

Specialty courts: current issues and future prospects

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The reasons individual offenders engage in criminal activity are numerous and varied. Three key priority areas have emerged in recent years – reducing crime related to drug dependency and mental health, reducing the over-representation of Indigenous offenders and reducing the incidence of domestic violence. Policy-makers and criminal justice practitioners have recently responded with the development of specialty courts designed to tackle specific problem behaviour and associated issues. This paper examines the history and development of the specialty court concept in Australia. It shows that the programs, although having the same overall aim of reducing reoffending, have significantly different structures as they attempt to deal with very different problems. This paper also reviews the key evaluations of specialty court programs conducted to date. If we are to understand what works and what doesn't, long-term assessment and evaluations are required of all specialty courts.

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Australia's criminal justice system has been witness to significant transformation, primarily in response to a number of important factors including:

- community and political unease about perceived government failure to deal with crime and reduce offending rates
- growing expectations of a more responsive and cost-effective criminal justice system
- shifts in the intellectual paradigm concerning the roles and responsibilities of the criminal justice system in delivering therapeutic intervention (Jefferies 2003).

There have also been a number of procedural innovations in recent years, from restorative justice to therapeutic-based interventions for offenders (Jefferies 2003). Specialty courts, sometimes called problem-solving or problem-oriented courts in the international literature, are one example where criminal justice systems have become intimately connected to the delivery of therapeutic and rehabilitative outcomes. Specialty courts, developed against a backdrop of policy orientation towards diversion from prison, are typically defined as new criminal court structures and procedures, developed to manage and deal with specific offender populations, where it is recognised that traditional criminal justice procedures have not been effective.

Specialty courts are different from specialist jurisdiction courts, such as the environment and industrial courts or the children's court. These specialist jurisdiction courts 'have exclusive jurisdiction in a field of law presided over by a judicial officer with expertise in that area' (Freiberg 2001:8). Freiberg provides greater detail about the differentiation between specialist jurisdiction and specialty courts. A core distinction is that specialty courts incorporate new and innovative court practices. These practices typically involve some level of judicial monitoring and cross-agency collaboration

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while seeking to achieve therapeutic outcomes. Specialty courts represent a move towards a model of justice that recognises the behavioural and environmental factors that contribute to offending, and the judicial system's capacity to deal with these problems (Freiberg 2001).

Despite this growing area of court practice there has not been any national overview of developments to date. This paper reports on a national audit of specialty court programs conducted in December 2004. It provides a summary of their establishment and implementation and where available, evaluations of the programs.

Australian specialty courts

National audit, December 2004

The audit identified 19 programs operating across Australia as at 31 December 2004. Of these court programs:

- nine were developed for dealing with drug dependent offenders
- six were developed as alternative sentencing programs for Indigenous offenders
- three were established for dealing with family and domestic violence
- one targeted offenders with a mental impairment.

The number of court programs is constantly changing, as are the procedures and methods employed by criminal justice agencies to deliver innovations. As a result, any national overview is out of date before it is completed. Despite this, the types of court programs identified here are believed to be a good description of the Australian specialty court movement and are consistent with the types of specialty courts operating in other countries (with the exception of community courts which are widely used across the US; see for example Casey & Rottman 2005).

Establishment

The first specialty court program was the South Australian Family Violence Court, which began in 1997. This was followed in 1999 by the New South Wales Adult Drug Court and South Australian Mental Impairment and Indigenous courts. At the time of the national audit the most recently established programs were the Northern Territory's Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) and the South Australian Court Assessment and Referral into Drug Treatment (CARDS) programs.

