

## DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL BRIEF FOR NOTING

**Date** 6 February 2013  
**To** **Attorney-General and Minister for Justice**  
**From** Courts Innovation Program  
**Subject** Bail and Sentencing Options  
**Requested by** Internally generated

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### RECOMMENDATION

That you **note** the development of Indigenous Sentencing Lists (ISLs) and the Queensland Courts Referral Service (QCRS).

### BACKGROUND SUMMARY

1. On 29 November 2012, the *Criminal Law Amendment Bill (No.2) 2012* was introduced into Parliament which included amendments to the *Bail Act 1980*, providing Magistrates with bail options for defendants to participate in rehabilitation, treatment or other intervention programs prior to sentencing. This supports the sentencing guidelines currently provided for in the *Penalties and Sentences Act 1992* and the *Youth Justice Act 1992*, where Magistrates must have regard to pre-sentence reports and the successful completion of programs by the accused while on bail.
2. The Chief Magistrate and other Magistrates have indicated that they will continue to consider the use of services and programs during periods of bail and upon sentencing to provide assistance for accused persons with health and social needs by referral to treatment, education and community support services.
3. The Courts Innovation Program (CIP) has been working with the Chief Magistrate, community and indigenous groups, government agencies and a range of other stakeholders to ensure Magistrates have appropriate bail and sentencing options.

### ISSUES

#### Indigenous Sentencing Lists

4. As a matter of practical convenience and to ensure administrative efficiencies, the Chief Magistrate released a protocol (**Attachment A**) to establish ISLs in Magistrates Courts. There are currently 10 ISL locations supported by local elders and developed at the discretion of the presiding Magistrate/s in consultation with CIP and local Community Justice Groups (CJGs).
5. The ISLs are designed to support Indigenous people who have committed an offence and are willing to participate with service providers and support agencies to address the underlying causes of their criminality. The use of an ISL ensures that court resources are used more effectively by enabling the attendance on court days of agencies and stakeholders specifically involved in the sentencing of Indigenous offenders, e.g. ATSILS, CJGs, Elders/Respected Persons and any Non-Government Organisations (NGOs) providing programs and referral services.

6. No specific resources are allocated by CIP to support ISLs, as was previously the case with Murri Courts. However, CIP provides assistance in establishing and maintaining the ISLs including gathering statistical material and evaluation. ISLs are largely coordinated by CJGs and are recognised as part of the normal court listing processes.
7. Currently unemployment, drugs and alcohol abuse are significant factors in offending for Indigenous peoples. ISLs provide opportunities to access services for offenders during the normal course of bail which may decrease the possibility of reoffending. CIP is working with CJGs, Magistrates and other stakeholders to target specific issues of unemployment and skill development which, particularly in regional centres, has a considerable relationship to offending. Queensland Health and NGOs, as part of their normal service delivery, assist the ISL process with drug and alcohol treatment. There are currently 107 services that are supporting ISLs across the 10 locations.

#### **Queensland Courts Referral Service**

8. The QCRS is being developed to address the needs of defendants appearing before the Brisbane Magistrates Court with drug and/or alcohol dependency, mental illness, intellectual disability, cognitive impairment and homelessness or at risk of homelessness.
9. The QCRS is made up of a number of NGOs and Queensland Health who can give short term assistance prior to sentencing for accused persons with health and social needs by referral to treatment and community support services. Located at the Arrest Courts in the Brisbane Magistrates Courts jurisdiction, Magistrates in the normal conduct of the Court and while having regard to the provisions of the *Bail Act 1980*, may grant bail to refer an accused person to attend a rehabilitation, treatment or other intervention through the QCRS in conjunction with other reporting conditions e.g. to report to police.
10. Unlike the Special Circumstances Court Diversion Program, there is no specific list or allocated Magistrate and referrals to the QCRS are dealt with in terms of the normal bail and sentencing processes and timeframes of the Court. The NGOs involved and Queensland Health, who can provide much needed mental health services along with other clinical treatments, are currently determining their referral processes to enable the QCRS to begin operation by late February 2013.
11. No funding will be provided to the QCRS. A Case Coordination Group made up of NGOs and Queensland Health will determine the best possible treatment or intervention for a particular accused and subsequently report back to the Court at the end of the bail period about the success or the failure of that referral. Additional court resources will not be consumed by additional appearances or reporting which occurred under the Special Circumstances Court Diversion Program. The only reporting that may occur is when an accused does not attend treatment or complete a referral. CIP will regularly audit services in consultation with the judiciary.
12. A primary focus of the QCRS will be to reduce the association of homelessness and offending. The NGOs who form QCRS can provide referrals to housing reducing the possibility of reoffending particularly in terms of street offences.
13. Similar NGO and health services exist in other regional centres and the model used in the Brisbane Magistrates Court could be expanded to other Magistrates Courts. CIP will keep statistical information and evaluate the service including any impacts on recidivism.

#### **EMPLOYMENT IMPACT**

14. Not Applicable.

**CONSULTATION WITH STAKEHOLDERS**


15. There has been significant consultation with the Chief Magistrate concerning the implementation of ISLs and the development of the QCRS. Other consultation has occurred from a cross-agency perspective and with non-government agencies.

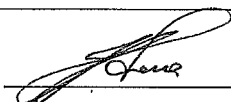
**FINANCIAL IMPLICATIONS**

16. Not applicable.

**POTENTIAL MEDIA**

17. There is potential for you to launch the QCRS in Brisbane after the referral process has been in operation for a short period of time.

NOTED or APPROVED / NOT APPROVED <b>Attorney-General and Minister for Justice</b> Comments		
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