many people with mental health problems are also slipping through the gaps in service provision. For example, those with a diagnosable psychosis appear to be picked up by the mental health services, but those with less severe, but still significant problems — such as depression, panic attacks, anxiety or anti-social behavioural traits — receive more ad hoc treatment. The quote at the beginning of this section illustrates this point.

The court has faced similar problems in attempting to find residential places for people with substance abuse problems. Counselling services are not enough for some clients, who require more intensive assistance.

In general, the court is continually looking for additional service providers who may be able to fill identified gaps. An example from our observation of the court, was for a service that could assist a defendant to find a job.

Access to transport as a barrier, was also raised in a number of interviews. A homeless person may not have enough money to catch a train to court, to crisis accommodation or to see a doctor. One service provider noted the risk of a homeless person *"jumping transport and compounding their offending record"*.

If an offender is unable to access a service provider, the service delivery model falls over at the first hurdle.

Conclusions

- ◆ Access to adequate services, particularly crisis and long-term accommodation and treatment for mental health and substance abuse problems, will continue to hamper the effectiveness of the court's intervention, unless addressed in the wider service system.
- ◆ A small amount of brokerage funding could be considered for the court to cover the cost

of transport or other appropriate costs for defendants on a case by case basis. This could make a positive difference to the ability of the court to tailor an effective intervention.

4.4.2 Funding of Service Providers

Government services involved with the court — the Queensland Police Service, Legal Aid Queensland, Queensland Corrective Services and Queensland Health — were not given additional funding for the Pilot.

By way of example of the additional resource burden, the Queensland Police Service noted that cases take longer to resolve and files stay open for longer periods. As well, people sometimes turn up to court when not expected or alternatively do not appear when required. We agree that the nature of the court will impose additional administrative burdens and assume that Legal Aid Queensland, in representing defendants, may face the same issue.

No additional funding was provided to the Magistrates' Courts for the Pilot. This is a resource intensive court and taking a magistrate away from general duties puts strain on the system overall.

The two community sector agencies that regularly attend the court — Brisbane Youth Service and Sisters Inside — are also not funded through this initiative. Sisters Inside however recently received a specific, but one-off grant, to fund its attendance for the coming 12 months.³⁰ Similarly, the Aboriginal and Torres Strait Islander Legal Service, which regularly appears in the court, has no specific funding for the program.

Relying on the goodwill of these service providers to continue their involvement is not sustainable in the long term. As noted above, their involvement with the court is critical.

Finally, there is a Memorandum of Understanding (MOU) between the Department of Justice and Attorney-General, Queensland Health and HART 4000. The MOU requires Queensland Health and HART 4000 to undertake assessments of participants and forward a compliance advice to the Court Liaison Officer. There are no MOUs with the numerous other service providers involved in the court.

Conclusions

- ◆ Lack of funding for some service providers will limit their ability to continue to be involved with the court and is not sustainable in the long term.
- ◆ Memoranda of Understanding need to be put in place with the key service providers.

4.4.2 Quality of Service Provision

It was properly beyond the scope of this evaluation to undertake a comprehensive assessment of the quality of service provision, but it is clearly integral to the service delivery model. Our observation of the key service providers at the court and interviews with them, is that all were professional, motivated and committed to helping their clients.

³⁰ From the Legal Practitioners Interest on Trust Account Funds, a grant program administered by the Department of Justice and Attorney-General

Four case study participants also reported positive interactions with service providers to which they had been referred:

- ◆ Adam was supported by Brisbane Youth Service and continued to maintain strong links with them;
- ◆ Eve was referred for drug and alcohol counselling and said it was *'very helpful, I had not done anything like that before'*. She was also put in touch with Sisters Inside and subsequently attended an 'Anger Management' course that she says has been helpful. She is also attending a drop in facility for homeless people once per week. Eve claims to have never used services such as this before her interaction with the Homeless Persons Court;
- ◆ Florence said that her involvement with the Homeless Health Outreach Team (HHOT) was the first time she had been *"case managed"*. HHOT also provided counselling. She described this arrangement as *"good to know and have someone to talk to"*;
- ◆ Geoff is in regular contact with mental health services, Biala and West End Community House. A staff member at West End Community House *"has helped me a lot"*. Roma House has also been helpful.

Two of the three other case study participants already had existing case workers/advocates (Brian and Don) and the third person was not required to attend any specific service (Cassie).

Conclusions

- ◆ The quality of service provision, to the limited extent we were able to assess it, appeared adequate and professional.

4.4.3 Service Providers in the Court

The service delivery model depends on certain of the service providers being physically present when the court sits. This is because it allows a defendant to be immediately linked with a service that may be able to help them. A good example was a defendant who had been charged with prostitution: because a representative of Sisters Inside was at the court, she was immediately introduced and received ongoing help from them for the next few months.

This immediate linking helps establish relationships and gets a defendant off "on the right foot" when initially trying to deal with their offending behaviour. This is illustrated in the case studies and was also confirmed as important for Indigenous clients in the interview with the Aboriginal and Torres Strait Islander Legal Service.

The alternative approach of asking a homeless person to find their own way to say a drug and alcohol counsellor or Brisbane Youth Service may set them up to fail. As a number of interviewees pointed out, people accessing this court have trouble remembering appointments, do not have addresses where they collect mail, have difficulty in filling in forms and so on.

A number of service providers noted that service provider attendance varies and that *"it is hard to keep track of who is there"*.³¹ For example, during the months we were observing the court, the mental health team from Queensland Health stopped attending.

Both the magistrate and the Court Liaison Officer have attempted to find new service providers to either attend the court or that may be potential referral points. An example were recent efforts to find a service provider (and potential sentencing option), for dealing with offenders involved with graffiti. Both the magistrate and Court Liaison Officer are hampered in these

31 Interview with Government service provider

efforts by a lack of time to adequately source and follow up new service providers and then to continue to work with them.

Conclusions

- ◆ Attendance of certain service providers at the court is vital.
- ◆ There is little coordination as to which service providers attend the court and how they may link together.
- ◆ An important function of the Court Liaison Officer and the presiding magistrate, is to build and manage relationships with existing service providers.
- ◆ New service providers/referral agencies should continue to be sought by the court. This will provide the court with new sentencing options.

4.5 Sentencing and Diversion

4.5.1 Bail

Concerns about the use of bail were raised by some interviewees. Their issue was that attaching conditions to a bail undertaking, such as requiring a person to attend a specific program and/or return to court on a number of occasions, was a distortion of the way bail is intended to operate.

Two specific concerns were raised. The first was that a defendant has not been found guilty, but is required to undertake certain actions anyway. The second concern was the potential for breaches of bail to occur when the chaotic nature of defendants' lives make it difficult for them to remember continued court re-appearances or to comply with other conditions. Breaches of bail could therefore mean a person is further criminalised.

The Protocol underpinning the operation of the Homeless Persons Court partly addresses this concern, by noting that as "the program is a voluntary opt in, it's unsuccessful completion is not a matter to be placed before the court on sentence."³²

Amendments to the *Bail Act 1980 (Qld)*, effective in July 2006, should also address these concerns. Section 11(4) provides that the Magistrates' Courts can require defendants to participate in "a program prescribed under a regulation". The Homeless Persons Court is one such program.³³ A breach of a bail undertaking under s 11(4) is not an offence.³⁴

Conclusions

- ◆ The use of bail in the Homeless Persons Court is consistent with legislation, but may be misunderstood by some stakeholders.

³² Homeless Person Court Diversion Protocol, Clause 16.3.

³³ Section 3(a) of the *Bail (Prescribed Programs) Regulation 2006 (Qld)*.

³⁴ Section 29(2)(c) of the *Bail Act 1980 (Qld)*.

4.5.2 Sentencing - Good Behaviour Bonds

The Magistrate often imposes a Good Behaviour Bond, requiring an offender to return to court at regular intervals.³⁵ This allows the court to monitor progress. The ability of the magistrate to impose such a condition is important. As illustrated by the case studies, the involvement of the court and the way people are treated are important factors in the rehabilitation of offenders.

The power for a magistrate to impose a condition on a Good Behaviour Bond is contained in s 19(2) of the *Penalties and Sentences Act 1992 (Qld)* (the "Act"). This provides that "the court may impose any additional conditions that it considers appropriate". A magistrate cannot however record a conviction if the bond is imposed under s 19.³⁶

If a magistrate wants to impose a Good Behaviour Bond **and record a conviction**, s 32, rather than s 19, of the Act applies. The difficulty is that s 32 does not include a provision — along the lines of that in s 19(2) — allowing the magistrate to impose additional conditions on an offender, such as a requirement to return to court.

This means that an offender can only be required to return to court under a Good Behaviour Bond, if that bond is made pursuant to s 19. It was argued that this may not be appropriate in some cases, where an offender has had previous convictions for the same offence. Not recording a conviction however, appears to be the only sentencing option open to the magistrate to enable re-appearances under a Good Behaviour Bond.

Conclusions

- ◆ Legislative change to s 32 of the *Penalties and Sentences Act 1992 (Qld)* may be required to allow the court to impose additional conditions, when making an order for a recognisance. Such a change would be consistent with the equivalent provision in s 19 of the Act.

4.5.3 Sentencing - Breaches of Conditions/Further Offences

The Queensland Police Service argued there needed to be stronger sanctions put in place, if an offender did not meet sentencing conditions. Although not explicitly suggested by them, an example would be that any re-offending would automatically bar a person from the Homeless Persons Court. In the Drug Court for example, an offender who breaches an Intensive Drug Rehabilitation Order can face sanctions, including imprisonment.

The Drug Court program however, is a more clear cut and prescribed program than the Homeless Persons Court. There are three explicit phases in the Drug Court program and participants are case managed and monitored throughout. The Homeless Persons Court in contrast, reflecting the nature of the client group, uses a range of referral mechanisms and case management is often variable.

Where an individual fails to comply with a sentence, the Protocol requires the matter to be re-listed for sentence. In our view, it is appropriate for the magistrate to exercise their discretion in such cases, as they do in all sentencing matters. It is then a matter of judgment for them as to whether a person receives a more severe sentence and/or remains in the court.

³⁵ 47% of people whose matters were finalised between May 2006 and September 2007 were given Good Behaviour Bonds without supervision.

³⁶ Section 17 of the Act provides that a recognisance is appropriate if "no punishment or only a nominal punishment should be imposed on an offender".

A better data system, with accurate information on individuals and that “flagged” individuals who re-offended as having appeared previously in the Homeless Persons Court, would support the magistrate’s decision-making in this regard.

