Faculty of Health Sciences
National Drug Research Institute

Producing Alcohol or Other Drug 'Dependence' in an Australian Drug Court: A Victorian Case Study

Dayan Eliana Sarmiento Guerra

This thesis is presented for the Degree of
Doctor of Philosophy
of
Curtin University

July 2018

Declaration

To the best of my knowledge and belief this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted for the award of any other degree or diploma in any

Date: 07/30/2018

Acknowledgments

Many have contributed to the completion of my PhD thesis. I would like to acknowledge their contributions here.

I was exceptionally privileged to have two great women academics as my supervisors. I am grateful to Associate Professor Kate Seear for supporting me throughout the candidature, for her great amount of patience, dedication to my project and encouragement. I would also like to thank Professor Suzanne Fraser for giving me the opportunity to complete a PhD within her research program in the first instance, for providing valuable advice at different stages of my candidature, and then for giving me much encouragement towards the latter part of the project, when I was struggling the most.

I want to thank the dozens of individuals I have worked with over the years as a social worker. Thanks for allowing me to walk your path, you teach me something new every day. Your experiences encouraged me to undertake research in this field.

I am also grateful to the Drug Court of Victoria and the Magistrates' Court of Victoria for giving me access to the field site to scrutinise the court's practices, and for providing the documents I requested. Without the court's considerable help and assistance, this research would have never been possible.

I am especially grateful to the drug court participants for showing interest in my research and taking the time out of their demanding drug treatment order schedules to meet me, and discuss their experiences and insights with me. Thanks also go to the drug court professionals who participated in the project, and to the individuals from the three welfare organisations that assisted me to recruit drug court participants.

My PhD research was undertaken at the National Drug Research Institute (NDRI) in the Faculty of Health Sciences at Curtin University. The NDRI receives core funding from the Australian government through the Substance Misuse Prevention and Service Improvement Grants Fund. I am thankful to all the academic and administrative support staff at the NDRI. Special thanks go to current and former staff from the NDRI's Melbourne office: Dr Peter Higgs, Dr Kiran Pienaar, Professor David Moore and Dr Robyn Dwyer. I am also grateful to the Office of Research and Development at Curtin University for providing the funding to undertake my research in the form of a PhD scholarship.

I would also like to express my appreciation at being part of an inspiring NDRI-Melbourne student cohort. Thanks go to Dr Aaron Hart, Dr Renae Fomiatti, Dr James Wilson and Dr Adrian Farrugia for your guidance and mentorship during candidature. Special thanks go to Liz Normand and Shelley Walker for your friendship and for sharing all the struggles and successes along my PhD journey.

I thank Dr Campbell Aitken of Express Editing Writing and Research, who provided professional editing services in accordance with the Institute of Professional Editors' Guidelines for editing research theses.

On a more personal level, I would like to acknowledge my Australian surrogate mum, Prue Forster. Thanks for all you have given me over the years, including all the laughter. I would not have been able to make it without you. To Kate Forster for your grounding and compassionate advice in times of difficulty, to Gordon Forster for putting up with me. To my dear friend, Brian Stafford, for your friendship over the years. You have been a great source of support, strength and motivation. To Angela Benic, for your sunny disposition and encouragement. To my canine friend, Tessie, for taking me out for walks and providing comfort.

Finally, special thanks to my family back home:

Después de haber alcanzado un logro académico de este calibre, en contra de todas las predicciones y leyes de la naturaleza (temas en los que no ahondare aquí), no puedo pasar por alto a tres personas que a pesar de la distancia y el tiempo siempre serán parte de mí. A mí querida madre, le doy las gracias por ser la fuente de fortaleza más grande que tengo. Mami, eres el ser más fuerte y resiliente que he conocido. A mi hermano Andrés, por ser una influencia tan importante en mi vida. Gracias por cuidarme, apoyarme y querer lo mejor para mí siempre. Sin una mamá y hermano como ustedes no sé qué hubiera sido de mí, muy seguramente hubiera perecido. Al fin te supere querido hermano! A mi hermano David porque a través de su pasión y disciplina por el deporte también me enseño mucho. Se les quiere y se les extraña.

