

Department of the Attorney General & of Justice NSW Bureau of Crime Statistics & Research

Research Report 11

THE SYDNEY DRUG DIVERSION PROGRAMME

The first two years



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## Preface

The Bureau of Crime Statistics and Research has been involved with the Drug-Diversion Programme from its beginning. The Director of the Bureau, Dr. Jeff Sutton, was invited to sit on a Committee chaired by the former Chief Stipendiary Magistrate, Mr. Murray Farquhar, amongst a number of other representatives from State Government Services and voluntary agencies. The initial programme provided for a mixture of treatment and assessment for persons convicted for the possession of narcotics before certain Courts of Petty Sessions in the Sydney metropolitan area. Through the services of Health Commission personnel, individuals attended a clinic for a period of up to eight weeks. In some cases they were referred to other agencies. They then returned to the Courts for sentencing, with their progress in the period taken into account by the Magistrates. From the beginning the programme was monitored, although no attempt was made to formally establish a scientific research programme for the evaluation of the success or otherwise of treatment. The current report discusses the reconviction rate and the determinants of those rates for those persons who attended the first year of the programme. It was decided that the most constructive way of using the research results would be to report them back to the Committee on an on-going basis. The programme was then substantially restructured. It is now known as the Drug and Alcohol Court Assessment Programme and is administered by the Drug and Alcohol Authority through a Committee chaired by Mr. Brian Stewart, the Chairman of the Drug Authority. Information on the new programme is included in this report but the full details are available direct from the Authority.

We have been glad to have the opportunity to conduct a research programme which had direct and immediate effect on the development of the Drug and Alcohol Court Assessment Programme and it is felt that it is now appropriate to publish the results of our original research. It should be borne in mind however, that the programme which is being evaluated has now substantially changed. Nevertheless the experience of establishing this programme should be of value to all those who are considering a similar method of dealing with drug offenders.

The research was commenced by Roseanne Bonney and Cheryl Meakins. Henry Pakula contributed the substantial legal section of the report. Liaison with the Drug and Alcohol Authority and the Drug Diversion Programme Officer in the Health Commission was mainly conducted by the Director, Dr. Jeff Sutton. Finally the data was co-ordinated and the report written and revised, after comments, by Angela Bester. It was typed by Ales Daly and many members of the staff have given comments and advice especially the Deputy Director, Sandra Egger.

A.J. Sutton,  
DIRECTOR.



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PART I - INTRODUCTION

CHAPTER 1: THE SYDNEY DRUG DIVERSION PROGRAMME

1.1 Background to the Programme

Over the past two decades there has been an increasing realization that the traditional punitive approaches of the criminal justice system have largely been ineffective in dealing with the problem of drug abuse. In the late 1960's the United States developed drug diversion programmes as an alternative means of dealing with drug offenders. The emphasis of this new approach was treatment rather than punishment, an emphasis very much in line with the 'humanitarian' philosophy of the time.

A similar approach was adopted by the New South Wales Government, and on the 1 March 1977 the Drug Diversion Programme was implemented in four Sydney Magistrates' Courts. The programme was in essence, an attempt to utilize the courts as agents for bringing drug offenders into contact with treatment services.

A number of factors, both direct and indirect, precipitated the implementation of the programme. An obvious factor was the perceived increase in drug abuse. Despite the difficulties in accurately estimating the incidence of drug abuse, there has been general agreement that the abuse of drugs, particularly opiates, increased dramatically during the 1970's. Appearances on opiate charges in New South Wales Magistrates' Courts indicated a 57% increase between 1973 and 1974, a 97% increase between 1974 and 1975 and a 21% increase between 1975 and 1976<sup>(1)</sup> The Sydney Coroner's statistics show an increase in the number of accidental drug deaths between 1974 and 1977, and

furthermore, an increase in the percentage of accidental drug deaths due to hard drugs such as morphine, heroin and cocaine. In 1974 13.3% of accidental drug deaths were due to hard drugs, with the figure increasing to 16.6% in 1975, 32.4% in 1976 and 41% in 1977.(2)

Another factor which influenced the decision to implement the programme was the dissatisfaction with the sentencing options available to Magistrates. Between 1971 and 1976 there was a steady decline in the use of prison sentences for drug offenders appearing in Magistrates' Courts. In 1971 prison sentences were used in 16.9% of drug cases, compared to 6.5% in 1976.(3) This decrease possibly reflected a belief that imprisonment was not always appropriate for drug offenders. Taking into account this decline in the use of prison sentences, the steady increase in court appearances for drug offences mentioned earlier, and the fact that in 1976, 47.9% of persons appearing on drug charges had previous convictions,(4) it is hardly surprising that the development of more effective non-custodial sentences was sought.

The Sydney Drink-Drive Rehabilitation Programme which was implemented in 1975 undoubtedly set a precedent for the Drug Diversion Programme. The two programmes are procedurally similar and the former Chief Stipendiary Magistrate, Mr. Murray Farquhar, played an active role in initiating them.

## 1.2 Description of the Drug Diversion Programme

### Objectives of the programme

Although the objectives of the programme were alluded to in several documents, no single document contained a comprehensive statement of what the objectives were to be.

The Health Commission of New South Wales said that the Programme was "designed to channel convicted narcotic users from the penal into the health care and treatment system"(5)

At the launching of the Programme with the opening of the Bourke Street Community Drug Advisory Service, the Premier made the following statement:

"The Diversionary Programme is intended to provide access to a diversity of treatment services following assessment of drug offenders who have pleaded guilty or who have been convicted of charges relating to drug addiction"(6)

Notes from meetings of the programme's Management Committee suggest that the objectives were:

- . to reduce the incidence of drug offenders
- . to effect early intervention in the drug-taking problem of drug offenders
- . to provide drug offenders with treatment as an alternative to sending them to prison.(7)

#### The target group

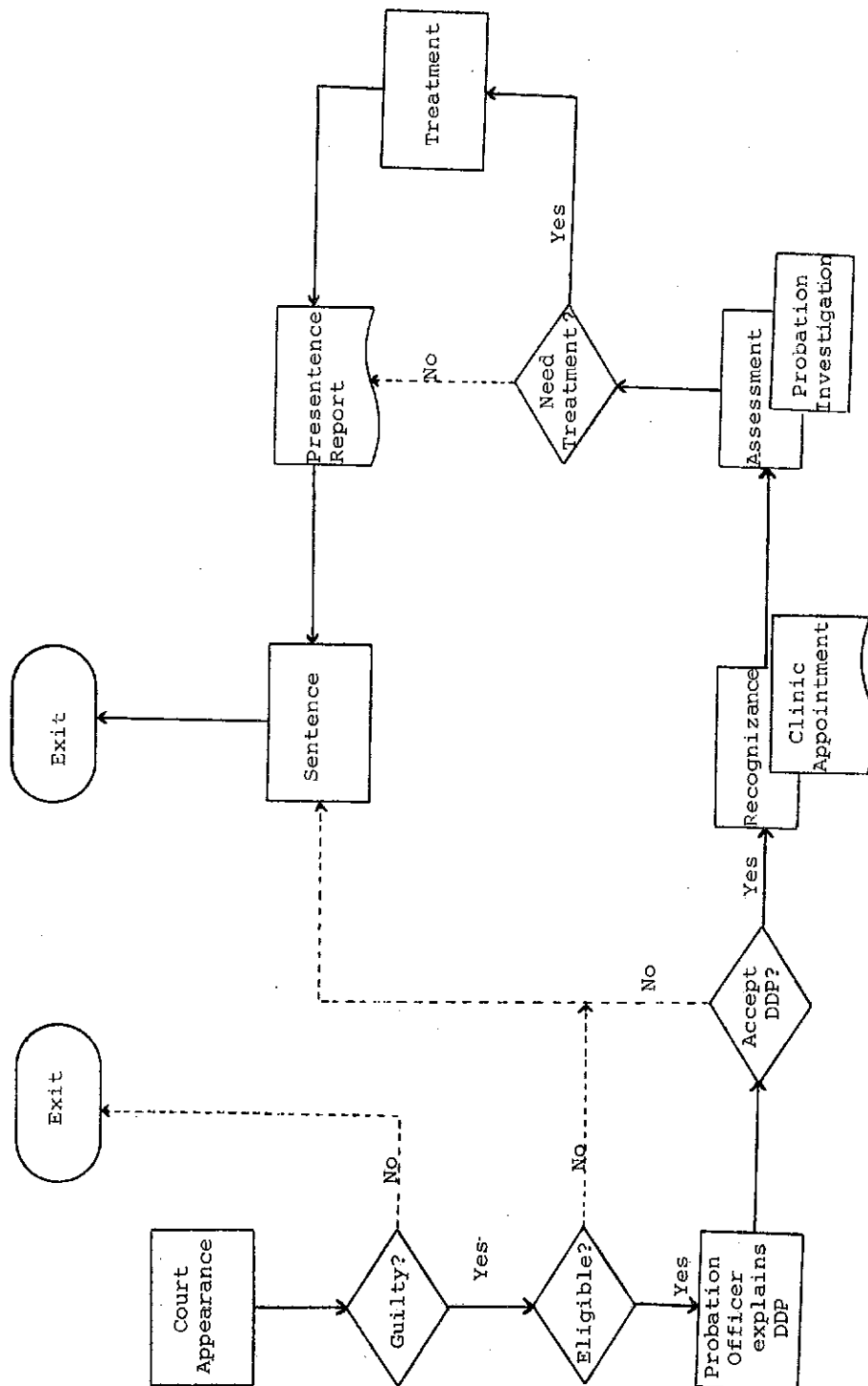
The programme was made available to individuals who either pleaded guilty to or were found guilty of a drug offence of which one aspect was the personal use of drugs. People appearing on marijuana charges were not eligible for the programme. Other than the exclusion of marijuana users, there was no further stipulation as to the type of drug involved in the offence. Furthermore, eligibility criteria did not have specifications

regarding the potential participant's criminal record. The individuals thus potentially eligible for admission to the programme ranged from first offenders to those with numerous prior convictions, and the drugs in question comprised the broad spectrum of opiates, hallucinogens, sedatives and stimulants. Initially the programme was only available to adults appearing at the Magistrates' Courts of Central, Waverley, Redfern and Newtown. In 1978 the programme was extended to other Magistrates' Courts as well as the Children's Courts.

#### Procedure

Once the guilt of the person had been established the Magistrate decided whether the person was suitable for the programme. The suitable offender was offered the programme and on acceptance the case was adjourned for eight weeks. The Magistrate placed the offender on a recognizance of which the conditions were to attend the assessment centre at either the Bourke Street Drug Advisory Centre or the Bondi Junction Community Health Centre, and to accept the supervision of the Adult Probation Service. An appointment to attend the assessment centre was made by the probation officer. At the centre a pre-assessment interview was done and arrangements were made for a full assessment at a later date. The full assessment comprised a social history and histories of drug usage and treatment received. Where possible treatment commenced during the adjournment period. The probation officer conducted an investigation into the offender's background, employment etc. At the end of the adjournment period the offender re-appeared at the Court for sentencing. The Magistrate was given the pre-sentence report, and in some cases, a separate report from the assessment centre. The programme procedure is illustrated in Figure 1 on page 5.

Figure 1: Drug Diversion Programme Procedure



PART II: THE DIVERSION CONCEPT AND DRUG DIVERSION PROGRAMMES

CHAPTER 2: DRUG DIVERSION IN THE UNITED STATES

Most of the literature on diversion emanates from the United States where according to Tomasic (1977), the first official usage of the term "diversion" occurred in the Task Force Report of the U.S. President's Commission on Law Enforcement and Administration of Justice.

Nimmer (1974) defines diversion as:

"...the disposition of a criminal complaint without conviction, the non-criminal disposition being conditioned on either the performance of specified obligations by the defendant, or his participation in counselling or treatment."(8)

Rovner-Pieczenik uses diversion to refer to

"...those formally acknowledged and organised efforts to utilize alternatives to the initial or continued criminal justice processing of alleged offenders, which are undertaken prior to adjudication but after a prosecutable action has occurred."(9)

Since diversion is a non-custodial procedure, it is clear that diversion programmes are intended for those offenders whose liberty is unlikely to endanger public safety. The major application of diversion programmes has been to matters which are as much social welfare or medical problems as they are criminal offences-like public drunkenness, juvenile delinquency and drug abuse.

The numerous existing diversion programmes, although differing in the specific treatments and social services which they offer, have similar entry and exit procedures:

"...a person is first brought before the court or panel set up by the court, a decision is made as to whether he would suit the types of activities open to the project. If he agrees to participate in the programme, the court defers prosecution until the completion of the prescribed scheme of counselling or job placement. The person agrees in writing to participate in the programme and in the U.S. context, agrees to defer his right to a speedy trial.

Upon completion of the scheme (usually between three and twelve months later) the person comes back before the court and if he is seen to have been successful, his charge is dropped and he is allowed to proceed as if he has not been arrested or charged."(10)

#### History of diversion

The disposition of an offence without trial has long been part of the American criminal justice system. Such disposition took place on an informal level and was typified by the exercise of discretion on the part of police not to charge. This practice was regarded as advantageous in that it relieved the overburdened courts and permitted the conservation of scarce resources for important cases.

In 1967 the U.S. President's Commission on Law Enforcement and Administration of Justice stated in its Task Force Report: Courts that the flexibility of non-trial disposition made it open to abuse.

"The main dangers of the present system of non-trial disposition lie in the fact that it is so informal and invisible that it gives rise to fears that it does not operate fairly or does not accurately identify those who should be prosecuted and what disposition should be made in their cases. Often important decisions are made without adequate information....without basic procedural protections for the defendant....often little factual material is available about the offense, the offender and the treatment alternatives...."(11)A second criticism by the Commission was that non-trial disposition was seldom followed by the treatment needed to prevent the recurrence of the offence.

The Commission recommended that non-trial disposition become a formalised procedure to avoid abuse of the system and to ensure that decisions not to charge or prosecute were rational, informed ones. Furthermore, the Commission recommended that extra-legal services, such as treatment and preventative education become a more integral part of non-trial disposition. The formal non-trial disposition together with the deliberate utilization of services became what is now known as "diversion".

