

2006

MERIT

MAGISTRATES EARLY REFERRAL INTO TREATMENT

ANNUAL REPORT



New South Wales Government
Attorney General's Department



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Executive summary

During 2006, the Magistrates Early Referral Into Treatment (MERIT) program was introduced into an additional five New South Wales (NSW) Local Courts: Singleton, Bankstown, Newtown, Mt Druitt and Waverley, bringing MERIT to a total of 60 of the 144 Local Courts operating in NSW. This meant the MERIT program was potentially available to 80.3% of cases brought before the NSW Local Courts.

During the 2006 calendar year, 2,801 defendants were referred to the MERIT program. Of these, 1,726 (61.6%) were accepted into the program, 288 either declined the program or did not attend for an assessment and the remaining 787 were not accepted into the program. Of the 787 not accepted, just under half were refused due to ineligibility under program entry criteria (n=349, 44.5%) - the most common reason for ineligibility was that the defendant did not have a demonstrable drug problem (18.6%), followed by the defendant not being eligible for bail (17.6%). Just under a quarter of defendants not accepted into the program were unwilling to participate in their treatment plan (n=170, 21.7%) and 145 cases (18.5%) were deemed unsuitable for MERIT by the Magistrate. These findings are consistent with those reported in the 2005 Annual Report, except that the proportion of defendants whose referral was not endorsed by the Magistrate has increased when compared with earlier program years.

There was a substantial increase in the proportion of referrals by solicitors when compared to 2005, with these accounting for nearly half (47.8%) of all referrals in 2006. Conversely, the rate of Magistrate referrals to the program dropped to 26.1% in 2006, compared to 31.1% in 2005.

The steady increase in the proportion of defendants who have had more than one MERIT episode noted in the 2005 Annual Report continued in 2006, with 18.6% of the defendants having been referred to MERIT on more than one occasion. This finding is not unexpected because as the program matures, there is greater opportunity for repeat referrals to take place. Completion rates for those with a second referral are not different to those referred for the first time.

Males made up 80% of the referral population in 2006, a figure consistent with previous years. The 4:1 gender ratio is also consistent with the ratio in relation to appearances before NSW Local Courts. Females are equally likely to be accepted into MERIT as male defendants.

The proportion of MERIT referrals who are known to be Aboriginal remains at around 16%. This rate is consistent with the proportion of Aboriginal defendants who appear before the NSW Local Courts. Of note is that in 2006 the proportion of known Aboriginal defendants accepted into MERIT (64.5%) was lower than known non-Aboriginal defendants (70.1%). However, this observed difference was not statistically significant. Statistical testing also showed no significant difference between Aboriginal and non-Aboriginal defendants in relation to the reason for program non-acceptance.

Cannabis continues to be the most frequently cited principal drug of concern amongst MERIT referrals (42%), followed by stimulants (32%) and narcotics (21%). The bulk of the narcotic drug users are dependent on heroin. In comparison to 2005 there has been a 6% increase in stimulant users and a decrease in the proportion of heroin users. There are regional differences in presenting drug type, with narcotics being the most frequently cited principal drug of concern for the urban region as opposed to cannabis for both the non-Sydney metro and regional areas. When compared with 2005, 2006 saw a sizeable reduction in the proportion of referrals in both the urban and non-Sydney metro regions where narcotics were the principal drug of concern.

Nearly half of the defendants referred to MERIT during 2006 were facing a single charge (45.9%), and just under one-third (30.5%), were facing two charges. The number of charges was not found to have a bearing on whether the defendant was accepted into the program. Most commonly, referred defendants were facing charges for illicit drug offences (43.0%), which is consistent with the figure for 2005 (38.8%). Charges for theft and related offences (30.0%) were the next most frequent charge type.

Program completion information is based on all defendants who were recorded as exiting the MERIT program during 2006. Of the 1688 defendants making up this cohort, 1064 (63%) completed the requirements of the program. This figure is slightly lower than the 67% program completion rate reported for 2005. Of the 624 defendants who didn't complete the program, the most common reason for non-completion was breach by the MERIT team for non-compliance with program requirements. Other reasons include voluntary withdrawal and removal by the Court.

In 2006, the median number of days completers spent on MERIT was 89 days, which is consistent with 2005. For program non-completers, the median number of days on the program was 45, compared to 42 in 2005.

Around two-thirds of MERIT participants reported having had at least one previous treatment for their illicit drug problem prior to entry into the MERIT program. Therefore, nearly a third of participants accessed drug treatment for the first time as a result of MERIT. Most commonly, the previous treatment reported was counselling (60.3%), followed by pharmacotherapy treatment (43.7%), withdrawal management (38.9%) and residential rehabilitation (27.3%).

Treatments provided by the MERIT program include intensive support and case management from MERIT caseworkers, which includes counselling and may include group work and other outpatient clinical interventions. In addition to direct client services provided by the MERIT caseworkers, program participants may be referred to a variety of external treatment providers for additional services such as pharmacotherapies (e.g. methadone), residential rehabilitation, withdrawal management, mental health, education and employment services.

Around two-thirds (63%) of the defendants who commenced MERIT completed the program. Factors related to program completion include:

- Defendants whose principal drug of concern was cannabis were more likely to complete
- Aboriginal defendants were less likely to complete
- Younger age groups were less likely to complete
- Defendants having previously spent time in gaol were less likely to complete
- Defendants living in rental and other less stable accommodation were less likely to complete
- Defendants with an education of Year 10 or less were less likely to complete.

Defendants with a primary alcohol problem showed a greater likelihood of program completion. However, it should be noted that there were only a small number of defendants in the sample whose principal drug of concern was alcohol, and that alcohol treatment under MERIT is available only in limited settings. Note that participants in the Rural Alcohol Diversion program at Orange and Bathurst Local courts (a MERIT-type intervention for defendants with a primary alcohol problem) were not included in this analysis.

Factors not related to whether a defendant completed MERIT include: gender; the number of times the defendant had been referred to MERIT; their country of birth; preferred language; and marital status.

As has been the case in previous years, there are considerable differences between program completers and non-completers on the basis of sentence outcome. The most common sentences for program completers was a bond (40.8% in total, 21.5% with supervision) and a suspended sentence with supervision (14.4%). Only 9% of the program completers were issued with a fine and 4.1% received a term of imprisonment.

By comparison, the most common sentence outcome for program non-completers was split between a bond (22.1% in total, 18.6% with supervision), a fine (24%) and a term of imprisonment (23.5%). It is important to note that there may be differences other than simply participation in MERIT between the completing and non-completing defendants that would have a bearing on the sentence handed down.

A main objective of the MERIT program is to reduce the likelihood of re-offending. In the current report, the measure of recidivism is provided for the 2005 program participants to allow for a sufficiently long follow up period. Consistent with previous years, significant differences in re-offending rates were found between program completers and non-completers, with 37% of defendants who completed MERIT in 2005 reappearing in court within 12 months of completing the program, compared with 56% of the program non-completers. However, when interpreting this finding, it is important to consider that systematic differences between the program completers and program non-completers may have a bearing on these results, not just the effect of the MERIT program.

1 INTRODUCTION

This is the fifth Annual Report for the Magistrates Early Referral into Treatment (MERIT) program. The Annual Report forms part of the MERIT program monitoring evaluation strategy and draws on data provided by NSW Health to present an overview of MERIT program operation across the year, and other data from the Bureau of Crime Statistics and Research (BOCSAR) to present information relating to MERIT participant criminal justice outcomes.

1.1 Program description

The MERIT program is one of the drug-diversion strategies developed as a result of the New South Wales (NSW) Drug Summit of 1999.¹ The Summit supported a range of diversionary approaches, rather than traditional legal methods, to deal with offenders who use illicit drugs.

MERIT is an inter-agency initiative between the NSW Attorney General's Department (lead agency), Chief Magistrate's Office, NSW Health and NSW Police.² The program commenced on a pilot basis in Lismore in July 2000. Following an evaluation of the pilot program,³ MERIT has been progressively introduced into Local Courts across New South Wales.

The decision to implement MERIT at a particular Local Court is driven by consideration of a number of issues including: the volume of finalised Local Court matters, the presence of existing treatment services to support MERIT, the projected cost-effectiveness and efficiency, the capacity at that Court for partnership working with local non-government organisations that support the MERIT program, and the number of Aboriginal defendants eligible for MERIT typically presenting at that Court.

¹ The NSW Drug Summit resulted in the implementation of five diversionary schemes targeting offenders who had committed minor drug or drug-related offences, designed to be used at different stages of offenders' contact with the criminal justice system. The five schemes were:

- the Cannabis Cautioning Scheme;
- the Youth Drug Court;
- amendments to the *Young Offenders Act 1997* to include the option of police cautions, warnings and conferences for minor drug offences;
- a Drug Offenders Compulsory Treatment pilot; and
- the Early Court Intervention Pilot, which became the Magistrates Early Referral Into Treatment (MERIT) program.

² The Legal Aid Commission, Office of the Director of Public Prosecutions and the Department of Corrective Services are also represented on the MERIT Statewide Steering Committee.

³ Passey, M., (Ed.), 2003, *Evaluation of the Lismore MERIT Pilot Program*, Northern Rivers University Department of Rural Health.

1.2 Eligibility for MERIT

MERIT is a court-based scheme targeting adult defendants appearing before a participating Local Court who have a demonstrable illicit drug problem. In contrast to other court-based drug diversion programs, defendants are not required to admit guilt and are referred to MERIT **pre-plea**.

The MERIT program aims to break the cycle of drug abuse and crime. To achieve this, the program addresses both the criminal conduct of the offenders as well as the health, mental and social welfare issues considered to be instrumental in bringing the offenders in contact with the criminal justice system.⁴ While MERIT participants are not required to be drug dependent, they must be assessed as having an illicit drug use problem that is serious enough to justify the significant treatment interventions available through MERIT.

MERIT eligibility criteria are intentionally broad, allowing referral sources substantial discretion and flexibility in assessing participant suitability. A defendant's eligibility is assessed against the charge(s) he/she is *currently* facing - criminal history is not taken into account.

To be approved for acceptance into MERIT the defendant must:

- be 18 years or older;
- be suitable for release on bail;
- have a demonstrable⁵ and treatable illicit drug problem;
- consent to voluntarily participate in the program;
- be assessed as suitable for the program;
- be a usual resident of the defined program catchment area; and
- be given Magistrate approval to participate in the program.

