



A series of Research Briefs designed to bring research findings to policy makers.

## Bail support in Australia

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### Introduction

In Australia the prison population has been increasing at a rate of 5% per year since 1984, and recent figures indicate that Indigenous people comprise 24% of the prison population in Australia (ABS, 2007). In 2007 the proportion of prisoners on remand was 22% of the entire prison population (ABS, 2007). Because of the increase in the numbers of people on remand, there has been an increased interest in bail support programs for Indigenous and non-Indigenous people as a viable alternative to remand.

Bail support is defined as the provision of services, intervention or support, designed to assist a person to successfully complete their bail period.

These programs may be undertaken on a voluntary basis or mandated as a condition of bail. These programs usually aim to:

- Reduce re-offending while on bail
- Increase court appearance rate and
- Provide magistrates and police with a viable alternative to remand or incarceration.

In the first section, this paper examines Australian and international literature to present

principles of best practice; in the second section current bail support programs in Australia are identified. Indigenous-specific support programs are also discussed.

### Principles of best practice

From the international literature, general principles of best practice for bail support programs include:

- (i) Voluntary participation, rather than mandatory intervention
- (ii) Support and intervention, rather than supervision or monitoring
- (iii) Holistic, with a broad needs assessment and response, providing information, support and intervention as required
- (iv) Coordinated and interdepartmental, to provide access to pathways across different service systems
- (v) Adaptable and responsive to local conditions.

These general principles are outlined below, followed by sections on principles specific to the needs of young people and Indigenous people.

***Bail support is the provision of services designed to assist a person to successfully complete their bail period***

#### *(i) Voluntary*

Voluntary programs are best practice as they meet Australia's international obligations under the United Nation's International Covenant on Civil and Political Rights (UN, 1966). This Covenant outlines that no person should be deprived of their liberty, except on such grounds and in accordance with such procedure as are established by law. A voluntary program takes into account the unconvicted status of the person (Youth Justice Board, 2002).

#### *(ii) Support and intervention*

Programs that offer support and treatment, as compared with monitoring and supervision, are more effective in addressing rates of recidivism (Amos, Miller and Drake, 2006). The Washington State Institute for Public Policy conducted a comprehensive review of their programs for adult offenders and found that intensive supervision programs had no impact on rates of reoffending, while treatment oriented programs

reduced recidivism by almost 22% (Amos, Miller and Drake, 2006). Similarly, several evaluations of bail support programs in the UK have indicated that bail support has a significant impact on reducing recidivism while defendants are on bail (Pritchard and Cox, 1996; WMPS, 1997).

**Treatment oriented services can reduce recidivism by up to 22%...**

(iii) Holistic

Programs that view the participants' needs holistically and provide a broad range of interventions and support are effective in reducing rates of recidivism (MacKenzie, 2002). Similarly, research into stages of change for a person suggests that implementing support programs at the point of bail is the optimal time for effective intervention (Kubiak *et al*, 2006).

(iv) Coordinated

Bail support programs that offer a coordinated, inter-agency service provide the participant with a pathway to navigate through complex systems and access a range of services as required (Allen, 2001).

(v) Adaptable

In contrast to other jurisdictions such as the UK, Australia's vast distances create a challenge when developing bail support programs. To be effective, bail support programs need to adapt to the specific context in which the program is run and take into account the needs of the local community (Victorian Law Reform Commission, 2007).

**Best practice and young people**

Australia's international obligations regarding young people and custody are outlined

in the United Nations' Convention on the Rights of the Child (UN, 1989). This Convention recognises the importance of diverting young offenders from the formal processes of the criminal justice system.

The Convention outlines best practice principles for diversionary programs for young people. These include:

- Best interests of the child as the primary consideration
- Programs that aim to reduce further conflict between the young person and the law
- Wide range availability of diversionary options at all stages of the criminal justice process
- Incorporate young person's consent to participation without coercion
- Programs which are developed in consultation with young people
- Age appropriate and provides for conditions which allow young people to develop to their full human potential
- Desirability of promoting the child's reintegration and assuming a constructive role in society
- Reviews, accountability and monitoring to ensure programs are fair, humane, and effective (HREOC, 2001).