#### Justifying diversion programmes

The original justification for non-trial disposition was that it relieved the overburdened courts. With the introduction of numerous formal diversion programmes the justifications somewhat increased. Briefly, these justifications were:

1. processing certain offenders, particularly first offenders, in the traditional way had the undesirable effect of perpetuating the "criminal" problem



2. imposing a criminal label laid the groundwork for a deviant identity and a criminal record reduced employment opportunities
3. certain offenders like drug abusers and juveniles could be dealt with more appropriately in the open community which possessed more effective mechanisms for rehabilitation than did coercive institutional structures like prisons
4. diversion prevented discrimination against the socially and economically disadvantaged since its formalisation provided a check against discriminatory exercise of discretion
5. diversion represented cost-benefits to the community and was a more humane approach to dealing with certain categories of offenders

#### Some examples of drug diversion programmes

The earliest diversion programme for drug users was the Manhattan Court Employment Project which was implemented in 1968. The focus of this programme was on job counselling and training and it specifically excluded heavy narcotics users. Non-drug users who were also admitted to the programme were found to be more successful than drug users.(12)

The Treatment Alternatives to Street Crime (TASC) programmes are probably the most prominent of the U.S. drug diversion programmes. The rationale behind the development of these programmes was the convincing evidence of "...a direct causal relationship between drug abuse, particularly heroin, and street crime."(13)

TASC programmes exist in numerous states and together they make up the National TASC Programme. The goals of the National TASC Programme when it was implemented in 1972 were:

- " . to identify and provide treatment to as many addict offenders as possible entering the criminal justice system by providing the vital linkage between the criminal justice and health care delivery system
- . to reduce the criminal recidivism of drug addicts through treatment and rehabilitation by reducing the drug use of all programme participants
- . to reduce the human and fiscal costs to society and the criminal justice system incurred by addict offenders through their criminal and drug taking behaviour"(14)

Although TASC started as a pre-trial diversion programme specifically for heroin addicts, by 1977 the programme was expanded to include all drug abusers (except alcohol). Also, these abusers were recruited at all points of entry to the criminal justice system such as pre-sentence referral, conditional probation, police diversion and conditional parole. Juveniles were also included.

Each TASC programme has been adapted to suit the different criminal justice system conditions and the different dimensions of the drug problem prevailing in the different states.

The TASC programme in Denver, Colorado excluded users of marijuana and only catered for individuals over the age of eighteen years. The participants were those persons awaiting adjudication or about to be paroled as well as those who were officially ordered by the courts to seek treatment.

The TASC programme in Austin, Texas catered specifically for opiates addicts while the Flint, Michigan programme preferred marijuana users.

The Marin County TASC programme screened persons remanded in custody. The cases of drug dependant persons were placed before the judiciary and pre-trial release would be granted on the condition that these persons enter into treatment.

In most U.S. Drug diversion programmes the treatment period could be from one to three years. Also, most programmes concentrated on users of heroin.

#### Evaluation Studies

Diversion programmes are not amenable to "truly scientific" research because of the ethical and legal issues inherent in the use of the classical experimental research design within the criminal justice setting. Most evaluation studies have therefore concentrated on the monitoring of programmes in order to assess how well programme objectives have been accomplished.

The P.C. 1000 State programme of California found that 86% of diversion cases terminated successfully, while only 4% of defendants were removed from the programme for committing new offences, 2% absconded and 8% had to be returned to court for failing to complete the programme. (15)

However, some local P.C. 1000 programmes yielded less positive results. For example, the evaluation of the Orange County Programme in 1974 concluded that:

" . Law enforcement officials were less happy with diversion since it reduced their opportunities to find out more about drug supply sources from defendants.

. The majority of divertees did not abstain from use of marijuana either while in the programme or subsequently, although many reported reduced and more circumspect use

. Divertees experienced fewer arrests and convictions, in a comparable time, than similar cases during the two years preceeding diversion (but differences were marginal) " (16)

The evaluation study also found that although the programme made a limited reduction in the workload of the prosecutor and the court, it greatly increased the workload of the probation service.

In evaluating the first five TASC programmes, the researchers found that:

- . 55% of all TASC clients were receiving treatment for the first time
- . recidivism was low - rearrest rates ranged from 5% - 13%
- . 75% of TASC clients in treatment had not used drugs for at least 30 days prior to the study

The latter two findings were regarded as very encouraging in view of the fact that TASC was dealing with "hard core" addicts. 64% of TASC clients were facing felony charges, 98%

had prior arrest records, 99% were heroin abusers and 85% were using heroin for one year at least.(17)

The researchers concluded that:

"In general, the TASC concept and programs have been successful in their goals of identifying and treating drug addicts previously unknown to the treatment system, reducing recidivism rates and drug use in the addict population, decreasing overall costs within the criminal justice system and reducing the costs to society of addict crime and lack of productivity." (18)

In 1974 the ABt Associates evaluated five other TASC programmes which had been implemented a year earlier. They concluded that the programmes had been successful in reducing recidivism and drug use and had brought many clients into contact with the treatment system for the first time. However, they expressed doubt as to whether treatment itself reduced recidivism, and thought that the motivation of the client was a more significant factor in reducing recidivism.(19)

The National Evaluation Programme of TASC interpreted the findings of individual evaluation studies with caution. The researchers conceded that the rearrest rates of TASC clients were relatively low, but that the lack of information on client outcomes for post-programme periods made it impossible to assess whether the reduction in recidivism was long term. They concluded that:

"Although TASC's short term effects include an eight percent rearrest rate while in the program, the inducement of a large number of people to enter treatment for the first time and the impressionistic information that TASC's

activities have improved the interface between the criminal justice and treatment systems, such findings cannot substitute for analysis of a program's long range impact. The lack of client analysis outcome in particular precludes defensible statements regarding TASC's long range impact on drug-related crime or the associated processing burdens of the criminal justice system." (20)

Rovner-Pieczenik expressed similar doubts about the long term reduction in recidivism. In a study of the technical adequacies of evaluation studies, she found that many had no post-programme observation period, and where such a period existed, it was too short. She also found that most studies indicated that the individual's characteristics prior to programme entry were important factors of successful programme outcome. The characteristics associated with success were:

- . employment at time of programme entry, good employment history
- . infrequent or no prior arrests
- . older age; secondary education; married; female
- . property offenders were more likely to be successful than were those persons who committed offences against the person. (21)

A recurring theme in the evaluation studies outlined is the lack of adequate data. According to Rovner-Pieczenik this problem has two major causes. Firstly, evaluative research was seldom made an integral part of early programme planning. Consequently, the research had to be designed to accommodate available data rather than designed to elicit the data required

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to assess programme effectiveness. Secondly, low priority was given to evaluative research in the allocation of programme resources.(22)

The Law Enforcement Assistance Administration (L.E.A.A.) expressed a similar view when it reported on the evaluation of diversion programmes and strongly recommended that the research component be included in the initial design of a programme and be a built-in part of the organisation structure.(23)

#### Diversion Legislation

In its early years diversion received wide support and strongly appealed to those seeking reform in the criminal justice system. Many states enacted legislation to cover the operation of diversion programmes. Statutes such as the Pre-trial Diversion Act (Massachusetts, 1974) and the Criminal Procedure Accelerated Act (Connecticut, 1973) provided for the diversion of drug offenders as well as other categories of offenders. In 1972 the State of California enacted legislation specifically providing for the diversion of drug offenders.(24)

Statutes were also enacted at the federal level. In 1972 the Drug Abuse Office and Treatment Act was introduced. This Act authorised the Special Action Office for Drug Abuse Prevention to establish pre-trial intervention programmes for drug offenders.(25)

#### Some criticisms

Doubts that diversion can effect a long term reduction in recidivism have already been mentioned.

Some critics argue that diversion programmes are not achieving the aim of reducing the workload of the courts and prisons because they in fact bring into the criminal justice process many people who would not have been processed at all. Gorelick (1975) has analysed the mechanisms by which this occurs.

"First, where a diversion program is available, there is evidence that individuals who normally would have been handled in the community are 'diverted' to official programs. Second, diversion programs are sometimes utilized by prosecutors and courts when less official procedures (for example, an administrative or educational hearing) might accomplish the same objective with less intervention and use of court time. Third, pre-trial diversion saves the court time only if, in its absence, the accused would have gone to trial. However, it appears that most pre-trial diversion cases would have been disposed of informally without a trial. For those who would have gone to trial, diversion saves the criminal justice resources only if most of those diverted would have gone to gaol. It appears, however, the diversion is more accurately an alternative to dismissal of charges or probation than to incarceration. Most individuals who are diverted would either have had their charges dismissed or would have received a sentence of probation."(26)

A similar view was held by the Canadian Law Reform Commission.

Another criticism of diversion is that stigma might not be avoided. As diversion becomes an institutionalised element of the criminal justice system, the term 'divertee' may attract stigma.

There is also concern for the disadvantages which may accrue to the unsuccessful participant who is returned to the conventional adjudication system. The paradox is evident that the greater the promise of diversion to avoid the punitive aspects of the criminal justice system, the greater is the potential prejudice to the defendant who fails in the diversion programme. In the course of treatment prejudicial disclosures are made and the very fact that the defendant has "failed" to respond to treatment would militate against him/her in the trial.

Legal analysts in the United States have been pre-eminently concerned with the issue of the legality of non-trial disposition, since to a large extent, it involves the exercise of judicial discretion by non-judicial bodies. Their main concern is that the individual's rights and protections which are built into the judicial process may be overlooked, and that this might lead to more coercive treatment of drug offenders than would be the case under conventional disposition.

As a continuation of the above criticism diversion has also been viewed as an expansion of social control. Gorelick (1975) explains that this expansion comes about from diversion's criteria for the imposition of social control - the concept of "need for treatment" has no inherent limitation.

"It too easily expands to accommodate pressures to rid the community of those who are perceived as threatening or odd. Moreover, if the degree or period of social control is determined by treatment necessities instead of punitive considerations, the degree of social intervention imposed on an individual may extend far beyond that which he could have expected as punishment. The time required to 'cure' an individual may bear no relation to the harm caused by his criminal act."(27)

### CHAPTER 3: DIVERSION IN NEW SOUTH WALES

Diversion in New South Wales presently exists in two forms, namely, pre-court diversion and pre-sentence diversion. Pre-court diversion exists in the form of the Police cautioning system for juvenile offenders. Under this system the Police exercise the discretion not to charge and instead, issue a formal warning to juvenile offenders.

The Drink-Drive Rehabilitation Scheme and the Drug Diversion Programme are forms of pre-sentence diversion. The decision to divert takes place after guilt has been established and prior to sentencing.

The fact that sentencing takes place after the referral process indicates that the entire judicial process remains intact. As such, the act of diverting an offender is more aptly described as an additional procedure to the processing of the offender, rather than as an alternative to the due processes of the law as in the case of pre-trial diversion. That diversion is not a replacement for the traditional judicial process is made clear by the following statement of Mr. Justice Woodward:

"(Diversion).....involves the judicial process, and treatment and rehabilitation within the criminal justice system as an alternative to the more usual concept of fine or imprisonment."(28)

Drug diversion in New South Wales is thus distinct from the United States programmes. Although both types of programmes involve the court referral of offenders to community resources, the fact that the referral takes place at the pre-sentence stage in the New South Wales programme raises different justifications for it.

In pre-sentence diversion the concern is for developing appropriate and effective sentences.

Two important assumptions of pre-trial diversion do not exist in pre-sentence diversion. Firstly, since the entire judicial process remains intact in pre-sentence diversion, it does not assume that this process has the undesirable effect of perpetuating the criminal problem. Secondly, since pre-sentence diversion is an additional procedure, it has not been designed to relieve overcrowded courts or speed up delays.

The two forms of diversion also differ in terms of outcome of programme participation. Successful programme participation leads to a dismissal of charges under the pre-trial form. In the pre-sentence form dismissal can occur under S.556A of the Crimes Act, but this dismissal is a function of sentencing rather than an automatic outcome of successful programme participation.

Broadly speaking, diversion of drug offenders is not new to the New South Wales criminal justice system. There has been provision under sections 68, 69 and 96 of the Justice's Act for a magistrate to adjourn a hearing at his discretion and permit the defendant to enter into a conditional recognizance. The defendant would then be referred to a treatment agency. In principle there is no difference between this type of court-referral and the Drug Diversion Programme. However, the two do differ in approach. The Drug Diversion Programme is a formalised court-referral procedure in that the referral mechanisms and the treatment resources are integrated to constitute a comprehensive programme. Furthermore, in a formal programme the magistrate would presumably consider each relevant drug case for referral, whereas under the traditional system referral would be random and generally only on the request of the defence counsel.

PART III EVALUATING THE DRUG DIVERSION PROGRAMME

CHAPTER 4: THE EVALUATION STUDY

4.1 The Aims of the Evaluation Study

A major difficulty in designing the evaluation study was caused by the lack of any documented agreement about the objectives of the Drug Diversion Programme and an equal absence of information about the anticipated benefits to be derived from its introduction.

Another problem was that the proposed evaluation research was not an integral part of early programme planning. Evaluation commenced six months after the programme had been implemented. The evaluation research was therefore of an ex-post facto nature, confined to describing and analysing what happened in the programme, rather than making definitive conclusions about its efficacy.

The aims of the evaluation study were thus:

- 1) to measure the characteristics of programme participants and compare these with non-participants
- 2) to measure participants' obvious outcomes such as sentences and reconvictions and compare these with those of non-participants
- 3) to produce an account of procedures undertaken in the assessment-treatment component of the programme, and
- 4) to identify problems in the operation of the programme.

#### 4.2 Evaluation methodology

The evaluation was confined to the pilot courts of Central, Redfern, Newtown and Waverley and the study period was between 1 March 1977 and 28 February 1979. The study was conducted in three stages.

##### Stage One: Collection and analysis of statistical data

The first stage involved the collection and analysis of statistical data relevant to the first two aims of the evaluation study. The total sample of drug offenders (excluding marijuana offenders) who appeared at the four courts during the study period were assigned to three groups on the basis of treatment status and programme participation.

##### Group 1: Drug Diversion Programme Participants

This group comprised those persons who pleaded guilty to or who were found guilty of a drug offence (other than marijuana) of which one component was the personal use of drugs prescribed under Parts III and IV of the Poisons Act, 1966. These persons chose to participate in the diversion programme offered by the four pilot courts.

##### Group 2: Second Treatment Group

Persons in this group were potentially eligible for admission to the programme, but they were already in treatment at the plea date. The difference between this group and Group 1 was that the former had come into contact with treatment facilities by means other than the programme.

Group 3: Non-Treatment Group

Although members of this group were eligible for the programme in respect to the type of drug charges stipulated in the eligibility criteria, they did not participate in the programme and were not in any treatment as far as could be established.

