

# CRIME PREVENTION ISSUES



Justice & Attorney General

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## Magistrates Early Referral Into Treatment: An overview of the MERIT program as at June 2009

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### What is MERIT?

MERIT is a court-based program targeting adult defendants appearing before a participating Local Court who have a demonstrable illicit drug problem, and who are motivated to participate in drug treatment and rehabilitation. Defendants are referred to MERIT pre-plea (i.e., no admission of guilt is required for participation) and will return to court to answer their charges either upon completion or termination from the program. The magistrate has discretion to consider the defendant's treatment response when sentencing.

The MERIT program aims to break the cycle of drug abuse and crime. To achieve this, the program addresses the underlying health, mental health and social welfare issues considered instrumental in bringing defendants in contact with the criminal justice system. While MERIT participants are not required to be drug dependent, they must be assessed as having an illicit drug use problem serious enough to justify the significant treatment interventions available through MERIT.

MERIT eligibility criteria are intentionally broad, allowing referral sources substantial discretion and flexibility.

MERIT commenced in the Northern Rivers region as a pilot program in July 2000. Following an evaluation<sup>i</sup> of the pilot in 2003, the program has been progressively introduced into a total of 61 Local Courts across New South Wales (as at 30 June 2009) and is potentially available to over 80% of charged defendants.

Funding for the program is provided under an Agreement between the NSW and Commonwealth Governments.

### MERIT program activity

From 1 July 2000 to 30 June 2009, a total of 19513 defendants have been referred to MERIT. Of these, 12101 (62%) were accepted into the program and a total of 7439 (64% of acceptances) were recorded as having successfully completed it.<sup>ii</sup>

The growth in the number of MERIT referrals year to year reflects the increase in the number of courts in which MERIT has become available over time. The proportions of referrals to acceptances, and acceptances to completions, have remained relatively consistent (Figure 1).

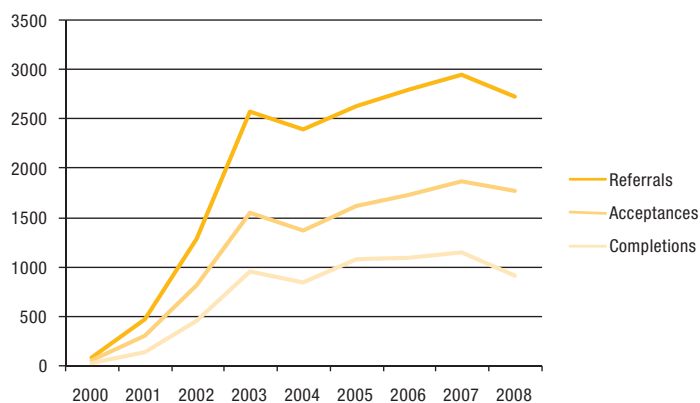


Figure 1: Number of MERIT referrals, acceptances and completions by year of referral: 2000-2008

### Source of referrals

Since program inception there has been an increase in the proportion of referrals made by solicitors relative to Magistrates. During the first 2½ years of operation, Magistrates accounted for around two-thirds of all referrals to MERIT. By 2007 this proportion had fallen to less than one-third with solicitor referrals accounting for

almost half of all referrals. Each year, a small proportion of referrals come from other sources including Police and self-referrals.

### Reasons for non-acceptance

Each year, a number of clients referred to the program do not commence as participants. In 2007, the most frequent reason for program non-acceptance was the defendant's unwillingness to participate in the program, which accounted for one-quarter of all non-acceptances. One-fifth of non-acceptances were due to the defendant not having a demonstrable drug problem. The number of non-acceptances due to lack of program capacity was negligible.

### A profile of MERIT participants in 2007

The following information has been taken from the 2007 MERIT Annual Report<sup>iii</sup> and relates to persons accepted into the MERIT program in the 2007 calendar year, a total of 1,869 defendants.

#### Gender, age, Aboriginal status, place of birth, educational achievement

In 2007, the majority (80%) of MERIT participants were male. This is consistent with the gender ratio of persons appearing before the NSW Local Courts (80.3% male in 2007).<sup>iv</sup> There is no difference in program acceptance based on defendant gender. The age of defendants accepted into MERIT in 2007 ranged from 18 to 64 years, with a median age of 28 years. The majority of defendants fell between 21 and 34 years of age (60.8%). Gender and age distributions have remained consistent across all years of program operation.