Conclusions

- ◆ Where an offender breaches a condition of sentence, the current re-sentencing approach as set out in the Homeless Persons Court Diversion Program Protocol, is appropriate.

4.5.4 Diversion Plans

The Court Liaison Officer is the first point-of-contact for the majority of court participants.³⁷ He will often make referrals to address the immediate need of a person, such as for crisis accommodation (assuming it is available). But in practice, the Court Liaison Officer does not recommend a diversion plan to the magistrate.

As illustrated by the case studies as well as our observation of the court, the magistrate often discusses various referral options with service providers during the court hearing process itself. Depending on the individual, it can take time for an appropriate rehabilitation strategy to be developed, for example, because the magistrate requires assessments to be undertaken.

The original program envisaged the magistrate playing a more passive role and either accepting or rejecting a diversion plan recommended by the Court Liaison Officer, rather than developing it. This is how the Court Integrated Services Program operates in Victoria.

Referrals to service providers are tailored for each individual. This was confirmed by Legal Aid Queensland, service providers, the case studies and our observation of the court. However no formal diversion plan is put in place, in the sense the term is generally used in the service sector. For example, goals are not set and a formal plan is not recorded on the court database. Instead, the service delivery model relies on service providers monitoring and working with offenders. Services may of course develop their own plans for individuals.

As noted in the discussion about the resourcing of the court (Section 4.1.1), one aspect of the role of the Court Liaison Officer is to “liaise with the service and treatment providers in relation to the participant’s progress”. This has not occurred in any systematic way. Follow up does occur but informally and on ad hoc basis.

Conclusions

- ◆ The magistrate, not the Court Liaison Officer, has the most impact on developing a referral or rehabilitation process.
- ◆ Defendants are given appropriate referrals, however formal diversion plans are not put in place.
- ◆ Follow up of participants in the Pilot has been ad hoc, rather than systematic.

³⁷ As discussed later, some female defendants have been uncomfortable speaking to a male. Others have “slipped through” the net.

4.6 Summary and Conclusions

Implementation of the Pilot has differed from that originally planned. In particular, diversion at the time an offender first appeared in the arrest courts has not occurred and the Court Liaison Officer has not had enough time to adequately follow up and support offenders.

On the other hand, the court has made effective use of its limited resources. It has sourced service providers to work with it and is continuing to look for new referral agencies that may help in rehabilitating offenders. The court has very strong support from stakeholders.

Most people are referred to the Homeless Persons Court by other magistrates. While not everyone who is potentially eligible is referred, the court would be unable to cope with a higher level of demand. One issue however is the identification of people who re-offend after sentence. The fact that they may have previously appeared in the Homeless Persons Court may not always be picked up by current systems.

The eligibility criteria have been a source of ongoing debate and some changes could be made to refine them. Formal diversion plans for individuals, in the sense used in the social services sector, are not developed, but tailored referrals are put in place for individuals.

At times, the court has also struggled to find appropriate referrals for participants. The most common issues have been an inability to access crisis accommodation and mental health or substance abuse treatment services. On some occasions, a lack of access to transport has also been a barrier (for example, where a person cannot afford a fare to access crisis housing).

The court has not been given any new sentencing options. This has raised some issues in relation to the use of Good Behaviour Bonds where a magistrate may also wish to record a conviction (there is no issue where a conviction is not recorded).

The current service delivery model however will not be sustainable in the long term unless adequate funding is provided for the administrative functions of the court (staffing and a court database), the magistracy and the service providers involved.

5

IS THE SERVICE DELIVERY MODEL APPROPRIATE? (*Process Evaluation*)

The analysis in Section 4 focused on the Homeless Persons Court as it currently operates. A broader and pertinent consideration is whether the current approach is the most appropriate. There may be better ways to obtain the same results.

This section, in considering the issue of “appropriateness” starts with a fundamental question: is there a need for a specific intervention that targets homeless people in the criminal justice system? It then examines the current service delivery model and the aspects of that approach that are effective. The final discussion outlines some suggested changes.

5.1 Is there a Need for an Intervention Targeting Homeless People?

The Experiences of Homeless People in the Criminal Justice System

Section 3.1 described the demography and other relevant characteristics of the people who have appeared in the Homeless Persons Court to date. A cohort of this nature appear to be more at risk of coming into contact with the criminal justice system. For example, according to a 2006 paper from Monash University’s Centre for Forensic Behavioural Science “(i) ncontrovertible evidence now exists to show that the prevalence of mental disorder among those in the criminal justice system (prisoners, offenders on community orders and accused on remand) is significantly greater than is found in the general population.”³⁸

The Literature Review, undertaken as part of this evaluation, notes that:³⁹

“Many homeless people have little choice but to drink, urinate, sleep and socialise in public because they have nowhere else to go.⁴⁰ The ‘public space is their home’ and they therefore engage in daily activities in public spaces.⁴¹ On their own these activities are not illegal, however, when conducted in public they may become so. There is also a suggestion that discrimination against homeless and Indigenous people exists in the implementation of public drunkenness offences.”⁴²

What many commentators go on to note however is the seeming inability of the criminal justice system to have any lasting impact on certain groups of offenders. For example, Payne writes that:

“An offender’s lifestyle and drug use are also shown to be linked to recidivism. Unemployment, limited or low level education, poor residential location, a history of mental health problems, family instability and serious, prolonged drug use are the key

38 J Ogloff, R Davis, G Rivers and S Ross, *The Identification of Mental Disorders in the Criminal Justice System*, Centre for Forensic Behavioural Science, Monash University, 2006, 6.

39 See Literature Review, Section 1.4 Underlying Causes of Offending Behaviour Amongst Homeless People

40 Monica Taylor, ‘Lock ‘Them’ Up?’ (paper presented at the Disability and Mental Health Aren’t Crimes Conference, Brisbane, 17-19 May 2006), 10.

41 Tamara Walsh, ‘Who is the “Public” in “Public Space”?’ (2004) 29 *Alternative Law Journal* 81, 83.

42 Ibid.

factors identified.”⁴³

The point that “the courts are merely spinning their wheels by continuing to take a traditional approach to prosecuting these defendants”⁴⁴ was made in a number of ways during interviews with the magistracy and service providers.

The obvious question however is whether a different approach by the courts can assist in changing the behaviour of those with mental disorders and other complex problems.

Can a Court Make a Difference?

The Literature Review discusses the emergence of problem-solving courts, within the philosophical framework of therapeutic jurisprudence. The Literature Review notes that although there have been few, if any, comprehensive evaluations of problem-solving courts,⁴⁵ there is evidence that court involvement is important in changing the behaviour of offenders. The evaluation of the South East Queensland Drug Court program is a case in point. Similarly the evaluation of the North Queensland Drug Court program found that:

“(m)any drug court evaluations in Australia and internationally have highlighted the support and praise of the magistrate as an important and unique component to the drug court. This is also the case in North Queensland, with participants consistently reporting that although they did not like appearing before the drug court, the positive feedback from the magistrate was very important.”⁴⁶

As discussed further below, the authority and involvement of the court as a catalyst for behaviour change, was also a theme in this evaluation.

The conclusion that the authority of the court and involvement of the magistrate can make a difference is an important one. If not, an alternative model could be to employ more case workers in the field to link with homeless people, without court involvement.

Conclusion

- ◆ There is a need for new approaches to dealing with homeless people in the criminal justice system.
- ◆ The courts are well placed to do this.

5.2 What Elements of the Current Model are Effective?

We identified a number of factors in the current model as working effectively:

- ◆ participants recognising that the court is giving them a chance to change;
- ◆ listening to people and involving them in the process;
- ◆ tailoring approaches, so that the court is involved more with some offenders than others;

43 Jason Payne, ‘Recidivism in Australia: findings and future research’, *Research and Public Policy Series*, No 80, Australian Institute of Criminology, 2007, xii.

44 Andrea Cabral, *Final Report to Eisenhower Fellowships*, 2007 (unpublished). Ms Cabral was commenting on the new approach of the Homeless Persons Court. The report was provided to the evaluators by the Hon. Linda Lavarch, M.P.

45 Geoff Phelan, ‘Solving Human Problems or Deciding Cases?’ (2004) 13 *Journal of Judicial Administration* 244, 245.

46 Jason Payne, ‘Specialty Courts: Current Issues and Future Prospects’, *Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice*, 2006, 6.

- ◆ requiring some offenders to return to court to report on progress;
- ◆ linking some people, for the first time, to service providers;
- ◆ sentencing conferences.

Each element is discussed further below. It is worth noting that a number of the elements overlap.

5.2.1 The Court Provides an Opportunity for Change

Case study participants saw the court as providing them with an opportunity to change, to give them a chance. This sentiment was shared by all case study participants.

"The court has made a big difference to me ... it has given me a chance ... it could have been a lot worse." (Florence)

"The immediate benefit ... is that the court process allows time for a person to address the causes of their offending behaviour and improve their own personal circumstances." (Support person for Brian)

"I don't know where I'm going in life, but the court has given me an opportunity to change my circumstances." (Geoff)

The same theme is present in the short interviews conducted with defendants outside the court, set out in Appendix 2. Illustrative quotes include:

"(The Pilot) has forced me to accept things I didn't want to accept." (Edward)

"The court has given me a chance. Kept me out of jail." (Michelle)

"They try their best to give you a chance ... that lady (the magistrate) was really nice to me." (Alex)

"Special circumstances is really, really good. If it was around when I first started, I still wouldn't be here." (Troy)

"The court gives people a chance to get help in life ... actually listens to them." (Susan)

A Christmas Card, from a current defendant with a similar message, is shown on the last page of this document.

5.2.2 Listening to People, Involving them in the Process

Defendants responded very positively to the opportunity to tell their story and felt that someone was listening to them.

"The way she goes about it ... she sits there and she listens, she is not just a normal judge ... she asks you what you want to get out of this". (Eve, case study participant)

"(The court) tailors sentences for a person's capability. She's such a nice lady, but I don't think she'd take any shit ... she is very just and equitable." (Geoff, case study participant)

This positive view contrasted with the usual court processes. Case study participants who had previous experience of the court system recognised that this court was operating from a different philosophical basis. Adam for example said *"they treat you different here, and I would know"*.

The same themes emerge from the 17 brief interviews we conducted with people appearing in the court, set out in Appendix 2. These were that:

- ◆ the court was trying to help them;
- ◆ those people with previous experience of the court system, recognised the difference in approach between the Homeless Persons Court and the general Magistrates' Courts. They were very favourable about the comparison.