Information on the characteristics and sentences of the offenders in the sample was obtained from the court papers, while information regarding previous and subsequent convictions was obtained from the records office of the New South Wales C.I.B.

Stage Two: The Treatment Component of the Programme

The clinic records of the Bourke Street Clinic were surveyed for the year 1977. The reason for this was that the required information was not always available from the Bondi Junction Community Health Centre, and also most offenders were referred to the Bourke Street Clinic.

The following information was extracted:

1. the number of clients completing the various stages of the assessment-treatment process
2. the types of services rendered by the Bourke Street Clinic.

Stage Three: The Role Study

A programme utilizing the resources of fundamentally different professions for the solution of a problem inherently contains the potential for conflict, since each discipline has its own perceptions of the problem and its proposed solution.



In order to minimise potential conflict and enhance programme efficiency, the personnel groups should have consensus on what their role functions ought to be. A role study was done to identify problems experienced by persons involved in the operation of the programme.

A sample of magistrates, probation officers and drug counsellors was interviewed twelve months after the programme had been implemented. (See Appendix C for the interview schedule). The evaluation concentrated on the interviewers' perceptions of the programme objectives and an appraisal of another's role activities.

CHAPTER 5 : RESULTS

STAGE 1 : STATISTICAL DESCRIPTION OF EVALUATION GROUPS

Table (5.1) shows the number of persons appearing before the four pilot courts on drug charges (excluding marijuana), during the two year study period. In both years the highest percentage of referrals were made from Central Court. The Courts of Newtown and Redfern each referred 4 persons during 1977 and there were no referrals from these two courts during 1978.

Central Court, as well as making the highest percentage of referrals also had the highest percentage of non-referrals during both years of the study period. The 1977 papers at this court were studied to ascertain the reasons for non-referrals.

These reasons are tabulated in Table (5.2).

Table 5.2 Reasons for Non-Referral.

Reasons	Number of Offenders	Percent
No evidence of addiction	55	27.0
Defendant on trial for more serious charges/remanded in custody	44	21.7
Entry to scheme opposed by Prosecution/Probation/Magistrate because of prior convictions/unsatisfactory probation history	23	11.4
Scheme entry declined by defendant	21	10.3
Non-appearance of defendant on plea date	9	4.4

Scheme not available on plea date	3	1.5
Defendant leaving State/Country/ Area	15	7.4
Defendant deceased	2	0.9
Drugs legally obtained but defendant not following use directions	4	2.0
Reasons not known	24	11.9
<hr/>		
	203	100.0

Table 5.1  
Evaluation Groups by Pilot Courts

	1977			1978			1979			1980		
	Diversion	Other Treatment	No Treatment	Diversion	Other Treatment	No Treatment	Diversion	Other Treatment	No Treatment	Diversion	Other Treatment	No Treatment
Courts	N	%	N	N	%	N	N	%	N	N	%	N
Central	100	65.4	43	69.3	71.9	203	92	80.8	62	77.5	257	71.1
Waverley	45	29.4	13	21.0	17.7	53	22	19.2	9	11.2	74	20.4
Redfern	4	2.6	6	9.7	5.2	15	-	-	7	8.8	17	4.8
Newtown	4	2.6	-	-	5.2	15	-	-	2	2.5	13	3.7
Total	153	100.0	62	100.0		286	114	100.0	80	100.0	361	100.0

The lack of evidence of addiction was the most frequent reason for non-participation in the programme. This occurred in 27% of the cases. In 21.7% of the cases, the defendants were on more serious drug and non-drug charges which invariably attracted gaol penalties. They were therefore not given the option of participating in the programme. Entry to the programme was opposed by prosecution/probation service/ magistrate in 11.4% of the cases. The reasons for opposition were mainly unsatisfactory probation or remand history (6 cases) and/or a long history of prior convictions (5 cases). In 10.3% of the cases, defendants declined the option of entering the scheme.

Table 5.3  
Sex by Evaluation Groups

1977					
	Diversion	Other Treatment		No Treatment	
		N	%	N	%
Male		45	72.5	206	72.0
	102		66.7		
Female		17	27.5	80	28.0
	51		33.3		
Total		62	100.0	286	100.0
	153		100.0		

Sex of offenders

Table 5.3 shows the representation of the two sexes in the three groups. In 1977 33.3% of the programme participants were females, this percentage being the highest of the three groups for that year.

The 1977 Court Statistics (29) indicate a higher proportion of females convicted on opiate charges than for other substances - 24.38% compared to 12.7% females in the overall drug offender population. The fact that opiates were involved in 80% of the cases in the Drug Diversion Programme possibly accounts for the high proportion of females in the programme. During 1978 there was an increase in the female proportion for all three groups. This may be attributed to the increase in the overall number of drug convictions involving females during 1978 (30).

Age (Table 5.4)

In both years offenders aged between 21 and 24 years constituted the highest proportion in the overall sample. This trend also existed within the three groups over the two year period. The 1977 Court Statistics indicate a higher concentration of opiate offenders in this age group than with other substances (31). Furthermore, opiate offenders are generally older than other drug offenders. It is therefore possible that the decrease in offenders aged between 18 and 20 years in 1978 was due to the increase in opiate offenders in the total sample for that year.

Both for 1977 and 1978, no persons over the age of 40 years were referred to the programme.

Table 5.4 Age by Evaluation Groups

Years	1977						1978					
	Diversion			Other Treatment			Diversion			Other Treatment		
	N	%	N	%	No Treatment N	%	N	%	N	%	No Treatment N	%
18-20	35	22.9	13	20.9	78	27.2	17	15.0	14	17.5	72	20.0
21-24	63	41.2	23	37.1	91	31.8	60	52.7	30	37.5	149	41.2
25-29	46	30.0	23	37.1	77	27.0	31	27.1	28	35.0	96	26.6
30-39	9	5.9	3	4.9	35	12.2	6	5.2	7	8.8	31	8.6
40+	-	-	-	-	5	1.8	-	-	1	1.2	4	1.1
Not known	-	-	-	-	9	1.6	-	-	-	-	9	2.5
Total	153	100.0	62	100.0	286	100.0	114	100.0	80	100.0	361	100.0



Marital Status

Difficulty was encountered in attempting to ascertain the marital status of the offenders in the total sample. This was particularly true in the case of non-participants of the programme where marital status was unknown in more than half of the cases. Because of the pre-sentence reports prepared by probation and parole officers, the marital status of program participants was established in most cases. Table 5.5 shows the marital status for this group. A complete table on marital status is given in Appendix (A).

Table 5.5    Marital Status of Programme Participants

	1977		1978	
	Number	Percent	Number	Percent
Single	80	52.2	67	58.8
Married	9	5.9	10	8.8
Widowed	1	0.7	-	-
Divorced	1	0.7	3	2.7
Separated	6	3.9	6	5.2
De-Facto	35	22.9	16	14.0
Not known	21	13.7	12	10.5
Total	153	100.0	114	100.0

More than half of the programme participants were single in both years of the study period. This is consistent with the general youth of the offenders in the programme.

Table 5.6 Occupation by Evaluation Group

	1977			1978		
	Diversion		No Treatment	Other Treatment		No Treatment
	N	%		N	%	
Professional	-	-	1	0.3	-	-
Semi-Professional/ Middle Management	5	3.2	2	3.2	2	2.5
Sales/Clerical/Trade	24	15.7	19	30.7	25	15.0
Unskilled	44	28.8	14	22.5	27	17.5
Sub-Total Employed	73	47.7	35	56.4	54	35.0
Student	1	0.7	1	1.6	1	0.9
Pensioner	3	2.0	1	1.6	3	3.8
Domestic	7	4.6	8	13.0	8	7.0
Unemployed	66	43.0	17	27.4	47	33.2
Sub-total "Not employed"	77	50.3	27	43.6	59	39.9
Not known	3	2.0	-	-	1	0.9
Total	153	100.0	62	100.0	114	100.0

Occupation: Table 5.6

Congalton's scale of four basic status categories A to D was used to measure the occupation distribution of the offenders. Persons falling into this scale were sub-categorised as "employed". The remaining persons consisting of students, pensioners, domestic and unemployed, were sub-categorised as "not employed". In the case of programme participants, occupations stated by them were validated by probation and parole officers in the course of preparing the pre-sentence reports. However, caution should be exercised in interpreting the occupational status for non-participants since the figures are based on self-reports which are not always accurate.

For 1977, 43% of programme participants were unemployed. This percentage was 15.6% more than unemployment in the second Treatment Group and 9.8% more than in the Non-Treatment Group. Also in 1977, of the programme participants who were employed, the majority were unskilled workers. In 1978 the differences in unemployment percentages for the three groups were marginal.

Table 5.7

Type of Offence by Evaluation Groups		1977			1978		
		Diversion	Other Treatment	No Treatment	Diversion	Other Treatment	No Treatment
		N	%	N	%	N	%
Use							
Possess							
Administer							
Sub-total "use"							
Sell							
Distribute							
Forge/Utter Prescriptions							
Manufacture							
Sub-total "push"							
Not known							
Total							

Type of Offence

The type of offence is shown in Table 5.7. The offences were categorised into "use" and "push". Since the Drug Diversion Programme was intended for those persons on charges involving the personal use of drugs, the high proportion of programme participants in the "use" category is to be expected. The percentage of programme participants in the "use" category was 83% and 89.5% for 1977 and 1978 respectively. Programme participants in the "push" category can be accounted for by the coding system used in this study. The principal offence was coded, and therefore the programme participants in the "push" category are those persons who had "push" type offences as their principal offence, but were also on lesser charges relating to personal use of drugs.

Type of Substance

Table 5.8 shows the types of substances involved in the drug offences.

For both years and within all groups the substance most often specified in the charges was an opiate. The Non-Treatment Group displayed a greater variation in the types of substances involved than did the other two groups.

Two offenders admitted to the programme were charged with cannabis offences, a substance which was excluded from the programme. In collecting the data for this study the principal offence rule was used. It may be that the two persons mentioned may have had cannabis charges as their principal offence and in addition may have faced less serious charges relating to other substances eligible in the programme.

Table 5.8 Type of Substance

	1977						1978					
	Diversion		Other Treatment		No Treatment		Diversion		Other Treatment		No Treatment	
	N	%	N	%	N	%	N	%	N	%	N	%
Opiates	123	80.4	50	80.6	146	51.5	93	81.5	59	73.8	220	61.0
Sedatives	20	13.0	8	13.0	109	38.1	19	16.7	20	25.0	104	28.8
Stimulants	6	4.0	3	4.8	15	5.2	1	0.9	-	-	11	3.0
Hallucinogens	2	1.3	1	1.6	10	3.5	1	0.9	1	1.2	13	3.6
Cocaine	-	-	-	-	6	2.1	-	-	-	-	4	1.1
Cannabis	2	1.3	-	-	-	-	-	-	-	-	-	-
Not Known	-	-	-	-	-	-	-	-	-	-	9	2.5
Total	153	100.0	62	100.0	286	100.0	114	100.0	80	100.0	361	100.0

Table 5.9 Previous Convictions by Evaluation Groups

	1977			1978		
	Diversion	Other Treatment	No Treatment	Diversion	Other Treatment	No Treatment
	N	%	N	N	%	N
Previous drug convictions	85	55.6	41	61	53.5	50
Previous non-drug convictions, no previous drug convictions	32	20.9	8	18	15.8	17
Sub-total previous convictions	117	76.5	49	79	69.3	67
No previous convictions for any offence	34	22.2	10	28	24.6	11
Not known	2	1.3	3	7	6.1	2
TOTAL	153	100.0	62	114	100.0	80
			286			361
			100.0			100.0
						100.0



Previous convictions.

Table 5.9 shows the proportion of persons who were first offenders. The percentage of first offenders amongst the programme participants increased slightly from 22.2% in 1977 to 24.6% in 1978. In both years, the proportion of first offenders in the programme was slightly less than that for the Non-Treatment group (the difference being 3.4% for 1977 and 4.4% for 1978), with the latter group having the highest proportion of first offenders during the study period.

In both years more than half of the programme participants had previous drug convictions, 55.6% in 1977 and 53.5% in 1978. Also, the programme participant group tended to resemble the Not in Treatment group in terms of previous drug convictions.

On the basis of a random sample, the Bureau of Crime Statistics and Research (32) found that in 1977, 42.7% opiate offenders had previous drug convictions, and that this proportion was relatively higher than for drug offenders on cannabis and other drug charges. Since by far the majority of offenders in the programme participant group and the Second Treatment group were on opiates charges, the high proportions of offenders with previous drug convictions in these groups can be expected.

Court Action (Table 5.10)

In comparing the sentences received by programme participants to sentences received by the other two groups for 1977, we found that:

- (a) a higher proportion of programme participants received probation sentences than did members of the other 2 groups - 51.6% (DDP); 42% (Second Treatment group); 21.4% (Not in Treatment group).
- (b) of the 3 groups, the programme participants were the least likely to receive fines only - 11.1% (DDP); 22.6% (Second Treatment group); 35.7% (Not in Treatment group).
- (c) the Not in Treatment group had the highest proportion of persons receiving prison sentences - 18.1% (Not in Treatment group); 7.8% (DDP); 6.4% (Second Treatment group).