Abstract

Background: Drug courts were developed in the US in the late 1980s as a response to the perceived ineffectiveness of traditional criminal justice responses to drug-related problems. Over the past 20 years drug courts have begun to emerge across the world, including Australia, where the model continues to gain popularity. Drug courts aim to address the perceived association between crime and drug use by providing individuals experiencing drug dependence with alcohol and other drug treatment, and intensive judicial supervision including drug testing. Most available research on drug courts is quantitative in nature and centres on exploring the effectiveness of drug courts in reducing drug use and recidivism. Little qualitative work has critically interrogated the assumptions that underpin court practices in relation to alcohol and other drug dependence. I aimed to investigate how concepts of dependence are constructed in the Drug Court of Victoria (also targeting alcohol dependence) and to explore the repercussions for both individual drug court participants and public understandings of addiction. **Theory:** I used a critical approach to the constitution of social problems based on the work of Carol Bacchi (2009). **Method:** I conducted ethnographic observation of drug court proceedings and in-depth qualitative interviews with drug court participants and personnel. I analysed these data alongside selected drug court policy and procedure documents and assessment reports produced by drug court clinical advisors. **Results:** In undertaking my fieldwork research at the Drug Court of Victoria, I identified four key 'sites' of drug court intervention into the lives of applicants and participants, where, following Foucault and Bacchi, 'governmental subjects' are produced. The first two sites are the critical points of admission into the drug court: screening of eligibility criteria by legal actors, and the clinical assessment. The other two sites are two of the main technologies the drug court uses to govern participants: the sanctions and rewards system and the alcohol and other drug-testing regime. I explored the way 'dependence' is represented in all these key sites and showed how these enactments overlap and conflict, producing harmful subjectification, discursive, and lived effects for participants. First, I show that the screening and assessment processes merged traditional criminal justice and public health approaches. In this way, legal actors make crucial decisions shaping drug court applicants' futures by relying on 'common sense' assumptions about dependence. Additionally, other distinctive elements of criminal justice or legal approaches to 'fact' finding exert a heavy influence over a putatively 'clinical' assessment. This results in arbitrary decision-making processes, producing harmful consequences for drug court

applicants. Second, I trace some of the effects of the sanctions and rewards system on participants. They include the perceived value of prison in the treatment of 'dependence', exposure among some participants to difficult conditions in which they serve out their sanctions, and the interruption of medication regimes such as pharmacotherapies used to manage alcohol and opioid withdrawal and to treat mental health conditions. Although the court purports to approach drug use as a health 'problem' (and often does), it simultaneously punishes participants for drug use. The court thus instantiates a conception of dependence as both an illness and a crime. These findings raise questions about the viability of the court's claim to being therapeutic and distinct from traditional (more punitive) criminal justice responses to drug use. Lastly, I trace some of the effects of the alcohol and other drug-testing regime used in the drug court. I argue that the urine-testing regimen can intensify participant involvement in the criminal justice system. Further, I note that the court's use of an abstinence model may heighten exposure to alcohol and other drug-related harms and risks, segregating drug court participants from the 'rest of society' and increasing their isolation. **Conclusion:** I offer some possibilities for redesigning drug court practices to avoid the pitfalls identified here. Such opportunities exist in the areas of determining eligibility to be part of the program, applying sanctions and rewards by avoiding the use of custodial sanctions, and acknowledging the harms brought about by the alcohol and other drug testing regime.

Table of Contents

Figures and tables

Figure

Tables

List of abbreviations

ADHD	Attention Deficit Hyperactivity Disorder
APA	American Psychological Association
ATSI	Aboriginal and Torres Strait Islander
ASI	Addiction Severity Index
CALD	Culturally and Linguistically Diverse
CCS	Community Corrections Services
CREDIT	Court Referral and Evaluation for Drug Intervention and Treatment
dL	Decilitre
DSM	Diagnostic and Statistical Manual of Disorders
HIV	Human Immunodeficiency Virus
MAP	Melbourne Assessment Prison
MCC	Melbourne Custody Centre
MRC	Melbourne Remand Centre
mg	milligrams
MMT	Methadone Maintenance Therapy
NIDA	National Institute of Drug Addiction
OPI	Office of Police Integrity
OPT	Opioid Pharmacotherapy Treatment
PPP	Port Phillip Prison
SOCRATES	Stages of Change Readiness and Treatment Eagerness Scale
SUD	Substance Use Disorder
WPR	What's the problem represented to be?