The Human Rights and Equal Opportunity Commission notes that diversionary programs aim to reduce the risk of trapping a young person in a pattern of offending (HREOC, 2001). This is consistent with the NSW Bureau of Crime Statistics and Research findings, which indicate that the younger the offender when he or she first has contact with the criminal justice

system, the higher the chances of reoffending and an adult life of crime (Vignaendra and Fitzgerald, 2006). Diversionary programs that provide intervention and support reduce that risk for the young person (Vignaendra and Fitzgerald, 2006).

International approaches to youth diversion also provide some guidelines for developing best practice bail support programs. The philosophy behind the Scottish model of juvenile justice is a focus on the 'needs not the deeds' of the young person (Buist, Asquith, 2002). This redefines the nature of the young person's engagement with the criminal justice system. This model assumes that the behaviour is the result of broad unmet social and welfare needs and provides programs to meet those needs.

**Scottish programs for juveniles focus on the 'needs not the deeds...'**

The Youth Justice Board in the UK provides a model for remand management and reduction through a system of widespread diversion programs across England and Wales (Youth Justice Board, 2002). The Youth Justice Board outlines their guide to standards in bail supervision and support. Some of these standards include:

- Programs should be developed at the initial bail assessment point, and be individually tailored to the needs of the young person.
- Young people should have immediate access to programs and support services once they are released on bail. If there is to be an intensive support program, a timely start will improve the young person's retention in the program.

- Programs should take a more holistic view of the young person and their needs, and interventions should be focused on promoting a more stable lifestyle.
- Family should be involved when possible.
- Programs should include court support to help the person to comply with their bail conditions. For example court reminder calls, accompanying the young person to court, organising transport when necessary and providing information and advice about the court and bail process (Youth Justice, 2002).

### Best practice and Indigenous people

Despite the fact that the Bringing Them Home report (1996) and the Royal Commission into Aboriginal Deaths in Custody (1991) made recommendations for increased diversionary options for Indigenous people, the overrepresentation of Indigenous people in custody persists. Research indicates that Indigenous young people are particularly vulnerable to becoming trapped in a cycle of contact with the criminal justice system (Chen *et al*, 2005). The remand population indicates that Indigenous people are still being diverted at a lower rate than non-Indigenous people (Polk, 2003).

Cunneen recommends the following best practice principles for Indigenous diversion programs:

- Adopt a holistic view of Indigenous health and wellbeing
- Have meaningful, not tokenistic involvement of Aboriginal people

- Involvement of family and the community
- Emphasise Indigenous heritage, culture and law
- Assist in establishing and strengthening relationships with Indigenous people who can become mentors and role models (Cunneen, 2001).

***Indigenous specific programs need to adopt a holistic view of Indigenous health and wellbeing***

### Current bail support programs in Australia

Currently most States and Territories in Australia have introduced some form of bail support program. Based on interviews with key policy makers in each jurisdiction, Appendix 2 outlines the current bail support programs by jurisdiction and target group.

#### Support programs for adults

The NSW Bureau of Crime Statistics and Research undertook a research study into the psychosocial needs of court defendants in NSW. This study found that social disadvantage was significant in the sample population and that support and interventionist programs should be implemented as crime preventative measures (Jones and Crawford, 2007). The significant impediments to adults meeting bail requirements include:

- Lack of easy to understand information about bail and bail conditions;
- Lack of support services to meet social needs, such as counselling, accommodation and treatment services; and

- Lack of support services to meet bail conditions, such as court reminders, transport.

Adult bail support programs that effectively address these difficulties are scarce. There are however some recent initiatives that are currently being trialled.

The Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) in Victoria is a treatment program for defendants who have an identified drug dependency. In 2004 CREDIT was combined with the Bail Support Program and now provides a model of treatment and broader support services. These include facilitating access to accommodation, welfare, legal and other supports, all of which assist the defendant in meeting bail conditions.