In addition the defendant must not:

- be involved in charges related to serious violence, sexual offences or wholly indictable offences; or
- have matters pending involving serious violence or sexual assault.

⁴ Barnes, L.A., and Poletti, P., 2004, *MERIT: A Survey of Magistrates*, Judicial Commission of New South Wales.

⁵ Indicators of a demonstrable drug problem are stated in the MERIT Operational Manual as:

- a history of recidivist offending to support drug dependence;
- admission of problematic illicit drug use; or
- being under the influence of an illicit substance or exhibiting drug withdrawal symptoms.

2 THE MERIT PROCESS

MERIT teams are attached to participating Local Courts and employed by the Area Health Service or a non-government service provider. There may be a number of MERIT teams in a Health Area, and each team may cover a number of Local Courts. MERIT caseworkers come from a range of professional backgrounds, including Probation and Parole, drug and alcohol counselling, psychology and nursing. Training is provided to ensure that MERIT caseworkers have the requisite knowledge of both the criminal justice and health issues required for their position.

Potential MERIT participants are generally referred at their first court appearance, but may be referred and assessed before their initial appearance. Referrals are accepted from police at the time of arrest, solicitors before the initial court appearance, or at court by the Magistrate. Probation and Parole officers, the defendants themselves and their family or friends may also make referrals.⁶

Because there is typically a three to four-week period between charge and initial court appearance, the defendant may agree to participate in drug treatment, including detoxification, before being formally enrolled in MERIT.

Following referral the MERIT Team undertakes a comprehensive assessment of the defendant. The assessment covers: drug use behaviours; drug use problems; family relationships and family drug history; the defendant's social situation; legal issues; health problems associated with drug use; mental health; motivation for change; and potential to engage in treatment for drug use problems.

At the next court hearing, the MERIT team provides a written report to the Magistrate, recommending whether or not the defendant should enter the MERIT program, and if recommended - an appropriate drug treatment plan. The Magistrate has discretion to determine whether defendants are accepted into MERIT.

A range of health and welfare services may be provided to meet the complex needs of MERIT participants. These needs can include drug dependence, health problems (including mental health), disability, unemployment, finance and housing, family dysfunction, children at risk, and legal concerns.

Participants are matched to appropriate drug treatments, including detoxification, counselling, pharmacotherapies (for example methadone, buprenorphine and naltrexone), residential rehabilitation, community outpatient services, and case management. In addition, a wide range of ancillary services may be accessed as appropriate. These include medical and other primary health care services, accommodation and housing, employment and vocational services, education and training, family counselling, and psychiatric and psychological interventions.

⁶ NSW Health Department, 2002, Magistrates Early Referral into Treatment (MERIT) Program Operational Manual.

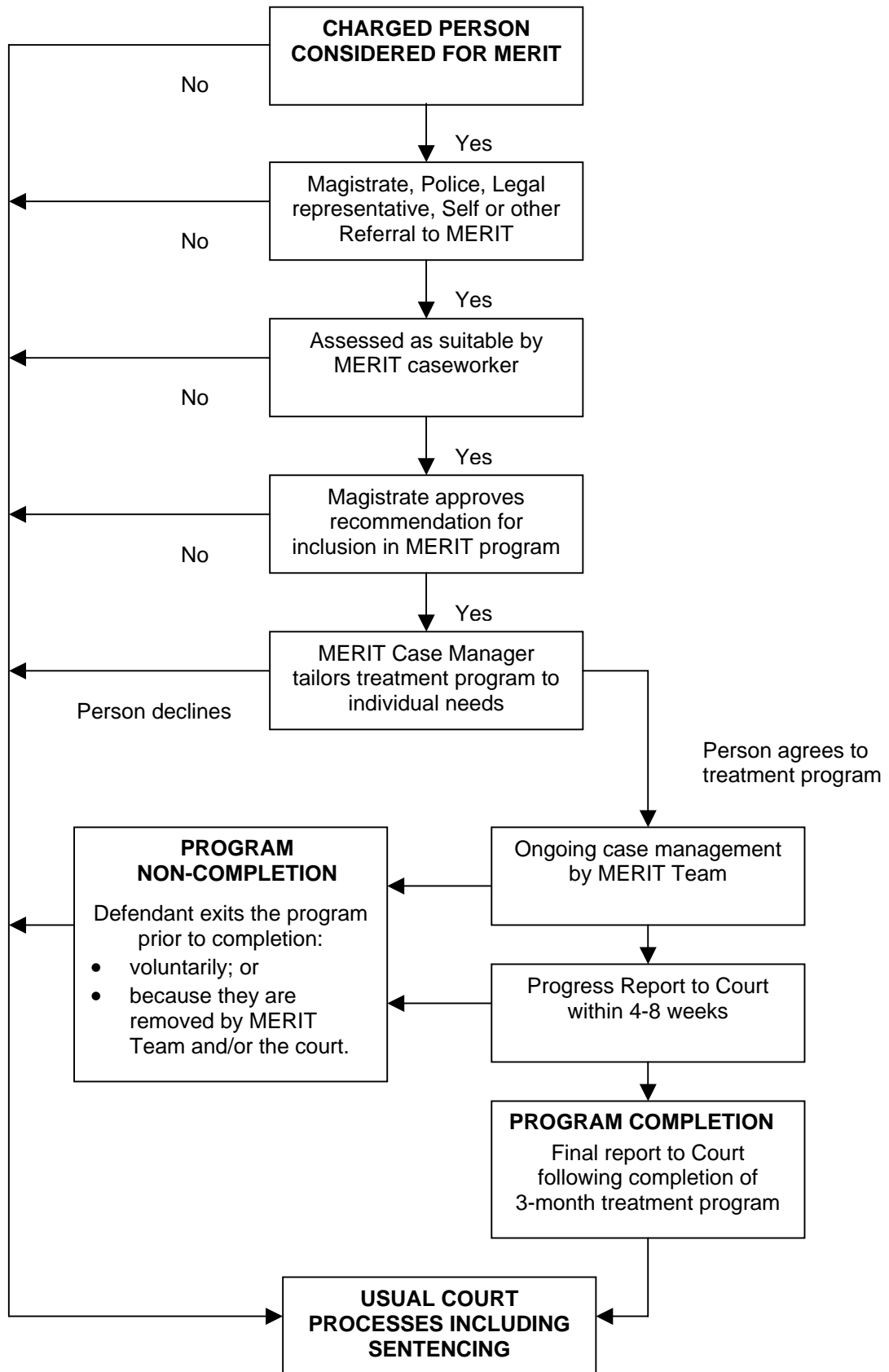
A core element of the MERIT program is an increased level of Magistrate supervision. Typically, this involves one or two additional short hearings to establish how a defendant is progressing. This process provides the Magistrate with the opportunity to monitor compliance with program goals, offer encouragement or admonishment, and emphasise the consequences of non-compliance, as appropriate. Where possible, the same Magistrate deals with the defendant throughout the bail period.

As a voluntary program, defendants may decline to participate in, or withdraw from the MERIT program and have their case determined by the Magistrate without prejudice. It is also possible for the Magistrate to remove participants from the program at any time. This usually occurs following an unfavourable report from a MERIT Team for non-compliance with the MERIT treatment plan. Other reasons include the client committing further offences, becoming ineligible for bail, or failing to appear at Court. Removal from the program may or may not impact on bail conditions, at the discretion of the Magistrate.

The MERIT program was designed to complement the Local Court system where matters typically progress from initial hearing to sentencing within about three months. Thus, the completion of the program generally coincides with the final hearing and sentencing of the defendant. The Magistrate hearing the case receives a detailed report from the MERIT team containing information on the defendant's participation in drug treatment and any further treatment recommendations. A representative of the MERIT team may attend the sentencing hearing, if requested by the Magistrate or the defendant.

The degree to which a defendant's participation in MERIT, successful or otherwise, is taken into consideration during sentencing is at the discretion of the Magistrate. However, depending on the rehabilitative potential of a defendant, as shown by their participation in MERIT, the sentence may provide a balanced, individualised response to both justice and individual needs. MERIT operates under the NSW Bail Act (1978) and Magistrates are guided by Practice Note 5/2002. The Practice Note states that "On sentence, the successful completion of the MERIT program is a matter of some weight to be taken into account in the defendant's favour. At the same time, as the MERIT program is a voluntary opt in program, its unsuccessful completion should not, on sentence, attract any additional penalty."

Figure 1 MERIT Process



3 PROGRAM COVERAGE AND EXPANSION

During 2006 MERIT was introduced into an additional five NSW Local Courts: Singleton, Bankstown, Newtown, Mt Druitt and Waverley, bringing MERIT to a total of 60 of the 144 Local Courts operating in NSW at the end of 2006. When examined in relation to the total charge population, the MERIT program is potentially available to 80.3% of cases before the NSW Local Court.

Table 1 presents information about MERIT coverage by Area Health Service, MERIT Team and Local Court. In the table, Courts have been grouped according to geographic location and linked to the relevant Area Health Service.

Some Area Health Services have nearly complete MERIT coverage. Making MERIT available at some smaller Local Courts can be challenging in terms of cost-effectiveness and finding suitable and adequate drug and alcohol services.