Illustrative quotes include:

"She understands. She puts out her words, what is right and what is wrong. (Other courts) don't really care, don't bother about you." (Emily)

"In this court, if you don't understand something, at least you can ask. In South Australia, I didn't understand." (Justin)

"The court is there to help us ... Other courts don't give a shit, just there to screw you over and send you to jail ... But if you're trying to improve your life ... they try to help you." (Troy)

5.2.3 Tailoring Approaches

The court engages with some offenders more than others. Some people, depending on their matter, may only appear in the court once. In contrast, other people, depending on their matter and willingness, can be extensively involved with both the court and service providers. For example, a matter may be adjourned a number of times, to allow for specific assessments of an individual or to find an appropriate service provider.

In this sense, the service delivery model is pragmatic and has been driven by available resources. Time and effort is invested by the magistrate and court staff on people who take the opportunity offered to them. However, there is little point in investing limited resources on those people who, for example, do not connect with service providers or who do not return to the court as required under Good Behaviour Bonds. The court takes a common sense approach and ends up targeting some offenders more than others.

Had the court access to more funding, presumably it may have taken a stronger role in trying to stay in touch with a greater number of people and provided more ongoing assistance.

5.2.4 Returning to Court

The case studies highlighted that returning to court was an integral part of the rehabilitation process for some offenders. The chance for an individual to show they could comply with the court order appeared to be an affirming experience.

"Not many people [would] come back to report like me". (Don, case study participant)

"She'll see the change in me." (Edward, short interviews with defendants)

The magistrate noted that post-sentence supervision, via Good Behaviour Bonds, was proving very effective. One defendant for example saying *"I'm going to make you proud of me"*.

Two other case study participants, Florence and Eve commented when first interviewed that in other courts they had had many "fail to appears". One person interviewed outside the court said:

“After I got out of jail last time ... the judges were all so cruel, they didn't care.. I promised myself that I would never turn up again or pay a fine.” (Kath, short interviews with defendants)

It seems that returning to court was perceived as such an unpleasant a task for some people, that they preferred to avoid it, even though the consequences were further charges. In the Homeless Persons Court in contrast however, re-appearing as part of a Good Behaviour Bond was seen in a completely different light. Support and praise from the magistrate was an important component of their rehabilitation.

There were, however, some different views. One of the defendants we interviewed in the short interviews (Appendix 2), was unhappy with having to return to court as part of a Good Behaviour Bond. A requirement to return to court was also seen as an issue by the Aboriginal and Torres Strait Islander Legal Service who were concerned such an approach may not be appropriate for their clients.⁴⁷ Some of their clients are used to “Murri time” and may not remember to return to court or may find the experience distressing.

Data about the number of people who return as part of a Good Behaviour Bond is not specifically collected by the court. Registry staff did a manual check for us over a three month period.⁴⁸ This showed that nine of the 15 people who were required to re-appear in the months of July, August and September, actually did so (a return rate of 60%). There is no benchmark against which to measure this, however it would be unlikely, given what we know about this client group, to expect a 100% return rate. This statistic could usefully be monitored in the future however.

The magistrate and Court Liaison Officer said that most people return as required. Sometime this may be on a slightly different date, for example where an individual was in hospital on a return date and could not attend for that reasons.

During our observations of the court we noted the experiences of a number of offenders returning to court as part of either conditional bail or a Good Behaviour Bond. They were required to appear before the magistrate, or in some cases to report to the Court Liaison Officer.

Appearances tended to fall into two categories. Some people came back with positive stories, advising the magistrate they were progressing. This news was obviously good and they were congratulated by the magistrate. Other people, however, came back with problems — an inability to find accommodation or a referral that wasn't working out for them. This post-sentence supervision sometimes also uncovered issues that previously had not been brought to the attention of the court, such as specific health problems. The court tried to intervene where possible, to address these problems.

By way of example, we observed one young man who returned to court on a date when he was not expected. As part of his probation, he was required to report to the police station in Fortitude Valley. He was finding this difficult as it meant coming into contact with other young people, who could lead him astray. He asked the magistrate if he could instead report to a different police station. In another case, a return appearance under a bond, uncovered the serious mental state and substance abuse problems of an offender. She was subsequently assisted to get medical help by Sisters Inside.

⁴⁷ We note they can raise such concerns during their submissions to the court.

⁴⁸ This was a manual and time-consuming exercise and we sincerely thank the Registry staff involved.

5.2.5 Linking People with Service Providers

Some service providers had existing relationships with people appearing before the court. Don and Adam, two of the case study participants for example, were already linked to the service system. Where people had access to such services, support people would frequently accompany them to court and may remind them of court dates.

On the other hand, some people reported they had not had much contact with agencies that may help them (Eve and Florence in the case studies are examples). The court then, was the first time they had been linked in a meaningful way with services that may help them.

5.2.6 Sentencing Conferences

On occasion, the court will hold a sentencing conference. These occur in the more complex cases and involve service providers, support people, the prosecution and defence in a more collaborative discussion about the appropriate way forward. This approach makes sense for difficult matters.

5.3 Other Service Delivery Models

5.3.1 Other Options

There are a number of different ways that the Homeless Persons Court could operate, compared to the current model. For example, it could manage its own crisis accommodation or have its own dedicated mental health workers and drug and alcohol counsellors. Each client could be allocated a case manager who worked with an individual intensively, perhaps over a reasonably long period of time. Some of the programs operating in Victoria have some of these elements.⁴⁹

The program could also be much more structured, perhaps for example, only targeting a certain type of offender such as those with drug and alcohol problems and providing exactly the same service pathway for everyone.

We do not think that operating through the arrest courts however is a viable approach, given the experience of the Pilot to date. This was discussed in Section 4.

5.3.2 What is the best approach?

The place to start in any discussion about the best service delivery model is the needs of the client group. The Pilot has provided a good insight into this.

We know that the homeless people appearing in the court have complex problems and that addressing them is not easy. There is no “one size fits all approach” or off the shelf remedy. We also know that some people will be more successful than others. Any service delivery model must be based on this knowledge.

There is much to recommend in the approach taken in Victoria, where some of their

⁴⁹ See the Literature Review for a description.

programs have direct access to accommodation services and brokerage funding. This means there is seamless service delivery and the service gaps, of the kind the Homeless Persons Court sometimes deals with, will be less likely. This is an approach that could be adapted for Queensland. The court for example may be able to come to an agreement with an accommodation provider to set aside a certain number of beds. The court will require some brokerage funding to do this.

The court would also be more effective if the Court Liaison Officer was able to provide more assistance and follow up to people referred to it. Our description of this is case coordination and would require the employment of additional staff to be adequately resourced. The court should not try and offer case management; this is a more intense and ideally long-term relationship with an individual. If there is to be case management, an external service provider, who is in a position to continue their involvement after the court case is over, should play that role.

The service delivery model should also remain flexible, rather than become more structured. This is **not** a program like the Drug Court, where participants follow the same pathways and graduate between levels. Reflecting the nature of the client group, the way in which the Homeless Persons Court deals with offenders needs to be flexible. The court should continue to take a pragmatic approach, so that some people, depending on their needs, will be more involved with the court than others.

The discretion of the magistrate therefore in deciding initial and ongoing eligibility is a key element of the court.

5.4 Summary and Conclusions

There is a need for new approaches by the criminal justice system in dealing with homeless people, particularly those with complex needs. This group of offenders are often described as trapped in a “cycle of offending”. Although it is still early days, there is evidence from both this evaluation and those of other speciality courts, that the involvement of the court can be a catalyst for behaviour change for some offenders.

Defendants interviewed during the evaluation saw the court as being there to help them and offering a chance for change. They appreciated being listened to and involved.

The current service delivery model is pragmatic, with the court engaging with some offenders more than others, depending both on an individual’s matter and their willingness to be involved. The approach is therefore tailored to each individual and based on building relationships — with the magistrate, the Court Liaison Officer and service providers.

The Homeless Persons Court is **not** a program like the Drug Court, where participants follow the same pathways and graduate between levels. Reflecting the nature of the client group, the way in which the court deals with offenders needs to be flexible.

The current service delivery model should remain, but with a greater emphasis on case coordination by the Court Liaison Officer and providing the court with some direct funding to overcome some of the service delivery gaps.

6

WHAT RESULTS ARE BEING ACHIEVED? (*Outcome Evaluation*)

This section addresses the evaluation question: what results are being achieved in the Homeless Persons Court? It begins by describing expected results, then assesses what results have actually been achieved.

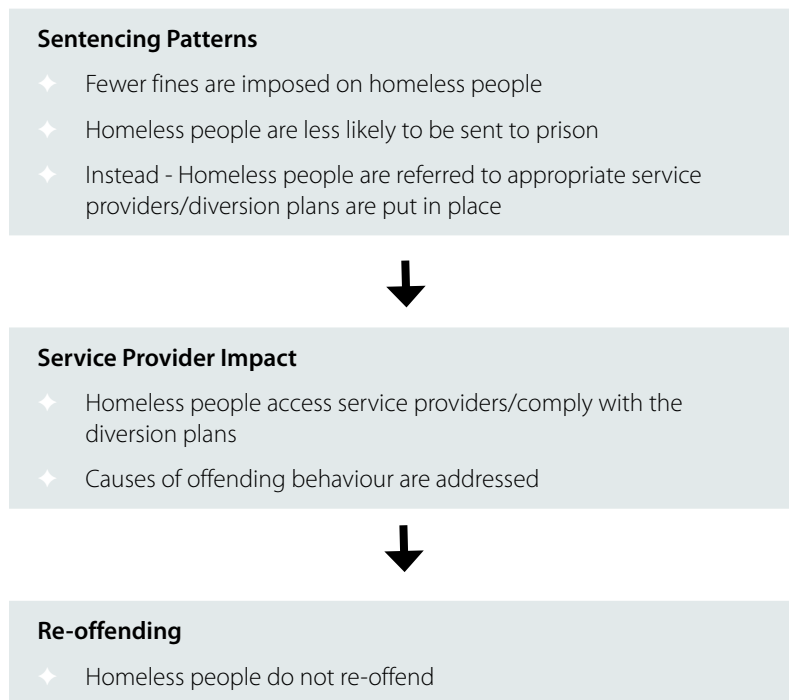
The outcome evaluation was significantly limited by two factors. First, as noted in numerous places in this report, there was a lack of reliable quantitative data aggregating what had happened to participants. Second, at the time this evaluation was drawing to a close, the Pilot had been operating for just 17 months. This is a relatively short time frame over which to assess changes in offending behaviour.