Chapter 1: Introduction

Drug courts were developed in the United States in the late 1980s as a response to the perceived ineffectiveness of traditional criminal justice responses to drug-related problems. Over the past 20 years they have begun to emerge across the world, including Australia, where the model continues to gain popularity. Drug courts aim to address the perceived association between crime and alcohol and other drug use by providing individuals considered to be experiencing alcohol and other drug 'dependence' with intensive, supervised treatment. Most available research on drug courts is quantitative in nature and centres on exploring the 'effectiveness' of drug courts in reducing alcohol and other drug use, recidivism, and costs. Little qualitative work has critically interrogated the assumptions that underpin court practices. In this thesis I explore how one Australian drug court located in the state of Victoria constitutes alcohol and other drug dependence and what the repercussions for those who participate in the program are. At the time I conducted my research (July to December 2015), the only existing branch of the Drug Court of Victoria was located in Dandenong.[1] This is the branch I studied. Since then, a second branch opened in the Melbourne Magistrates' Court in April 2017. The Melbourne branch has seen the reorganisation of presiding magistrates but is run using the same policies as the Dandenong branch.

In order to unpack how the 'problem' of dependence is articulated and addressed, I focus on and analyse a range of drug court practices that are central and decisive in shaping the experiences of drug court participants. The specific practices I focus on are key points at which access to the court and thus to alcohol and other drug treatment is realised, definitions of 'dependence' and its key underlying concepts are articulated and shaped, relationships between objects and subjects – such as drugs and crime – both materialise and are stabilised, and ideas, including about dependent subjects, are constituted. In this way, drug court practices offer especially powerful windows into how the court perceives (and shapes) the 'problem' of alcohol and other drug dependence, as well as some of the court's internal tensions and effects. The practices I focus on are the selection and assessment of participants, the use of custodial sanctions to penalise non-compliance, and the surveillance of participants' alcohol and other drug use through urinalysis and breath-testing. My analysis is guided by the following objectives:

[1] Dandenong is a suburb of Melbourne, Victoria, Australia, approximately 30 kilometres south-east from the Melbourne central business district.

1. to investigate how concepts of dependence are produced and enacted in an Australian drug court;

2. to explore how the relationship between crime and dependence is conceptualised and established in a drug court setting;

3. to investigate how drug court participants accommodate, resist or otherwise engage with conceptualisations of dependence in their drug court experiences;

4. to contribute to the academic literature about the operation of Australian drug courts, and their implications for official and public understandings of addiction concepts; and

5. to provide possibilities for redesigning the provision court-ordered alcohol and other drug treatment.

Introducing drug courts

Drug courts are specialist 'problem-solving courts' designed to address criminal activity seen as related to alcohol and other drug use (National Association of Drug Court Professionals, 2014). They have become a feature in the rise of so-called 'therapeutic jurisprudence', a movement in which the law is considered a therapeutic agent (Cappa, 2006). Eligible individuals are offered court-supervised alcohol and other drug treatment as an alternative to imprisonment. Drug courts bring together magistrates, prosecutors, defence lawyers, corrections workers and alcohol and other drug treatment providers in a combined effort to reduce reoffending believed to be the result of alcohol and other drug use (Bull, 2006, 2010; Burns & Peyrot, 2003). Drug court participants typically take part in multiple alcohol and other drug treatment modalities, submit to periodic alcohol and other drug testing and regularly report back to judicial figures. These judicial figures manage individual treatment programs and typically administer sanctions and rewards depending on the extent of the person's compliance. As an incentive for participation, some drug courts involve dismissal of the criminal charges on completion of the program, while others allow participants to undertake the program in the community in lieu of a prison sentence (Freiberg, 2002a, 2002b).

Drug courts were first developed in the United States (US) in the late 1980s as a response to growing prison populations, high rearrest rates and pressures on local courts (Hora, 2002; Nolan, 2001, 2002b, 2011; Wenzel, Longshore, Turner, & Ridgely, 2001). The apparent and highly

publicised success of drug courts as a cost-effective alternative to incarceration led to widespread support for them in the US (Nolan, 2001). As a result, drug courts have expanded rapidly, with 2830 in operation in the US by 2012 (Global Centre for Drug Courts, 2014). Nolan (2001) notes that the proliferation of drug courts in the US has been labelled a 'revolution' in criminal justice. Not only has this new form of justice served as a model in the US for the development of other 'problem-oriented courts' attempting to address crime, such as petty theft, prostitution, driving under the influence of alcohol and domestic violence (Goldkamp, 1994), but it has spread to many other jurisdictions. Drug courts are now found in countries including Austria, Belgium, Canada, Ireland, New Zealand, Norway and the United Kingdom. With encouragement from the Organisation of American States (headed by the US), numerous Latin American and Caribbean countries have adopted or are in the process of adopting drug courts. These include Argentina, Brazil, Barbados, Bermuda, Chile, Costa Rica, Dominican Republic, Jamaica, México, Panamá, Suriname, and Trinidad and Tobago (Csete & Tomasini-Joshi, 2015).