In New South Wales there is currently a trial of two programs which aim to improve compliance with bail conditions. Firstly a small pocket booklet is provided to defendants, where a defendant's bail conditions can be written, allowing them to understand their requirements and carry their bail conditions easily in their pocket. Further at Moree Local Court, the Aboriginal Client Service Specialist has been collecting mobile phone numbers from Aboriginal defendants and sending them a text message reminder just prior to their court date. This has been implemented to answer the concern that people were failing to appear at court, simply because they forgot the court date. These programs address fundamental obstacles facing defendants meeting bail conditions in that they provide simple, easy to understand and accessible information regarding bail and conditions which is essential if people are to meet those conditions.

Most jurisdictions have diversionary programs for people with alcohol and drug dependencies and for people with mental illness, referral to which may be set as a condition of bail. However, such programs cannot properly be regarded as bail support as the focus is not to assist the person in meeting their bail conditions, but rather to provide them with the opportunity for treatment. Referral into treatment programs are in operation in several states, as set out below.

- Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) in Victoria and NT CREDIT in Northern Territory;
- Magistrates Early Referral Into Treatment (MERIT) in New South Wales, and QMERIT in Queensland
- Court Assessment and Referral Drug Scheme (CARDS) in South Australia
- Court Mandated Diversion program in Tasmania.

Similarly the Rural Alcohol Diversion (RAD) pilot, operating in Orange and Bathurst in New South Wales, is another diversionary program offered in a rural setting, however it does not offer bail support. The Court Integrated Services Program (CISP) is a recent venture set up by the Department of Justice and Magistrate's Court of Victoria. The CISP links accused offenders to support services such as drug and alcohol treatment, disability services and mental health services. Operating within the CISP is the Aboriginal Liaison Program, which aims to increase the awareness amongst Indigenous accused of the various supports available to them.

Drug and alcohol diversionary programs are an area that has

been identified as requiring improvement, however they are beyond the scope of this paper. For more information on this area see the report by Joudo (forthcoming); this report, among other issues highlights the remoteness of some Indigenous communities as being a major barrier in Indigenous offenders accessing support programs. The report also identifies the eligibility criteria for programs as being a further barrier for Indigenous participation. For an overview of evaluations of drug diversion programs in Australia see Wundersitz (2007); Crime Research Centre (2007).

#### *Deficiencies in support programs for adults*

The overarching gap in the provision of bail support programs for adults is the limited number of services available. While generalist support services, such as the Salvation Army and Lifeline, may be meeting some of the support needs of clients in metropolitan regions, there are limited numbers of these services available in rural and remote areas. Additionally, there is a lack of specifically tailored bail support programs in both the metropolitan and the rural and remote regions, resulting in a major shortfall for adults wishing to access such support.

Another issue of concern relates to the lack of program evaluations to determine the effectiveness of bail support programs currently available. It would be beneficial to establish a consistent evaluation framework that operates across programs in each jurisdiction.

#### **Support programs for young people**

The most significant obstacles facing young people in regards to being granted bail and meeting bail conditions are:

- Access to appropriate accommodation
- Absence of a responsible adult/guardian
- Access to after hours support services, which take into account the times when young people are most likely to breach their bail conditions.

#### ***Young people have specific accommodation and support needs while on bail***

There are currently three bail support programs in Australia, in Victoria, Queensland and New South Wales, which aim to address these obstacles.

The Conditional Bail Support Program and Youth Bail Accommodation Support Service in Queensland addresses all these major obstacles facing young people on bail. The Conditional Bail Support Program provides an intensive support program for young people while they are on bail. The Youth Bail Accommodation Support Service targets young people who are homeless or at risk of homelessness, and provides referrals and financial support for the young person to secure appropriate accommodation. This program operates on a brokerage style funding model and has the flexibility to respond to individual needs and requirements. Both these programs have been evaluated and have demonstrated success in diverting a significant number of young people from remand (Venables and Rutledge, 2003). The Conditional Bail Support Program is delivered through 33 departmental offices across Queensland and the Youth Bail Accommodation Support Service is in operation from Gympie to Beenleigh. The Department of

Communities manages the areas outside this location.