In 2007 the proportion of MERIT participants who identified as Aboriginal was 16%, a figure consistent with the proportion of Aboriginal identified defendants appearing before the NSW Local Courts that year (15%).<sup>v</sup>

A relatively small proportion of 2007 MERIT participants were born outside Australia, 11%.

Consistent with previous years, the highest educational achievement for the majority of participants (74%) was Year 10 or less.

#### Principal drug of concern, charges faced

Cannabis was identified as the principal drug of concern for 42% of accepted defendants. This was followed by stimulants<sup>vi</sup> (30%) and narcotics (23%).<sup>vii</sup> These percentages are consistent with the figures reported for 2005 and 2006, but represent a departure

from the early years of the program when the majority of defendants reported narcotics as the principal drug of concern.

In 2007, narcotic drugs still featured most prominently in urban locations. Those reporting cannabis as their principal drug of concern were more likely to be found in regional and rural locations.

In 2007 over half of defendants accepted into MERIT were facing two or more charges (56.5%). The most commonly reported charges involved illicit drug offences (36%). This represents a significant decrease compared with 2006 when 60% of accepted defendants were facing such charges. The next most common charges for MERIT participants in 2007 were theft and related offences (28%) and road traffic offences (18%).

### A profile of MERIT exits in 2007

A total of 1820 defendants exited MERIT in 2007, of whom 1222 (67%) completed program requirements (completers).

#### Completing the program

For those exiting in 2007, a number of factors were found to be significantly related to program completion, including:<sup>viii</sup>

- *Aboriginal status*

A significantly smaller proportion of Aboriginal defendants completed MERIT (60%) than non-Aboriginal participants (69%).

- *Previous MERIT episodes*

Having previously participated in the MERIT program was associated with reduced completion rates (69% of those with no previous MERIT experience compared to 61% of those with 2 or more previous MERIT episodes).

- *Gender*

A significantly smaller proportion of women defendants (60%) completed MERIT than male participants (69%). See Martire and Larney, 2009 for a more detailed discussion of this issue<sup>1</sup>.

#### Treatment received on MERIT

While participating in MERIT all defendants are provided with an individualised treatment plan developed

<sup>1</sup> Martire, K. A., & Larney, S (2009). Women and the MERIT program. *Crime Prevention Issues Bulletin*, No. 5. Crime Prevention Division; Sydney. [http://www.lawlink.nsw.gov.au/lawlink/cpd/merit.nsf/pages/merit\\_resources](http://www.lawlink.nsw.gov.au/lawlink/cpd/merit.nsf/pages/merit_resources)

by their caseworker. As well as support and case management from a caseworker, MERIT participants receive individual and group counselling. Around one-third (34%) of MERIT participants received additional treatments from outside the MERIT team. Of these, one-third received pharmacotherapy (31%) and/or residential rehabilitation (32%). Just over one-quarter (26%) attended an inpatient detoxification service. A number of participants also receive non-drug related services while on the MERIT program, such as education, employment and mental health care services.

Importantly, one third of defendants who exited the program in 2007 reported that participation in MERIT was the first time they had received any formal treatment for their illicit drug problem.

## Criminal Justice outcomes for MERIT participants

Criminal justice outcomes are presented for defendants exiting MERIT in 2006 to allow sufficient time for follow-up.<sup>ix</sup>

### Sentence outcomes

MERIT is intended to produce sentence outcomes that reflect the increased rehabilitative prospects of a defendant as a result of successfully completing illicit drug treatment. Information about sentencing outcomes was available for 1382 participants.

There are considerable differences between the principal penalty outcome for program completers and non-completers. For the 2006 cohort, the most common sentence outcome for MERIT program completers was a bond with supervision (23%) or a bond without supervision (17%). The most common sentence outcome for program non-completers was a fine (23%) or a term of imprisonment (22%).

### Recidivism

Another main objective of the MERIT program is to reduce re-offending by participating defendants, both while they are on the program and following program completion (see Lulham, 2009<sup>2</sup> for a recent analysis of 2002-2005 data).

A person is recorded as having re-offended if, following entry into the MERIT program, they had a finalised court appearance for new charges within a given time period. Information about re-offending was available for 1539 participants.