The courts were established either under existing legislation or by new or amending legislation. Existing legislation is typically used where the current legislative framework already provides the court

power to make orders requiring the diversion, sentencing and treatment of offenders. New or amending legislation is used where specialty court programs require a marked shift in the role and power of the court not available under existing legislative frameworks. It is not yet clear which of the establishment mechanisms is preferred, mostly because both mechanisms offer advantages and disadvantages yet to be formally evaluated. Research indicates that in using existing legislation, specialty court programs can be established in a timely fashion and amendments to practice and procedure can be expedited as they do not require significant legislative changes. On the other hand, such programs are constrained by the limits of legislation that for the most part was not developed with the needs of the court innovation in mind. As such, their capacity to meet the needs of their target offender population may be compromised (CRC 2003).

A typology of specialty court programs

There is a variety of programs operating across Australia and no single program is identical to another. The establishment of specialty courts has occurred in response to jurisdiction-specific issues. The processes by which these new courts operate and the outcomes they seek to achieve vary significantly from program to program, making the task of identifying common elements and defining their structures a challenging prospect. This has been compounded by the continual process of modification as courts draw lessons from either their own internal experiences or observing other courts nationally and internationally. These changes occur at a rapid rate so that definitions and typologies quickly become outdated.

For analytical purposes however, it is necessary to develop a conceptual model of the key characteristics that define specialty courts and from this determine the extent to which individual courts adhere to those characteristics. The most notable attempt to define specialty courts

Drug courts

Drug court programs first developed in New South Wales in 1999 and now operate in Queensland, Victoria, Western Australia, South Australia and the Northern Territory. They emerged in response to growing community concern about the levels of drug-related crime and the inability of traditional criminal sanctions, such as prison, to have any tangible impact on reducing drug abuse. The aim of the drug court program is to reduce drug dependency and the criminal activity associated with it, and to improve the general health of participants. This is achieved through an integrated treatment and rehabilitation program, designed and monitored in a non-adversarial judicial environment and offered as an alternative to a custodial sanction. Compliance is formally monitored through regular drug testing and criminal offence monitoring.

Evaluations of drug court programs in Australia have demonstrated reductions in both offending and drug use, as well as improvements in general health. Cost-analyses have indicated that drug court programs are at least as cost-effective as the alternative of imprisonment.

is the work of Berman and Feinblatt (2001), which developed four typical characteristics of specialty courts (which they called problem-solving courts). These are:

- **Case outcomes** – Specialty courts seek to achieve tangible outcomes for the three key stakeholders in the court process: victims, offenders and communities. Depending on the court's specific goals, outcomes may be confined to one of the three key stakeholders, while the number of outcomes can range from one to many
- **System change** – Specialty courts seek to re-engineer how government and justice systems respond to broader social and community problems. System changes are usually evident in the roles of the court (moving away from traditional practices) and its layout. These changes are believed necessary to deliver the case outcomes
- **Judicial monitoring** – Specialty courts rely on judicial authority to monitor offenders, solve problems and change behaviour
- **Collaboration** – Specialty courts utilise the services and expertise of government and nongovernment agencies in the management of offenders. The level of collaboration often depends on the desired case outcome. Collaboration occurs in two main forms: within the administration of the court process, and within the delivery and development of offender programs.

Broadly speaking, all 19 court programs surveyed can be classified as specialty courts. This review extends these classifications to consider other details of how specialty courts in Australia are currently operating. In terms of case outcomes, two measures were developed to assess the number of core outcomes and whether the outcomes are aimed at the behaviour of the offender or the procedure of the court. Judicial monitoring was extended to assess the frequency of court monitoring and

Family and domestic violence courts

Family and domestic violence (DV) courts first appeared in South Australia in 1997, and now also operate in Western Australia and the Australian Capital Territory. The primary aims of DV courts are victim safety and offender accountability. They seek to improve the criminal justice response to domestic violence by increasing the prosecution of offenders, providing victim support services and enhancing community awareness of the incidence of family violence. The court operates primarily in an adversarial, non-therapeutic environment. Participating offenders may be required to undertake violence prevention awareness programs.