The Central After Hours Assessment and Bail Placement Service in Victoria also addresses the needs of young people by providing after hours bail assessments. While the service does not have funding to provide accommodation, the bail support officer works with the young person to negotiate with family or friends to find suitable accommodation. This program operates in the metropolitan regions around Victoria and provides an over the phone assessment service for young people arrested in rural and remote areas.

The Intensive Bail Support Program has recently been implemented in New South Wales and will potentially address many of the obstacles facing young people in relation to bail. This program targets young offenders 10 to 14 years of age and Indigenous young people. Similar to the Queensland model, it also operates on brokerage style funding and provides intensive support for the young person while on bail. This program is in its initial stages of implementation and as such its effectiveness is yet to be determined.

Although there are other bail support programs, they do not effectively address all the key obstacles associated with young people and bail. The Supervised Bail Program in Western Australia responds to the need for a responsible adult and guardian by providing a bail coordinator for a young person who has no responsible adult guardian. Similarly, the Bail Options Project in Tasmania refers young people who are homeless to accommodation and other support services.

*Deficiencies in support programs for young people*

The overall aim of young persons' bail programs is to reduce the large numbers of young people on remand and while they provide a good starting point, there remain significant gaps in the services. Deficiencies are apparent in both the geographical location of services, as well as the level of support that is available. There is not a sufficiently widespread coverage of services across states and territories and the long distances required to access appropriate services disadvantages young people in rural and remote communities.

Bail requirements are more complex for young people so bail support services need to provide greater support to meet those requirements. Some services assist the young person in accessing bail, but provide little or no support for them to meet their conditions while they are on bail. There are also limited numbers of Indigenous specific programs for young people.

The most significant deficiency in bail support programs for young people throughout all states and territories is the lack of available and appropriate accommodation for young people. This is the single most significant factor associated with young people being remanded in custody (Appendix 1). Another factor is the absence of an appropriate adult guardian to provide supervision and support for the young person to meet their bail requirements. Bail support programs also need to take into account the time of day and week that young people are most likely to offend and tailor services to meet this need. Taking these issues into account may help address the juvenile remand population.

**Support programs and Indigenous people**

An overview of the current bail support programs found only two Indigenous specific programs; one in Queensland for adults with alcohol dependencies and one in Victoria for Indigenous young people.

***A pilot Queensland program aims to provide culturally relevant support to Indigenous Communities...***

The Queensland Indigenous Alcohol Diversion Program is a three year pilot program, operating in Cairns, Townsville and Rockhampton. Each pilot site also covers outreach to an Indigenous community, and therefore also includes the areas of Palm Island, Yarrabah and Woorabinda. This program is Indigenous specific and provides intensive intervention and support for its participants. One of the features is the program's locality near to Indigenous communities which means that participants can continue to reside in their communities while undertaking the program. Other significant features of this program are that it aims to break the alcohol-crime cycle for Indigenous people, focuses on providing holistic health outcomes and aims to increase the participants' quality of life.

The Koori Youth Bail Intensive Supervision Support program in Victoria specifically targets the overrepresentation of Indigenous young people on remand, by providing intensive support for Indigenous young people and their family. This is the only Indigenous specific and culturally appropriate service for Indigenous young people on bail. It is in operation in three regions in Victoria.

*Deficiencies in support programs for Indigenous people*

There is a lack of Indigenous specific programs in all states and territories with Indigenous people being referred to non-Indigenous specific programs. In addition the Indigenous programs available have not been adequately evaluated. As retention rates of Indigenous people in these programs are less than non-Indigenous people, these programs may well not be effective in meeting the specific cultural needs of Indigenous people. Indigenous people are also less likely than non-Indigenous people to be diverted into programs due to lack of stable accommodation and/or supports in their community. As the programs available to Indigenous people do not address these issues, a viable option for diversion is not provided.