In terms of the sub-categories of 'non-prison' sentences and 'prison' sentences, the proportion of programme participants receiving sentences in these two categories, tended to resemble the sentences received by the Second Treatment group - 86.9% non-prison and 7.8% prison sentences for DDP; 88.8% non-prison and 6.4% prison sentences for the Second Treatment group. Also, these proportions were respectively much higher and lower than for the Not in Treatment group which had 72.4% receiving non-prison sentences, and 18.1% receiving prison sentences. The relatively high proportion of prison sentences in the Not in Treatment group is to be expected since this group had the highest proportion of "pushers" and were more likely than the programme participants to have committed serious offences. When referring to Table 5.7 (type of offence) we find that the Second Treatment group tends to resemble the Not in Treatment group rather than the Drug Diversion group in terms of the grouped push/use categories of offences. One would therefore expect

Table S.10 Court Action

	1977			1978		
	Diversion	Other Treatment	No Treatment	Diversion	Other Treatment	No Treatment
	N %	N %	N %	N %	N %	N %
556A Dismissal/Recognizance	6 3.9	2 3.2	10 3.5	11 9.6	2 2.5	13 3.6
558 Recognizance with/ without fine or probation	74 48.4	37 59.8	89 41.2	1 0.9	50 62.4	102 28.2
Rising of the Court	2 1.3	-	3 1.0	4 3.5	2 2.5	7 1.9
Fine	17 11.1	14 22.6	102 35.7	14 12.3	17 21.3	161 44.7
558/554 Recognizance continue/undergo diversion	34 22.2	2 3.2	3 1.0	69 60.5	-	-
Sub-total "non-prison" sentence	133 86.9	55 88.8	207 72.4	99 86.8	71 88.7	283 78.4
Imprisonment	12 7.8	4 6.4	52 18.1	9 7.9	8 10.0	57 15.8
Recognizance Forfeited	7 4.6	3 4.8	25 8.8	6 5.3	-	11 3.0
Death of Defendant	1 0.7	-	2 0.7	-	1 1.3	1 0.3
Not Known	-	-	-	-	-	9 2.5
TOTAL	153 100.0	62 100.0	286 100.0	114 100.0	80 100.0	361 100.0

the Second Treatment group and the Not in Treatment group to have similar proportions of prison sentences. The fact that the proportion of prison sentences in the Second Treatment was the lowest of the 3 groups, (this proportion was 1.4% lower than for programme participants, and 11.7% lower than for the Not in Treatment group) may suggest that most of the offenders in the Second Treatment group were not serious pushers. However, the great similarity in proportions of prison sentences between programme participants and the Second Treatment group, and the big difference in proportions of prison sentences between the latter group and the Not in Treatment group, could also suggest that being in treatment played some role in the sentencing decision.

During 1978, again the majority of programme participants received probation sentences (61.4%). However, 60.5% of the programme participants were ordered to continue treatment compared to 22.2% in 1977.

The proportion of programme participants who were imprisoned during 1978 was similar to the 1977 imprisonment figure. There was a very small increase in the proportion of this group receiving a fine only - 11.1% (1977) to 12.3% (1978). Although the general sentencing pattern for programme participants in 1978 was similar to the 1977 pattern, many more offenders in 1978 were ordered to continue treatment.

Table 5.11 Amount of Fine by Evaluation Group

	1977				1978			
	Diversion		Other Treatment		Diversion		Other Treatment	
	N	%	N	%	N	%	N	%
NO FINE	126	82.4	46	74.1	100	87.7	60	75.0
\$1-\$50	2	1.3	-	-	-	-	1	1.2
\$51-\$100	3	2.0	3	4.9	3	2.6	7	8.8
\$101-\$200	14	9.2	9	14.6	5	4.4	6	7.6
\$201-\$300	4	2.5	4	6.4	5	4.4	2	2.5
\$301-\$400	3	2.0	-	-	1	0.9	1	1.2
\$401-\$500	1	0.6	-	-	-	-	1	1.2
\$501-\$1000	-	-	-	-	-	-	2	2.5
NOT KNOWN	-	-	-	-	-	-	-	-
	153	100.0	62	100.0	114	100.0	80	100.0
			286	100.0			361	100.0

### Amount of Fine

Table 5.11 indicates the amounts of the fines received by the three groups of offenders. Note: Fined offenders were those who received fines only as well as those who received a fine in conjunction with a recognizance.

Both for 1977 and 1978, the Not in Treatment group had the highest proportion of offenders receiving a fine, with more than half of the offenders in this group being fined in 1978.

### Reconvictions

In establishing the reconvictions, certain offenders were excluded from the sample. They were those who had died, and those who were not able to reconvict during the period considered because of imprisonment. The files of the Department of Corrective Services were also examined to ensure that others who were imprisoned for offences other than the drug offence counted in the study, were not included in the reconviction study sample. The percentage of persons reconvicted are indicated in Table 5.12.

The percentage of programme participants who were not reconvicted for any offence was 60.7% for 1977 participants with a small increase to 63.7% for 1978 participants.

27.3% of the persons in the programme in 1977 were reconvicted for drug offences, while only 19.6% of the persons in the programme in 1978 were reconvicted for such offences. Although there was this decrease in the percentage of programme participants with drug reconvictions, there was also an increase in the percentage reconvicted for non-drug offences only, that is, 12.0% (1977) to 16.7% (1978). The percentage of 1978

programme participants reconvicted for any offence was thus marginally different to that of 1977 programme participants.

Of the three 1977 groups, the Programme participants group had the highest percentage of persons with drug convictions. The reverse was true for 1978 - programme participants had the lowest percentage of persons with drug convictions. However, in terms of reconvictions for any offence, differences between the three groups were marginal for both years.

Table 5.12 Reconstructions One Year After Plea Date

	1977				1978			
	Diversion N	Other Treatment N	No Treatment N	%	Diversion N	Other Treatment N	No Treatment N	%
Reconvicted for drug offences	41	15	38	27.3	20	21	73	28.0
Reconvicted for Non-drug offences only	18	6	57	12.0	17	10	50	13.3
Sub-total Reconvicted	59	21	95	39.3	37	31	123	41.3
Not reconvicted for any offence	91	37	156	60.7	65	44	181	58.7
TOTAL	150	58	251	100.0	102	75	304	100.0



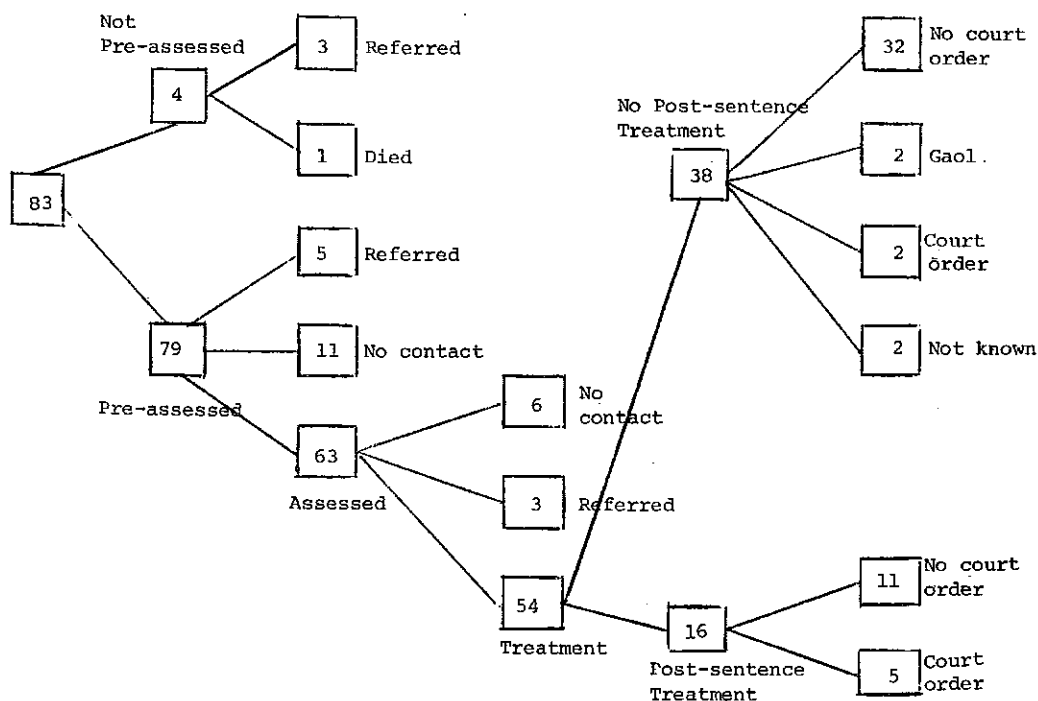
STAGE 2: ASSESSMENT - TREATMENT DETAILS

The clinic records of the Bourke Street Community Advisory Centre were surveyed for the year 1977. 107 offenders were referred to the Bourke Street Clinic. Of these, 18 were referred elsewhere on first presentation, 2 had forfeited their recognizances and in 4 cases it could not be determined what had happened to the referrals. For the remaining 83 referrals the following information was available:

1. the number of clients at various stages of the assessment - treatment process.
2. the services clients received at the clinic.
3. treatment histories of clients.

Figure 5.1 shows the number of clients at various stages of the assessment - treatment process.

Figure 5.1    Number of clients at various stages of the  
assessment-treatment process.



A pre-assessment was conducted on 79 (or 95%) of the 83 offenders who had appointments at Bourke Street Clinic. 5 offenders were referred to other treatment centres after the pre-assessment, while 11 offenders were no longer in contact with the clinic. The remaining 63 offenders (78% of the 83 offenders) completed the full assessment stage with a further 3 offenders being referred elsewhere and 6 offenders breaking off contact with the clinic, the remaining 54 offenders proceeded to the treatment stage at Bourke Street Clinic. This constituted 56% of the 83 offenders. After sentencing, 16 clients continued treatment at the clinic, while 38 did not. An attempt was made to establish some reasons for these 38 people not to continue treatment. As far as could be established, two offenders who had commenced treatment were sentenced to a term of imprisonment and therefore could not continue treatment. A further 32 were not directed by the court to continue treatment. In 2 cases it could not be established whether the clients had continued treatment after being sentenced. The 38 people who did not continue treatment also comprised 2 people who were directed by the court to continue treatment. Of the 16 who did continue treatment, 5 people were doing so under the directive of the court. It appears that the remaining 11 people were continuing treatment of their own volition.

(2) The services the clients received at the Bourke Street Clinic

Urine Testing

Of the 54 clients who commenced treatment at the Bourke Street Clinic, 22 (or 40.8 percent) were given a urine test, while the remaining 32 (or 59.2 percent) were not given a urine test. The urine test was therefore not consistently used. Urine testing was not a prerequisite for programme participation as

in the case of some United States drug diversion programmes. We must therefore assume that the reasons for the inconsistent use of urine testing were either that some clients did not wish to consent to such testing and/or the testing was not seen to be necessary for some clients.

Type of treatment received

Table 5.13 Type of treatment received.

Type of Treatment	Number of Clients	Percentage of clients
One-to-one counselling only	35	64.8
Counselling and "other" treatment	15	27.8
"Other" treatment only	3	5.5
Type of treatment not known	<u>1</u>	<u>1.9</u>
	54	100.0

One-to-one counselling was the type of treatment received by the majority of the clients. The "other" treatment consisted of psychodrama, group therapy, psychotherapy, meditation relaxation exercises, and home-visiting. In most cases where "other" treatment was given, it was in conjunction with one-to-one counselling. Psychodrama was the most frequently used "other" treatment and appeared in 9 cases. Treatment combinations were used in 15 or 27.8 percent of the cases.

The Methadone Programme and Withdrawal Techniques

Table 5.14 shows the withdrawal techniques used for the 54 clients who entered treatment at the Bourke Street Clinic.

Table 5.14 Withdrawal Techniques

	N	%
Methadone withdrawal	19	16.6
Methadone maintenance	3	5.6
Non-Methadone withdrawal	13	24.1
Withdrawal not needed/prior withdrawal/ not physically addicted	15	27.8
Not withdrawn, reasons unknown	12	22.2
Not known if withdrawn	<u>2</u>	<u>3.7</u>
Total	54	100.0

Note: Methadone withdrawal - the addict is withdrawn from heroin over a 2 month period, by consuming gradually reduced levels of methadone.

Methadone maintenance - the addict is given a dose of methadone so that he feels comfortable and feels no withdrawal symptoms. The programme lasts for a period of two years.

22.2% of the clients were placed on the methadone programme mainly using methadone withdrawal. A slightly higher percentage of clients (24.1%) were withdrawn by non-methadone techniques such as acupuncture and hypnotherapy. In 27.8% of the cases withdrawal was not deemed necessary, mainly because the clients were not physically addicted.

### (3) Treatment History

Of the 79 referrals who were pre-assessed, 46 were presenting for treatment for the first time, 15 had received treatment prior to programme entry and in 18 cases treatment histories were unknown.

STAGE 3: THE INTERVIEWS

Five magistrates, four probation officers and four drug counsellors were interviewed. These people were selected on the basis of their active involvement in the programme.

Perceptions of Programme Objectives

Table 5.15 shows the responses to the question "What are the primary objectives of the Drug Diversion Programme?"

Table 5.15 Programme objectives as perceived by Interviewees

<u>Legal Objectives</u> Objectives	Type and number of Respondents
a) to reduce the number of drug offenders	Magistrate (1)
b) to reduce recidivism	Magistrate (1)
c) to provide an alternative sentence option to imprisonment	Probation and (1) Parole Officer
d) to provide the court with additional information for the formulation of appropriate sentences	Magistrate (2) Magistrate (1) Probation and Parole Officer (2)
e) to motivate the addict to accept treatment he would not otherwise seek by threat of penal sanction	Magistrate (1) Probation and Parole Officer (1)
f) to impose sanctions on drug abuse	Probation and Parole Officer (1)
<u>Treatment Objectives</u>	
g) to rehabilitate drug users/to cure addiction	Magistrate (2) Probation and Parole Officer (1)

- |   |   |
|---|---|
| h) to provide access to treatment services  | Probation and (1)<br>Parole Officer<br>Drug Counsellor(2)                   |
| i) to educate the offender about the drug<br>he takes                             | Magistrate (1)<br>Probation and<br>Parole Officer (1)<br>Drug Counsellor(2) |
| j) to introduce drug users to treatment<br>services at an early stage of drug use |   |
| k) to assess the addict's need for<br>treatment and type of treatment             | Probation and<br>Parole Officer (1)   |

Political Objectives

- |   |                                      |
|---|--------------------------------------|
| l) to provide the Health Commission with<br>more clients/to justify staff increases | Probation and<br>Parole Officer (2)  |
| m) to <u>appear</u> to be doing something about<br>problem/a political game         | Magistrate (2)<br>Drug Counsellor(1) |

- NOTE:
- 1) The number of responses does not correspond with the number of interviewees because some interviewees made more than one response.
  - 2) Legal objectives are those with immediate implications for the criminal justice system; treatment objectives are those with immediate implications for the health system; political objectives are those with 'political' motives.

- Omitting the 'political' objectives at this stage, the rate of response in the remaining two categories were as follows:
1. 6 or 66.7% of the nine responses by magistrates fell into the category of legal objectives.
  2. 5 or 55.6% of the nine responses by probation and parole officers fell into the category of legal objectives.