Table 1 MERIT coverage by Area Health Service and Local Courts at 31 December 2006

| Area Health Service | MERIT Teams | Courts contained within AHS boundaries <i>Courts with MERIT appear in bold</i> | Court Coverage ⁷ |
|------------------------------------|-------------------------------------|--|-----------------------------|
| South Eastern Sydney and Illawarra | South East Sydney Illawarra | Wollongong, Albion Park, Kiama, Port Kembla, Nowra, Sutherland, Kogarah, Downing Centre, Central* , Waverley, Milton | 98.8% |
| Sydney South West | South West Sydney Central Sydney | Liverpool, Campbelltown, Camden, Burwood, Fairfield, Bankstown** , Newtown, Picton, Balmain | 92.3% |
| Sydney West | Western Sydney Wentworth | Parramatta, Katoomba, Penrith, Blacktown, Mt Druitt , Windsor | 92.9% |
| Hunter and New England | Hunter New England | Tamworth, Cessnock, Muswellbrook, Newcastle, Maitland, Raymond Terrace, Toronto, Singleton , Belmont, Kurri Kurri, Scone, Dungog, Armidale, Glen Innes, Gunnedah, Inverell, Moree, Narrabri, Quirindi, Walcha, Wee Waa, Boggabilla, Tenterfield, Mungindi, Warialda, | 70.4% |
| Greater Western | Mid West Far West Macquarie | Bathurst, Orange, Dubbo, Parkes, Oberon, Blayney, Forbes, Wilcannia, Broken Hill, Wellington*** , Condobolin, Cowra, Dunedoo, Grenfell, Lithgow, Rylstone, Peak Hill, Lake Cargelligo, Bourke, Brewarrina, Walgett, Warren, Nyngan, Lightning Ridge, Wentworth, Narromine, Gulgong, Gilgandra, Coonamble, Coonabarabran, Cobar, Mudgee, Balranald | 52.1% |
| North Coast | Mid North Coast Northern Rivers | Lismore, Byron Bay, Ballina, Casino, Kyogle Port Macquarie, Kempsey, Wauchope, Mullumbimby, Murwillumbah, Tweed Heads, Grafton, Maclean , Coffs Harbour, Forster, Macksville, Taree, Bellingen, Gloucester | 72.3% |
| Greater Southern | Southern Greater Murray | Queanbeyan, Wagga Wagga, Junee, Cooma , Albury, Cootamundra, Corowa, Deniliquin, Finley, Moama, Tumut, Hay, Temora, Tumbarumba, Lockhart, Moulamein, Griffith, Gundagai, Hillston, Holbrook, Leeton, Narrandera, West Wyalong, Batemans Bay, Bega, Narooma, Bombala, Eden, Crookwell, Yass, Goulburn, Moruya, Young | 30.7% |
| Northern Sydney and Central Coast | Northern Sydney Central Coast | Gosford, Manly, Wyong, North Sydney, Hornsby , Ryde, Woy Woy | 86.7% |

* The Central Court registry works in conjunction with the Downing Centre.

** Owing to closure for redevelopment, all Bankstown Local Court matters were transferred to Burwood Local Court from December 2003 to May 2006.

*** Wellington Local Court has a MERIT-like diversion program operating, but for the purposes of this analysis is not included in the MERIT court statistics.

⁷ Courts have been grouped according to AHS. The percentage in the 'Court Coverage' column represents the volume of cases in MERIT local courts as a proportion of cases in all local courts by AHS. The figures were calculated using 2006 Court Statistics provided by BOCSAR.

4 RESEARCH METHOD

4.1 MERIT operational data

The MERIT Information Management System (MIMS) is a purpose-built database designed to be both an operational client management tool and a means of collecting a large amount of participant data for the ongoing monitoring and evaluation of the MERIT program.

There are a number of data items collected on MIMS, including participant characteristics, medical treatment episodes and health outcomes. Some data items form part of the National Minimum Dataset (NMDS) provided to the Commonwealth as part of the Illicit Drug Diversion Initiative funding agreement. The database is maintained by NSW Health and does not include information on criminal justice outcomes.

4.2 Criminal justice data

The Bureau of Crime Statistics and Research (BOCSAR), a business centre of the NSW Attorney General's Department, provides data on sentence outcomes and re-offending.

Referrals to MERIT are recorded on the NSW Local Courts database (the GLC) as part of the bail conditions. Sentence outcome data are gathered by matching data concerning MERIT referrals to sentence outcomes on the GLC. Re-offending data are gathered by linking MERIT participants to BOCSAR's Re-offending Database (ROD). While NSW Health provides a participant's unique Criminal Names Index (CNI) number, the Bureau returns the criminal justice data to the Crime Prevention Division in an aggregated format in order to protect the privacy of individuals.

4.3 Data quality

Each MERIT Team records data on the MIMS database. There are a number of data checks built into the database to identify missing and anomalous data entries, and the MIMS database manager runs quarterly data quality reports from each Area Health Service. Demographic data and information required for reporting to the Commonwealth are collected routinely. More detailed data are available for participants who enter and/or complete the program, than those who are referred but not accepted into MERIT.

The quality of sentence outcome data is dependent upon the accurate identification of MERIT referrals at the Local Courts on the NSW Local Court database (the GLC). Over the last two years, the proportion of MERIT defendants that have been matched to the Local Courts database has undergone a significant increase, with over 80% of defendants currently being matched compared with less than 20% in the years prior to 2005.

Re-offending data are gathered by matching a defendant's CNI number provided by NSW Health to the re-offending database (ROD) of BOCSAR. Data quality is challenged by difficulties associated with matching this unique identifier to a record on the database. Defendants may present with a number of names and aliases, different dates of birth and other demographic inaccuracies making it difficult to match them with re-offending information and compounding other data recording errors.

4.4 Health Outcome data

The health outcomes of the MERIT program are measured by interviewing MERIT participants at entry to and exit from the program in relation to their health and social functioning. Information is collected on patterns of drug use (including severity of dependence), risk behaviour, psychological stress, and physical/ social/ emotional functioning.

Detailed analysis of MERIT health outcomes are contained in a recent report released by NSW Health.⁸

4.5 Base-line data

The 2006 Annual Report, consistent with the 2005 Annual Report, uses two base-line data measures. The baseline for MERIT *referral* information is all referrals made to the program from 1 January to 31 December 2006 inclusive. This reflects the MERIT program inputs for that calendar year. Similarly, the baseline for MERIT outcomes are defendants who *exited* the MERIT program between 1 January to 31 December 2006, reflecting all program outputs for the calendar year.

In the 2004 MERIT Annual Report a single base-line measure was used to report MERIT referral and completion information. Given that MERIT is a three-month program, the single base-line measure included persons who were referred to MERIT during the later months of the previous calendar year as well as excluding details about persons referred to MERIT during the later months of the calendar year who did not exit the program in that year.

In keeping with previous Annual Reports, sentence outcome and recidivism data are presented for the cohort of defendants exiting MERIT in the *previous* calendar year, in this case 2005. This is done to ensure accurate sentence information can be collected and to allow for recidivism to be measured over a suitable time period.

MERIT program duration is measured by calculating the number of days between the court date at which the Magistrate endorses the defendants referral to MERIT, which is known as "the program entry date" (first MERIT court date) and the date at which the Magistrate, on the basis of a MERIT

⁸ New South Wales Department of Health, (2007), *The Magistrates Early Referral Into Treatment (MERIT) program: health outcomes*.

caseworker's report, determines that the defendant has exited the MERIT program, the "exit date" (last MERIT court date).

Note that drug treatment and other service provision can begin before program entry is endorsed by a Magistrate and can finish before the final report is submitted to a Magistrate. Treatment⁹ can also continue on a voluntary basis after the MERIT program has been completed.

As most variables in the report are measured on a nominal or ordinal scale, the primary presentation of data is in cross tabulation format and statistical analyses are limited to chi-square analyses. Analyses are presented as statistically significant at the .05 probability level. Only selected statistics are presented in order to facilitate ease of reading. Missing data are recorded where appropriate in order to accurately frame interpretation of analyses. Percentages have been calculated with missing data excluded.

⁹ "Treatment" can encompass pharmacotherapy, counselling and/or a residential rehabilitation program.

5 PROGRAM ACTIVITY IN 2006

5.1 MERIT referral and acceptance rates

This section provides a statistical overview of the operation of the MERIT program during the 2006 calendar year.

5.1.1 Number of MERIT referrals

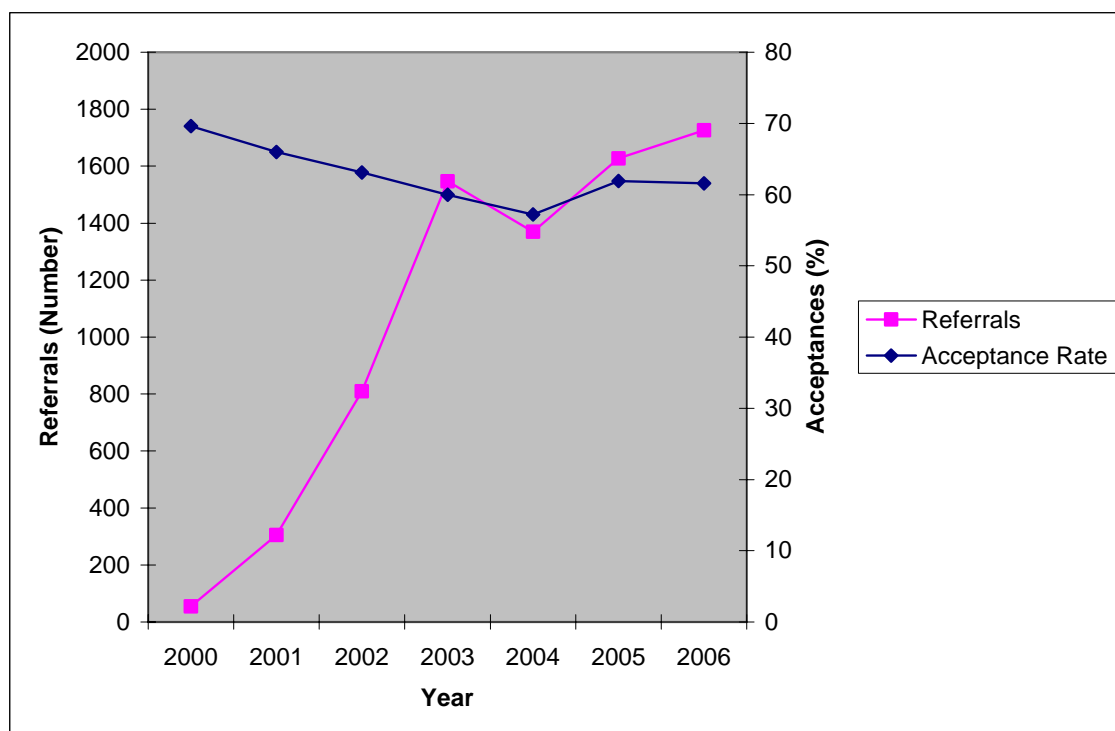
From 1 January to 31 December 2006, there were 2,801 referrals to MERIT, an increase of 176 (6.7%) from the 2005 calendar year.