**Conclusions**

International research has indicated that treatment oriented bail support programs can have a substantial impact on recidivism. Best practice principles which have been outlined in this paper include the need for programs to be voluntary, supportive, holistic, coordinated and adaptable to Australian conditions. This paper has also acknowledged the challenge of developing bail support programs which respond to the local needs of rural and remote communities.

Additionally this paper highlights the specific requirements of young people and Indigenous people and make recommendations for these needs to be addressed in the development of bail support programs.

Although there are some promising initiatives in many

jurisdictions, challenges include the need to provide services which meet the bail support needs of the majority of defendants.

A lack of program evaluations, particularly in relation to Indigenous programs, makes it difficult to reach any conclusions on effectiveness of bail support programs. Evaluation of new initiatives will indicate if several of the current pilot programs are effective in the Australian context, and will help to develop new best practice principles for bail support.

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## Appendix 1: Policy and project worker contacts interviewed

Telephone and personal interviews with officers from the following agencies, August – September 2007

JURISDICTION	AGENCY
New South Wales	Crime Prevention Division, Attorney General's Department of NSW
	Aboriginal Programs Unit, Attorney General's Department of NSW
	Parramatta Children's Court
	Rural Alcohol Diversion Program (RAD)
	Magistrates' Early Referral Into Treatment Program (MERIT)
Victoria	Central After Hours Assessment and Bail Placement Service
	Koori Intensive Bail Support Program
Queensland	Youth Bail Accommodation Support Service
	Strategic Policy Division, Department of Justice and Attorney-General
Commonwealth	Criminal Law Branch, Attorney-General's Department
Tasmania	Bail Options Project, Anglicare Tasmania
Western Australia	Supervised Bail Program, Department of Corrective Services

**Appendix 2: Bail support programs by jurisdiction and target group (September 2007)**

JURISDICTION	BAIL SUPPORT PROGRAM	TARGET GROUP
New South Wales	<ul style="list-style-type: none"> <li>- Magistrates' Early Referral Into Treatment (MERIT)</li> <li>- Rural Alcohol Diversion (RAD)</li> <li>- Intensive Bail Supervision Program</li> </ul>	Adults Adults Young People
Victoria	<ul style="list-style-type: none"> <li>- Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT)/Bail Support Program</li> <li>- Central After Hours and Bail Placement Service</li> <li>- Koori Youth Bail Intensive Supervision Support Program</li> <li>- Adult Court Advice and Support Service</li> </ul>	Adults Young People Indigenous Young People Adults (18-20 years)
Queensland	<ul style="list-style-type: none"> <li>- Queensland Indigenous Alcohol Diversion Program (QIADP)</li> <li>- Queensland Magistrates' Early Referral Into Treatment (QMERIT)</li> <li>- Conditional Bail Support Program</li> <li>- Youth Bail Accommodation Support Service</li> </ul>	Indigenous Adults Adults Young People Young People
Western Australia	<ul style="list-style-type: none"> <li>- Supervised Bail Program</li> </ul>	Young People
South Australia	<ul style="list-style-type: none"> <li>- Court Assessment and Referral Drug Scheme (CARDS)</li> <li>- Youth CARDS</li> </ul>	Adults Young People
Northern Territory	<ul style="list-style-type: none"> <li>- Northern Territory Court Referral and Evaluation for Drug Intervention and Treatment (NT CREDIT)</li> <li>- Bail Assessment and Supervision</li> </ul>	Adults Adults
Tasmania	<ul style="list-style-type: none"> <li>- Bail Options Project</li> <li>- Court Mandated Diversion program</li> </ul>	Youth Adults
Australian Capital Territory	<ul style="list-style-type: none"> <li>- None found</li> </ul>	
Commonwealth	<ul style="list-style-type: none"> <li>- None found</li> </ul>	

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