Both factors influenced the extent to which we could draw firm conclusions about what was being achieved.

Appendix 4 includes some brief comments on an outcome evaluation in the future.

6.1 Expected Results

The diagram describes the impact the Homeless Persons Court is expected to have on offenders, at various stages in the process.



The expected results described above are also reflected in some of the aims of the Pilot. These were set out in Section 2.2 earlier, and include:

- ◆ preventing “the entrenchment of homeless people in a cycle of offending and punishment”;
- ◆ to “reduce the number of fines” and “the risk of imprisonment” and
- ◆ to refer homeless people to “services to address accommodation, health and other needs”.

6.2 Actual Results

6.2.1 Sentencing Patterns

Fines

Of the 108 matters finalised between May 2006 and September 2007, 24 fines have been issued. This represents 22% of matters finalised.

In the general Magistrates' Courts, "approximately 90% of offenders charged with public order offences receive a fine".⁵⁰ The evaluation of the sentencing outcomes of the Homeless Persons Court conducted by Walsh in August and October 2006 also considered the number of fines (see Section 3 of the Literature Review). One of the main findings was that similar types of defendants who appeared before the general arrest court were more likely to be sentenced by way of a fine — 28% received fines in the general arrest court as compared to 15% in the Homeless Persons Court.⁵¹

The presiding magistrate said that without the option of referral to service providers, more people would have been fined, for want of other sentencing options.

Imprisonment

"The program is really good for clients one repeat offender had been with us for five years, and last year he had a court appearance and if we had not known about the court for him, he would have gone to jail The magistrate gave him the proverbial kick and three months to straighten up and that is exactly what he needed. Our client finally recognised he had to make a change. However, this does not happen overnight and he had two more appearances and he was assisted by Legal Aid. He has now made big changes and after several different living arrangements, he is now doing well in a rehabilitation clinic." (Service Provider interview)

"I'd have been in jail, if I'd gone to the other courts." (From short interviews with defendants, Appendix 2)

Of the 108 matters finalised between May 2006 and September 2007, five people have been imprisoned.

Some of the case study participants and those participating in short interviews outside the court (Appendix 2), said that the sentencing practices in the Homeless Persons Court differed to that in the general Magistrates' Courts. They thought it was less likely for a person to be sent to jail if a matter was heard in this court.

The presiding magistrate estimated that around one-third of defendants appearing in the Homeless Persons Court could potentially be sent to jail. On this basis, of the 108 matters finalised, an estimated 36 custodial sentences would have been imposed.

⁵⁰ This excerpt is from an internal Department of Justice and Attorney-General document describing the proposed operation of the program.

⁵¹ Tamara Walsh, 'The Queensland Special Circumstances Court' (2007) 16 Journal of Judicial Administration 223, 230.

Instead - referrals to service providers

"Some of the sentencing practices are actually tougher than getting a fine ... they require people with chaotic lives to keep returning to court ... the services need to be there for them."

(magistrate)

There was no reliable data on the number of people referred to service providers and which type of referral was most common. Our observation in the court was that the majority of people were either referred to some type of service or linkages with existing service providers were reinforced and continued.

There were two views about sentences amongst stakeholders. One view, as illustrated in the quote above, is that sentences in the Homeless Persons Court are actually tougher than in the general Magistrates' Courts. This is because defendants can be required to attend rehabilitation programs and/or re-appear in court as part of a Good Behaviour Bond and report on progress. Being fined for example, gets the matter over and done with and could be seen as a simpler, easier option by some people.

The other view, expressed by the Queensland Police Service, is that sentences are softer and may not be meeting community expectations. To our knowledge however, there have been no appeals on sentence.

Our view is that initial sentencing practices are consistent with the aims of the court, broader principles of therapeutic jurisprudence and the Homeless Persons Court Diversion Program Protocol. It is not a question of whether sentences are "tougher" or "softer", but more appropriate for the cohort of people appearing in this court and consistent with its aims. The court is not dealing with people who have committed serious, violent offences. In particular, people who may avoid jail do so only under certain conditions, such as attending programs to address the cause of their offending behaviour — requirements that have not been imposed on them in the past.

Conclusions

- ◆ Fines and imprisonment are less likely in the Homeless Persons Court.
- ◆ Sentencing practices involving referrals to service providers, are consistent with the aims of the court.

6.2.2 Service Provider Impact

Access to Service Providers and Compliance with Diversion Plans

There was a lack of comprehensive data on the numbers of people referred to various service providers and whether individuals followed through on the referral.

Service providers, the Court Liaison Officer and the magistrate told us however that most people did contact service providers as required and comply with their referral. Of course, there is a group that does not. It was not possible to estimate the size of either cohort.

Addressing the Cause(s) of Offending Behaviour

"I've seen a number of people who have been helped by the program complete abstinence, a period of abstinence followed by a lapse, followed by some enlightenment, a period of

significant reduced use ... people begin to experience what it is like to feel normal, to think more clearly.” (Service provider interview)

“No client has had a negative experience, no matter what has happened there is always something for you to build on.” (Service provider interview)

“(The court has) helped me stay out of trouble in the future.” (Eve, case study participant)

“It has really made me see I want to finish with court now, and have a stable environment so I can get the kids ... I need to develop life skills for this” (Adam, case study participant)

Again, due to a lack of data and the short time frame, we could not draw conclusions about the actual numbers of people who had successfully addressed the causes of their offending behaviour. Similarly we could not draw any conclusions about the number of people who had not successfully addressed the cause of their offending behaviour.

The case studies and interviews however suggest two things.

First, that at least some people are making an attempt to address the cause of their offending behaviour. Service providers were very clear about this and could point to a number of examples of clients who were accessing programs and trying to change the ways in which they lived their lives.

Second, that “success” is a relative factor and needs to be measured on a case-by-case basis. The quote at the beginning of this section illustrates this point. At its most basic, “success” might be a person actually attending a counselling or treatment program when they have not done so in the past. This is at least a beginning. Other people might reduce their drug use, improve their health, start taking medication for a mental illness, re-connect with family and so on. Some people may never re-offend; others may offend at a reduced rate or in less serious ways. Some people may make significant progress right from the start; others may have a more “stop/start” experience and not begin to make any changes for some time. Many people talked about the need for “small steps” and how progress may be iterative.

This variability of outcome was illustrated in the case studies.

- ◆ Florence had cleared up all of her legal matters, found more stable accommodation and made significant headway in addressing her addiction.
- ◆ Adam had found some part-time work, was looking at training courses and hoping to “get my kids back”.
- ◆ Cassie was feeling more confident about the future and hopeful of being accepted into rehabilitation.
- ◆ Don was doing some volunteer activities and had undertaken several job trials.
- ◆ Eve had attended drug and alcohol counselling and anger management counselling.

Three of the seven case study participants had re-offended, during the time we were following their cases (Brian, Geoff, Don). This smaller group however still believed that the court intervention was a good thing for them. They had attempted to address their underlying problems, albeit not with complete success. “Success” for this group was of a different nature. It includes factors such as:

- ◆ returning for court appearances as required;
- ◆ attending appointments with a service provider and engaging with them;
- ◆ staying off drugs for a longer period of time than in the past;
- ◆ beginning to feel part of the community again.

As described in the Literature Review, evaluations of similar initiatives to the Homeless Persons Court in other jurisdictions have also noted that success needs to be measured in comparative terms. A report into the Community Court Program in Los Angeles for example found that homeless people may need to make several attempts at establishing a stable lifestyle:

[t]herefore, getting clients enrolled in a treatment program, even for short lengths of stay, may increase their chances of completion at a later date ... and should still be considered a 'success' and of benefit to the community and the individual.⁵²

Conclusions

- ◆ We could not draw any conclusions about the number of people who were successfully addressing the cause of their offending behaviour, or were attempting to do so.
- ◆ Evidence from the service provider interviews and the case studies however, suggest that at least some people are making an attempt to address the problems which are contributing to their offending.
- ◆ The degree to which offenders are successful in addressing the causes of their offending behaviour will vary. Success is a relative term and needs to be measured on a case by case basis.

6.2.3 Re-offending

We could not draw any conclusions about the re-offending rates of participants in the Homeless Persons Court. The main reason is that the Pilot has not been operating for a sufficient length of time to allow for a comparison of pre and post offending rates.

Ideally recidivism rates, measuring both incidence and severity of offending, could be measured by comparing pre and post program offending over an appropriate length of time. In the longer term, measures of recidivism need to be put in place for this program and across the justice system. We recognise this is not an easy task.

The Queensland Police Service had some concerns that the offending behaviour of some people involved in the Pilot had actually increased. This was based on observation. They thought it possible that some offenders, believing that punishment in this court may be more lenient, were therefore less concerned about the consequences of offending. They also believed that people may be given too many chances.

Of the seven people included as case studies in the evaluation, three people had re-offended and four people had not. It is impossible to draw any conclusions about this. It is a tiny sample, participants were interviewed only a short time after exiting the court program and there are no benchmarks against which to make a comparison.

On the positive side however, service providers were able to give examples of individuals who appeared to have reduced their re-offending.

Conclusions

- ◆ We could not draw any conclusion about whether the Pilot has reduced the re-offending rates of participants, because of the short time-frame over which it had been operating.

⁵² Sarah Hunter and Terry Schell, Process Evaluation of the Streets or Services Program; a Court Diversion Program in Los Angeles (2006) xiv.

- ◆ Recidivism measures should be included in any future evaluation of the court, once sufficient time has elapsed. This issue needs to be considered in any re-design of the court database.

6.3 Summary and Conclusions

The results evaluation was hampered by a lack of reliable and comprehensive data and the short time frame over which the Pilot has been operating.

There is evidence that there are fewer fines levied in this court and offenders are less likely to be sent to jail.

Given the lack of reliable and comprehensive data and the short time frame over which the Pilot has been operating, we could not draw any firm conclusions about the numbers of people who:

- ◆ had been referred to service providers;
- ◆ had complied with referrals;
- ◆ were making some progress with their referral and addressing the causes of their offending behaviour;
- ◆ had reduced their re-offending or stopped re-offending.

However, based on interviews with service providers and the case studies that are at least some people who fall into each of the categories above. Service providers all gave us examples of clients who had achieved some success. "Success" however is a relative concept and needs to be measured on a case by case basis. It will range from simply attending a diversionary program, to making changes such as reducing substance abuse partially or completely, staying on medication, re-connecting with family, sustaining a tenancy, obtaining a driver's licence and so on.