5.1.2 MERIT acceptance rates

Of the 2,801 referrals in 2006, 1,726 (61.6%) were program acceptances.

Figure 2 illustrates the relationship between referral numbers and acceptance rates over time. There has been continued growth in the number of referrals to MERIT, and stabilisation of the proportion of program acceptances at around 62% for both 2006 and 2005, following a low of 57% in 2004.

Figure 2 Number of program referrals and percentage acceptance: 2000-2006



In 2006, a total of 1075 referred defendants did not end up entering the program. Of these, 288 either did not attend for a MERIT assessment (referral only) or declined the program before a treatment protocol was devised. The 2005 Annual Report noted a reduction over time in the proportion of referred defendants who did not attend for an assessment, from 10% in 2003 to 5% in 2005. In 2006 this proportion remained stable at 4.8% (n=135), as did the proportion of defendants who declined entry to the program, 5.5% (n=153).

5.1.3 MERIT non-acceptance

A key performance measure for the MERIT program is the proportion of defendants who are referred but ultimately not accepted to participate in the program. As was the case for 2005, just over one-quarter of program referrals (n=787/2801, 28.1%) were not accepted in 2006.

It is possible that a defendant may be found both eligible and suitable for MERIT, but the Magistrate may not agree to entry into the program. Magistrates did not endorse 145 referrals to MERIT during 2006. Other reasons for non-acceptance into the program include ineligibility, program logistics and failure to meet suitability criteria.

Table 2 provides the frequency and percentage for the reasons for non-acceptance into the MERIT program.

Table 2 Reasons for program non-acceptance of MERIT referrals

| Reason for non-acceptance | | 2006 | |
|--|---|------------|-------------|
| | | n | % |
| Not eligible | No demonstrable drug problem | 146 | 18.6 |
| | Not eligible for bail | 138 | 17.6 |
| | Strictly indictable offence(s) | 61 | 7.8 |
| | Not an adult | 4 | 0.5 |
| Sub-total | | 349 | 44.5 |
| Not suitable | Unwilling to participate | 170 | 21.7 |
| | Mental health problem | 12 | 1.5 |
| | Already in court ordered treatment | 6 | 0.8 |
| Sub-total | | 188 | 24.0 |
| Program logistics | Resides outside of effective treatment area | 15 | 1.9 |
| | Program full | 1 | 0.1 |
| Sub-total | | 16 | 2.0 |
| Program entry not endorsed by Magistrate | Sub-total | 145 | 18.5 |
| Other | Sub-total | 86 | 11.0 |
| TOTAL | | 784 | 100 |

Missing = 3

As indicated, during 2006 nearly half of all program non-acceptances were due to the defendant being ineligible for the program (44.5%), with the most common reasons for ineligibility being that the defendant did not have a demonstrable drug problem or due to the defendant being ineligible for bail. Other frequent reasons for non-acceptance were an unwillingness of the defendant to participate in MERIT, and because the Magistrate did not endorse the entry to MERIT. There is little variation in the reasons for defendant non-acceptance when compared with the figures for 2005. However, there has been a slight increase in the proportion of defendants whose entry into MERIT is not endorsed by the Magistrate (18.5% in 2006 compared to 16.9% in 2005).

5.2 MERIT referral

5.2.1 MERIT referral sources and acceptance rates

During the early years of the program, referrals to MERIT were typically made by Magistrates. In later years, there has been a shift in the main referral source, with the proportion of solicitor referrals outstripping those by Magistrates.

The figures for 2006 (Table 3) show the proportion of solicitor referrals to MERIT was just under half (47.8%) of all referrals. The rate of Magistrate referrals dropped to 26.1%. Self referrals, referrals from the police, Probation and Parole, family /friend and "other"¹⁰ sources remained consistent from 2005 to 2006.

Table 3 Source of Referral

| Referral source | Referrals by source | | Acceptances by source | |
|--------------------|---------------------|------------|-----------------------|------|
| | n | % | n | % |
| Solicitor | 1321 | 47.8 | 855 | 64.7 |
| Magistrate | 721 | 26.1 | 465 | 64.5 |
| Self | 261 | 9.4 | 156 | 59.8 |
| Other | 234 | 8.5 | 123 | 52.6 |
| Police | 105 | 3.8 | 53 | 50.5 |
| Probation & Parole | 86 | 3.1 | 54 | 62.8 |
| Family /friend | 37 | 1.3 | 16 | 43.2 |
| Total | 2765 | 100 | 1722 | |

Missing 36 4

¹⁰ "Other" MERIT referrals are typically made by health care professionals

Table 3 also shows the acceptance rate by referral source. Around two-thirds of solicitor and Magistrate referrals result in a program acceptance, as do 62.8% of referrals from Probation & Parole and 59.8% of self-referrals.

The referral acceptance rate drops to around half for referrals made by the police and those from an “other” source (typically health professionals). Referral to MERIT by family/friends resulted in the lowest of all acceptance rates, at 43%. These results are similar to those observed in 2005.

5.2.2 Previous referrals to MERIT

A previous referral to MERIT does not preclude a defendant from further referral. This is in recognition of the fact that chronic drug dependent persons may require more than one episode in drug treatment. It is also possible that a defendant may have had a previous referral to MERIT, but may not have been accepted into or completed the program.

Just under one-fifth of the defendants referred in 2006 (18.5%, n=523) were recorded as having had a previous referral to the program, compared to 16% in 2005. This increase is to be expected, because as time progresses, there is a greater number of defendants who have had contact with MERIT.

There was a slight increase in the acceptance rate of multiply referred defendants in 2006 at 61.6%, compared to 59.7% in 2005.

Table 4 shows that in 2006, defendants referred on more than one occasion were less likely to decline the program than those with only one referral (4.2% compared with 5.8%) but were also more likely not to attend for an assessment following a referral (6.7% compared with 4.4%). However, these observed differences are not statistically significant.¹¹

Table 4 Program status by number of referrals to MERIT

| No. referrals | Program status | | | | | | | | |
|---------------|----------------|-------------|------------|------------|--------------|-------------|---------------|------------|-------------|
| | Accepted | | Declined | | Not accepted | | Referral only | | Total |
| | n | % | n | % | n | % | n | % | n |
| 1 referral | 1404 | 61.6 | 131 | 5.8 | 643 | 28.2 | 100 | 4.4 | 2278 |
| 2+ referrals | 322 | 61.6 | 22 | 4.2 | 144 | 27.5 | 35 | 6.7 | 523 |
| Total | 1726 | 61.6 | 153 | 5.5 | 787 | 28.1 | 135 | 4.8 | 2801 |

¹¹ $\chi^2=6.608$, df=3, n=2801, p=.086.

5.3 The demographics of referred/accepted defendants

5.3.1 Gender

In 2006 females made up 20.3% (n=555) of referrals to MERIT and 21.1% (n=364) of all MERIT acceptances.¹² The gender ratio of defendants referred to MERIT is consistent with the gender ratio of persons appearing before the NSW Local Court in 2006, where females constituted 18.9% of finalised cases. There is no significant difference in the rate of acceptance into MERIT on the basis of the defendant's gender.¹³ These findings are consistent with previous years.

5.3.2 Age

The age range of defendants referred to MERIT during 2006 was from 16 to 60 years. The median age at referral was 28 years. The largest proportion of defendants referred were in the 25-29 age group (22.5%) followed by the 21-24 age group (19.6%) and the 30-34 age group (19.1%). Together, these three age groups accounted for 61.2% of all referrals to the program. This age distribution is consistent with previous years.

Table 5 Age at referral and acceptance as a proportion of referrals

| Age | Referred | | Accepted | |
|--------------|-------------|--------------------|-------------|----------------|
| | n | % of all referrals | n | % of age group |
| <18 | 6 | 0.2 | 2 | 33.3 |
| 18-20 | 381 | 13.8 | 235 | 61.7 |
| 21-24 | 540 | 19.6 | 331 | 61.3 |
| 25-29 | 620 | 22.5 | 402 | 64.8 |
| 30-34 | 527 | 19.1 | 343 | 65.1 |
| 35-39 | 360 | 13.1 | 210 | 58.3 |
| 40-49 | 280 | 10.2 | 180 | 64.3 |
| 50+ | 44 | 1.6 | 23 | 52.3 |
| Total | 2758 | 100 | 1726 | |

Missing = 43 for referrals

Note that there were six under-age referrals to MERIT during 2006. One defendant aged 16 years of age was accepted and completed the program. Of the remaining five defendants, who were 17 years of age at the time of referral, one was accepted into the program, one declined the program, one did not attend for an assessment and the other two were not accepted.

¹² Note that the gender of 73 referred defendants was missing.

¹³ $\chi^2=6.911$, $df=3$, $n=2728$, $p=.075$.

5.3.3 Aboriginal status

Table 6 shows the number and proportion of defendants referred to MERIT who were recorded as being Aboriginal. The proportion of Aboriginal defendants referred to MERIT during 2006 (15.5%) is similar to that reported in 2005 (16.2%). This figure is also consistent with the proportion of Aboriginal defendants who appear before the Local Court (13.9% in 2006). However, a slightly higher (though not statistically significant) proportion of non-Aboriginal defendants are accepted into MERIT, 70.1% compared with 64.5% for Aboriginal defendants. The observed difference is largely explained by the higher proportion of Aboriginal defendants who decline to participate in MERIT.

Table 6 Aboriginal status of referred defendants and acceptance as a proportion of referrals

| Aboriginal status | Referred | | Accepted | |
|-------------------|-------------|--------------|-------------|----------------|
| | n | % | n | % of referrals |
| Aboriginal | 377 | 15.5 | 243 | 64.5 |
| non-Aboriginal | 2059 | 84.5 | 1443 | 70.1 |
| Total | 2436 | 100.0 | 1686 | 69.2 |

Missing = 365 for referrals and 40 for acceptances

5.3.4 Country of birth

The information in this section concerns only those defendants who were *accepted* into MERIT during 2006. This is due to the high numbers of missing cases in relation to this variable at the referral stage.

In 2006, information about country of birth was available for a total of 1719 of the 1726 defendants accepted into MERIT. Of these a total of 222 (12.9%) were born outside Australia. This figure is slightly higher than in 2005, where a total of 155 (9.6%) of 1620 defendants accepted into MERIT were born in a country other than Australia.

