

**Presentation to the
Third National Indigenous Justice CEO Forum
held at Brisbane on the 21st and 22nd November 2007.**

Philosophy

The Queensland Indigenous Alcohol Diversion Program is a 3 year pilot program. It is a treatment program for indigenous people who appear in the Magistrates Court charged with criminal or quasi criminal offences.

This program is designed to break the alcohol-crime cycle which is one of the primary causes of indigenous over representation in the criminal justice system.

There is a direct link between excessive alcohol consumption and rates of offending, relationship and family breakdown. The profound and destructive impacts upon communities as a result of the effects of excessive alcohol consumption are well documented. Children witness violence in the family and in the community, they have poor role models, have inadequate food, clothing and access to schooling as family income is spent on alcohol.

The benefits of successful completion of program include improved relationships, improved family life and reduction in offending.

Legislative basis

Section 11(4) of the Bail Act 1980 [Qld] provides that a Magistrates Court may impose on the bail a condition that the defendant participate in a program prescribed under a regulation. The Queensland Indigenous Alcohol Diversion Program is such a prescribed program. A defendant is not required to enter a plea of guilty before they enter the program.

The program has operated in Magistrates Courts sitting in Townsville, Cairns, Rockhampton and at communities in Yarrabah and Woorabinda since July 2007.

The Protocol

The Protocol which governs the operation of this program was issued by Judge Marshall Irwin, Chief Magistrate of Queensland on 13 August 2007.

The nature and purpose of the program, as stated in the Protocol, is as follows:

1. The program provides for early referral for assessment of defendants who are eligible for bail, who are motivated and volunteer to engage in treatment and rehabilitation for their alcohol problems, and who otherwise meet the eligibility criteria to participate in the program.
2. The program brings together the health, justice and law enforcement systems with the focus on the reduction of criminally offending behaviour by Indigenous defendants associated with alcohol use and the reduction of Indigenous over-representation in the criminal justice system.

The eligibility criteria as stated in the Protocol are broadly that the defendant is an Aboriginal or Torres Strait Islander adult who has a demonstrable and treatable alcohol problem and the offences with which they have been charged must have been related to the defendant's use of alcohol; and that those offences must be able to be dealt with in the Magistrates Court and the defendant must be eligible for bail.

The defendant is required to undergo an initial assessment which is carried out by a clinical nurse from Queensland Health as a result of which a Suitability Court report is prepared which identifies whether the defendant has an alcohol problem and whether they are willing to work on it. If that report assesses them as being suitable, they are referred to a full assessment at which time a treatment plan is formulated and a report called the Clinical Assessment is prepared.

After hearing submissions from Elders, Prosecution and their lawyers, and if the Defendant is deemed suitable by the Magistrate, they are granted bail with a condition that they participate in the QIADP program for a period of up to 20 weeks.

The phases of the Program include the Detoxification [if required], Intensive Treatment and Rehabilitation phases.

The participant is required to return to Court, either fortnightly or such longer period as appropriate, to review their progress at which time reports are received from the accommodation provider and Qld Health. They are addressed by their first name if it is appropriate to do so. I do not wear a robe while sitting in the Court.

Participants are bailed to live either at a suitable address in the community or in supported accommodation. A participant is commonly bailed to live in supported accommodation in circumstances where they are not supported in their endeavours by members of their household or where their addiction to alcohol is such that they could not reasonably be expected to free themselves of the addiction without substantial support.

The successful completion of the Program is a matter which is taken into account by way of mitigation of penalty when they either plead guilty to, or are found guilty of, the charges before the court. The fact that they have not successfully completed the program is not a matter to be placed before the court on sentence.

Even if a participant has not completed the program, it is my view that the Court should at least recognise, and in a positive way, the fact that they were willing to enter the program and should be encouraged to pursue treatment options.

Early signs of progress

I sat in the Townsville Magistrates Court where this program has operated since it commenced on 10 July 2007. My observations are based on the 4 months I sat in that Court.

The Court sits every fortnight on Tuesday. A team meeting is held before the commencement of court at which key stakeholders discuss the progress of participants and an opportunity to have valuable input into court process.

The key stakeholders are the Elders of the Indigenous Community, the Court, Police Prosecutions, lawyers for the defendants [principally the Aboriginal and Torres Strait Islander Legal Service – ATSILS], Queensland Health and the providers of supported accommodation which is available to participants during the Rehabilitation Phase of the treatment program.

There has been an increasing stream of participants willing to enter into the program in Townsville because:

1. The Elders support the program and encourage defendants to enter the program and both Elders and Indigenous mentors support participants once they are in the program.
2. Both the Court and ATSILS actively seek out opportunities to refer defendants to the program.
3. The clinical nurse from Queensland Health and the staff from the supported accommodation providers ensure assessments are done on a timely basis and that informative written reports are available for the courts consideration.
4. The defendants lawyers and the police prosecutor are prepared to work with the Court and take a pragmatic and flexible approach to ensure that participants are not prematurely excluded from the program.