As developed in the US, Canada and Australia, drug courts have criminal justice and therapeutic objectives. They aim to reduce criminal activity interpreted as drug related, improve compliance with court-ordered conditions, and reduce imprisonment rates and the cost of the system by reducing the workload of the police, the courts and the correctional system. Drug courts are said to achieve these objectives by utilising judicial and therapeutic interventions which aim to decrease drug use. The US National Association of Drug Court Professionals (2004; 2015) has identified 10 components of drug courts which have come to be internationally accepted as essential features; the functioning of the Drug Court of Victoria is also guided by these components (KPMG, 2014 Parsons & Lauritsen, 2013). They are as follows (National Association of Drug Court Professional, 2004, p. iii):

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.

6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organisations generates local support and enhances drug court effectiveness.

Another important feature of drug court regimes is that they use a phased program, which requires the participant to move from one stage to another, depending on compliance with program conditions (Freiberg, 2004). Drug treatment orders issued in Victoria are also phased and are intended to take 12 months to complete. The three phases used in Victoria's drug courts are summarised in Table 1.

Most Australian jurisdictions either currently have or have experimented with drug courts. The first Australian drug court opened in New South Wales in 1999, followed by Queensland in 2000, South Australia in 2000, Western Australia in 2001, Victoria in 2002, the Northern Territory in 2003, Tasmania in 2007 (Freiberg, 2002a; King, Freiberg, Batagol, & Hyams, 2014). In 2012, however, incoming state and territory governments abolished both the Queensland and Northern Territory drug courts (Hanman, 2013; Magistrates Court of Queensland, 2013). There are now signs that the drug court model is experiencing a resurgence in Australia. For example, in 2017 Victoria opened a second drug court in Melbourne, the Australian Capital Territory commissioned the design of its first drug court (Trask & Inman, 2017), and the state of Queensland commissioned a review to develop options for the reinstatement of a drug court in the state (Freiberg, Payne, Gelb, Morgan & Makkai, 2016). As a result, new legislation to include a drug and alcohol treatment order as a sentencing option was passed in the Queensland parliament at the end of 2017.

In Australia drug courts are part of a broad range of judicial programs that seek to divert individuals out of the traditional criminal justice system. As Fitzgerald (2008) points out, diversion in Australia can occur at different points in the criminal justice system: arrest diversion; bail diversion; sentencing-based diversion and post-sentencing diversion. Drug courts

represent a form of sentencing-based diversion, in which individuals are sentenced to a drug court order rather than a term of imprisonment. In these courts the focus is on treating alcohol and other drug use, because this is believed to be the main contributor to their offending. Drug courts are considered to be the most invasive and intensive of diversionary programs (Makkai, 2002; Murphy, 2011).

Table 1 *Drug treatment order phases: Objectives and requirements*

	Objectives	**Participant's requirements**
Phase 1 Stabilisation (3-6 months)	• Reduce drug use • Be honest about their drug use and treatment • Punctually attend all treatment and reporting requirements • Cease criminal activity • Stabilise their physical and mental health • Stabilise their housing/accommodation • Begin to address 'life skills' (including financial management, parenting and self-esteem development)	• Attend weekly court review hearings • Attend weekly case management appointments • Attend weekly drug and alcohol counselling • Attend all other appointments as directed by the court • Submit for urinalysis testing three times per week (Mondays, Wednesdays and Fridays) • If on an alcohol ban, submit for breath testing twice weekly (Tuesdays and Thursdays)
Phase 2 Consolidation (3-6 months)	• Maintain honesty about their drug use and treatment • Achieve periods of abstinence from drug use • Continue to punctually attend all treatment and reporting requirements • Continue to refrain from criminal activity • Maintain stable accommodation according to their needs • Consolidate their social and domestic environment • Improve their health and general wellbeing • Identify job skill needs and undertake education or training	• Attend fortnightly court review hearings • Attend fortnightly case management appointments • Attend fortnightly drug and alcohol counselling • Attend all other appointments as directed by the court • Submit for urinalysis testing twice weekly (Mondays and Fridays) • If on an alcohol ban, submit for breath testing weekly (Thursdays)
Phase 3 Reintegration (minimum six months)	• Maintain honesty regarding their drug use and treatment • Maintain abstinence from drug use • Maintain a crime-free lifestyle • Maintain their general health and wellbeing • Maintain stable accommodation according to their needs • Continue to punctually attend all their treatment and reporting requirements • Undertake education or training, or gain employment • Be fiscally responsible	• Attend monthly case management appointments and review hearings • Attend monthly drug and alcohol counselling • Attend all other appointments as directed by the court • Submit for weekly urinalysis testing (Mondays) • If on an alcohol ban, submit for weekly breath-testing (either Tuesdays or Thursdays)