5.3.5 Highest educational achievement

As has been the case in previous years, the great majority of defendants referred to MERIT were those whose highest educational achievement was Year 10 or less (69%). Just under one-fifth (18%) were educated to the level of Year 11 or 12, 10.9% had trade or TAFE qualifications and only a small proportion (2.1%) were tertiary educated.

5.4 Principal drug of concern

Table 7 provides information about the principal drug of concern to be addressed by the MERIT program. It is important to note that a substantial number of defendants accepted into MERIT may present with multiple drug problems.

Cannabis was the principal drug of concern for 42% of accepted defendants. This is followed by stimulants at 32%, and narcotic drugs at 21%. Note that heroin makes up the bulk of the narcotic drug category.

Overall, there has been an 8% reduction in the proportion of accepted defendants whose principal drug of concern was heroin compared with the figures reported for 2005. This reduction compares with a 6% increase in stimulant use. Within the 'stimulants' category, amphetamine proportions have remained fairly constant over the two years. The increase is accounted for by small increases in the reported use of ecstasy and cocaine as principal drug of concern.

Table 7 Principal drug of concern recorded by the MERIT team - accepted cases

| Principal drug of concern | | n | % |
|---|--|-------------|--------------|
| Cannabis | | 727 | 42.1 |
| Stimulants | Amphetamines/ Methamphetamines (incl. Speed, Ice) | 488 | 28.3 |
| | Cocaine | 33 | 1.9 |
| | M.D.M.A. (Ecstasy) | 25 | 1.4 |
| | Sub-total | 546 | 31.6 |
| Narcotics | Heroin | 341 | 19.8 |
| | Methadone | 8 | 0.4 |
| | Morphine (incl. MS Contin, Opium) | 9 | 0.5 |
| | Codeine (incl. Codral Forte, Disprin Forte, Panadeine) | 3 | 0.2 |
| | Buprenorphine | 1 | 0.1 |
| | Sub-total | 362 | 21.0 |
| Sedatives | Benzodiazepines* | 66 | 3.8 |
| Ethanol (Alcohol) | | 23 | 1.4 |
| Other Anti-depressants and Anti-psychotics, NEC | | 2 | 0.1 |
| TOTAL | | 1726 | 100.0 |

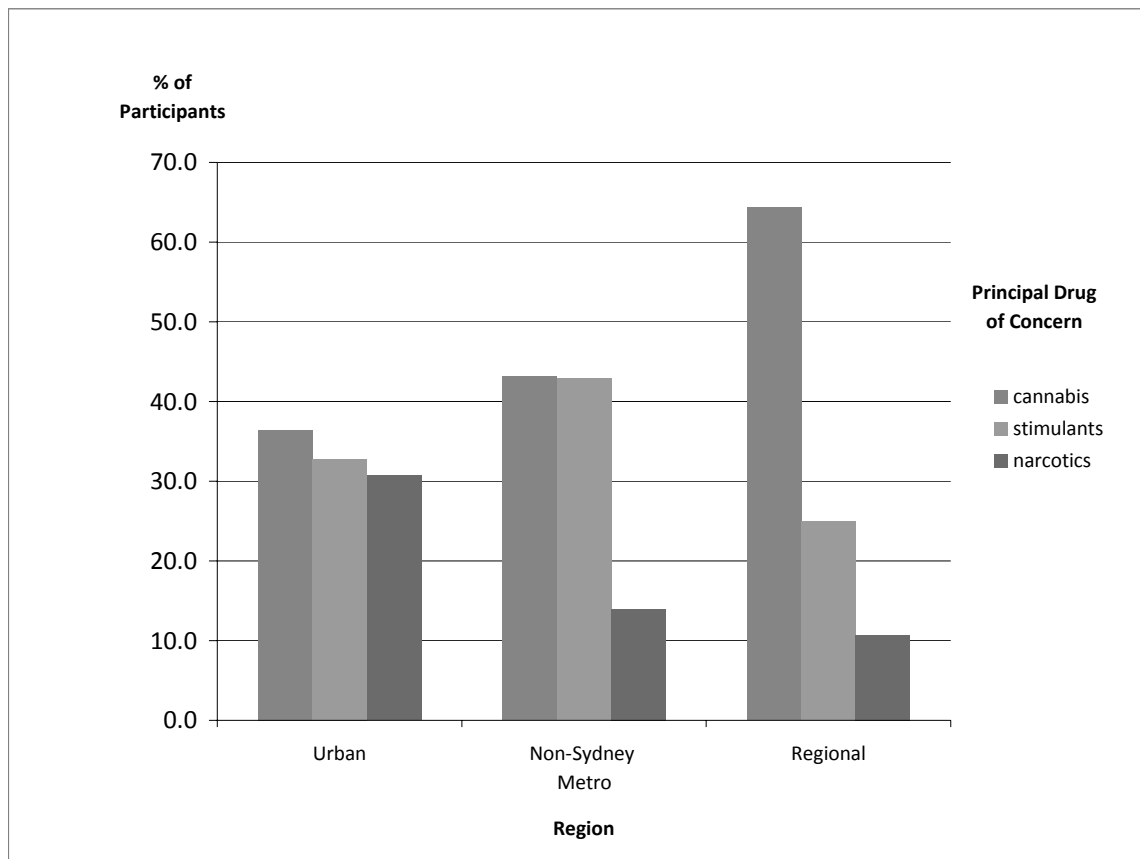
* Includes one case of Gamma-hydroxybutyrate (GHB)

5.4.1 Principal drug of concern by region¹⁴

From previous years, we know there are clear differences in the principal drug of concern on the basis of region.

Figure 3 shows the regional proportions of the recorded principal drugs of concern for persons accepted into MERIT in 2006.¹⁵

Figure 3 Principal drug of concern by region



The principal drug of concern for almost a third (30.7%) of the urban defendants accepted into MERIT was a narcotic, for almost two-fifths (36.5%) it was cannabis and for 32.8%, a stimulant. The non-Sydney metro region shows a very different pattern of drug use, with defendants most frequently reporting

¹⁴ The Urban region is made up of the Northern Sydney, Western Sydney, South Eastern Sydney, South Western Sydney, Central Sydney and Wentworth MERIT teams. The Non-Sydney Metro region is made up of the Hunter, Illawarra and Central Coast MERIT teams. The Regional region is made up of the New England, Mid West, Far West, Macquarie, Mid North Coast, Northern Rivers, Southern and Greater Murray MERIT teams.

¹⁵ Note that in the previous Annual Reports the regional comparison of drug type usage included only cannabis, amphetamines and heroin as these were the three primary drugs of concern reported. However, due to the 6% increase in the reported use of other stimulant drugs, Figure 3 includes all stimulant drugs and all narcotic drugs. Note however that the narcotics category is primarily heroin. Figures relate to only those defendants who were accepted into the program as there are a sizeable number of referred defendants for whom there is no principal drug of concern recorded.

cannabis as the principal drug of concern (43.1%), then stimulants at 42.9% and narcotics at 14%. The pattern of drug use in regional areas is even more markedly different to the urban pattern, with the majority (64.3%) of defendants reporting cannabis as the principal drug of concern, just under one-quarter, 24.9%, reporting stimulant use and only 10.7%, narcotics use.

There was a sizeable reduction in the proportion of narcotics as the principal presenting drug of concern in both the urban and non-Sydney Metro regions in 2006 and a corresponding increase in stimulants as the principal drug of concern, when compared to the 2005 figures (See Table 8). Specifically, there has been a 14.5% reduction in narcotics as the principal drug of concern in the urban region accompanied by an increase of 11.5% for stimulant drugs. A similar shift in the non-Sydney metro region is also apparent, with a decrease of 10.4% in narcotics and an increase of 9.2% in stimulants. By comparison, the drug use pattern in the regional areas remained more consistent with that observed in 2005.

Table 8 Principal drug of concern percentages, 2005 and 2006

| Principal drug | 2005 | | | 2006 | | |
|----------------|-------|------------------|----------|-------|------------------|----------|
| | Urban | Non-Sydney Metro | Regional | Urban | Non-Sydney Metro | Regional |
| Cannabis | 33.5 | 41.9 | 58.8 | 36.5 | 43.1 | 64.3 |
| Stimulants | 21.3 | 33.7 | 27.0 | 32.8 | 42.9 | 24.9 |
| Narcotics | 45.2 | 24.4 | 14.2 | 30.7 | 14.0 | 10.7 |
| n | 701 | 451 | 393 | 869 | 394 | 373 |

Missing = 82 (2005) and 90 (2006)

5.5 Number of charges and type of offence

5.5.1 Number of charges

A near majority of defendants referred to (45.9%) and accepted into (45.2%) MERIT during 2006 faced only one criminal charge at the time of referral. The equivalent figures for 2005 were 50.3% and 48.8% respectively. Just under one-third of referred and accepted defendants were facing 2 charges (30.5% and 29.8% respectively). Around 10% of referred and accepted defendants were facing four or more charges, with two defendants each facing 13 charges. On average, each defendant was facing two charges.

The number of charges does not have a bearing on whether the defendant is accepted into MERIT.¹⁶

¹⁶ $\chi^2=12.669$, $df=12$, $p=.394$, $n=2466$

5.5.2 Type of offence

The distribution of offence types MERIT defendants were facing at the time of referral and acceptance into MERIT is presented in Table 9. Note that defendants may be facing more than one charge. The Australian Bureau of Statistics' Australian Standard Offence Classification (ASOC) has been used.

In 2006 the most common charges faced by MERIT participants were illicit drug offences (41.9%). This represents a slight increase when compared with the 2005 figures which show 39.5% of the accepted defendants to be facing such charges. The next most common charges for MERIT participants in 2006 were theft and related offences (32.0%) compared with 33.3% in 2005.

Note that the homicide and related offences category includes charges for death and injuries arising from road accidents. All six defendants in this category were facing charges for culpable driving. One defendant was accepted into the program, one was a referral only (did not attend for an assessment), and one was unwilling to participate in the program. The remaining three were excluded from MERIT on the basis of being ineligible for bail (n=1) or due to them facing a strictly indictable offence (n=2).