Some people however are not going to make much progress and may continue to re-offend.

7

CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

7.1.1 Drawing the Evaluation Together

This section draws the themes of the evaluation together, by describing the operation and impact of the Homeless Persons Court as a whole.

The court began operating in May 2006. At the time of writing this report, the court database indicated that some 215 people had appeared in the court.⁵³

We know a lot about the demography of this group of people and the problems they face. The important point is their problems are often complex, long-standing and hard to resolve.

More broadly, policy-makers also know that current approaches are not effective and there is a need for a new approach. This is why so many people interviewed for this evaluation talked about homeless people becoming trapped in a cycle of offending.

For the 215 people involved to date, the Homeless Persons Court is a chance to change that situation.

Although the evaluation was hampered by the lack of reliable quantitative data, there is qualitative evidence that some offenders are making progress in instigating change and addressing the cause of their offending behaviour. Success however needs to be measured in a holistic way. It may range from no re-offending to reduced re-offending. It might also describe improvements in an individual's health, attempts to address a drug problem, re-connecting with family or support networks, finding a job. Of course some people will not make much progress and may continue to offend.

For policy makers, the question is whether the investment of resources into the Homeless Persons Court is a sensible use. In our view, it is. The court complements a number of the *Responding to Homelessness* initiatives already in place, such as the accommodation hubs and Queensland's Health's outreach teams. Together the sum is greater than the parts. And in a pragmatic sense, it is more cost-effective than sending a person to jail.

Finally, both the process and outcome evaluations lend support to the service delivery model currently employed. The involvement of the court and its tailored, flexible approach to dealing with offenders, can be a catalyst for change for some people.

Our overall conclusion is that there is early evidence that the Homeless Persons Court is meeting its overall objective: it is diverting homeless people charged with public space offences to health, accommodation and other relevant services to address the underlying causes of their offending behaviour.

Given this, our major recommendation is that the court should be made permanent.

⁵³ The number is probably understated as early participants were not all recorded in the database. The Court Liaison Officer estimates that up to 50 records may be missing.

7.1.2 Lessons Learnt: Success Factors

There are some aspects about the way in which the court operates that are absolutely fundamental. If they were absent, the service delivery model would probably fail. These factors are set out below, and need to be retained in any revised model.

- ◆ The active support of Legal Aid Queensland, the Queensland Police Service, Queensland Corrective Services and the other key service providers;
- ◆ The attendance of key service providers at the court. This means that homeless people are immediately linked into services that may assist them.
- ◆ Access to adequate services, such as crisis accommodation and mental health counselling and interventions.
- ◆ The attitudes, inter-personal skill and empathy of the magistrate and other court staff.
- ◆ The active involvement and authority of the court in making referrals and where relevant, monitoring compliance.
- ◆ An understanding that the client group accessing the Homeless Persons Court have difficult and chronic problems. Time, patience and relationship-building is needed to work with this group. 'One-off' and brief interactions with the court are not likely to be effective. Success needs to be measured at the individual level and will differ accordingly between individuals.

7.2 A Revised Model - An Overview of the Key Elements

The key elements of a permanent court are described below. Recommendations for detailed change are in the following section. The court should:

- ◆ continue to operate in a collaborative partnership with the key service delivery agencies, particularly those that attend sitting days. These agencies will need funding to continue their involvement;
- ◆ be more involved in case coordination of offenders. Additional Court Liaison Officers will be needed to meet this increased workload; and
- ◆ continue the present flexible, tailored approach to dealing with the client group, that recognises that some offenders will engage more with the court than others.

A revised model, should also operate as a separate court, so that matters in the Homeless Persons Court are not mixed with those from the general Magistrates' Court. This is a minimum requirement for the improved operation of the court in the future and recognises it is a speciality court.

The current physical location of the Homeless Persons Court is not optimum. Service providers need access to rooms where they can speak to clients in confidence, rather than in a waiting area. The court itself, is extremely noisy. Given the interaction that occurs within the court — between the magistrate and the defendant and the magistrate and service providers — it would be preferable that a new location could be found, possibly in the new Magistrates' Court building.

The other important change recommended for the future, is to formally expand the target group of the court to include people who are homeless and/or have impaired capacity. As noted elsewhere in this report, this is effectively the group of people accessing the court now, because of the melding of the Homeless Persons Court and the Special Circumstances List.

It seems incongruous that people with impaired capacity, who commit the same offences as homeless people and for the same reason, should not benefit from this type of diversionary program.

This potential change has implications for the name of the court. There is value in retaining the focus on “homelessness” in the name of the court. The term is reasonably well understood within the community and it is clear how the court fits into broader government initiatives about reducing homelessness.⁵⁴ However, if the target group expands as suggested, some people appearing in the court, will have impaired capacity, but will not be homeless. For this reason, we recommend below that the court be re-named the “Homeless Persons and Special Circumstances Court.”

We have not suggested that the court be given legislative status at this point of time. The court is still evolving and legislation, once in place, is always difficult to change. Prescribing the parameters by which the court operates is too early. This issue could of course be reviewed in a few years time.

7.3 Recommendations

7.3.1 Overall Operation

For the reasons outlined in the sections above, the court should be made permanent, be stand-alone and be renamed.

The court should also expand its operation from one day per week, to three days per week. It would be premature to operate for a longer period, although demand is likely to exist. This would provide some leeway for other recommendations in this evaluation to be implemented, concerning case coordination and data collection in particular. As well, there will need to be negotiations with service providers about their capacity to service the expanded court.

In the longer term, a court of this nature could operate in other locations outside Brisbane, where there were adequate service providers. The program needs to be further bedded down however, before there is further expansion.

Operations

Recommendation 1 - A Permanent Court

The Homeless Persons Court should become a permanent feature of the Brisbane Magistrates’ Courts. It should operate for three days per week.

⁵⁴ Not one of the defendants raised any issues with the current name of the court, and the use of the word “homeless”.

Recommendation 2 - A Stand Alone Court

The Court should operate on a stand-alone basis. Matters from the general Magistrates' Courts should not be intermingled.

If feasible, a new physical location should be found for the court.

Recommendation 3 - A New Name

The Court should be called the Homeless Persons and Special Circumstances Court.

7.3.2 Resourcing

Funding

One of the major findings from the Process Evaluation was that the court was under-resourced. This issue needs to be addressed in a revised model, particularly if the court is to operate for three days per week and the Court Liaison Officers are to take a greater case coordination role.

Based on our estimates of the workload of a court operating for three days per week, and a reasonable caseload for each Court Liaison Officer, three positions are required, together with administrative support. These broad calculations are set out in Appendix 6.

At least one Court Liaison Officer should be a female. Some female offenders are uncomfortable dealing with males.

The involvement of the magistrate in the court to date has also not been specifically funded. The Magistrates' Courts are the busiest in Queensland and the re-allocation of one person to the Homeless Persons Court has had implications in other parts of the court system. This is not sustainable.

None of the key service providers, who attend the court at each sitting, are funded to do so. This court, by its nature however, is resource intensive. Again, it is not sustainable to rely on the goodwill of these providers to continue to be involved. Without their involvement, the court could not operate.

We have not attempted to estimate the amount of funding these agencies will require. This should more properly be negotiated between the Department of Justice and Attorney-General and each agency.

Recommendation 4 - Funding

Additional funding should be provided for the court for:

- one administrative position;
- three Court Liaison Officers, at least one of whom should be a female;
- a permanent magistrate for three days per week;
- the key service providers, who are not currently funded — Legal Aid Queensland, the Queensland Police Service, Queensland Corrective Services, Sisters Inside, Brisbane Youth Service and the Aboriginal and Torres Strait Islander Legal Service. (Sisters Inside has some current funding but it is a one-off grant.)

Magistrates

At present, one magistrate has been allocated to the court. There is significant merit in having the same person sit in the court each week. This means the magistrate gets to know some of the defendants, can follow their matters through and develops specific skills in interacting with people with impaired capacity. On the other hand, from a risk management perspective, it would be useful to have other magistrates available as back up and in the longer term, for potential succession planning.

As described in the case studies in particular, the personal skills of the magistrate are critical to the successful operation of the court. A magistrate sitting in this jurisdiction also needs some understanding of the complexity of homelessness and some technical knowledge of the aetiology of drug abuse and mental health issues.⁵⁵

Any magistrates operating in the court however should ideally have their own lists, so that offenders have the benefit of dealing with the same magistrate who understands the history of their matter and is better placed to monitor progress.

Recommendation 5 - Magistrates

A small pool of magistrates should be available to sit in the court, to provide back up support and potential succession planning. However, magistrates filling this role must have the requisite personal and technical skills required by a court of this nature. An individual magistrate should have their own list.

Training

Both the magistrates and Court Liaison Officers should have access to initial and ongoing training relevant to their roles. For example, training on interacting with people with substance abuse or mental health issues would be vital. Such training would cover topics such as: drugs commonly used by homeless people, their impact, treatment scenarios and so on, types of mental health problems and treatments, the long-term impacts of childhood sexual or physical abuse on adults and so on.

⁵⁵ A simple example is knowledge about the type of medication people who have been past drug users will be taking.

Recommendation 6 - Training

Any magistrates involved with the court and the Court Liaison Officers should be given access to appropriate training, covering issues such as interacting with people with substance abuse problems and mental health issues.

Brokerage

The court is often hampered in its ability to make an appropriate referral because of a lack of crisis accommodation, or because a defendant has no money for transport to a service provider. A relatively small amount of brokerage funding would go a long way to addressing this barrier. This funding would be complementary to that already provided to the two homeless service hubs. Without brokerage funding, the court has one hand behind its back.

The estimate below is based on allowing \$100 per person and a court caseload of 540 people per year (rounded down). Not every client will need brokerage funding of course. The figure of \$100 is based on the experience of HART 4000 a homeless service hub. It has brokerage funding of \$100,000 per annum with average brokerage expenditure per client of \$113.

Recommendation 7 - Brokerage

The court should have access to \$50,000 per annum for brokerage funding. This could be administered either by the Department of Justice and Attorney-General, or by a community agency on its behalf.

7.3.3 Administration and Management

Database

Accessing adequate data was a continual frustration during this evaluation. There is no doubt that either a new database or a revised database needs to be put in place. We understand the Department of Justice and Attorney-General is in the process of doing this. The database needs to link with the criminal history database maintained by the Queensland Police Service to ensure criminal histories and current matters are accurate.

Recommendation 8 - Database

A new (or redesigned) database that can adequately record details of each person appearing in the court and subsequent outcomes, needs to be put in place. This database needs to link with the relevant police and court databases.