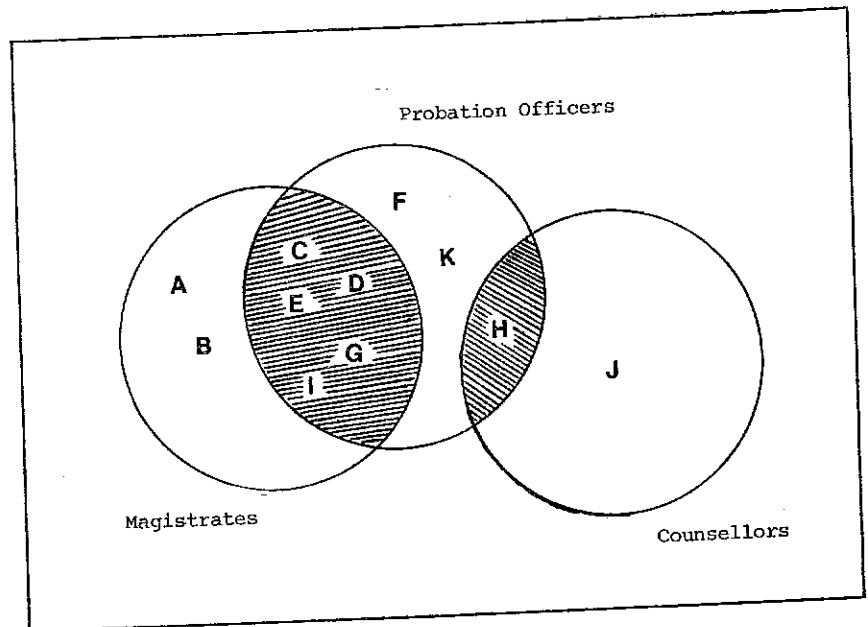
3. All four responses by drug counsellors fell into the category of treatment objectives.

There was a tendency on the part of interviewees to emphasise those objectives which had a direct bearing on their role activities. Magistrates emphasised legal objectives while drug counsellors were mainly concerned with treatment objectives. The virtually equal response rate of probation and parole officers in the two categories of objectives was consistent with the 'go-between' role they (the officers) performed in relation to the courts and the assessment/treatment centres.

The responses of the drug counsellors are interesting. Firstly, they made no responses falling into the legal objectives category. This possibly indicates a tendency on the part of counsellors to distance themselves from the criminal justice system. Secondly, none of the drug counsellors saw the objective of the programme as being "to cure addiction" as did two magistrates and a probation and parole officer. Instead, the drug counsellors emphasised early intervention.

Magistrates and Probation and Parole officers had a considerable degree of consensus on programme objectives. This consensus is illustrated by the fact that the responses of these two groups overlapped five out of nine times. At no point did drug counsellors and magistrates overlap in responses, and the former group's responses overlapped with those of probation and parole officers on one occasion. The overlapping of responses is illustrated in the Figure 5.2.

Figure 5.2    The overlapping of responses between magistrates, counsellors and probation and parole officers.



Note: Each letter corresponds with an objective in Table (7)

The marked tendency of the counsellors' responses not to overlap with the responses of the other two groups is another indication of the counsellors distancing themselves from the criminal justice system. This distancing had important implications which were revealed in the remaining parts of the interviews.

The political objectives appear to be an expression of frustration with the Drug Diversion Programme, on the part of some interviewees. The people who made these responses also stated what they thought the programme objectives ought to be.



Table 5.16 Interviewee's Appraisal of Other Groups' Activities

COMMENTS ON

	MAGISTRATES	PROBATION OFFICERS	DRUG COUNSELLORS
MAGISTRATES	<ul style="list-style-type: none"> <li>- very co-operative</li> <li>- more realistic about drug problem than counsellors</li> <li>- need to act more promptly on bail violations</li> <li>- reporting task hampered by counsellors</li> </ul>	<ul style="list-style-type: none"> <li>- wrote vague, brief reports</li> <li>- negative attitude towards court proceedings</li> <li>- insufficient urine tests</li> <li>- unduly reticent with information</li> <li>- no attempt to validate information on client</li> </ul>	<ul style="list-style-type: none"> <li>- superficial assessments</li> <li>- vague treatment programmes</li> <li>- disregard for court proceedings</li> <li>- unwilling to share information</li> <li>- insufficient feedback to court</li> <li>- not wanting to help addicts who most need help</li> </ul>
PROBATION OFFICERS	<ul style="list-style-type: none"> <li>- not sufficiently selective with referrals</li> <li>- easily persuaded by private solicitors</li> <li>- need to be experienced to deal with drug offender</li> </ul>		
DRUG COUNSELLORS	<ul style="list-style-type: none"> <li>- not sufficiently selective with referrals</li> <li>- appear to be confused about programme</li> <li>- not sufficiently coercive</li> </ul>	<ul style="list-style-type: none"> <li>- no understanding of confidentiality and the therapeutic relationship</li> <li>- misinterpret information from counsellors in court</li> <li>- punitive attitude towards client</li> <li>- important for supervising client during adjournment period</li> </ul>	

### Appraisal of Other Groups' Activities

The interviewees' appraisal of other groups' activities are shown in Table 5.16. The common responses are mentioned in greater detail below.

### Magistrates' Comments

The most common criticism against the drug counsellors by the magistrates was the quality of feedback on the clients they referred. Magistrates stated that the reports of the counsellors were vague, providing very little information on what happened at the clinic during the adjournment period. Furthermore, the magistrates claimed that the counsellors' reports provided very little information in addition to the information provided in the pre-sentence reports by the probation and parole officers. One magistrate stated his complaint in the following way:

"They (the counsellors) say that they counsel the people I send them. But, I haven't the slightest idea what that means, and the reports they write me about the people they see don't make it any clearer....(they) are so good at keeping their methods of treatment a secret."

The magistrates also claimed that the drug counsellors adopted a negative attitude towards the court proceedings in that they were slow in reporting cases in which offenders had breached recognizance conditions.

In contrast with their comments on the activities of drug counsellors, the magistrates generally expressed satisfaction with the work of the probation officers. Some magistrates felt that the probation officers could have played a more active role

in supervising the divertee and ascertaining more information on the assessment and treatment procedures. However, they added that these activities were hampered by the attitudes of the drug counsellors and the heavy caseloads of the Adult Probation Service.

#### Drug Counsellors' Comments

Most counsellors thought that the magistrates showed little selectivity in whom they referred to the programme, which the counsellors felt hampered their work. One counsellor summed up the situation as follows:

"The magistrates seem particularly confused and this has created problems for the counsellors ...(some)... people sent to us had been on heroin much too long for us to do anything with them... if the clinics get cluttered with unsuitable clients morale suffers and there is a strong chance that they start using them for selling drugs."

Most drug counsellors directed their criticisms of the probation officers at the investigatory role played by them, and claimed that the probation investigation conflicted with the confidentiality required in a therapeutic relationship.

To quote one counsellor:

"We must offer the client confidentiality, but side by side with this is the probation investigation. The client might say that he does not want his mother or father to know that he is on a drugs charge, and we would respect this request. But the probation officer will say that "we must tell your parents so that we can check out what you say about yourself". As it is now, we spend half our time reassuring the client that we aren't

the same as the probation officers, and we will respect their confidence and not tell anyone they don't agree needs to be told about their addiction."

Contrary to the above criticism, one counsellor stressed the importance of the probation component of the programme.

The counsellors also felt that the probation officers misinterpreted their (counsellors') information to the court.

"...We are not prepared to share all our information with the probation officers because we found a couple of times that they were interpreting what we said back to the Court in a way we never intended. That's why we insisted that our report was appended to the pre-sentence report as a separate document and not an integral part of their report."

#### Probation Officers' Comments

The probation officers were very satisfied with the role and activities of the magistrates. One officer felt that the magistrates could be more selective in whom they referred to the programme.

All the probation officers were critical of what they regarded as unwillingness on the part of the counsellors to impart information. One officer stated that:

"...we really know very little about what happens at the treatment clinic. We don't have that much information from them and to my mind this is self-defeating since they are supposed to be working with us so that we can provide information to the Court. But as it is now, the courts are getting no more information than they used to get."

The probation and parole officers felt that many counsellors regarded them as 'baddies' who could not be trusted with confidential information. They felt that the withholding of information hampered the sentencing task of the magistrates.

Another complaint voiced by the probation and parole officers was that the counsellors displayed little or no interest in the validated information obtained in the course of the probation investigation.

The probation officers generally felt that they were in a better position than the counsellors to assess the offenders since they (probation officers) had more contact with the offenders during the adjournment period.

The probation officers also criticised the expectation by counsellors for clients to be voluntary:

"They want all the people coming to them to be voluntary clients, which ignores the fact that the person has committed a criminal offence and is involved with the courts. He isn't coming to the clinic because he wants to, he's coming because he has to and should be treated this way."

#### Private Solicitors

Some members of all three groups expressed concern with the role played by some private solicitors. They claimed that these solicitors were requesting the referral of their clients for the sake of getting a lighter sentence rather than for helping their clients with their drug problems. The drug counsellors claimed that this created false expectations on the part of the clients and hence complicated the assessment-treatment process.

Odyssey House

There was provision in the Drug Diversion Programme for offenders to attend voluntary agencies for treatment. One voluntary agency in particular, namely, Odyssey House, was singled out for praise by some magistrates and probation and parole officers.

The favourable reaction to Odyssey House deserves some comment because it illustrates what some magistrates and probation and parole officers found wrong with government clinics.

Odyssey House is an intensive therapeutic community for the treatment of heroin addicts. It adopts a drug-free treatment modality and clients are required to remain in treatment between eight and eighteen months. Although programme participation is voluntary, clients are required to remain entirely within the centre for the initial phase of treatment.

Odyssey House prefers not to have as clients those people who are facing a gaol term. Anyone coming through the Court system who absconds from the centre is immediately reported to the appropriate authorities. As one magistrate observed:

"I can be confident if I send someone to Odyssey House that, if they abscond, I will know about it immediately and issue the appropriate warrant for that person's arrest. I can't have the same confidence that the Health Commission will co-operate with the Criminal Justice System to the same extent."

Probation officers stated that the compulsory urine testing at Odyssey House ensured that the offender abided by the conditions of remand set by the court. They also thought that

the working relations between probation officers and Odyssey House personnel were better than the relation between probation officers and Health Commission drug counsellors. Additionally, the probation officers thought that Odyssey House was more sympathetic and respectful of the necessarily authoritarian role of the probation officer in the Drug Diversion Programme.

#### Discussion of the Interviews

The interviewees disclosed a high degree of dissatisfaction amongst the three personnel groups. The magistrates and probation and parole officers were dissatisfied with the way in which the drug counsellors executed their activities. The drug counsellors were, on the other hand, dissatisfied with the way in which the two other groups operated. The conflict amongst these three groups revolved around four issues, namely, the eligibility criteria, voluntarism, confidentiality and rehabilitation.

#### Eligibility criteria

The broadly stated eligibility criteria meant that the type of offender referred by the magistrate would to a large extent depend upon the individual magistrate's perception of who the target group ought to be, and the magistrate's definition of the target group would be in accordance with his perception of the primary objectives of the programme. On interviewing the personnel groups on the objectives of the programme it was found that magistrates and counsellors were not always in agreement on who the target group ought to be.

### Voluntarism

Although the offenders in the programme volunteered to participate, the action was not entirely voluntary because a certain amount of legal pressure was being exerted upon the offenders. Probation and parole officers acknowledged that the degree of voluntarism was limited. This limitation was similarly acknowledged by the drug counsellors. Although some counsellors were dissatisfied with the limited voluntariness involved in the programme, their main dissatisfaction in this area was what they regarded as an attempt by the criminal justice system to pass off clients as being voluntary participants, thereby giving the public the impression that the criminal justice system was being humane.

### Confidentiality

The issue of confidentiality was a major source of conflict between members of the health system and the members of the criminal justice system. The confidentiality principle is accepted as being important for an optimal therapeutic relationship, and the counsellors would thus not give certain information to the court without the consent of their clients. Probation and parole officers on the other hand, felt that it was their duty to report to the court on the position of the offender to the best of their knowledge, and this meant imparting all the relevant information on the client. However, probation and parole officers have also, in the past, been in possession of confidential information, and therefore cannot be accused of having very little understanding of the confidentiality principle. It seems that the conflict was about the kind of information to be imparted to the court. Probation and parole officers have undoubtedly had longer experience in reporting



to the court than have the drug counsellors, and it is likely that they were somewhat perturbed by the reticence of the counsellors.

### Rehabilitation

The definition of rehabilitation as implied by the formal programme objective of reducing the incidence of drug offenders, caused some dissatisfaction amongst the counsellors. They felt that they would regard a person as being rehabilitated if he/she was capable of looking after himself physically, emotionally and socially, and this did not necessarily exclude the moderate use of drugs. They therefore regarded the definition of rehabilitation as implied above, as being too narrow. It is also likely that greater dissatisfaction flowed from the implication of the definition. This definition, in a sense, implied that the criminal justice system was defining the criteria for successful treatment, and consequently was interfering with the professional judgement of the counsellors.

### Changes in the 'traditional' role of the counsellor

Of the three groups, the counsellors received the most negative criticisms. The magistrates and probation and parole officers generally felt that the counsellors were simply being very unco-operative. Evidence of this 'unco-operativeness' was found in the tendency of the counsellors to distance themselves from the programme objectives directly related to the criminal justice system, and in the explicit statements of most counsellors that they did not wish to become de-facto partners of the criminal justice system. This 'unco-operative' attitude was probably the product of dissatisfaction with the changes the programme effected on their 'traditional' roles as counsellors.

The first change has already been alluded to in the discussion of the definition of rehabilitation. In the conventional counselling situation, the client and counsellor establish the treatment goals, and these goals are based upon the needs and capabilities of the individual client. The success of treatment is measured against these internal goals rather than external criteria. However, in the Drug Diversion Programme, the criteria for treatment success are defined by the criminal justice system, if the objective of the programme is to reduce the incidence of drug offenders. As such, the autonomy of the counsellors to define treatment success was impinged upon.

Prior to the implementation of the programme, the counsellors possessed the autonomy to define the target groups for their treatment programmes. However, under the broad eligibility criteria, the magistrates ultimately decided who would be eligible for treatment. The counsellors were likely to find this situation untenable since they, being the treatment experts, were in a better position to decide who would be suitable for the programme.

In the 'normal' counselling situation the client and counsellor establish a contract that allows for the termination of the therapeutic relationship at the discretion of the two parties. This freedom to terminate is important in the counselling relationship because counsellors believe that very little can be achieved with the client who no longer desires to remain in treatment. However, in the programme, the counsellor had no power to terminate the counselling relationship at his discretion. It was regarded as his duty to see clients referred from the court even though the client was unmotivated.