Table 9 Offence types for referred and accepted defendants

| Offence type | Referred (n = 2465) | | Accepted (n = 1726) | |
|--|------------------------|--------------------|------------------------|--------------------|
| | n | % of defendants | n | % of defendants |
| Acts intended to cause injury | 377 | 15.3 | 257 | 14.9 |
| Against justice procedures, government security/operations | 403 | 16.3 | 288 | 16.7 |
| Dangerous or negligent acts endangering persons | 119 | 4.8 | 69 | 4.0 |
| Deception and related offences | 49 | 2.0 | 40 | 2.3 |
| Homicide and related offences | 6 | 0.2 | 1 | 0.1 |
| Illicit drug offences | 1058 | 43.0 | 723 | 41.9 |
| Property damage and environmental pollution | 215 | 8.7 | 155 | 9.0 |
| Public order offences | 89 | 3.6 | 58 | 3.4 |
| Road traffic and motor vehicle regulatory offences | 370 | 15.0 | 279 | 16.2 |
| Robbery, extortion and related offences | 42 | 1.7 | 30 | 1.7 |
| Sexual assault and related offences | 4 | 0.2 | - | - |
| Theft and related offences | 739 | 30.0 | 553 | 32.0 |
| Unlawful entry with intent/burglary, break and enter | 199 | 8.1 | 138 | 8.0 |
| Weapons and explosives offences | 105 | 4.3 | 66 | 3.8 |

Missing = 336 for referrals

6 MERIT PROGRAM EXITS

This section relates to all defendants accepted into the MERIT program who exited the program some time during 2006 - a total of 1688 defendants. Of these, 353 commenced the program in 2005 and 1335, in 2006. This cohort includes participants who completed program requirements (completers), as well as those not completing requirements (non-completers). Table 10 shows the exit status of these defendants.

6.1 Exit status of persons accepted into MERIT

In 2006, just under two-thirds (63%) of MERIT participants exited the program having met all program requirements. This figure is slightly down from the 67% reported in 2005. The remaining third of participants did not complete MERIT for various reasons - the most common being breached by the MERIT Team for non-compliance with program requirements (23.5%). This figure is slightly higher than the previous year, 20.6%. The court removed around 5% of the defendants from the program, which is consistent with that reported for 2005.

Table 10 Exit status of MERIT participants, 2006

| Exit status | n | % |
|----------------------------|-------------|--------------|
| Completed program | 1064 | 63.0 |
| Breached by the MERIT Team | 396 | 23.5 |
| Withdrew voluntarily | 122 | 7.2 |
| Removed by Court | 83 | 4.9 |
| Died | 3 | 0.2 |
| Other | 20 | 1.2 |
| Total | 1688 | 100.0 |

6.2 Program duration

The expected duration of the MERIT program is three months. However, the actual time defendants spend on MERIT can vary. For example, a defendant may be considered to have met all program requirements in under the three-month period, or more likely, the defendant may take longer than three months to successfully complete all program requirements. This is at the discretion of the Magistrate dealing with the each individual case in consultation with the MERIT team, the defendant and his/her legal representative.

6.2.1 Program duration by completion status

As indicated in Table 10, in 2006 there were 1064 defendants who completed the MERIT program (completers) and 621 defendants who did not (non-

completers). The following analysis excludes the three defendants who died while on the program.

The median number of days completers spent on the MERIT program was 89. The most frequent program duration for completers was 84 days (n=325, 31%). For program non-completers, the median number of days on the program at 45 days was half that of program completers. The most frequently occurring program duration for program non-completers was 42 days (n=125, 20%). These figures are consistent with those reported in previous Annual Reports.

6.3 Treatments and services

Defendants in MERIT participate in a standardised treatment protocol developed by their caseworker. This typically involves a combination of individual counselling and group work. The services provided to the defendants by the MERIT caseworkers are described under the umbrella term “support and case management” which includes counselling and may include group work and other outpatient clinical interventions.

In addition to direct client services provided by the MERIT caseworkers, program participants may be referred to a variety of external treatment providers for additional services as required. This section details the previous treatment history of MERIT participants prior to commencing MERIT and treatment services provided by external providers to MERIT participants while on the program.

6.3.1 Treatment history prior to MERIT

Table 11 (page 22) details the treatments that participants reported they had received prior to their referral to MERIT. Of the 1688 MERIT participants who exited in 2006, previous treatment history was available for 1601 (94.8%).

Around two-thirds of this cohort (1092, 68.2%) reported having had at least one previous type of treatment for their illicit drug problem and 509 (31.8%) reported no previous drug treatment.

Most commonly, they reported having received counselling specifically for their drug problem (60.3%) followed by pharmacotherapy treatment (43.7%), withdrawal management (38.9%) and residential rehabilitation (27.3%).

A total of 573 (52.5%) of the 1092 defendants who reported having had previous treatment had received two or more of the listed treatment types and 296 (27.1%) had three or more. Note that in cases where the MERIT participant had more than one type of treatment, each type is recorded, but where there were multiple records of the same type of treatment, the multiples were removed.

Table 11 Previous illicit drug treatments received by MERIT participants

| Previous treatment type | n | %* |
|--|----------|-----------|
| Counselling | 659 | 60.3 |
| Pharmacotherapies | 477 | 43.7 |
| Withdrawal management | 425 | 38.9 |
| Residential rehabilitation | 298 | 27.3 |
| Support & case management | 51 | 4.7 |
| Information & education | 41 | 3.8 |
| Consultation (not withdrawal management) | 33 | 3.0 |
| Other | 102 | 9.3 |

*Total participants who had a previous treatment recorded = 1092
Missing = 87

6.3.2 Treatments received from external providers while on MERIT

Information about the types of services provided to MERIT participants by external providers was recorded for a total of 630 (37%) of the 1688 MERIT participants who exited the program in 2006. Just under half of this group (44%) received more than one type of service. Of the 630 participants for whom information was available, similar proportions received pharmacotherapy treatment (30.6%), residential rehabilitation (29.7%) and inpatient/residential withdrawal management (28.1%) as all, or part of, their external treatment. Other services received include external drug and alcohol counseling and mental health, employment and education services.

7 FACTORS RELATED TO PROGRAM COMPLETION

This chapter examines the factors related to defendants completing or not completing the MERIT program. The total number of defendants upon which the following analyses are based is 1685 and excludes three defendants who died while on the program (See Table 10).

In the analysis below, program completers are compared with defendants who did not complete the program, regardless of reason for non-completion.

Based on previous research with the MERIT population (Passey et al, 2006; MERIT Annual Reports), the following variables were included for analysis:

- Gender
- Age
- Aboriginal status
- Number of MERIT episodes
- Country of birth
- Type of accommodation
- Marital status
- Served time in gaol
- Principal drug of concern
- Principal income source
- Highest educational achievement
- Preferred language

7.1 Factors related to program completion

Variables found to be significantly related to MERIT program completion are listed in

Table 12 (see page 27). Note that the number of cases for each variable differs on the basis of the availability of information in the MIMS database.

7.1.1 Aboriginality

Aboriginal defendants complete MERIT at a significantly lower rate (52.6% vs 64.7% for non-Aboriginal participants).¹⁷ Note that despite this, more than half of the Aboriginal participants do meet the program requirements.

7.1.2 Age

The age of the defendant was significantly related to program completion – with the older age groups (over 25 years) more likely to complete MERIT than the younger program participants.¹⁸

¹⁷ Aboriginality: $\chi^2=11.765$, $df=1$, $p=.001$, $n=1647$.

¹⁸ Age: $\chi^2=25.155$, $df=7$, $p=.001$, $n=1685$.

7.1.3 Previous gaol time

Having previously spent time in gaol is negatively related to program completion: with 59.6% of non-completers having a prior term of imprisonment compared with 47.5 % of completors.¹⁹

7.1.4 Accommodation type

The type of accommodation in which the defendant resides is related to program completion. Defendants living in owned accommodation are more likely to complete the program and those in rental and other types of accommodation less likely²⁰.

7.1.5 Principal income

The principal income source of the defendant was significantly related to program completion²¹ - with those employed (whether full or part-time) being most likely to complete. Defendants who are on a temporary benefit are much less likely to complete.

7.1.6 Education

The highest educational achievement of the MERIT participants is related to program completion.²² Defendants whose education is Year 10 or less are least likely to complete the program while those with a tertiary education are most likely. There is a direct relationship between education level and employment.²³

7.1.7 Principal drug of concern

The principal drug of concern is related to program completion.²⁴ Cannabis users are significantly more likely to complete (67.7%), than are narcotics (58.8%) or stimulants users (57.8%).

7.2 Factors not related to program completion

The following variables were not found to be significantly related to program completion:

7.2.1 Gender

No difference was found between the program completion rates for male and female defendants.²⁵ This finding is consistent with previous research.

7.2.2 Number of MERIT episodes

This issue was examined by comparing the completion rate of defendants for whom the 2006 completion was their first MERIT episode with those for whom it was their second or third-plus episode. There was no difference between the

¹⁹ Previous gaol time: $\chi^2=23.384$, $df=6$, $p=.001$, $n=1682$.

²⁰ Accommodation type: $\chi^2=10.14$, $df=3$, $p=0.18$, $n=1674$

²¹ Principal income: $\chi^2= 47.102$, $df=5$, $p<.000$, $n=1660$.

²² Education: $\chi^2=12.076$, $df=3$, $p=.007$, $n=1514$.

²³ Education and employment: $\chi^2=55.957$, $df=15$, $p<.000$, $n=1506$.

²⁴ Principal drug: $\chi^2=25.625$, $df=4$, $p<.000$, $n=1682$.

²⁵ Gender: $\chi^2=.607$, $df=1$, $p=.436$, $n=1685$.

completion rate of MERIT first timers (63.5%) and MERIT second (or more) timers (64.3%). There was, however, a difference between these two groups and the MERIT third-plus timers – who had a completion rate of only 50.8%. This finding is in contrast to that in 2005, in which a statistically significant difference was reported – with 67% of the 2005 MERIT first-timers completing the program compared with 61% of the second timers and 50% of the third timers.

7.2.3 Country of birth

Country of birth was not related to program completion for the 2006 defendants.²⁶ This again is in contrast to the findings reported in the 2005 Annual Report – where those born outside Australia were the more likely to be program completers: 73% compared with 65%. The corresponding figures for 2006 are 62.9% of Australian born participants completing the program compared with 64.8% of defendants born outside Australia.