	• Engage in family reconnection	

Source. (KPMG, 2014, p. 18)

Makkai (2002) situates the emergence of drug courts in Australia within a context of rising rates of property crime, the development of open-air illicit drug markets, and the jump in opiate overdoses during the 1990s. Australian and US drug courts differ in at least two ways. First, Australian drug courts were initially set up to target individuals with extensive histories of non-violent offending, believed to be linked to problematic alcohol and other drug use, and who were likely to be facing imprisonment. In contrast, most US drug courts target first-time offenders (Freiberg, 2002a, 2002b). They also differ at the point in the criminal justice system where participants are first admitted into the program. In Australia, drug courts are generally post-plea, in that defendants enter a 'guilty' plea and are then admitted into the program if they meet the eligibility criteria. In the US, drug courts admit defendants at different points of the criminal justice system – arrest, bail, sentencing, and post-sentencing (Nolan, 2001). These differences are important. In Australia the incentive to take part is the opportunity to avoid traditional forms of punishment such as imprisonment by pleading guilty. Importantly, participation in the drug court requires individuals to 'admit' that they have a 'problem' with alcohol and other drugs. This raises questions about the role of drug courts in shaping participants' conceptualisations of themselves and their alcohol and other drug use – questions which are rarely acknowledged or subjected to critique in the Australian context. Further, the US practice of targeting individuals at multiple points in the criminal justice system means that US courts bring a larger number of citizens into the system. For this reason, its drug courts have been increasingly criticised for coercing nonviolent, first-time offenders into drug treatment and lengthy court programs (Gowan & Whetstone, 2012; Mosher & Akins, 2014). This process is increasingly seen as contributing to heightened social control by the court system (Colyer, 2007; Vrecko, 2009). Moreover, while it has been recognised that drug courts represent an alternative to imprisonment, some authors challenge their effectiveness at reducing alcohol and other drug use and recidivism (Mosher & Akins, 2014). US drug courts have also been criticised for their role in reproducing racial and ethnic inequalities in the criminal justice system, as African Americans and Hispanic people are over-represented and have relatively low completion rates (Gallagher, 2013; Murphy, 2011).

While supporters of the system claim that drug courts are exemplars of evidence-based practice, some observers have questioned these claims (Drug Policy Alliance, 2011; Fitzgerald, 2008;

Indermaur & Roberts, 2005; Justice Policy Institute, 2011; National Association of Criminal Defense Lawyers, 2009). Early studies of drug courts' 'effectiveness' in the US seem to have inflated the reduction in recidivism and alcohol and other drug use in several respects, failing to incorporate proper comparison groups, disqualifying more problematic offenders, and discarding those who did not 'complete' the program (Drug Policy Alliance, 2011; Mosher & Akins, 2014). Also, as Indermaur and Roberts (2003) note, most Australian drug courts were implemented before a sound body of evidence on their effectiveness had accumulated. Additionally, an assessment of Australian drug court evaluations concluded that we still lack an 'unequivocal endorsement' (Indermaur & Roberts, 2003, p. 150) that the model is an effective way of reducing recidivism. Rigorous evaluation of Australian drug courts remains a priority (Kornhauser, 2016).

As I shall explain in chapter 2, research on Australian drug courts is scant, composed mainly of evaluations. Some critical research was conducted in the early years of implementation (Fitzgerald, 2008; Indermaur & Roberts, 2003, 2005; Makkai, 2002), but such work has gradually subsided. In addition, only three empirical studies (in the form of grey literature) using qualitative methods have been published. These explore the principle of therapeutic jurisprudence (Bull, 2006; L. Moore, 2012) operating in Queensland and Tasmanian drug courts, and the development, practices and consequences of the New South Wales drug court (Took, 2011). Given the growing significance of drug courts both in Australia and abroad, there is a need to critically assess key assumptions in use within these courts, their implications and effects.