Assessment Form

The current referral form is long and requires a great deal of information. The referral form could usefully be simplified and it needs to dovetail exactly with the computer database used by the court. At the moment, there is a mismatch between the two. The intake forms used in other court diversion programs may be a useful starting point.

Recommendation 9 - Assessment Form

The current assessment form should be re-designed by a person with appropriate skills, to ensure that the right data is collected and recorded.

Tracking Participants

At present, the court does not routinely and effectively track how many people are still “current” within the system, nor at what stage their matter may be. Where there is some tracking, the task is completed manually, for example, where a person is expected to return on a Good Behaviour Bond. Some type of system for managing client numbers is needed. Each Court Liaison Officer needs to know how many files they are coordinating and what is happening to them.

Recommendation 10 - Tracking Participants

The court needs to track how many people are involved with the court at any one time and at what stage their matter is at.

Capping Numbers

Demand for this court is likely to always outstrip supply. Actual numbers need to be monitored as per recommendation 10 above.

A mechanism for capping numbers may be needed in the future. Other specialist courts, such as the Drug Court, cap numbers. We also note there are resource implications in relation to Recommendation 14 which includes extending eligibility to offenders who were contesting some charges. The resource implications of this have not been estimated. One way of managing them is to slightly reduce the number of people handled by the court.

Recommendation 11 - Capping Numbers

The numbers of new clients accepted into the court may need to be capped.

Memoranda of Understanding

Memoranda of Understanding need to be developed with each core service provider. This recommendation links to recommendation 4, regarding the funding of these service providers.

Recommendation 12 - Memoranda of Understanding

The Department of Justice and Attorney-General should develop Memoranda of Understanding with: Legal Aid Queensland, the Queensland Police Service, Queensland Corrective Services, Sisters Inside, Brisbane Youth Service and the Aboriginal and Torres Strait Islander Legal Service.

7.3.4 Case Coordination

With adequate funding, the Court Liaison Officers should take a greater role in interacting with court participants. This should not extend to case management, a function that if needed, is better undertaken by existing service providers.

Court Liaison Officers should:

- ◆ assess potential participants, using a specific assessment tool. In this regard, the approach used by the Court Integrated Services Program in Victoria could be adapted. This tool rates the risk of re-offending. Information about a person's contact with existing services also needs to be collected;
- ◆ prepare a report for the magistrate setting out relevant facts about the person, that suggests possible referral pathways. This report should be provided to both the prosecution and the defence;
- ◆ follow up with service providers to check compliance and progress with any court-ordered referrals. On some occasions, the Court Liaison Officer may also need to contact the person direct. This might occur for example, to remind them of a coming appearance. A condition of sentence or bail might also require a person to report to the Court Liaison Officer;
- ◆ where appropriate, prepare an exit plan for the person once they have completed their sentence in the court. An exit plan would ensure there was ongoing support for a person so that relevant agencies were still able to assist them if necessary.

Recommendation 13 - Case Coordination

Court Liaison Officers should have a defined and clear role in coordinating and supporting court participants through the process. This will involve initial assessment, preparing initial and follow up reports for the magistrate, liaising with service providers and where necessary, the people participating in the program regarding their progress and compliance, and finally preparing an exit plan for them.

7.3.5 Eligibility

Eligibility has been an ongoing issue for the Homeless Persons Court. To some extent, this will continue to occur whatever criteria are in place, as there will always be cases that are grey.

In our view, the criteria are fundamentally sound as evidenced by the identification of a relatively homogenous target group, albeit with complex and difficult problems. However some changes and clarifications would improve the operation of the court as set out below:

- ◆ as noted above, eligibility should be extended to people with impaired decision-making capacity (that is, along the lines of the Special Circumstances List);
- ◆ eligibility should be extended to include offences involving driving, where those offences are directly related to an individual's homelessness. A good example, is a person who is living in their car, charged with driving without a licence, when they have shifted the vehicle;
- ◆ a person who has committed both eligible and ineligible offences, may have the eligible offences heard in the court. This will be at the discretion of the magistrate;
- ◆ defendants who wish to contest all charges will not be eligible for the court. However,

a person who is pleading guilty to some charges and not guilty to other charges, will remain eligible and all charges will be heard in the court. They will be placed on bail for the offences to which they are pleading guilty until a final sentence is given for all charges.

We recognise that not guilty pleas impose more work on both the prosecution and the defence. The proposal above represents a reasonable compromise.

It is appropriate that the magistrate retain the ultimate discretion to determine eligibility. This is consistent with the judicial function. After hearing arguments from both side, the magistrate is in the best position to determine whether an individual is initially eligible, or remains eligible, for inclusion in the court. However, the eligibility criteria should not be “stretched”, as has happened in a couple of cases during the Pilot.

Recommendation 14 - Eligibility

Eligible offences should be expanded to include driving offences related to homelessness, such as where a person has been living in their car.

The target population should expand to include anyone with impaired capacity (who has committed an eligible offence).

Defendants who wish to contest all charges will not be eligible for the court. However, a person who is pleading guilty to some charges and not guilty to other charges, will remain eligible and all charges will be heard in the court.

7.3.5 Measuring Recidivism

The ultimate measure of success for this court is that offenders will reduce their re-offending. It was not possible to measure recidivism in this evaluation, but ideally such measures should be in place.

Recommendation 15 - Recidivism

The Department of Justice and Attorney-General should put in place a system for measuring recidivism in this court over the longer term.

APPENDIX 1 – LIST OF INTERVIEWEES

List of Interviewees

Government

Jenny Clark, Jonathan Leach and Christine Shepherd	Department of Housing
Julie Evans, Leanne Peel	Queensland Health (Homeless Health Outreach Team) (Mental health)
Lorna Cave	Queensland Health (Homeless Health Outreach Team) (Drug and Alcohol)
Terry Ryan and Jo Linde	Department of Justice and Attorney-General
Victoria Brewer	Department of Corrective Services
Kieran Seth	Queensland Police Service
Mark Lingwood and Rod Charles	Queensland Police Service
Sarah Colquhoun, Steve Faoagali and Marnie Alefosio	Department of Communities – Greater Brisbane Region
Jenny Whitworth	Department of Communities – Homeless Persons Information Queensland
Angela Carr, Mark Pathe	Crime and Misconduct Commission
Julanne Murray	Legal Aid Queensland

Service Providers/Community Sector

Rachel Watson	HART 4000
Leigh Eagle	Brisbane Boarders
Captain Bruce Robinson	Salvation Army
Angie, Debbie, Lani and Jason	Brisbane Youth Service
Deb Kilroy, Margaret Fitzgerald	Sisters Inside
Rose Butler	MICAH
Monica Taylor	Queensland Public Interest Law Clearing House
Gregory Shadbolt, Sarah Laikind, Howard Jones	Aboriginal and Torres Strait Islander Legal Service
Michelle	ARROS

Magistracy

Judge Irwin	Chief Magistrate
Mr. B D Hine	Deputy Chief Magistrate
Mr J S Gordon	Magistrate
Ms E A Hall	Magistrate
Mr J M Herlihy	Magistrate
Mr J B Lock	Magistrate
Mr N F Nunan	Magistrate
Ms T Previterra	Magistrate
Ms C G Roney	Magistrate (presiding in the Homeless Persons Court)

Court Staff and Volunteers

Rikki, Andy, Beth, Sarah	Volunteers (University students)
Phil Macey	Court Liaison Officer

Meetings

Client Reference Group	13 June 07, 12 October 07.
Program Steering Committee	9 May 07, 6 June 07, 18 July 07, 8 August 07, 28 September 07
Evaluation Advisory Committee	26 April 07, 13 July 07, 22 November 07
Client Reference Group	13 June 07.

Interview Topics

Interviews were semi-structured, covering the following topics:

1. Eligibility for the program
2. Offences: the range
3. Sentencing options: options available and their use
4. Is the Program working as intended?
 - Court Liaison Officer Process
 - Court Process
 - Support services
5. What is working well? What could be improved or should change?
6. What is being achieved through the Program?
7. What is being achieved overall in terms of the objectives around divert, prevent and reduce (as per the aims of the pilot)?

Services supporting the Program

1. Impact on the specific Service/organisation
2. Impact on your clients
3. Interaction with other services
4. Future of the program

Concept of Success

Definition of success

- ◆ Individuals
- ◆ Program

APPENDIX 2 – SHORT INTERVIEWS WITH DEFENDANTS

Methodology

Seventeen people appearing in the Homeless Persons Court were involved in very short interviews about their experiences.

The initial contact with court participants took place in the waiting area outside Court 3 at the Roma Street Magistrates' Court. Defendants were waiting to have their case heard by the magistrate, waiting to sign a bond, or were returning as a condition of their diversion to report to the Court.

The following steps occurred:

- ◆ Introduction to the participant by one of the following: the Court Liaison Officer, a law student volunteer with the Program, or occasionally a service provider in contact with the participant. We left it to this group to suggest possible interviewees;
- ◆ Provision of an information sheet that included contact details of the interviewer;
- ◆ Verbal agreement to conduct a discussion about their experience and to take notes;
- ◆ The asking of a basic set of questions about their views on the Homeless Persons Court along the lines of:
 - We are interested in your views on the Homeless Persons Court. What do you think about it?
 - Has the Court Liaison Officer helped you?
 - How could the court be improved in the future?
- ◆ For some participants, we asked if they would be interested in being part of the longer term case study group. Not everyone who said they were interested was ultimately included as a case study.

Interviews took place on 17 May, 24 May, 7 June, 14 June, 28 June, 12 July and 19 July 2007.

We only knew the individual by their first name. These names have nevertheless been changed below.

Comments on the Approach

Only two people approached for their views refused to participate. This appeared to be because they were anxious to leave the court or just didn't want to talk to anyone. There were also some people who it was clear would not be worth approaching because they seemed upset or under the influence of some type of substance.

Interviews took around 10 minutes on average. Some people found it hard to be fully involved. They might for example be able to answer questions about whether the court had helped them, but found it harder to address something more conceptual as to how it could be improved. Attention spans were often short and sometimes we only managed to ask a couple of questions.

We had hoped to conduct 30 – 40 of these very short interviews, but they were not as easy to arrange as expected. The court is a busy place and people came and went quickly, were busy talking to a service provider or waiting in court. Nevertheless this sample of interviewees provides insight into the views of participants.

Given the nature of the interview, we attempted to write down exactly what an individual said so that people “speak for themselves”, without any filtering. (Brackets indicate questions or added text for context, included by the evaluator.)