Australian evaluations of family and domestic violence courts have focused on procedural aspects of the court's operation. Little is known about their efficacy in reducing domestic violence. However, the procedural evaluations have illustrated that the courts improved the efficiency, speed and consistency with which DV matters are dealt with by the courts.

whether the monitoring is targeted at rehabilitation or case determination. The extent to which the court works with other agencies in the administration of the court and the development and delivery of programs is assessed to determine the level of collaboration. Finally, system change is assessed using two key indicators: the level of modification to the judicial role and the courtroom layout (see Payne 2006).

Courts were categorised utilising available materials describing their processes and procedures – including practice and procedures manuals, evaluation reports and public information on the internet – and supplementary discussions with a contact officer for each court regarding standard operating procedures (see Payne (2006) for more detail on the classification methodology). From this

process three distinct Australian specialty court typologies emerged:

- **Courts as case managers** – characterised by significant changes in the way in which the judicial officer and the court operate. The primary function of the court is to work collaboratively with partner agencies in case management and program delivery for each offender. The court maintains significant and ongoing contact with the offender to enhance rehabilitation. The court's role in case determination is seen as secondary to rehabilitation. There were seven courts, primarily drug and mental impairment courts, identified in this typology
- **Courts as diversionary operators and case monitors** – characterised by moderate changes to the adversarial nature of the courtroom, while maintaining traditional judicial roles. The defining feature is that the level of judicial monitoring is periodic and primarily for case determination – a review process provides information for consideration in sentencing. The court and its officers are not typically seen as functional in the treatment or rehabilitation process. This group consists of the drug court diversion programs of the Northern Territory (CREDIT), the Australian Capital Territory (CADAS) and South Australia (CARDS), and the family violence courts of Western Australia and South Australia
- **Courts as specialist adjudicators** – primarily concerned with case processing and procedural justice for special offender groups. Their main objective is to seek criminal case determination that gives consideration to the information provided by experts and dedicated court advisers. The court is not typically involved in monitoring an offender's progress on a treatment or rehabilitation plan, but is concerned with appropriate sentencing. This group consists of the Indigenous courts and the ACT Family Violence Intervention Program.

Current issues for Australian specialty courts

Access and eligibility

Specialty court programs rely heavily on strict eligibility criteria to ensure that programs are adequately and appropriately targeted. Access to court programs may be restricted across four core variables:

- **demographic** – age, gender, Indigenous status and residential location
- **offending** – current offence types, prior offending and imprisonment history, reasons for and causes of offending
- **judicial** – court type, plea type, eligibility for bail, prior program involvement, current sentences
- **other factors** – drug dependency, capacity to participate and voluntary participation.

Strict eligibility criteria are necessary to ensure that specialty court programs can be utilised by offenders for whom they were designed. However, this introduces issues for the implementation of these programs:

- where special eligibility criteria exist, program operators must have access to adequate assessment and identification tools to ensure that they are applied adequately and fairly
- where multiple eligibility criteria are used concurrently, subgroups of offenders may be at a disadvantage and therefore have limited access to the services.

Although the first of these seems self-evident, locating and applying adequate assessment tools is difficult, particularly in cases where an offender's criminal activity is the result of a combination of personal, psychological and behavioural factors that are difficult to disentangle. It may never be possible to identify and treat every cause of offending through one program, but it is imperative that specialty courts continue to monitor and review their assessment methods and tools to ensure that programs are applied

Indigenous courts

First established in South Australia in 1999, Indigenous courts now operate in New South Wales, Queensland, Victoria, Western Australia and the Australian Capital Territory. The aims of the courts can vary between jurisdictions but generally, they provide an alternative and unique criminal justice procedure for Indigenous Australians. The courts are characterised by significant modifications to the manner in which criminal matters are heard, often within a culturally appropriate setting, having regard to the input of Indigenous elders in the sentencing procedure. Indigenous courts are not generally involved in the therapeutic intervention of Indigenous offenders, but provide a forum within which to sentence offenders.