Indeed, one of the key assumptions made by the drug court model is that dependence causes crime, and that if dependence is addressed through treatment, recidivism will decline. The drug–crime association has been examined extensively. In a recent review of existing literature, Freiberg et al. (2016) found that most of these studies point to a strong positive correlation between the two (Makkai & Payne, 2005; Stafford & Burns, 2013). However, the drug-crime nexus debate remains hotly contested because there is a lack of evidence of causality. As Freiberg and colleagues (2016) explain, over 40 years of sociological, biological, medical and psychological research on the drug-crime nexus has not yet answered the question of causation. Menard, Mihalic, and Huizinga (2001) identify five explanations of the drug-crime relationship: drug use produces crime; crime produces drug use; drug use and crime influence each other in a

pattern of mutual causation; and the relationship between drug use and crime is coincidental and they result from a common underlying cause.

The most common explanation for the relationship between drug use and crime, however, is the first one: that drug use acts as a trigger for criminality. Goldstein (1985) developed a tripartite model that supports this view of causality:

- the psycho-pharmacological effect – used to describe crimes that are committed while individuals are intoxicated;
- the economic-compulsive – used to describe crimes assumed to be committed for economic gain. Proceeds are often thought to be used to fund drug use; and
- the systemic impact – used to describe crimes that manifest as a result of involvement in the market of illegal drugs.

It is of note that the drug court model supports this view and treats the dependence–crime nexus as self-evident. However, other authors (Menard et al., 2001) have labelled this hypothesis as simplistic and untenable because in most of the research conducted with criminal justice populations, drug use generally occurs after offending. Further, they note that once both crime and drug use have begun, each increases the probability that the other will continue. Most importantly, they argue that while some crime is caused by drug use and some drug use is caused by crime, both are heavily influenced by a group of similar factors. Researchers and practitioners must acknowledge that reducing drug related crime is a difficult task that must take into consideration a diverse range of individual and systemic factors (Freiberg et al., 2016). That is to say, treating substance dependence alone without meeting and redressing other needs such as social exclusion will not be enough to cease their involvement in the criminal justice system (see also Clancey & Howard, 2006; Mackenzie, 2006; Seddon, 2000).

As I will explain as the thesis unfolds, a central concern of my research is how the Drug Court of Victoria understands, diagnoses and deals with dependence. It is important to explain why I have decided to focus on the term ‘dependence’ rather than other terms (most notably, ‘addiction’) that are often used in research on alcohol and other drug use. As Fraser (2013) notes, the term ‘addiction’ is a heavily contested one. In some contexts, terms such as ‘compulsivity’ and ‘compulsive behaviour’ dominate; in others, the term ‘addiction’ is instead mobilised, including in popular, neuro-scientific and 12-step discourses. Yet, medical and public health circles in

Australia and some other countries prefer the term 'dependence'. The Drug Court of Victoria belongs to this latter group. While my observations of the daily operations of the court revealed that terms such as 'addiction', 'vice', 'habit', 'dependence' and 'substance abuse' are used interchangeably, the term 'dependence' is used in the legislation framing the operations of the court. Therefore, the use of this term is reflected in formal proceedings in the courtroom and in policy and procedure documents. It is important to note, however, that the terminology of dependence – while preferred in the court – is not necessarily unproblematic or non-stigmatising. The relationship between terminology (such as 'addiction') and problematic concepts is discussed in more detail in the literature review. In this thesis I use dependence 'as an umbrella to allow critical investigation' (Fraser, 2013, p. n.p.). My aim is not to adopt a particular interpretation of the 'problem of dependence' but to shed some light on the ways the 'problem' itself is constituted in the multiple and disparate practices in which the Drug Court of Victoria engages.

Choosing the field site: Drug Court of Victoria

I developed an interest in the experiences of individuals who use alcohol and other drugs and are involved in the criminal justice system through working as a social worker. Over several years, I have worked with men involved in a variety of diversionary schemes at various stages of the Victorian criminal justice system.[2] They included pre-trial schemes such as the Assessment and Court Referral List and the Court Integrated Services Program, sentencing programs such as community corrections orders, and post-sentencing programs such as parole orders. I often accompanied clients to court to offer support, mediated dealings between them and criminal justice system officials, and advocated on their behalf. My observations about criminal courts concur with those of Baldwin (2008), who suggested that 'they are fascinating institutions, the decisions they take are of undoubted public importance and they sometimes provide scenes of high drama' (p. 375).