As at 31 October 2007, there were 21 active participants on the program. There have been 36 referrals into the program, principally from the arrest Court, since 10 July 2007.

There are 40 places available for participants in this Program in Townsville. Subject to Queensland Health and the accommodation providers being sufficiently resourced, the limit of 40 places should be reached by February 2008.

In practice, the numbers are limited to those participants who can be:

1. Assessed and, once on the program, managed by the staff at Queensland Health.
2. Accommodated in supported accommodation in the event that accommodation in the community is not suitable.

Defendants may choose to be represented by either the indigenous legal service or by any other solicitor funded by Legal Aid Queensland which provides a grant of aid for practitioners to appear on their behalf.

Effect of failure to complete the program

The failure to complete the program does not prevent them re-entering the program at a later date.

The House rules of the supported accommodation providers are generally strictly enforced. If those rules are breached, they may be evicted. They may return to that place at a later date but they are likely to be “timed out” for a certain period depending on the nature of the breach.

The legislation does not penalise a participant should they fail to complete the program. The participant does not commit an offence under s. 29 of the Bail Act 1980 if they breach the condition of their bail which requires them to complete the program. By virtue of s.30[6] of the Bail Act 1980 [Qld], the court may not revoke bail if the only ground for making an application to revoke bail is that the defendant has failed to complete the program. The court may however remove the condition that they participate in the program.

The motivation to change

I have been surprised by the number of recidivist offenders - who could also fairly be described as chronic alcoholics - who have not only ventured onto the program but who have remained on the program for a time. Some have withdrawn from the program before they have completed it and others remain on the program.

Their presence on the program can only be explained because they were motivated to change.

At this early stage, the reasons why they are motivated to change are speculative. However, it is reasonable to assume this program is showing early signs of success because the incentives to change come from outside that environment which compels or pressure them to drink in excess. While they are in that environment, they may not feel they are able to resist the advances of those – being family members as much as members of the wider community - who would have them continue drinking.

In this program, they are able to make the decision to abstain or minimise alcohol consumption free of those influences.

Their first contact is with a clinical nurse from Queensland Health who informs them about the health benefits of withdrawal and about how it will improve their functioning as an individual and as a family member.

Having made that decision, they are supported by the stakeholders in the Court process I have described. Early indications are that participants are motivated to change not merely because they may receive a reduction in sentence but that they decide they are no longer prepared to endure the burden imposed on them, and their families, by either chronic ill health or continued involvement in the criminal justice system.

Challenges

Appropriate arrangements for the transport of participants to court especially in the early stages of the Program are critical. Participants often enter the program in such a fragile physical and emotional state that their attendance can only be assured if those arrangements are in place.

Even if successful on the Program, participants often return to the problematic environment which fuelled their addiction. Presently, the program does not allow entry of partners unless they meet the eligibility criteria. A dependent spouse may encourage relapse. Dependent spouses ought to be permitted, or required, to attend which will increase the prospects of success on the program and reduce the chance of relapse into alcohol use. Further, suitable accommodation ought to be provided for family units who would benefit from relationship counselling.

A participant may make significant headway while in the program but they need to be supported – in the form of housing and family assistance - as they reintegrate into the community. Access to training and education for future employment is also desirable while on the program as an incentive to remain free from their alcohol dependency.

The future

The funding of this program is an important initiative of the Queensland Government and all those involved in the program are committed to ensure it be given the best possible opportunity to work.

The early encouraging signs of the program in Townsville persuade me that the program is most likely to succeed where all stakeholders in the process are positive about the program and are sincere in their dealings with the participant. Those closest to the participants in the process, the workers from Queensland Health and the accommodation providers must be able to establish a meaningful rapport with them.

They must be able not only to appropriately communicate with the participant but they must be able to relate to them. Their genuine enthusiasm for the progress of the participant - or lack of genuine enthusiasm - flows through to the participant. It is not enough to simply pay lip service to the process. We are dealing with people who are struggling physically and emotionally. This program proposes that they undertake a life changing experience.

The selection of appropriately dedicated stakeholders is critical for those reasons.

People who enter the program want to change but do not know how to change. Participants leave the program having experienced a taste of what life is like free of alcohol. We should not underestimate the significance of that experience to the participant. The experience itself opens the window to what life is like without alcohol and itself is a motivation for further change.

I have been encouraged that both young and old people, many of whom have children, have chosen to come on this program, I have seen young partners with babies sitting anxiously in the back of the court with an expectant look on their face as their partner confronts their addiction. I have seen the faces of participants progress from looks of dependency to looks of expectation and hope.

The best opportunity participants have in their endeavours to change after they have been on the program will come at that time when their community – already despairing at the destruction wrought upon wives, husbands, partners and children and at the erosion of the significance of indigenous culture to their young people - is able to introduce measures which are effective to resist the culture of excessive alcohol consumption, and those measures are supported by elders, police, health, community workers and the court.

We all have a role to play.

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