7.2.4 Preferred language

Given that country of birth was not found significant for the 2006 program completers, the defendant's preferred language was also examined. It is possible that the 2005 cohort had a higher number of people born outside Australia but who came from an English-speaking country. It was thought that defendants whose preferred language was not English may have a lower completion rate, however this was not found to be the case.²⁷

7.2.5 Marital status

Marital status was not found to be significantly related to program completion.²⁸ This was also the case in 2005.

²⁶ Country of birth: $\chi^2=.269$, $df=1$, $p=.604$, $n=1685$.

²⁷ Preferred language: $\chi^2=3.340$, $df=1$, $p=.068$, $n=1685$.

²⁸ Marital status: $\chi^2=3.613$, $df=2$, $p=.164$, $n=1580$.

Table 12 Variables related to MERIT program completion

| | | Completers | | Non-completers | | Chi-square test |
|----------------------------|--------------------|------------|------|----------------|------|-----------------|
| | | n | % | n | % | p |
| Aboriginality | Aboriginal | 113 | 52.6 | 102 | 47.4 | <.000** |
| | Non- Aboriginal | 926 | 64.7 | 506 | 35.3 | |
| Age | 18-20 | 140 | 56.5 | 108 | 43.5 | .001** |
| | 21-24 | 197 | 56.0 | 155 | 44.0 | |
| | 25-29 | 250 | 66.3 | 127 | 33.7 | |
| | 30-34 | 196 | 63.2 | 114 | 36.8 | |
| | 35-39 | 131 | 68.9 | 59 | 31.1 | |
| | 40-49 | 129 | 71.7 | 51 | 28.3 | |
| | 50+ | 18 | 72.0 | 7 | 28.0 | |
| Served time in gaol | No | 413 | 69.8 | 179 | 30.2 | <.000** |
| | Yes | 373 | 58.6 | 264 | 41.4 | |
| Accommodation | Owned | 306 | 68.0 | 144 | 32.0 | 0.046 |
| | Rented | 670 | 61.5 | 419 | 38.5 | |
| | Other | 88 | 60.7 | 57 | 39.3 | |
| Principal income | Full-time employed | 138 | 78.4 | 38 | 21.6 | <.000** |
| | Part-time employed | 86 | 78.2 | 24 | 21.8 | |
| | Pension | 219 | 69.1 | 98 | 30.9 | |
| | Temporary benefit | 514 | 57.7 | 377 | 42.3 | |
| | No income | 58 | 57.4 | 43 | 42.6 | |
| | Other | 37 | 56.9 | 28 | 43.1 | |
| Education | Yr 10 or less | 634 | 61.1 | 403 | 38.9 | <.000** |
| | Yr 12 or less | 195 | 70.9 | 80 | 29.1 | |
| | TAFE/trade | 113 | 66.1 | 58 | 33.9 | |
| | Tertiary | 24 | 77.4 | 7 | 22.6 | |
| Drug type | Cannabis | 491 | 67.7 | 234 | 32.3 | <.000** |
| | Narcotics | 224 | 58.6 | 158 | 41.4 | |
| | Stimulants | 281 | 57.8 | 205 | 42.2 | |
| | Other | 66 | 74.2 | 23 | 25.8 | |

8 CRIMINAL JUSTICE OUTCOMES

A 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. MERIT is also intended to produce sentence outcomes that reflect the increased rehabilitative prospects of a defendant as a result of successfully completing the drug treatment. The following information provides an account of sentence outcomes and re-offending of MERIT program participants. Comparisons are made between defendants who complete MERIT with defendants who do not complete MERIT. In the absence of an appropriate control group (that is, a group of defendants who exhibit similar characteristics to MERIT participants but who have not participated in the MERIT program) no firm conclusions can be drawn regarding the efficacy of MERIT in relation to the criminal justice outcomes.

Criminal justice outcomes are measured by comparing post-program sentences and re-offending rates. The relevant data are provided by the NSW Bureau of Crime Statistics and Research following a process that matches MERIT participants with the Local Court and Re-offending databases held by the Bureau.

In keeping with previous Annual Reports, the sentence outcome and recidivism data are presented for defendants completing MERIT in the previous calendar year, in this case 2005.

Selected information about the defendants accepted into MERIT, who were recorded as having completed contact with the program during 2005, was sent to BOCSAR to identify the principal penalty received as well as the number of defendants who were brought back before the Local Court within 12 weeks of commencing MERIT, and within 6 and 12 months of completing contact with the program.

Of the total of 1514 defendants for whom information was sent to BOCSAR, 1160 were successfully matched with the court data. This represents 76.6% of defendants.

8.1 Sentence outcomes

The sentence outcomes of the 1160 MERIT participants matched by BOCSAR in 2005 are presented in Table 13.

There are considerable differences between the principal penalty outcome for program completers and non-completers. The most common sentence outcomes for MERIT program completers are a bond with supervision (21.5%) or a bond without supervision (19.3%). By comparison, the most common sentence outcomes for program non-completers are a fine (24%) or a term of imprisonment (23.5%).

The distribution of sentence outcomes by completion/non-completion status is consistent with previous years of the program.

When interpreting this information it is important to recognise that the program completers and non-completers may differ systematically on factors that influence the severity of penalty. As a result, the observed sentence outcomes may reflect

these pre-existing differences or selection bias rather than the effect of the MERIT program.

As previously seen in Table 10, almost one-quarter of MERIT participants were breached by the MERIT teams for non-compliance with program requirements, and a further 12% were either withdrawn from the program by the court or withdrew from the program voluntarily. The reasons for them not completing the program could also have had a significant bearing on the sentence outcomes.

Table 13 Principal penalty by completion status: 2005

| Principal Penalty | Completed | | Not completed | |
|--|-------------|--------------|---------------|------------|
| | No. | % | No. | % |
| Fine | 72 | 9.0 | 87 | 24.0 |
| Imprisonment | 33 | 4.1 | 85 | 23.5 |
| Bond with supervision | 172 | 21.5 | 49 | 13.5 |
| Bond without supervision | 154 | 19.3 | 31 | 8.6 |
| Suspended sentence with supervision | 115 | 14.4 | 26 | 7.2 |
| Suspended sentence without supervision | 50 | 6.3 | 17 | 4.7 |
| Community Service Order | 69 | 8.6 | 17 | 4.7 |
| Home detention | 2 | 0.3 | - | - |
| Periodic detention | 11 | 1.4 | 4 | 1.1 |
| Bond without conviction | 42 | 5.3 | 4 | 1.1 |
| Probation with supervision | - | - | 1 | 0.3 |
| Nominal sentence | 8 | 1.0 | 1 | 0.3 |
| No conviction recorded | 29 | 3.6 | - | - |
| No penalty | 41 | 5.1 | 38 | 10.5 |
| TOTAL | 799* | 99.9* | 362 | 100 |

* The principal penalty for one defendant has been removed as the defendant was sentenced as a juvenile. The penalty imposed was a control order with supervision.

8.2 Re-offending

Re-offending in this report is measured by a finalised court appearance for new charges following entry to the MERIT program. It should be noted that not all incidences of criminal activity come to the attention of the police and/or result in charges being laid.

8.2.1 Re-offending within 12 weeks of commencing MERIT²⁹

Table 14 shows the number and percentage of 2005 MERIT participants who were charged with a new offence within 12 weeks of commencing the MERIT program. Note that these figures include persons who completed contact with MERIT in less than the 3 months standard program and so may not have actually been receiving drug treatment in MERIT at the time of the offence.

Just over one-fifth of all MERIT participants were charged with a new offence within 12 weeks of commencing the program (255/1160, 22%). Differences are apparent on the basis of exit status, with only 14.5% of program completers re-offending within 12 weeks compared with 38.6% 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 bail withdrawn.

Table 14 Re-offending within the 12 week MERIT program period

| | | Re-offended while on MERIT | |
|-----------|-----------------------|----------------------------|------|
| Exit year | Exit status | n | % |
| 2005 | Completed (n=800) | 116 | 14.5 |
| | Not completed (n=360) | 139 | 38.6 |
| | TOTAL (n=1160) | 255 | 22.0 |

8.2.2 Re-offending post MERIT contact

Table 15 (page 31) presents information relating to the re-offending rates of the MERIT participants that BOCSAR was able to match with the Local Courts database, by completion status, at 6 months and 12 months after completing contact with the program. The last MERIT court date was used as the starting point of the follow up period.

²⁹ The point of reference for this analysis was a charge with an offence within 12 weeks of the first MERIT court date.

Table 15 Re-offending by MERIT exit status, 6 months and 12 months

| Exit year | Exit status | Number re-appearing in court | |
|-----------|---------------|------------------------------|------|
| | | within 6 months | |
| 2005 | | n | % |
| | Completed | 180 | 22.5 |
| | Not completed | 152 | 42.2 |

| Exit year | Exit status | Number re-appearing in court | |
|-----------|---------------|------------------------------|------|
| | | within 12 months | |
| 2005 | | n | % |
| | Completed | 297 | 37.2 |
| | Not completed | 202 | 56.1 |

The figures in Table 15 show a substantial difference in the rate of recidivism for defendants who completed compared with those who did not complete - at both 6 and 12 months intervals.

In 2005, 42.2% of MERIT program non-completers appeared before court within 6 months of exiting the program compared with only 22.5% of those who completed the program. By 12 months following program completion, the proportion of both program completers and program non-completers who re-appeared in court increased by about 14% - to 56.1% for defendants not completing MERIT and 37.2% for those completing.

9 DISCUSSION

9.1 Program expansion, referrals and acceptances

During the 2006 calendar year the MERIT program was introduced into an additional five NSW Local Courts bringing the program to 60 of the 144 Local Courts in NSW and available at 80.3% of all Local Court appearances.

From program commencement in July 2000 to 31 December 2006, a cumulative total of 12,225 defendants have been referred to MERIT, with 7,439 (60.9%) referrals resulting in a program acceptance. From 1 January to 31 December 2006 a total of 2,801 defendants were referred to MERIT, with 1,726 (61.6%) defendants being accepted into the program. The number of program referrals was up by 174, or 6.6% on the 2005 calendar year.