With self-referred clients counsellors have very little difficulty in adhering to the confidentiality principle because there is seldom an external authority requesting information on their clients. Even prior to the programme when some counsellors recruited clients from the courts via private solicitors, confidentiality presented no problem. The relationship between client and counsellor existed independently of the court, and the client, counsellor and solicitor decided what information would be made available to the court. However, in the programme, the criminal justice system decided what information should be imparted to the court.

In their new role of providing the court with information, it is likely that counsellors were uncertain about the legal implications of their information. This uncertainty could be another factor responsible for the reticence of the counsellors.

#### Conclusion

The interviews of the probation officers, drug counsellors and magistrates, as the three key groups in the implementation of the Drug Diversion Programme, disclosed extensive conflict and confusion.

Both magistrates and probation officers were critical of the role played by the drug counsellors, in so far as they understood what that role was. Conversely, the drug counsellors saw magistrates and probation officers as being incapable of comprehending the therapeutic relationship between the counsellor and his client.

Each group felt that the way in which it executed its duties was legitimately within the parameters of its profession. Furthermore, the counsellors felt that the other two groups were interfering with the professional judgement of the treatment system, while the other two groups felt that the counsellors were interfering with the professional judgement of the criminal justice system. The problem here was clearly that of the lack of communication. Had there been better communication between the two systems, the personnel groups could have developed more insight into, and appreciation of one another's roles, thereby increasing the level of co-operation and enhancing programme efficiency.

Apart from the inadequate communication, there was also a lack of co-ordination and clarification of roles. The roles of probation officers and drug counsellors often overlapped, and it appears that these two groups were given very few guidelines as to how their overlapping roles were to be integrated.

The degree of conflict between the two systems undoubtedly reduced the level of programme efficiency. The problems and issues uncovered by the interviews are part due to the inherent difficulties in joining the law with the treatment of drug dependent persons.

CHAPTER 6:   LEGAL ISSUES IN THE DRUG DIVERSION PROGRAMME

Drug diversion involves the interaction between the criminal justice system and therapeutic institutions in the handling of drug offences. It is this interaction between these essentially conflicting types of institutions which raises the legal issues to be discussed here.

"A carefully defined relationship between the Criminal Justice System and treatment services has to be structured that can reconcile the potentially conflicting objectives of providing effective treatment while insuring that minimum surveillance over those who have violated the law is maintained. Those who plan and administer such programmes, in addition, must take careful account that the policies and procedures employed pay proper respect to the constitutional and statutory rights of the individuals who participate.....sensitivity on the part of programme administrators to the legal issues associated with diversion programmes is a necessary part of sound programme development."<sup>33</sup>

The legal issues are being explored with two concerns in mind. Firstly, the concern is that the programme does not result in more coercive treatment of drug offenders. Secondly, the interviews revealed some uncertainty amongst drug counsellors as to the legal implications of the information given to them by their clients. It is hoped that this section of the report will lend some clarification to these legal uncertainties.

6.1 Jurisdiction to make the order

The power to make orders for offenders to present themselves for assessment seems to be clearly within the terms of sections 68, 69, 96 and 96(sA) of the Justices Act. Section 68 empowers the Justice to adjourn any hearing at his discretion, s.69(1)(b) provides that where the hearing is adjourned, the Justice may discharge the defendant upon his entering into a recognizance, s.96(1) provides that the person entering such recognizance shall appear at the time and place appointed or named in such recognizance, or as the Justice may direct and s.96(2A)(a) enables the Justice to impose special conditions in the recognizance. The Justice may set such special conditions as appear to him likely to result in the defendant's appearance at the time and place required by the recognizance or to be "necessary in the interests of justice or for the prevention of crime".

It will be seen that this provision is couched in very broad terms. Certainly, the requirement for the defendant to present himself for assessment at a clinic seems well covered by it, in that it might well "appear" to a Magistrate to be "necessary in the interests of justice" as he weighs them. It seems open to him to consider these interests from either the prosecutorial or the defendant's side.

Indeed, the provision seems broad enough to allow orders with more detailed conditions, requiring the participant, for instance, to attend the clinic on several occasions in the eight week period prior to sentence.

6.2 Legal issues arising from the admission of offenders to the programme

(a) A basic issue is whether there is impermissible coercion to induce individual participation in the programme. Under the procedure which has been adopted, the offender is given the option of entering the scheme. This would be sufficient to prevent challenge to the scheme on the ground of coercion. But we are not merely concerned with what is legally permissible; an inquiry into legal issues involves broad consideration of the fairness of procedure.

True voluntariness is hardly possible in the context where the offender has already been convicted and is awaiting sentence. On the basis of the experience in the United States the problem is not so much that the dangers of non-participation are incorrectly stressed to potential participants, but rather that the potential benefits of participation may be over-stated, and the risks associated with participation understated. In particular, there is often neglect to inform potential participants of the restrictions on personal freedom and privacy which any participation may entail, or of the disadvantages which may accrue to the unsuccessful participant who is returned to the conventional adjudication system.<sup>34</sup>

The interviews with the personnel groups revealed claims that some private solicitors were over-stating the potential benefits of the programme to their clients, claiming that participation in the programme would lead to a lighter sentence. As a matter of fairness, procedures should be developed in order to maximise the individual's capacity to decide for or against participation on the basis of informed self-interest.

(b) The next legal issue relating to admission to the scheme concerns the eligibility criteria. Under the scheme, these were very broad: anyone found guilty of a charge of which an element was the consumption of drugs (excluding marijuana) was eligible for the programme. In the United States where the law is stronger than here in guaranteeing "equal protection under the law" in the Constitution (14th Amend.), the Supreme Court approved as criteria for the exclusion from a diversion programme, those addicts with two or more prior felony convictions or those convicted of crimes of violence (Marshall v U.S.). The court held these criteria not to be "unreasonable", because treatment could reasonably have been regarded as being less effective for these offenders and because their participation in such a programme might impede the treatment of others.<sup>35</sup>

Broad eligibility criteria for admission to the scheme are commendable from the civil liberties viewpoint in that such criteria may avoid the arbitrary exclusion of certain offenders. However, under broad criteria, referral to the scheme would mainly be subject to the discretion of the magistrate which would be difficult to challenge in the Australian context because of the relative weakness of the law in guaranteeing "equal protection". If broad eligibility criteria are used, it would be desirable for the person in authority to make the referral, to be well informed of the scope and purpose of the scheme.

(c) A final issue relating to admission to the scheme derived from the fact that the programme had been set up on an experimental basis in selected courts. Arguably, it would be unfairly discriminatory against offenders appearing before other courts to refuse to deal with them in this way. As a matter of strict law, however, the decision lies within the discretion of the magistrate. In practice, what often transpires in the



other courts is very similar to the programme. If the defendant pleads not guilty, the matter is adjourned, typically for six to ten weeks, depending on the work load of the court. Whether on advice from his legal representative or on his own initiative, a defendant may plead not guilty at the original hearing, even though he anticipates pleading guilty after the adjournment; but during this period, he will often seek treatment at a drug clinic, as a tactic to build up a case in mitigation.

### 6.3 Legal issues arising from the assessment by the counsellor

#### (a) Confidentiality of communication

The overriding legal issue arising from the assessment by the drug counsellor is that of confidentiality of communication. If the counselling relationship is to be an open one, it is very likely that a client will disclose self-incriminating material. The issues that need to be considered are the position of the counsellor with regard to confidential information, and the position of the client with regard to the disclosure of self-incriminating information.

#### The position of the counsellor

If we consider first, the issue of the compellability of the counsellor as a witness, there is no common law privilege respecting his communication with his clients. However, the courts have said that they will respect the confidences which members of professions receive in the course of their work.

In Attorney-General v Mulholland (1963), Lord Denning said:

"Take the clergyman, the banker or the medical man. None of these is entitled to refuse to answer when directed to by a judge. Let me not be mistaken. The judge will respect the confidences which each member of these honourable professions receives in the course of it, and will not direct him to answer unless not only it is relevant but also it is proper and, indeed, a necessary question in the course of justice to be put and answered. A judge is a person entrusted, on behalf of the community, to weigh on the one hand the respect due to confidence in the profession and on the other hand the ultimate interest of the community in justice being done....."

Bagot (1977) has analysed the legal position of probation officers in great detail, and by analogy, his analysis may be applied to the position of the drug counsellors. He argues that there is an opening in the law for probation officers to be granted privilege by extension of the doctrine of crown privilege. According to this doctrine, otherwise admissible evidence should be excluded if its reception would be contrary to state interest. Bagot further argues that in the last twenty years the courts have given increasingly expansive interpretation to these words. Thus far it seems that the confidentiality of communication lies solely within the discretionary powers of the court - the court ultimately decides when confidential information should be made available to the court.

Since the counsellor has no common law privilege exempting him from providing the court with confidential information, it becomes imperative for the counsellor to know the conditions under which he may be compelled to impart such information.

Perhaps the most damaging sort of evidence within the knowledge of the counsellors, which they would be most reluctant to give in court, would be of other offences committed by their clients that could provide grounds for the prosecution to bring new charges. Such an occurrence would cast the counsellor in the role of an agent of the prosecution, and undermine his helping role. Fortunately, the existing rules of evidence tend to prevent such a situation from arising. At the trial stage only evidence relating to the charge being heard is relevant and admissible. At the sentence stage, apart from proven prior or subsequent convictions and admitted pending charges taken into account, the courts, in enquiring into an offender's background, must not take any account of allegations of the defendant's criminality in determining sentence. Since the counsellor's intervention in the programme takes place at the stage where the client has already been convicted, the counsellor would be acting within the legal boundaries if he chose to withhold confidential information regarding the client's disclosure of other unproven offences. This position was clarified by the Queensland Court of Criminal Appeal (1978). The Court of Appeal held that:

"....no reference be made in a pre-sentence report, or in any associated medical or psychological report, to any alleged conduct of a criminal nature attributed to the person the subject of the report, unless he had been convicted of an offence constituted by that conduct. It is improper to place before a court in any report of this nature material relating to allegations, investigations or charges which did not result in a conviction, and this should be made clear to those responsible for the preparation of these reports. Whilst the purpose of the pre-sentence report is to provide the court with all the

available information which may properly assist it in determining the appropriate sentence to impose, the inclusion of pre-judicial material of this nature tends to frustrate that purpose."

The Court added that if any such material is included in a pre-sentence report or associated report and is read by the court which is to impose sentence, it would be "prudent, and proper in the interests of justice" for the judge or magistrate to order the deletion of the objectionable material and to adjourn the matter for hearing by another judge or magistrate.

The conclusion then is that the counsellor is under no legal obligation to disclose information on unproven offences, and the rules of evidence render it an extremely remote chance that the drug counsellor would be called upon to give evidence on new matters which could lead to charges at the hearing for sentence.

#### The position of the client

A condition of effective counselling is that the client should feel confident that he may be frank in discussions with his counsellor, without fear of adverse consequences. Probation officers have adopted the practice of telling their clients that they are primarily officers of the court, with the duty to report to it on the condition of the defendant to the best of their knowledge. This would serve as a warning to the client respecting the disclosure of incriminating information. Such disclosures are indeed made, but the warning helps to ensure that they are voluntary.

In discussing the position of the counsellor, it was pointed out that certain disclosures are not likely to be admissible as evidence, and that the counsellor is unlikely to be called to give evidence on new matters leading to charges at the hearing for sentence. If this situation was explained to the client it would be unlikely to make him unduly wary of openly discussing his case with his drug counsellor. This makes it all the more desirable that the client be told of his "right against self-incrimination."

There remains, nevertheless, an undesirable element of ambiguity in the whole situation. This has prompted some American states to pass "immunity statutes" which authorise compelled interviews in exchange for binding assurances that incriminating evidence revealed in these interviews will not be used in court. The U.S. Supreme Court has upheld such statutes.

Perhaps consideration could be given to enacting special protection for probation officers, counsellors and their clients in respect of confidential information, in New South Wales. Such legislation, however, would be a radical innovation in the Australian context. An alternative course lies in the magistrate's discretion to exclude evidence which is "unfair" to the defendant.

(b) Urine Testing

Under the Drug Diversion Programme there was no formal requirement that participants undergo urine tests. These tests were carried out for anyone going onto a methadone programme, and some other clients were given the test, apparently on an informal basis.

The legal considerations regarding urine-testing are:

- i) the conditions of lawful testing
- ii) the legal significance of urine samples

The conditions of lawful testing are either statutory authorization or the consent of the person being tested. As far as statutory authorization is concerned, the closest existing analogy is the "breathalyser" legislation. This legislation provides that if the police have good reason to believe that a person is driving a vehicle, or attempts to put a vehicle in motion while under the influence of intoxicating liquor, they may require him to take a breath test, and if that is positive, a blood-alcohol test. The test is compulsory in the sense that refusal to take the test constitutes an offence.

In the absence of legislative authorization, the consent of the person is required. The consent required for lawful testing refers to the freedom of the person to assent or refuse. It is not a question of willingness to take the test, but rather of agreeing to take it by one's own decision, without physical compulsion. Where for instance, the test was a pre-condition for admission to a treatment programme, this sort of compulsion would not vitiate the consent. The person is still free to choose whether to take the test in the sense required, and it would be lawful.

In many contexts, notably contracts in the civil sphere and signed "records of interview" in the criminal sphere, the courts have traditionally paid credence to signed documents. This accounts for the practice adopted by many clinics taking urine tests as a normal procedure, to have the client sign a consent form. These forms would substantially protect counsellors from legal challenge regarding the taking of tests

Once the urine samples have been obtained, their legal significance relates to their admissibility as evidence in court.

The rule against self-incrimination does not apply to physical evidence like fingerprints, breath tests, blood samples or urine samples. Urine samples may be admissible as evidence even if they were obtained under conditions other than the lawful ones discussed above.

In the absence of compulsory provisions, the consent of the person is required to take urine samples. If it is taken by coercion, either in the sense that the person protested and the test was taken against his express will, or perhaps a person in authority conveyed that the test was compulsory, the sample might be inadmissible as evidence in court.

In the case of compulsory legislation making it an offence to refuse to give a test, this in itself does not constitute coercion in the sense required to invoke the rules excluding evidence on the basis of public policy. A person actually refusing to give a sample, while he may be liable under the Act for the refusal, still may not be forced to submit to the test; and if he is, the evidence of the test may be excluded on the basis of the need for "the protection of the individual from unlawful and unfair treatment."

#### 6.4 Conclusion

In the absence of specific legislation governing the Drug Diversion Programme, the criminal justice system is faced with the somewhat complex task of applying broad legal principles to the specifics of the diversion programme.