Sophie

(Third time to court, coming back to report)

- < Didn't know how it operated at first.
- < (Experiences?) Been good, She's really nice. I ran into her (the magistrate). She stopped and talked to me. Told her I was on a methadone program ...
- < Roma House ... is a fantastic place .. share a room .. very supportive
- < She (the magistrate) understood where I was coming from.
- < Last time ... I was on the street.
- < (What difference has this court made?) ... I'd have been in jail, if I'd gone to the other courts.

Edward

(Has a drug problem)

- < (views on the court) Heaps better ... the court is there to help us .. Other courts don't give a shit, just there to screw you over and send you to jail .. But if you're trying to improve your life ... they try to help you.
- < (views on the Court Liaison Officer) .. he can see through you. Not people just doing it for the pay packet.
- < (He was given a six months Good Behaviour Bond) I passed. Got through it. (Supposed to do a Salvo course, but didn't.)
- < Drug use now ... only on pay day.
- < I know all the different organisations.
- < I asked to get on to the list ... out of jail for six years ... (the Pilot) has forced me to accept things that I didn't want to accept.
- < In other courts ... you'd end up with a worse sentence ... 60/40 chance (in this court) of staying out of jail, 80/20 in other courts
- < Try and teach people to be real .. Honest with yourself.
- < She'll see the change in me.

Jeff

(Long term homeless, studied law when younger, begging and drug charges, 3rd or 4th appearance)

- < Helping people. Given people a break from the regular criminal justice system ... Just changes the patterns of thinking about the criminal justice system.
- < Bigotry toward police ... change people's attitudes towards legal process, their would be less crime.
- < (Different to other courts?) Lesser sentence ... different public policy.

- < (What is good?) Changes attitudes towards the criminal justice system ...
- < (Stop people coming back?) .. I'm homeless .. Handy for me, as I didn't end up in prison.
- < Could prevent people from coming back and re-offending
- < (Phil?) Helped. Puts you on a course.
- < (Support?) HART 4000 ... Only just wanting to get off the street now ...
- < (Suggestions to improve?) Couldn't work better? Christine has got it under control. Very understanding. The way she speaks is brilliant. Couldn't get a better magistrate .
- < Show magistrate that you're reforming ... why you get a lesser sentence.

Michelle

(Drug problem ... will be asking magistrate for an adjournment to get legal advice .. doctor's appointments and "show some change", interview was quite disjointed)

- < Its awesome ... There's a chance. Why play ... like a game of monopoly, if you know you're going to lose.
- < Get immune to the criminal lifestyle or using ...
- < The court has given me a chance. Kept me out of jail.
- < Heroin .. you forget your court dates ... I've gone from high to rock bottom ... given me a chance
- < This is my second time to court, seeking an adjournment
- < I want my home back. I want to be an example.
- < Get out of jail free card.
- < (ways to improve?) Thank you. They've given us this. Not just get rid of them. The whole system will give me outlets.

Callum

(Not yet sentenced, but very familiar with the court system, wants drug rehab, eventually the magistrate's sentence (Good Behaviour Bond) requires him to come and see the Court Liaison Officer every week. Difficult decision for the magistrate. No point in fining. Also has other charges that require committal to the District Court.)

- < Good idea to have the court because there are people in special circumstances ... we've got issues
- < If they do the right thing Homeless or drug addict can work out other options ... I want help to get into rehab ...not had help before
- < (Phil?) Phil is all right. He understands, helps ... talks to you.
- < (Living) Here, there and everywhere ... (Phil) can't do much as he is so busy (Phil is trying to help him with accommodation.)

Alex

(Had been in jail previously – had his 18th birthday in there.)

- < I was going through the normal court, until I told them I was homeless ... (in this court) they try their best to give you a chance ... that lady (the magistrate) was really nice to me
- < (Phil) a good bloke ... People are trying to help you .. All courts should be like this. I've never walked into a court before and had people try to help me, ask if I needed a lawyer (interview stopped when Adam left to talk to the Homeless Health Outreach Team.)

Bill

(Says he is in court for about the 5th time, been reporting once a week. In court, discussion mainly around assisting him to find a job, is given fresh bail and to see Phil again. Bill had turned up last week – unrequested – to explain his difficulty in reporting to the Fortitude Valley police station as part of his bail condition. He said the Valley was a place he was better off avoiding as if he was there, the chance of running into the wrong people was greater.)

- < Today is hopefully my last day.
- < (about the court) I really like it. The judge is pretty nice and she's fair. She listens to both sides of the story.
- < (what personal difference has it made to you?) I'm less nervous and (more) calm ... used to be an alcoholic ... that's why I did it. Now I'm staying out of trouble.

Billy

(young man, had a DVO, had broken into a bottle shop, had been meant to go to Court 1, but the solicitor put into Court 3. He had yet to appear in this court)

- < Told (this court) is pretty strict ..
- < (Phil) A good bloke .. said to drink at home ... good advice. Suggested I go to Brisbane Youth Service ... helped with food parcel ...

Karen

(Karen said she hadn't been through court yet at all, but it was clear she had. She has alcohol and mental health problems. She has just moved up to the coast.)

- < It is helping a lot of people ... it helped me
- < People with mental illness or homelessness ... need a special court, they're not your average Joe Blow

(The Duty Solicitor had suggested she come to Court 3 because of her mental health issues. She had been charged with public nuisance and swearing – was drunk in Brunswick St Mall – dancing.)

Jade

- < Only been to this court, so I can't compare it
- < This is the fourth time I've come to court, I would have liked to just come once ... I had a lawyer this time
- < (Phil) – had helped with food ... I didn't have money at all, he helped me to get the Public Trustee to attend
- < (how to improve) Stop asking people to come back

Kath

(Had been charged with soliciting, public nuisance)

- < After I got out of jail last time ... the judges were all so cruel, they didn't care .. I promised myself that I would never turn up again or pay a fine (in other words, she'd prefer to be charged with failure to appear)
- < She's great (Christine). She listens, she asks us ... I've never ever known a magistrate like that ... Get a lot of support there

- < (Phil) it was useful to have him involved ... he's lovely
- < We joke around together ... get along really well
- < (improve the court) Can't think of anything ... When its really embarrassing, like prostitution it would be nice to not to have to read the whole thing out in the court
- < (sentence) Sitting in this court (court 1) the other day ... judge was horrible ... I had to get an adjournment ... coming here once a month ... I love the idea of getting a sewing machine (Magistrate Roney was saying that Kath should try and occupy her time and she said how she used to sew)

Anna

Driving whilst disqualified.

- < (the court) is a great idea ... should be ongoing
- < Have the opportunity to get parole, instead of going to jail
- < xxx got me off going to jail three times .. through stupidity on my behalf
- < Single Mum
- < (The Court Liaison Officer) is definitely helpful
- < In the other court down the road, having children and breastfeeding, I felt really uncomfortable ... it was a lot more formal, gave you the impression you weren't dressed properly Julianne transferred the matter to this court. I do feel better down here.

Sean

Not part of the Homeless Persons Court. The Court Liaison Officer wants him to be part of the Client Reference Group. He has just finished probation, without breaching it. Had 11 years in jail straight – “institutionalized”. Abandoned by his mother when he was 6. Has 6 brothers, 3 sisters. Has been homeless for 19 years and lives by the river.

He was in court to support his mate Tony. His offences were stealing, fraud, utensils, drugs. Has to go back to the District Court.

- < The Client Reference Group is good. Get to explain your side of it.

Justin

(Justin's offence was common assault of a security guard. He was making a drawing, sitting on the steps of the cathedral and was asked to go. He just wanted five more minutes to finish. He threw his bag that had a bottle in it – the guard had a “minor cut”, according to him.)

He is homeless, sleeping rough in Bowen Hills. Once a day he goes to the 139 Club and also the street vans for breakfast. He doesn't like going to the vans at night because of possible fights.)

- < A good idea.
- < In South Australia (where he had lived for some time), they haven't got the resources to deal with problems.
- < Been here before .. I can't remember what happened.
- < Now I just got a good behaviour bond. I have to come and see the judge every month. I'm pretty good with remembering dates.
- < (interaction with other services) I'm the type of person that likes my space. Tried boarding houses before and it hasn't worked, I'd rather stay on the streets.

- < I've been on the streets since I was 14 and I'm now 36. I'm accustomed to living out there.
- < I was originally in court 1 and was referred from there to special circumstances.
- < Talking to Phil was helpful. Told me where to go if I wanted places to stay, or counselling or food.
- < In this court if you don't understand something, at least you can ask. In South Australia I didn't understand.
- < My criminalisation is fairly lengthy. The same thing happens over and over. For most people, no body's perfect and everyone from time to time gets in trouble. I don't want to end up back in jail. I'll try and keep out of trouble.
- < I'm trying to get back into the good books with my mother. I have difficulty writing and spelling. Phil said to come back any time and he'll write the letter with me.

Troy

- < Way better than any other court
- < Person with a disability difficulty (in special circumstances) you can actually sit down and give your side of what is going on and the why the circumstances keep happening, whereas a normal court won't care
- < Special circumstances is really, really good. If it was around when I first started, I still wouldn't be here. 4th time here, 2nd time in this court
- < (Phil) makes it easier, when people on your side, try and get the best possible out of it

Susan

- < She's very good.
- < Court gives people a chance to get help in life, willing to help and actually listen to them.
- < Give them the benefit of the doubt.
- < (in court 1) they put a lot of people in jail and don't listen ... here you get a chance ... willing to help you
- < (Susan said she was gang raped by police)
- < (Improve) doing quite well ... they need more coffees, need a social worker
- < You need to know they won't go to jail ... girls do bad things and get pushed into it ... need to explain ... a little bit of a cry
- < About time they had something like that

Emily

- < She understands. She puts out her words, what is right and what is wrong.
- < Understands what we're coming from, with a family problem
- < I might get somewhere for me and my little boy (to live) ... I just need someone out there caring for me.
- < (other courts) don't really care, don't bother about you
- < This will make a difference for me.
- < Phil has been useful.
- < (what to improve) my head is a little messed up ...

APPENDIX 3 – ELIGIBILITY CRITERIA

The Homeless Persons Court Diversion Program

To be eligible to participate in the Program the defendant must meet the following criteria:

Either at the time of the offence or at the time the person appears before the Magistrates' Court:

1. The person is an adult (i.e. a person to whom the Juvenile Justice Act 1992 does not apply).
2. The person is homeless (or at imminent risk of homelessness) within the Chamberlain and Mackenzie definition of:
 - Primary homeless ("sleeping rough")
 - Secondary homeless ("stop-gap housing")
 - Tertiary homeless (Boarding house residents)

This definition is set out in full in the Appendix.