This continued expansion allowed more drug dependent defendants the opportunity to address their illicit drug problem, including a substantial number (around 32%) who had never previously received treatment for their drug problem.

In 2006 just under half of all referrals resulting in non-acceptance were due to the defendant being ineligible for MERIT (44.5%) - mostly owing to the defendant not having a demonstrable illicit drug problem or not being eligible for bail. In addition, one-fifth of all non-accepted defendants chose not to participate in the program (21.7%). The reasons why some defendants choose not to participate or choose to withdraw from the program, could be a subject of future research.

During 2006, a significant reason for non-acceptance was due to program entry not being endorsed by the Magistrate - this occurred in 145 cases (18.5% of non-acceptances). Comparing the figures for 2006 and 2005 shows there has been an increase in the proportion of non-acceptance due to the Magistrate's decision. The reason for this relatively small but increasing number of cases may be worthy of investigation.

In 2006 solicitors were the primary source of referral (as was the case in both 2004 and 2005). This is in contrast to the earlier years of MERIT where Magistrates made the majority of referrals. The proportion of solicitor referrals has steadily increased over time - 47.8% in 2006 compared with 42.6% in 2005 and 40.6% in 2004.

Around two-thirds of all referrals to the MERIT program by Magistrates, solicitors and the Probation and Parole Service resulted in acceptance. The referral acceptance rate dropped to around half for referrals made by police and those from an "other" source. The acceptance rate dropped further where the referral was by a family member/friend, 43%.

There has been a steady increase over time in the proportion of defendants with multiple referrals to MERIT. A further increase in the proportion of this group is evident for 2006, with 18.6% of the defendants having previously been referred to MERIT. This is to be expected, because as the program matures so to does the number of defendants who have prior MERIT experience. Given that the proportion of defendants *accepted* into MERIT more than once is still quite small and that persons referred for a second time are just as likely to complete the programs as those referred for the first time, there doesn't seem to be a need, at this stage, to restrict the number of times a defendant may be referred to the program.

In 2006, the proportion of males referred to MERIT was 79.7% and those accepted, 78.9%. These figures are consistent with the proportion of males who come before the NSW Local Courts, which in 2006 was 81.1%. Note that gender is not significantly related to program acceptance or completion.

Defendants referred to MERIT during 2006 ranged in age from 16 to 60 years with a median age of 28 years. The majority of defendants referred to the program are aged from 21 to 34 (61.2% of referrals). There is no difference in program acceptance on the basis of age. These findings are consistent with previous years of program operation.

Another consistent finding over time has been that the majority of defendants referred to and accepted into MERIT are educated to Year 10 or less, with this group making up 69% of the 2006 defendants. The equivalent figure for 2005 was 72%.

The figures for 2006 show that of all referrals to MERIT, 15.5% of the defendants were known to be Aboriginal. It is important to note that this rate is consistent with the proportion of Aboriginal defendants who appear before the NSW Local Courts. As has been the case in previous years, the acceptance rate of Aboriginal defendants was lower than that for non-Aboriginal defendants, 64.5% compared with 70.1%. However, this observed difference was not statistically significant.

Cannabis is the most commonly reported principal drug of concern for persons accepted into MERIT (42%). This was followed by stimulants (32%) and then narcotics, primarily heroin (21%). The findings for 2006 demonstrate an increase in stimulants and a reduction in narcotics as the principal drug of concern for MERIT referrals in comparison to previous years. This finding has implications for MERIT service delivery in terms of the types of presenting problems at treatment facilities.

Over half of those accepted into MERIT in 2006 were facing two or more charges at the time of referral (54.8%). Most commonly, the charge type faced by MERIT acceptances involved illicit drug offences (41.9%). The corresponding figure reported for 2005 was 39.5%. Following drug charges, the next most common charge type for those accepted into MERIT involved theft and related offences (32.0%). This figure is consistent with that reported for 2005.

9.2 MERIT program exits

Of all defendants who exited the MERIT program in 2006 (n=1688), just under two-thirds (63%) completed the requirements of the program. This figure is slightly down from the 67% completion rate reported for 2005. It would be of interest to see if this rate could be improved and how it compares with other similar drug crime diversion programs.

Almost one-quarter of all 2006 exited defendants were breached by the MERIT team for non-compliance (23.5%), a figure that is marginally up on that reported for 2005, 20.6%. The court removed 5% of the defendants from the program during 2006, a figure consistent with that reported for the previous year.

The median duration on the program for defendants completing MERIT was 89 days which is consistent with the target duration of three months. The median duration for program non-completers was half that of the program completers, at 45 days, indicating that even those defendants who exit prematurely generally receive a substantial amount of treatment for their illicit drug problem.

Bi-variate analyses showed the factors significantly related to successfully completing the MERIT program. These have been consistent across years. One important finding is that significantly fewer Aboriginal defendants complete MERIT than do non-Aboriginal defendants. The Aboriginal Health and Medical Research Centre (AHMRC) project cited in the 2005 Annual Report continues, the purpose of which is to develop a model of best practice to engage local Aboriginal communities to support MERIT and other diversion programs.

Defendants under the age of 25 continue to be less likely to complete the program, as do defendants who have previously spent time in gaol. However, more than half the defendants in each of the two younger age brackets and more than half of those who have spent time in gaol *do* complete the program. There is therefore no evidence to suggest that any particular group of defendants be excluded from referral to the program.

Type of accommodation continues to show a relationship to program completion, with defendants in more stable accommodation more likely to complete the program. The principal income source is also related to completion, with those defendants who have some paid employment being more likely to complete, as are defendants with a higher level of education. These findings point to defendants having a greater chance of successfully completing MERIT if they have some social and economic stability as a support.

The principal drug of concern is also related to program completion, with those defendants reporting cannabis as their main drug of concern being the most likely to complete the program. This is important, as cannabis is now the most frequently reported principal drug of concern for MERIT participants.

9.3 Treatments and services

Nearly one third of the 2006 MERIT participants reported not having received previous treatment for their illicit drug problem, showing that MERIT continues to make intensive drug treatment available to a substantial number of offenders who have not had previous treatment to address their drug use issues.

Participants in the MERIT program receive support and case management from a dedicated MERIT caseworker. In addition, program participants may be referred to a variety of external treatment providers for further services as required. More than one service was often recorded for the same defendant. Most often, the defendants received pharmacotherapy treatment (30.6%), residential rehabilitation activities (29.7%) and/or inpatient/residential withdrawal management (28.1%). Just under one-quarter received drug and alcohol counselling from an external source. Note that information about the type of external services provided was only available for 37% of the MERIT completion group.

9.4 Health outcomes

Health outcomes of the MERIT program are measured by interviewing MERIT participants at entry to and exit from the program in relation to their health and social functioning. Information is collected on patterns of drug use (including severity of dependence), risk behaviour, psychological stress, and physical/ social/ emotional functioning.

A recent NSW Health Report found that MERIT achieves significant positive health outcomes for those who complete it³⁰. At completion of the program, a majority of participants reported greatly reduced levels of drug use (both in terms of frequency and intensity) and associated risk behaviours, as well as better mental, physical and social functioning. In 38% of cases, participants reported abstinence from all illegal drugs when they left the program.

It should be noted that the study was limited by the lack of a suitable control group and that it isn't possible to say to what extent the reported behaviour changes were sustained beyond the 3-month period of the MERIT program. However, a number of MERIT participants are recorded as continuing in drug and alcohol including residential rehabilitation, pharmacotherapy or counseling at program exit.

³⁰ New South Wales Department of Health, (2007), *The Magistrates Early Referral Into Treatment (MERIT) program: health outcomes*.

9.5 Criminal justice outcomes

Criminal justice outcomes were measured by comparing the post-program sentences and re-offending rates of MERIT program completers and non-completers in 2005 in order to allow sufficient time for follow up. In the absence of an appropriate control group, caution should be exercised regarding the efficacy of MERIT in relation to the criminal justice outcomes.

Accepting this caveat, completing the MERIT program appears to contribute to sentence outcomes that reflect the increased rehabilitative prospects of a defendant and in a reduced rate of re-offending both at 6 and at 12 months from program completion. Given the high number of MERIT participants who are already recidivist offenders prior to entering the program³¹, this is a notable achievement.

Significant differences were found between MERIT completers and non-completers with regard to sentence outcomes. The most common outcomes for program completers were a bond with supervision (21.5%), or a bond without supervision (19.3%), or a suspended sentence with supervision (14.4%). In contrast, the most common outcomes for program non-completers were a fine (24%) or a term of imprisonment (23.5%). It is important to note that many factors other than completion or non-completion of MERIT are used to determine the appropriate sentence for a given offender.

Completion of MERIT is strongly associated with lower rates of re-offending, and consequently, improved community safety. Of the 2005 cohort, 42% of the program non-completers appeared before the court within 6 months of exiting the program, compared with only 23% of program completers. By 12 months following program completion, the proportion of program completers who had re-appeared on further charges was 37% compared with 56% for program non-completers.

In 2006, 58.6% of MERIT completers had previously spent time in gaol and 68% were aged 25 or over, showing that MERIT is not just for first-time offenders. As a result, any reduction in drug use by these clients is likely to lead to a substantial reduction in the intensity and overall level of their offending. This has the potential to lead to improved safety in the community.

Despite MERIT having an apparent sizeable effect on re-offending, a high proportion of defendants are charged with a new offence within the 12 weeks of their commencing the MERIT program. For the 2005 cohort, 22% of all defendants accepted into MERIT re-offended within 12 weeks of commencing the program - 14.5% were program completers and 38.6% were program non-completers. While the majority of these defendants are recorded as being MERIT non-completers (and may no longer have been participating in the

³¹ 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.

program at the time the charges were brought), there are considerable proportions of MERIT completers in each year who were found to be facing new charges while still on the program. It should be noted that these charges may be related to minor offences and/or offences that aren't drug related.

A gap still exists in relation to evidence of the over-all effectiveness of the MERIT program (Harvey et al, 2006). Essential to measuring this is the comparison of MERIT participants with an adequate control group of non-participants. The NSW Bureau of Crime Statistics and Research will be conducting such a review during 2008. It is only through such research that we can determine the true extent to which program participation contributes to the observed recidivism outcomes.

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