Under such broad legal principles, the operation of the scheme is ultimately subject to the discretion of the criminal justice system. Although this is wholly in accordance with the principle that the disposition of an offence should be an exercise of judicial discretion by a judicial body, such discretion must not be permitted to unnecessarily interfere with the independent professional judgement of the treatment system. Indeed, the central feature of legislation governing a drug diversion programme would be the establishment of a fine balance between the judgement of the criminal justice system and that of the health system.

In considering the legal issues arising in the various forms of diversion programmes, it seems that the greater the promise of diversion to avoid the direct consequences of conviction, the more complex are the legal issues. Also, the greater the shift from "due process", the greater the potential decrease in the protections afforded by the judicial process to individuals, and consequently, the greater the potential for coercive treatment of individuals under the guise of "rehabilitation". The United States experience has been that any major shift from the conventional criminal justice process must be accompanied by the creation or adaptation of legislation to substitute the protections given to defendants under the conventional criminal justice process.

From a legal perspective, pre-sentence diversion appears to be a safe option. Since much of the conventional criminal processing remains intact, there is less risk that the diversion programme could result in more coercive treatment of offenders through the non-judicial exercise of discretion.



Although the legal issues raised in the Drug Diversion Programme are not as problematic as those issues raised in other models of diversion, they nevertheless warrant thorough consideration by those involved in the planning and administration of the court-referral programmes.

Chapter 7 THE DRUG AND ALCOHOL COURT ASSESSMENT PROGRAMME  
(D.A.C.A.P.)

The Drug and Alcohol Court Assessment Programme (D.A.C.A.P.), the redesigned Drug Diversion Programme, was implemented in December, 1979. The programme is confined to the Sydney Central Court of Petty Sessions (including the courts in the Mark Foys Building). As the title of the programme suggests, the D.A.C.A.P. is designed for the purpose of assessing persons charged with drug and alcohol-related offences, and reporting the assessments to the Court. At present the programme is in its first phase which concerns the assessment of drug offenders. The facilities at Langton Clinic are being used, and the project is being conducted by members of the Bourke Street Drug Advisory Centre, the staff from Langton Clinic, and probation and parole officers seconded to the programme.

The aim of this section of the report is to present an overview of the D.A.C.A.P. to illustrate the amendments made to the Drug Diversion Programme.

The objectives of the D.A.C.A.P.

A major problem area in the Drug Diversion Programme was that of objectives. The formal objectives were so broad that they were given a diversity of interpretations and led to confusion amongst the personnel groups involved in the implementation of the programme. In an attempt to redress the situation, very specific objectives have been formulated for the D.A.C.A.P. These objectives are as follows:

"General Objectives: To reduce the general level of non-medical and/or illicit drug use in the community by using the opportunity of court action as an entry point to attempt some intervention in the drug-taking career of individuals.

Specific Objectives:

1. To provide information to assist the magistrates in their sentencing practice.
2. To introduce individuals identified as using substances into a system that provides them and others with an assessment of their problems (if any) and to recommend some method of handling these problems.
3. By this intervention to identify persons with drug-related problems and encourage them to take some action about these problems.
4. By involvement with these interventions to improve the health and social functioning of these persons.
5. To provide information, by collating statistics and conducting research, to the courts, health services, Drug and Alcohol Authority, the Government and others, on relevant details of the programme, identified trends, identified areas of need and methods that have proved successful, and to make recommendations in the area of court intervention schemes."<sup>36</sup>

As can be observed from these objectives, the D.A.C.A.P. is essentially a diagnostic-information service which:

- (a) provides the court with information on the offender for formulating appropriate sentences.
- (b) provides the offender with information which can assist him/her in taking an appropriate course of action about his/her problem.

This diagnostic information is generated through a thorough assessment of persons referred from the courts.

This assessment-oriented approach has the following advantages:

- (1) It clearly leaves the decision of who needs treatment, in the hands of the appropriate authority which is the health system.
- (2) It can effect an adequate matching of the individual to treatment services, thereby ensuring that treatment is relevant to the needs of the individual.
- (3) It avoids the dilemma of restrictive vs. broad eligibility criteria for programme entry. Since the offender is diverted for assessment only, minimal criteria are required because the assessment will establish suitability for treatment. The eligibility criteria used in the D.A.C.A.P. are therefore still broad. Those eligible are persons found guilty of or who plead guilty to one or more charges of using, selling, or possessing restricted or illegal substances other than marijuana. These persons must also be suitable for release on bail.
- (4) Following from the above point, the assessment-oriented approach broadens the range of persons who may be given access to treatment resources, thereby increasing the

opportunity for early intervention. For those persons who are not chronic drug dependent persons, the assessment can be an educational process informing them about their situation in relation to drugs. This has been stated in the guiding principles of the programme: "....not all persons involved in the non-medical use of drugs are acting in a way that is pathological. However, such use does place a person 'at risk' and persons in such a risk situation should be encouraged to, and given help to, examine their behaviour."<sup>37</sup>

- (5) It requires a shorter adjournment period than the eight weeks in the Drug Diversion Programme. The adjournment period in the D.A.C.A.P. has therefore been adjusted to three weeks.

#### The Programme Procedure

A detailed description of the programme procedure is given in Appendix (D). A very definite procedure has been established to facilitate the flow of information between the court and the assessment centre, and amongst the personnel involved in the assessment process. This in itself is an improvement on the Drug Diversion Programme in terms of organisation and management.

The two important innovations of the D.A.C.A.P. are the primary care worker and the post assessment conference. The primary care worker is the probation and parole officer appointed to:

- (1) supervise and guide the offender during the adjournment period
- (2) monitor the assessment process

- (3) arrange the post assessment conference
- (4) investigate the offender's social background
- (5) prepare and submit the pre-sentence report to the court
- (6) appear at the court on request
- (7) make the arrangements for the offender to attend an outside treatment agency where necessary.

The introduction of the primary care worker has greatly reduced the inconsistencies in the former role of the probation and parole officer. In addition to being responsible for supervising the offender and producing a pre-sentence report as in the Drug Diversion Programme, the primary care worker is responsible for co-ordinating the entire assessment procedure. Although the primary care worker does not carry out the actual assessment, there is greater involvement of the primary care worker in the assessment procedure than was the case in the Drug Diversion Programme.

The D.A.C.A.P. has also clarified the role of the probation and parole officer in relation to the role of the counsellor. The Health Commission personnel are only responsible for conducting the various assessment tests and recommending the appropriate treatment programme, and for summarising the post-assessment conference. The primary care worker collates all the relevant information obtained during the assessment procedure into a pre-sentence report for the court.

Not only have the roles been structured to remove the strain between these two personnel groups, the re-structuring also allows for the two personnel groups to execute those functions in the programme which are most consistent with their respective professions.

The post-assessment conference is a major improvement to the Drug Diversion Programme. Apart from the benefit it has in involving the offender in the rational selection of a treatment programme it provides the very important opportunity for the primary care worker and assessment personnel to share information, something which was seriously lacking in the Drug Diversion Programme.

The issue of what information needs to be supplied to the court, has been given attention in the D.A.C.A.P. The format of the pre-sentence report has been adapted from the format set out by the Probation and Parole Service. Furthermore, the pre-sentence report is accorded the same confidentiality as that of the Probation and Parole Service.

At this stage it is too early to comment upon the efficacy of the D.A.C.A.P. However, with the improvements made to the objectives, the clarification of roles, and the overall improvements in terms of organisation and management, the D.A.C.A.P. is likely to produce more positive results than was the case in the Drug Diversion Programme.

PART IV : CONCLUSION

CHAPTER 8 : DISCUSSION AND CONCLUSIONS

8.1 Were the programme objectives accomplished?

The objectives mentioned during the interviews were used as evaluation criteria since they were the basis upon which the programme really operated. What follows is an assessment of the extent to which these objectives were accomplished.

To provide access to treatment services

In order to assess this objective one would need to know how many programme participants were in treatment for the first time. Of the 79 persons pre-assessed at the Bourke Street Clinic in 1977, 46 or 58.2% were presenting for treatment for the first time, 15 had received treatment prior to programme entry, while in 18 cases prior treatment details were unknown.

It therefore seems that the programme did achieve some success with this objective. However, it should be noted that some drug offenders did seek treatment outside the parameters of the Drug Diversion Programme. An offender may seek treatment prior to sentencing as a tactic to build up a case in mitigation and hopefully obtain a lighter sentence. It is interesting to note that 41.2% of persons in treatment during the 1978 period were in 'non-diversion' treatment and none of these persons were sentenced to continue treatment. It is possible that the Drug Diversion Programme may have reinforced the practice of seeking 'non-diversion' treatment prior to sentencing.



To introduce drug users to treatment at an early stage of drug use

Table 5.9 shows that approximately 40% of programme participants in both years had no previous drug convictions. It could be argued that drug taking precedes the first drug conviction by a considerable period, thus limiting the programme's chances of effecting early intervention. However, the Drug Diversion Programme has drug offenders as its target group and the earliest time at which it can effect early intervention would be the first drug conviction. To this end, it is conceivable that the programme managed to introduce some drug users to treatment at the earliest possible stage. Magro's comparative study on diversion groups and self-referred clients lends support to this proposition. He found that diversion groups generally had shorter drug-taking histories than self-referred clients.(38)

Naturally, it is hoped that the person introduced to treatment would, if necessary, remain in treatment after the eight week adjournment period. The lack of adequate data from the clinics makes it difficult to establish the extent to which this occurred. The evaluation study did a follow-up of reconvictions only.

To provide the Court with additional information for the formulation of appropriate sentences

Presumably the additional information implied by this objective would be the pre-sentence report. It seems that for 1977 this objective was partially accomplished. Although magistrates received additional information from the pre-sentence report compiled by probation officers, they were highly critical

of the paucity of information from the clinics. It may be that the situation improved during 1978 since most programme participants were sentenced to continue treatment.

A related objective was that of assessing the individual's need for treatment and the type of treatment most suitable for the individual. The clinic records show that a full assessment was conducted on the majority of 1977 referrals. However, since the information was not always made available to the courts, the accomplishment of the assessment objective in itself is somewhat meaningless.

To provide an alternative sentencing option to imprisonment

In analysing the sentences received by the two diversion groups it was found that 22.2% (1977) and 60.5% (1978) of programme participants were sentenced to continue treatment as a condition of their recognizances. Indeed, an alternative sentencing option was created by the implementation of the programme.

However, for this sentencing option to be an alternative to imprisonment, persons sentenced to treatment would have had to be sentenced to imprisonment if the programme did not exist. In 1976 16.8% of opiate users appearing in N.S.W. Magistrates Courts were sentenced to a term of imprisonment compared to 7.8% in the 1977 diversion group. Similarly, in 1976 58.1% of opiate users received probation sentences compared to 48.4% in the diversion group. It therefore seems likely that in 1977 it was both an alternative to probation as well as imprisonment. However, for the 1978 diversion group, treatment was more likely to be an alternative to probation since 60.5% were sentenced to treatment compared to 0.9% who were sentenced to a S558 Recognizance without treatment. It would therefore be more

accurate to view diversion as an alternative to probation, particularly if one of the programme objectives was early intervention. An early intervention programme would concentrate on first offenders who are less likely to be imprisoned irrespective of whether the programme exists or not. However, the important point is that an alternative sentencing option has been created by the Drug Diversion Programme.

To cure addiction

Intervention over a period of eight weeks is unlikely to cure addiction and therefore this objective should be regarded as a long term one.

To reduce recidivism, to reduce the number of drug offenders

Of the three 1977 evaluation groups, the diversion group had the highest percentage of reconvictions for any offence as well as the highest percentage of drug reconvictions. At face value this result suggests that the first year of the Drug Diversion Programme was a failure in terms of reducing recidivism. There is evidence to indicate that the 1977 diversion group was in fact a 'high risk' one with a propensity to reconvict.

Various studies on recidivism have found a relationship to exist between offender characteristics and recidivism.

In its study on recidivism the Bureau of Crime Statistics and Research found that:

- first offenders were less likely to reconvict within the first five years than were those offenders with previous convictions.

- females were generally less likely to reconvict than were males.
- young offenders were more likely to reconvict and they reconvicted at a faster rate during the first two years.(39)

According to Hood and Sparks (1970) ".....most researchers have found that an offender's chances of recidivism are greater; the more previous convictions he has; the younger he is, and the younger he was when first convicted; men have higher reconviction rates than women and offenders against property generally have higher reconviction rates than those committing offences of violence."(40)

Rovner-Pieczenik, in evaluating a number of pre-trial diversion programmes found that the characteristics of programme participants prior to programme entry influenced post-programme success. Persons with few or no prior convictions or arrests and who were employed were least likely to reconvict.(41)

Although these studies are not directly comparable to the Drug Diversion Programme, they do suggest that the characteristics of programme participants are at least as important as the treatment given in the programme.

In analysing the characteristics of the 1977 diversion group, it was found that 76.5% had previous convictions; 55.6% had previous drug reconvictions; 50.3% were not employed and 64.1% were in the young age group of 18-24 years. Furthermore, an analysis of the characteristics of those persons with drug reconvictions showed that 85% had previous convictions while 65.8% were not employed. Taking into account the general findings of research studies mentioned earlier, the high

reconviction figures for the 1977 diversion group are likely to be a reflection of offender characteristics.

In contrast with the 1977 group, the 1978 diversion group had the lowest percentage of reconvictions and this percentage was also lower than that of the 1977 group. Furthermore, drug reconvictions dropped from 27.3% in 1977 to 19.6% in 1978. In comparing the characteristics of the two diversion groups no major differences were found except for a slightly higher percentage of first offenders in the 1978 group. There was, however, a significant contrast in the sentences received. 22.2% of the 1977 group were sentenced to continue treatment while 60.5% of the 1978 group received such a sentence. This could suggest that the kind of sentence received may have played some role in the reduction of drug reconvictions in the 1978 group. Due to the lack of follow-up data, this statement is but a tentative one. It is worth noting that evaluation studies on TASC programmes found a sizable decrease in recidivism amongst clients whilst in treatment.

A hidden factor which possibly affected recidivism was the offenders' motives for participating in the programme. Undoubtedly some offenders primarily saw programme participation as a means of obtaining a lighter sentence. This was a concern expressed by some drug counsellors who felt that the system was being manipulated by unmotivated offenders. It is therefore conceivable that the programme actually attracted persons unlikely to respond to treatment in the manner necessary to effect reduction in recidivism.