3. The person is charged with an eligible offence, namely:
 - An offence that is to be dealt with summarily (by right or election);
 - Which arises from circumstances which have an aspect of public order and are connected to homelessness; (including 'procedural' offences such as fail to appear, breach of bail conditions in respect of another eligible offence);
 - and include the following:
 - ◆ public nuisance;
 - ◆ begging in a public place;
 - ◆ wilful exposure;
 - ◆ being drunk in a public place;
 - ◆ trespass;
 - ◆ unlawfully gathering in or on a building or structure;
 - ◆ unlawful possession of suspected stolen property;
 - ◆ assault or obstruct a police officer;
 - ◆ contravene a direction or requirement of a police officer;
 - ◆ wilful destruction or damage to property in a public space;
 - ◆ unauthorised dealing with shop goods;
 - ◆ stealing;
 - ◆ possession of a knife in a public place;
 - ◆ consumption of liquor in a public place;
 - ◆ unlawfully having possession of a dangerous drug for personal use in circumstances factually connected to a public order offence where each dangerous drug is a prescribed dangerous drug and the total quantity of the substances, preparations, solutions and admixtures in the person's possession containing the dangerous drug is not more than the prescribed quantity in relation to the dangerous drug under the Penalties and Sentences Regulation 2005, s5 and schedule which is set out in the Appendix;

- ◆ unlawfully having possession of anything contrary to s10(1) and (2) of the Drugs Misuse Act 1986 in circumstances factually connected to a public order offence;
- ◆ failure to properly dispose of a needle or syringe;
- ◆ traffic offences in circumstances factually connected to a public order offence.

Disqualifying offences are:

- ◆ Those of a sexual nature (except for prostitution); and
- ◆ More serious offences of personal violence.

A person is not automatically disqualified because of:

- ◆ Previous convictions for like offences; or
- ◆ Previous participation in the Homeless Persons Court Diversion Program (the program)
- ◆ There is a likelihood of imprisonment being imposed for the offence or offences
- ◆ The eligible offence is alleged to have been committed in the Central Division of the Brisbane Magistrates' Court District or is connected with an offence alleged to have been committed in that District.
- ◆ The person agrees to be assessed for, and participate in the program (which consent can be withdrawn at any stage).
- ◆ The charge is not the subject of contest, whether indicated through a plea of guilty or otherwise.

The Special Circumstances List

To be eligible to participate in the List the defendant must in addition meet the following criteria:

- ◆ The person appears to suffer from impaired decision making capacity as a result of mental health issues, intellectual disability or brain/neurological disorders.

Five persons a week will be the subject of referrals to the List.

APPENDIX 4 – COMMENTS ON THE OUTCOME EVALUATION

General Comments

“What policy makers would like to measure often bears little resemblance to what researchers are able to measure, given the limitations on appropriate data and available information.”⁵⁶

The Invitation to Offer for this evaluation noted that “the outcome evaluation will necessarily be limited because of the short timeframe for both the pilot program and the evaluation, the difficulty in identifying a comparison group of homeless offenders in the courts and the lack of any baseline data.”

In theory, it would be possible at a given point of time to identify a group of homeless people in the generalist courts and a comparable group of homeless people in the Homeless Persons Court. In practice, the Pilot has not been operating for a sufficient period of time and with sufficient numbers of participants, to allow comparisons of attributes such as offending rates. A qualitative comparison, as an alternative, would have been both difficult to organise and limited in application. By definition, homeless people are hard to contact and track.

Similarly, a comprehensive analysis of recidivism was not possible. At the time of writing this report, the pilot has been operating for 18 months. There are only a small number of people therefore where sufficient time had elapsed to assess re-offending. Confounding any potential analysis as well, were our concerns about the accuracy of some of the available data. These are discussed elsewhere.

An Outcome Evaluation in the Future

The outcome evaluation in this report was largely qualitative, based on interviews with service providers, our observations and the case studies. It was disappointing that we were unable to obtain data on issues such as the number of people who complied with referrals for example.

With better data collection and over a longer period of time, the following outcome measures could be included in an outcome evaluation:

- ◆ Diversion - no and type of referrals made, compliance with those referrals
- ◆ Circumstances - homelessness status
- ◆ Circumstances - changes in behaviour, health, drug use, life skills, mental health and so on for a sample of individuals
- ◆ Re-offending - comparison of pre and post offending behaviour (incidence, seriousness) over say an appropriate period of time.

The analysis above may need to divide the group into two segments: those who have one-off interactions with the court and those who have more intensive, ongoing interactions.

⁵⁶ Jason Payne, 'Recidivism in Australia: findings and future research', *Research and Public Policy Series*, No 80, Australian Institute of Criminology, 2007.

While the use of a comparison group in any outcome methodology might appear promising, practically it would be very hard to put in place. A statistically valid sample would be hard to find and harder to track. We think the above approach would be adequate.

APPENDIX 5 – EXCERPT FROM DISABLED JUSTICE

The excerpt below is from Phillip French, *The Barriers to Justice for Persons with a Disability in Queensland*, Queensland Advocacy Inc, May 2007, p 83.

The excerpt quoted therein is from Toombs, D, *Why Criminal Lawyers Assist in the Imprisonment of the Disabled* Paper presented at "Lock 'Them' Up: Disability and Mental Illness Aren't Crimes Conference, Brisbane, Australia, 17-19 May 2006.

This excerpt provides an example of why people with impaired capacity end up trapped in a cycle of offending.

✕ ✕ ✕ ✕ ✕

In most Courts, the Duty Lawyer Service operates under significant pressure. Lawyers conducting the service must see, advise, and represent many clients in the course of the Court session. In most cases, they will have had no contact with a defendant before, and only have very limited time to gain an understanding of the legal issues and provide advice. For this reason, the Duty Lawyer's focus tends to be on the legal issues, and in the present, rather than on the personal characteristics of their client, or their past or future. Within the limited time available, and with this focus, duty lawyers often fail to identify a person with cognitive disability, or simply do not have time to investigate the matter, even where this may be suspected.

Additionally, even where the lawyer may firmly suspect their client has cognitive impairment, they may tend to take the view that the matter is best resolved through a plea of guilty, rather than by entering a defence, or canvassing issues relating to the defendant's capacity to plead before the Court. The lawyer's focus is on the immediate resolution of the problem, as it presents on that day, by the most direct and resource unintensive means available. This strategy is oblivious to the cumulative impact of these 'quick-fix' solutions, which can be very negative in the case of a repeat offender. One commentator narrates a typical scenario as follows:

He'll ... wait for the duty lawyer to call his name.

The duty lawyer has seen around fifteen clients already, its 9:45am, the Magistrate wants to get the matter on at 10:00am and there is another twelve clients to see.

If the client isn't looking at a term of imprisonment, the duty lawyer knows that despite this bloke being a little hard to read, that he is not going to get Legal Aid for him. Time is also ticking away.

Here is the likely panacea.

And the panacea for the client is to plead guilty, when by virtue of his disability he may not only have a defence of unsound mind, but also is a fellow who may not be fit to plead to this charge.

And it doesn't end there.

On that occasion he will possibly be punished by way of a fine. However, two weeks later he might again be in court on a similar charge. He might get a substantially bigger fine. Six months later, he does it again, on this occasion a probation order. The client's flat out being compliant with himself, let alone with probation, so inevitably

he'll breach it and be back before the Magistrate.

He's now in an untenable position.

We're before a Magistrate who's justifiably vexed.

"I've given him fines and they haven't worked."

"I've given him a probation order and that hasn't worked."

"An intensive correctional order wouldn't work"

Where to from here? Imprisonment.

And that's the stark reality.

APPENDIX 6 – ESTIMATE OF RESOURCING NEEDS

Resourcing calculations are set out below. Given the difficulty we had in collecting reliable data for this evaluation, it was difficult to be precise about any of the assumptions. For this reason, there will need to be close monitoring of workloads.

The methodology used to estimate staff resourcing numbers is a relatively simple one.

- ◆ Step 1 - Estimate how many clients each Court Liaison Officer (CLO) could handle, based on the expanded case coordination role outlined in this report and also allowing for other administrative tasks;
- ◆ Step 2 - Estimate how many clients a court operating for three days per week, would deal with
- ◆ Step 3 - Work out the number of Court Liaison Officers needed (Step 2/Step 1)

Step 1

Estimate that each CLO could oversee 180 clients per year, or 45 per quarter (based on each client staying in the court system for around 12 weeks on average, and an allocation of 5 hours time to each of them overall). Detailed calculations and assumptions are below.

1.1 Estimate of number of hours involved with each client

Task	Assumption	Hours
Initial interview	45 minutes	0.75
Report for court - initial		0.50
Report for court - follow up	Say 3 - 20 minutes	1.00
Contact with service providers	Say 3 - 15 minutes	0.75
Direct contact with client		1.00
Exit plan, general liaison, other		1.00
TOTAL		5.00

The estimate of time for the initial interview and for writing the initial court report are based on actual experience of the Court Liaison Officer. Other figures are based on likely scenarios, given what we know about the client group.

1.2 Estimate number of hours for general duties

Attend court	1.5 days per week	11.25
Other meetings, admin etc	1 day per week	7.50
TOTAL		18.75

With a 37.5 hour week, this means there are 18.75 hours available (37.50 - 18.75) for direct client related case coordination tasks as per 1.1 above.

1.3 Estimate number of clients one CLO can handle

- Divide 18.75 hours by the number of hours involved with each client in 1.1
 $18.75/5 = 3.75$ clients dealt with each week
- Assume clients are involved with the court on average for 12 weeks (based on our best estimate of the current position)
 $12 \text{ weeks} * 3.75 \text{ clients} = 45 \text{ clients per quarter}$
 $45 \text{ clients per quarter by } 48 \text{ weeks}^{57} = 180 \text{ clients per year}$

Step 2

A court operating for three days per week is expected to deal with 540 clients per year. (Assuming an average 15 new clients per month at present.)

- 15 clients month at present for a court operating for one day per week
- 45 clients per month if the court operates for three days per week ($15 * 3$)
- 45 clients * 12 months = 540 clients

Step 3

This means that 3 CLO positions are needed to manage this workload.

- 540 clients for the court overall, one CLO can work with 180 clients per year
 $540/180 = 3.0$ Court Liaison Officers

⁵⁷ Allowing for annual leave.