Evaluations of the Indigenous court model in Australia have been process-oriented, describing the procedural elements of the court, rather than evaluating their success in reducing offending. Nonetheless, these evaluations have noted improvements in both victim and offender satisfaction and anecdotal evidence to suggest that the court increases Indigenous identification with the criminal justice system and reduces reoffending.

appropriately to the targeted offender populations.

While it is necessary for multiple eligibility criteria to exist, their strict application may have unintended consequences and exclude different subgroups of offenders. This may occur when a group of otherwise eligible offenders is more likely to experience a combination of personal, psychological or behavioural factors which prohibit their participation. Female offenders, for example, are not ineligible for a drug court program purely on the basis of their gender, but are more likely to have childcare responsibilities, employment problems, family issues and psychiatric difficulties – all of which may be prohibitive to their participation in community-based correctional supervision orders (Bull 2003; Green et al. 2002). These factors, prominent among drug using female offenders (Johnson 2004), can lead to the exclusion of such offenders, or early program withdrawal/termination. Several Australian drug court evaluations have noted these eligibility concerns as possible explanations for female offenders being less likely to participate in drug court programs (Lind et al. 2002; SPRC 2004).

Females are not the only subgroup of offenders who experience difficulties in accessing specialty court programs (for a comprehensive discussion about access and equity in drug diversion

programs see Bull 2003). Other groups noted in the literature include:

- **young offenders** – less likely to voluntarily participate in intensive supervision programs, and more likely to experience psychological problems
- **Indigenous offenders** – more likely to be arrested for a violent offence or have a history of violent offending which prohibits access to community-based programs such as drug courts. Few specialty court programs offer culturally appropriate treatment programs for Indigenous offenders
- **offenders living in rural and remote regions** – not having access to specialty court programs with residential requirements
- **offenders with a mental impairment** – with the exception of the mental impairment court, offenders with a diagnosed mental illness are often prohibited from participating in programs on the basis of their capacity to voluntarily participate and the risk to themselves and the community.

It is important that specialty court programs evaluate and review their eligibility criteria on a regular basis, to ensure that any unintended consequences are identified and responded to appropriately. Moreover, those planning to establish court

innovations should utilise prior research and evaluation to identify and respond to possible issues surrounding eligibility prior to implementation. Importantly, the application and implementation of eligibility criteria are only as strong as the assessment tools used to coordinate them.

Evaluation and effectiveness

Both the Australian and the international literature have emphasised that innovations in the courtroom should be subject to continued monitoring and formal evaluation. There are three types of evaluation commonly used to measure the success and good practice of specialty courts:

- **process evaluations** examine whether the implementation and operation of the program is consistent with how the program was intended to operate
- **outcomes evaluations** examine whether the program has achieved its specified aims and objectives
- **cost-analysis evaluations** examine the operational costs of a program. More detailed analyses can be undertaken to measure the cost-effectiveness or cost-benefit of a program (United States Department of Justice 2003). Cost-effectiveness evaluations examine the raw gains from a given program in terms of the program output, such as the level of reduced offending per dollar spent. Cost-benefit evaluations go one step further to quantify program outputs in terms of financial units and compare them with the program input cost.

In Australia, the majority of specialty courts have been publicly evaluated. Process evaluations have been the most common type of evaluation, followed by outcomes evaluations. As at 31 December 2004 there had been 11 process evaluations, seven outcomes evaluations and four cost-analysis evaluations. These evaluations have focused on five key areas of enquiry:

Mental impairment courts

The only mental impairment court in Australia was established in 1999 in South Australia. It is distinct from other mental health jurisdictional courts which operate as quasi-tribunals to determine the legal application of mental impairment for the purposes of prosecution and sentencing. Instead, the South Australian court was established to monitor and sentence offenders identified as having a mental impairment. The aims of the court are to reduce offending associated with an offender's mental illness, improve general health, and improve the criminal justice response to mental illness. Participants with mental impairment undergo treatment while their progress is monitored by a specialty judicial officer. The court relies heavily on the services of mental health officers to guide program application and sentencing.