Regarding the objective of reducing recidivism, all that has been established thus far is that the 1978 diversion group fared better than the 1977 group in terms of recidivism. It is not possible to assess how significant this reduction in

recidivism really was. The problem lies in the broadness of the objective. There was no indication of the magnitude of the envisaged reduction nor was there any indication of the time period over which such a reduction would take place.

Thus far, the results suggest that the programme objectives were accomplished to a certain extent. However, this only applies to those objectives which can be classified as short term or methodological ones, namely, providing access to treatment services; introducing drug users to treatment at an early stage of drug use; providing the court with additional information for the formulation of appropriate sentences; and providing an alternative sentencing option. No conclusions can be made regarding the objective of reducing recidivism and an eight week adjournment period was certainly too short to cure addiction.

#### 8.2 Problems of the adjournment period

The adjournment period was used for assessing individuals and providing treatment if time permitted. Although this may have sounded feasible at the time when the programme was designed, the results indicate that it was not.

Firstly, referrals who needed or wanted treatment could not receive much treatment over such a short time period. Since most of the treatment could only take place after sentencing, it would have been more appropriate to reserve a shorter adjournment period for the sole purpose of assessment. This would have the advantage of avoiding the unnecessary delays in sentencing.

Secondly, those referrals who did not need or want treatment would also have experienced an unnecessary delay in sentencing.

Thirdly, in most cases the assessment centres also served as treatment centres, and it may be that the programme, to a certain extent, provided an opportunity for people not heavily involved in the drug scene to become further involved in it. If the treatment programme was separated from the assessment process, such a problem could be avoided.

### 8.3 Conclusions

The overall emerging picture of the Drug Diversion Programme is one of a programme fraught with difficulties on both the conceptual and operational levels.

A major problem of the programme has been the lack of clearly defined formal objectives, a situation which affected the operation of the programme in the following ways:

- . The broad objectives were open to a variety of often conflicting interpretations by the people involved in the operation of the programme. This was demonstrated in the section reporting on the interviews with programme personnel. No programme can be expected to operate efficiently if its personnel are in conflict over the objectives.
- . The broad objectives provided magistrates with very little guidance for interpreting the equally broad eligibility criteria. The broad eligibility criteria in themselves were not problematic. In fact, they allowed for the consideration of the individuality of each case appearing before the pilot courts, thus

giving each offender a "fair" chance of being considered for referral. However, with such broad criteria, the type of person referred would, to a large extent, depend upon the magistrate's interpretation of the programme objectives. As was illustrated earlier, some magistrates saw the curing of addiction as a programme objective and were therefore likely to refer persons with numerous previous drug convictions. In contrast, many counsellors felt that early intervention was a major objective and therefore thought that first offenders were more suitable for the programme. The issue here is not which objective was correct, but rather that the magistrates were referring persons regarded by the treatment professionals as being unsuitable. Such a situation was undesirable in that it created conflict, it wasted the resources of the criminal justice and treatment systems and very importantly, the unsuitable referral could "fail" in the programme and be disadvantaged when appearing for sentence.

- . The broadness of the objectives undoubtedly contributed towards a fair amount of scepticism on the part of programme personnel. This scepticism was clearly demonstrated in the interviews where some people saw the programme as a political manoeuvre. A programme lacking credibility with the people who have to implement it is unlikely to operate efficiently.

It would seem that these broad objectives were a result of the programme's rationale being based upon impressionistic data. This is not to suggest that the impressions were inaccurate, but rather that they could not provide the basis



for a set of well-defined objectives. This view is supported by the Royal Commission into Drug Trafficking which concluded in respect to the Drug Diversion Programme that:

"...it seems likely that appropriate guidelines for the operation of the scheme were not fixed and that both design features and ultimate objectives were undetermined. The development of the scheme has been largely on an ad hoc basis,"(42)

A considerable degree of conflict existed between the members of the criminal justice system and those of the treatment system. This conflict was mainly due to the lack of clarification of the various roles and the confusion surrounding the programme objectives.

The absence of specific legislation governing the Drug Diversion Programme undoubtedly created some confusion, particularly for the treatment personnel, in respect to confidential information. In analysing the legal issues arising in the Drug Diversion Programme, it was found that the chances of drug counsellors undermining their helping role through the disclosure of information to the courts, were remote. With respect to the position of the client, there is less risk that the programme could result in more coercive treatment of offenders under the guise of rehabilitation, since under pre-sentence diversion much of the criminal justice process remains intact. Nevertheless, in the absence of specific legislation the criminal justice system is faced with the complex task of applying broad legal principles to the specifics of the Drug Diversion Programme, a situation which makes it difficult to fully reconcile the potentially conflicting objectives of the criminal justice and treatment systems.

The length of the adjournment period was problematical. It proved to be too short for any significant treatment to take place, and on the other hand it was too long for assessment only. The indications are that the adjournment period could have been used more effectively if it had been shorter and reserved solely for the purpose of assessment.

The problems experienced in the Drug Diversion Programme can be attributed to the inevitable difficulties surrounding the translation of a relatively new concept into a practical programme. This has been the experience of overseas programmes:

"...overseas administrations with much longer and more extensive experience with diversion programmes have found the subject bristling with difficulties, both in conception and execution, and indeed a learning process is perceptible in many governments' successive movements in policy to meet the inadequacies as they arose."(43)

Much has been said about the deficiencies of the programme. However, there is room for optimism.

There are indications that the programme improved during the second year of its operation. There were slightly fewer referrals with previous convictions, the sentences imposed were more consistent with the objective of developing alternative sentencing options and for whatever reasons, a smaller percentage of programme participants were reconvicted for drug offences.

In assessing the extent to which the programme objectives were accomplished, it was found that there was at least the potential for the fulfillment of the short term objectives:

- to introduce drug users to treatment at an early stage of drug use - a comparative study showed that diversion groups generally had shorter drug-taking histories that did self-referred clients.
- to provide access to treatment services - more than half of the 1977 referrals to the Bourke Street Clinic were presenting for treatment for the first time.
- to assess the individual's need for and type of treatment - the 1977 clinic records show that most referrals were assessed and this was likely to have been the position in 1978 as well.
- to provide the court with additional information for the formulation of appropriate sentences - additional information was made available through the pre-sentence reports furnished by probation officers.
- to provide an alternative sentencing option to imprisonment - the programme did create an alternative sentencing option in that magistrates could make treatment a condition of a recognizance. Although the figures indicate that this sentencing option was more likely to be an alternative to probation, the important point is that an alternative sentencing option has been created.

It should be remembered that the Drug Diversion Programme was a pilot programme open to modification. As such, it has served the important function of providing the learning experience needed to develop a programme such as the Drug and Alcohol Court Assessment Programme (D.A.C.A.P.). Looking at the design and procedures of the latter, it would seem that it has

the potential to yield more positive results than did the Drug Diversion Programme during the first two years of its operation. A clear set of objectives has been established; data collection has been made a routine part of programme operation; the programme procedure facilitates the flow of information between the courts and the assessment centres; and very importantly, the roles of the various personnel groups have been clearly defined.

Although programmes such as the Drug Diversion Programme and the Drug and Alcohol Court Assessment Programmes represent a small element in the armory to deal effectively with the drug problem, they are nevertheless important non-custodial alternatives within the existing legal framework, particularly when viewed in the light of the failure of past approaches.

The fact that the effectiveness of treatment in reducing drug crime has neither been proved nor disproved suggests that the use of treatment for drug offenders should be the subject of further exploration.

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APPENDIX A. TABLE : MARITAL STATUS BY EVALUATION GROUPS

	1977						1978					
	Diversion			Other Treatment			Diversion			Other Treatment		
	N	%	No Treatment	N	%	No Treatment	N	%	No Treatment	N	%	No Treatment
SINGLE	80	52.2	12	19.3	58	20.3	67	58.8	17	21.2	68	18.9
MARRIED	9	5.9	2	3.2	6	2.0	10	8.8	4	5.2	8	2.2
WIDOWED	1	0.7	-	-	-	-	-	-	-	-	1	0.2
DIVORCED	1	0.7	-	-	2	0.7	3	2.7	-	-	5	1.4
SEPARATED	6	3.9	-	-	3	1.0	6	5.2	4	5.0	8	2.2
DE FACTO	35	22.9	4	6.5	9	3.1	16	14.0	2	2.6	3	0.9
NOT KNOWN	21	13.7	44	71.0	208	72.9	12	10.5	53	66.2	268	74.2
TOTAL	153	100.0	62	100.0	286	100.0	114	100.0	80	100.0	361	100.0



APPENDIX (B)

CLINIC RECORD STUDY - SYDNEY DRUG DIVERSION PROGRAMME

NAME OF CLINIC: .....

CLIENT'S SURNAME .....

CLIENT'S GIVEN NAMES .....

Was the client already in treatment at clinic before  
beginning DDP? Yes No

What date did the client first present? .....  
.....

How many times was this client seen by counsellors  
during the 8 week adjournment?  
(If client did not present code "0 0")

Was the client physically withdrawn from narcotic  
drugs during the 8 week adjournment? Yes No

If Yes What method or combination of methods of  
withdrawal was used?

1. Methadone Withdrawal
2. Hospital Withdrawal (name of facility used)  
.....
3. Other in-patient withdrawal (name of facility  
used) .....
4. Home withdrawal without Methadone
5. Acupuncture
6. Hypnotherapy
7. Other (please specify fully) .....  
.....

Was the client referred to any other agency except  
for withdrawal during the 8 week adjournment?  
Yes No

If Yes Name of agency .....  
.....

What services did this clinic provide to the client  
during the 8 week adjournment?

- |                                       |                         |
|---------------------------------------|-------------------------|
| 1. Pre-assessment                     | 7. Home-visits          |
| 2. Assessment                         | 8. Methadone Programme: |
| 3. One-to-one counselling             | (1) Withdrawal          |
| 4. Psychodrama                        | (2) Maintenance         |
|                                       | (3) Blockade            |
| 5. Group Therapy                      | 9. Urine Testing        |
| 6. Meditation/Relaxation<br>exercises | 10. Psychotherapy       |

11. Other (please specify fully) .....  
.....

What services did this clinic provide to the client  
at the end of the 8 week adjournment?

- |                         |   |
|-------------------------|---|
| 1. Written Court report | 2. Personal court<br>appearance on<br>client's behalf |
|-------------------------|---|

Did client continue in treatment after he received sentence?	Yes	No
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APPENDIX (C)

INTERVIEW SCHEDULE

- Question 1                      What are the primary objectives of the Drug Diversion Programme? What is it trying to achieve?
- Question 2                      Will you fully describe your activities in connection with the programme.
- Question 3                      In what ways do your activities help to realise the main objectives of the scheme which you mentioned in Question 1.
- Question 4                      To what extent do you think your activities have been successful in realising the main objectives of the scheme.
- Question 5                      Can you suggest any ways in which your activities could contribute more successfully to the main objectives of the scheme?
- Question 6                      With what other people (groups) who are directly involved with the implementation of the scheme do you have contact?
- Question 7                      In what ways do their activities help to realise the main objectives of the scheme?
- Question 8                      How successful has (each group mentioned in Question 6) been in realising the main objectives of the scheme?
- Question 9                      Can you suggest any ways in which their activities could contribute more successfully to the main objectives of the scheme?
- Question 10                      Is there any other comment on the scheme you would like to make?

APPENDIX (D)

STAGES OF THE ASSESSMENT PROCESS (D.A.C.A.P.)

The First Hearing.

The first hearing in this context refers to the first court appearance at which the accused has pleaded guilty or has been found guilty of the sale, possession and/or use of an illegal substance (excluding marijuana) and at which the process of sentencing can begin. At this time a duty probation officer can advise the magistrate on D.A.C.A.P. If the magistrate feels that treatment intervention could be valuable, he may refer the individual back to the duty probation officer who can then explain to the accused the role of D.A.C.A.P. and perform an initial assessment of the accused's suitability for the programme.

If D.A.C.A.P. is deemed appropriate and the accused is in agreement, the magistrate will place the offender on a BAIL RECOGNIZANCE conditional on attending the assessment programme for a period of three weeks. At the Clerk of Petty Sessions office, the offender enters into the recognizance and obtains clinic appointment instructions. Photocopies of the recognizance, facts of the offence, charge sheet and other relevant papers are collated and sent by Government Courier to the D.A.C.A.P. centre.

The Assessment

On arrival at the centre, the client will be seen by a duty counsellor for an intake interview, and allocated a PRIMARY CARE WORKER. The primary care worker will lead the client through

all phases of the assessment programme, co-ordinating activities, ensuring a consistent contact for the client and consolidating a report on his/her progress.

At the INTAKE (INTERVIEW) the client will be given information on all aspects of D.A.C.A.P. Consent forms will be explained and clients will be asked to sign forms for the release of information to the courts, participation in the Naloxone challenge test, etc. A urine specimen is collected and a decision is made regarding inpatient or outpatient assessment. (This will depend largely on the health of the individual.)

The ASSESSMENT involves both psychological testing, a medical examination, an interview with the assessment worker and in certain cases, the Naloxone challenge test (used to confirm or deny freedom from physiological addiction).

The POST-ASSESSMENT CONFERENCE must consist of the primary care worker and the assessment worker and may include the medical officer and others (i.e. researcher). The person assessed is involved at the end of the conference and if further meetings are indicated, another time is arranged. From this meeting a rational choice of intervention alternatives are suggested.

An ASSESSMENT REPORT is then prepared synthesizing all of the significant findings of the assessment process. The standard of presentation, verification of information and general style follow closely the guidelines set out in the Probation and Parole Guidelines for pre-sentence reports (No. 8/79(5)). The assessment is organised under the following headings:

SIGNIFICANT SOCIAL BACKGROUND, including, where applicable, demographic details, family background, education, employment, cultural factors, etc.,

DRUG SITUATION, including patterns of drug use, relationship between drug use and offence and resulting problems, MEDICAL/PSYCHIATRIC FINDINGS, written in non-behavioural language where applicable, ASSESSMENT AND INTERVENTION OPTIONS, including the likelihood of the intervention plan being acceptable to the client, its availability and likely outcome.

#### The Second Hearing

Prior to the second hearing, two copies of the assessment report are sent to the court. One is attached to the court papers and the other is directed to the client's legal representative. If the police, magistrates or the legal representatives desire the primary care worker to appear at court, arrangements can be made prior to the hearing. (Extract from the Report from the Working Party to Drug Diversionary Programme Steering Committee on proposed D.A.C.A.P., November, 1979.)