My employment has enabled me to follow the struggles of the men I have worked with in trying to keep out of jail. They often express frustration about the conditions of their court orders, including undergoing court-ordered treatment for alcohol and other drug use. Few understand, for instance, why they are mandated to attend psychologists and counselling sessions to work on

[2] The social support programs I have worked in target men exclusively as they are attached to a homeless shelter that provides accommodation to men only.

their ‘addictions’, when they do not have access to housing or to other basic needs. I knew about the existence of the Drug Court of Victoria, located in Dandenong, and wondered why it was the only one in the state of Victoria, where I live. Given that I was searching for a PhD topic and I was interested in experiences of alcohol and other drug use treatment within the criminal justice system, I decided to find out more about the court. As I read about the drug court model, I learnt that (as noted earlier) drug courts are considered to be the most onerous of diversionary programs (Makkai, 2002). Further, I learnt that the model was on a rapid expansionary trajectory in some regions of the world, including some states in Australia.

In order to see the drug court model in action, I decided to visit the Drug Court of Victoria as a member of the public in August 2014. I observed review hearings during one afternoon and then had the opportunity to speak to the presiding magistrate to ask questions about the drug court model and the proceedings I had just observed.[3] As well as answering my questions, the magistrate gave me a document outlining the operations of the court. This was the drug court’s submission to the *Inquiry into the supply and use of methamphetamines, particularly 'ice', in Victoria*, which had taken place one year before (Parsons & Lauritsen, 2013).

I felt my first visit to the drug court had been fruitful for several reasons. First, through these preliminary observations, I was introduced to the drug court clientele. I noticed that the demographics of the drug court participant group mirrored those of the group I was accustomed to working with: mostly men in their 30s and 40s, with long histories of incarceration and at risk of homelessness. Second, I realised that, despite it being my first visit to the court, I was fairly familiar with the social services and legal jargon utilised in the courtroom. I surmised that such familiarity would facilitate an understanding of the more intricate drug court processes needing investigation. Third, somewhat fortuitously, I met a key drug court gatekeeper (the magistrate), who was approachable and could potentially facilitate future access to the court. Fourth, through contact with this gatekeeper I had been directed to information that I would not have been able to obtain so easily otherwise. This was because at the time of my visit (late 2014) the only evaluation available of the Drug Court of Victoria (Alberti, King, Hales & Swan, 2004) was over 10 years old and little information was available on the drug court’s website. Through the drug

[3] During my fieldwork I realised that in general terms any member of the community who showed an interest in the operations of the drug court, mostly students and welfare workers, was welcome to speak to the magistrate after court proceedings had concluded.

court's submission to the Inquiry (Parliament of Victoria, 2014), I was able to track down other important material about the court and potential future of the drug court model in Victoria. For example, two of the recommendations resulting from the Inquiry involved the drug court. Recommendation 33 proposed that the Victorian Government expand the operation of the Victorian drug court to Melbourne, Geelong, Sunshine and Gippsland.[4] Recommendation 34 proposed that the jurisdiction of the Victorian drug court, which was limited to hearing cases in which an applicant's offence could be given a maximum two-year imprisonment sentence, be extended to include offences that could result in a maximum sentence of five years' imprisonment (Parliament of Victoria, 2014).

The recommendations of the Inquiry suggested that there was potential for the scope of court-ordered alcohol and other drug treatment to broaden in the state of Victoria and to incorporate more people. For this reason, research on the topic is timely, and could contribute to discussions about how Australian drug courts work and what their implications are for official and public understandings of other key concepts, such as alcohol and other drug 'addiction', or 'dependence', beyond the assumption that drug courts are 'tough' and 'effective' in terms of saving money and reducing crime. Notably, the Inquiry's recommendations did eventually lead to the establishment of Victoria's second drug court within the Melbourne Magistrates' Court in April 2017. It manages 170 participants at any one time (more than twice as many as the Dandenong drug court) and serves a large number of inner-city suburbs in Victoria. In addition, the calls to open more drug courts in other areas of Victoria have continued and intensified since the recommendations were made public and the second branch of the Drug Court of Victoria was inaugurated (see Bucci, Mills, & Lee, 2015; Lee, 2015; Parliament of Victoria, 2018; Tyler, 2016; Tomazin, 2016; Victorian Alcohol and Drug Association, 2013; Victorian Council of Social Services, 2015; Victorian Government, 2017; Victorian Ombudsman, 2015).