The South Australian Mental Impairment Court was formally evaluated in 2004. The findings indicated significant reductions in offending among participants across all offence types. The court was not the subject of a cost-analysis, so it is not possible to determine whether the court is as cost-effective as other court sanctions.

- **satisfying victims and offenders** – evaluations to date have indicated that specialty court programs can result in satisfaction for one or both parties, and that while individuals may have negative experiences, their overall perception of the court program is positive (CRC 2003; Freeman 2002; Potas et al. 2003; SPRC 2004)
- **reducing crime** – focusing on the prevalence, frequency and time to reoffending, the evaluations (primarily of drug courts) have generally noted success in reducing offending among participants, particularly those who successfully complete the program (CRC 2003; Lind et al. 2002; Makkai & Veraar 2003; Payne 2005; SPRC 2004; Skrzypiec, Wundersitz & McRostie 2004). None of the evaluations to date has determined how long post-program levels of reduced offending are maintained
- **reducing drug use** – there is consensus that participation in drug court supervised rehabilitation plans results in reduced use of drugs among those who stay in the program. There have not been any long-term studies that track participants after they have completed the program so there is limited evidence that the benefits are sustained. (Freeman 2002; Lind et al. 2002; Makkai & Veraar 2003; Payne 2005; SPRC 2004)
- **improving health and social function** – results have been positive in the evaluations measuring improvements in health and social function, but again, it is unclear whether these results are sustained once a participant leaves the program (Freeman 2002; Payne 2005; SPRC 2004)
- **cost-analysis** – public cost evaluations have been conducted on four of the drug court programs and showed that the program was at least as cost-effective as the alternative of imprisonment, and that benefits from reduced recidivism and improved health increase the cost-effectiveness of such programs (CRC 2003; Lind et al. 2002; SPRC 2004). There is a need for further cost-effectiveness studies across the range of specialty courts.

An interesting finding of some evaluations has been the identification of the 'termination effect' where offenders who are terminated early from a specialty court program are significantly more likely to reoffend than any other comparison or control group (Lind et al. 2002; Makkai & Veraar 2003; Payne 2005). The reasons for this are not well known, but it highlights potential gaps in the eligibility and assessment process.

Future directions and conclusions

Evaluations to date have noted that subpopulations of offenders, including females, Indigenous offenders, young offenders and offenders with a mental impairment are less likely to access and/or remain compliant with the many requirements of a specialty court program. This is in part due to characteristics which inhibit their willingness or capacity to participate. If specialty courts are to reach all potential clients they will need to:

- assess the appropriateness of current eligibility criteria
- develop responses to improve the participation of these groups
- develop risk assessment tools to identify those people who are most likely to benefit from the specialty court program.

Most Australian specialty court programs have undertaken some type of process, outcomes or cost-effectiveness evaluation, but not on a continuing basis. Considerably more value would be added from embedded evaluations to improve outcomes as part of a process of continuous improvement. There have not been any long-term evaluation studies of key court outcomes such as offending, drug-use, health and social functioning, so the sustainability of achievements has not yet been rigorously tested.

There is also a need for greater collaboration across the states and territories in the development of good practice principles in the delivery of therapeutic and targeted interventions.

Systematic and ongoing evaluation will become a cornerstone of such an endeavour.

Finally, the specialty court movement in Australia is characterised by significant professional networks that have developed between key players in the delivery of services. This whole of government approach to program delivery is often difficult to establish and maintain, but when achieved, allows a greater level of collaboration and communication on issues of importance. The judiciary rely heavily on the professional experience of both the health and corrective services agencies; these agencies also rely on a large network of service providers working towards a common goal. In some jurisdictions, the implementation of specialty court programs has been heralded as a successful working model for cross-government collaboration and cooperation. This is a positive outcome from the development of specialty courts which has wider implications for policy and practice development across government.

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URLs were correct in May 2006

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