2 Lulham, R. (2009). The Magistrates Early Referral Into Treatment Program: Impact of program participation on re-offending by defendants with a drug use problem. *Crime and Justice Bulletin*, No. 131. NSW Bureau of Crime Statistics and Research; Sydney. [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/cjb131.pdf/\\$file/CJB131.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb131.pdf/$file/CJB131.pdf)

## Re-offending while on MERIT

Just under one-fifth of all MERIT participants were charged with a new offence within 12 weeks of commencing the program (294/1539, 19%)<sup>x</sup>. Differences are apparent on the basis of exit status, with only 12% of program completers re-offending within 12 weeks compared with 31% of the program non-completers. This is not unexpected since re-offending while on MERIT can be cause for a defendant being removed from the program and/or for having bail withdrawn.

## Re-offending after MERIT

People completing the MERIT program had lower rates of re-offending than non-completers. In 2006, 37% of MERIT program non-completers appeared before court within 6 months of exiting the program compared with 23% of those who completed the program – a statistically significant difference. By 12 months following program completion, 49% of defendants not completing MERIT and 35% of those completing had re-appeared in court on fresh charges. This difference in re-offending rates was also statistically significant.

## Health outcomes for MERIT participants

It is intended that MERIT participants will stop or reduce their drug use and display improved health and social functioning at program exit<sup>xi</sup>. To assess changes in health domains, participants complete a voluntary health outcomes survey at program entry and exit. These questionnaires ask participants about their drug use (SDS), risk behaviours, health (mental and physical), their capacity to perform day-to-day activities (SF-36) and their psychological well-being (Kessler-10).

### Drug use

In 2007, MERIT participants reported statistically significant reductions in the number of days of use of all drug types at program exit. There was also a reduction in the mean number of drug classes used in the previous month, from 3.5 to 1.9 (including licit drugs).

Severity of Dependence Scale scores significantly decreased from program entry to exit across all drug types. However, mean scores remained in excess of established cut-offs for drug dependence.

### Psychological distress

Changes in MERIT participants' physical and psychological well-being were assessed using the Kessler-10 Psychological Distress Scale. Mean K10 scores decreased significantly from program entry to exit, indicating reduced psychological distress in MERIT participants.

## Physical and mental health

The SF-36 assesses a range of health status measures, including general health, mental health, bodily pain and physical functioning, with lower scores indicating poorer health. For MERIT participants mean scores on all SF-36 subscales increased significantly from program entry to exit, indicating improved physical and mental health.

## Conclusion

In summary, the MERIT program provides access to drug treatment for a large number of Local Court defendants, many of whom have not previously received such services. The program is associated with positive outcomes for participants, consistent with both its criminal justice and health objectives.

<sup>i</sup> Passey, M., Patete, S., Bird, G., Bolt, S., Brooks, L., Lavender, K., Scott, D., Sloan, K., Spooner, C., & Vail, J., (2003). *Evaluation of the Lismore MERIT Pilot Program. Final Report*. Northern Rivers University Department of Rural Health, NSW Attorney General's Department.

<sup>ii</sup> Note that the exit status of 497 defendants was not yet determined at the time of the data analysis.

<sup>iii</sup> Crime Prevention Division (2009), *2007 MERIT Annual Report*, Attorney General's Department of NSW.

<sup>iv</sup> Bureau of Crime Statistics and Research (2008), *New South Wales Criminal Courts Statistics 2007*. Sydney; Bureau of Crime Statistics and Research.

<sup>v</sup> *Ibid*

<sup>vi</sup> Stimulants include Amphetamines/ Methamphetamines, Cocaine and M.D.M.A.

<sup>vii</sup> Narcotics include Heroin, Methadone, Morphine, Codeine and Buprenorphine. Heroin was the most commonly used form of narcotic amongst the MERIT defendants.

<sup>viii</sup> Of those tested, the factors found to be significantly related to program completion were: Aboriginal status, Gender, Age, Prior term of imprisonment, Principal income, and number of previous MERIT episodes. See 2007 MERIT Annual Report for details. Note that the base figure for each of the analyses varied slightly due to missing data in each test variable. All analysis excludes the three MERIT participants who died while on the program

<sup>ix</sup> Criminal justice information was available for 1160 of the 1514 defendants (76.6%) who exited MERIT in 2006.

<sup>x</sup> *Ibid*.

<sup>xi</sup> NSW Department of Health (2007), *The Magistrates Early Referral Into Treatment (MERIT) program: Health outcomes*, NSW Department of Health.

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