The Drug Court of Victoria was established in 2002 and is part of the first generation of Australian drug courts (Indermaur & Roberts, 2005). At the time I conducted my research (July to December 2015), the only existing branch of the Drug Court of Victoria was located in Dandenong. This is the branch we studied. A second branch opened in the Melbourne Magistrates' Court in March 2017. The Melbourne branch has seen the reorganisation of

[4] Other metropolitan and regional local government agencies also located in the state of Victoria.

presiding magistrates but is run using the same policies as the Dandenong branch. Given the overlaps in policy and personnel, the observations offered in this thesis have relevance for both branches and other courts that use similar methods. The stated objectives of the court are: to improve the health and wellbeing of participants through reducing alcohol and other drug use and criminal behaviour and improved connection to the community, and to reduce the severity and frequency of offending for participants (KPMG, 2014). Since 2002, two evaluations of the program have been conducted (Alberti, King, Hales, & Swan, 2004; KPMG, 2014). According to an evaluation conducted by KPMG (2014), 90% of Drug Court of Victoria participants are male and 10% are female. Participants currently range in age from 22 to 52. Further, 80% were born in Australia with the remaining 20% born overseas. Three percent identify as Indigenous Australians. Most (78%) have a previous imprisonment history, with the most common offences committed before entering the program being theft related (47%), driving related (20%) and drug related (15%). The KPMG (2014) evaluation found that 61% of individuals accepted into the program did not complete the program, but that those who did complete the program experienced improvements in health and wellbeing, and reduced recidivism[5].

The Drug Court of Victoria employs three magistrates. They preside over the two branches of the court full time, are responsible for the granting and cancelling of drug treatment orders, and for the judicial supervision of participants. This includes compliance with drug treatment order conditions such as attendance at appointments with various drug court professionals, and different substance use treatment modalities (Parsons & Lauritsen, 2013).[6] From time to time, other Magistrates sit in, as the presiding Magistrates take leave. The court has strict eligibility criteria. A participant must be 'dependent' on alcohol or other drugs, and their 'dependency' must have contributed to the commission of the offence (*Sentencing (Amendment) Act 2002*, s18Z). Drug court participants are sentenced to a drug treatment order, which lasts from one to two years. The order consists of two components: alcohol and other drug treatment and supervision, and a custodial component which is suspended while the participant undergoes treatment in the community. The treatment component of the order includes specific conditions

[5] While the drug court program may be beneficial for some (KMPG, 2014), we do not know enough about other 'effects' of the program on participants. For example, we do not why 61% of drug court entrants do not complete the order, and what the consequences of having been exposed to the program are (Fitzgerald, 2008). More research on the non-completing group should be conducted.

[6] One magistrate is employed at the Dandenong Magistrates' Court and two at the Melbourne Magistrates' Court.

intended to address the participant's dependence, such as attendance at appointments with drug court case managers and clinical advisors, alcohol and other drug counselling, regular attendances before the drug court magistrate, and regular substance testing. In addition, the order comprises three different phases. In order to progress from a lower phase to a higher phase, participants must have achieved the specific goals of their current phase. For example, one of the goals of phase three is that the participants become 'fiscally responsible' (KPMG, 2014, p. 19).

Introducing the chapters

Having introduced drug courts and the reasons that convinced me to study the Drug Court of Victoria, I now describe the way this thesis is organised. It follows a common structure: introduction, literature review, theory and methodology, results and conclusion. This section outlines the role each of the chapters plays and then flags some of my findings.

In Chapter 2, I review the literature relevant to my project. In the first part of the chapter I review available literature on drug courts in Australia. In the second part of the chapter I review international literature that analyses how dependence has been defined in drug courts. Following this, I review understandings of the 'causes' and 'effects' of dependence within drug courts. I then look at how dependence is diagnosed in the drug court context and how eligibility for participation in drug courts is established. I then review approaches to treating dependence in drug courts. I also review existing literature on some of the consequences of drug court approaches to dependence and crime. Finally, I review some of the literature on the experiences of participants in drug courts. I argue that research has neglected individuals' experiences of drug courts and that more work is needed in this respect.

In Chapter 3, I respond to the questions posed by my literature review and introduce some of the ontological, methodological and political propositions of the theoretical framework used in this thesis: Carol Bacchi's (2009) 'what is the problem represented to be' (or WPR) approach. In this chapter I provide an introduction to the framework. I explore key theories that shape the approach and how I intend to apply the framework in my thesis. The second part of chapter 3 provides an overview of the three main methods used in this research: court observation, qualitative interviewing, and analysis of textual materials related to the operations of the Drug Court of Victoria (including policy documents, information given to participants, evaluations and clinical assessment reports). In this chapter I explain the rationale for my research design, the

details of data collection and analysis, and the ethical dimensions of my research. I conclude by reflecting on the research methods I utilised.

Chapter 4 is the first of four analytical chapters that explore how alcohol and other drug dependence is enacted in the Drug Court of Victoria (drug court), and the repercussions for drug court participants and public understandings of dependence. As I explained above, the specific practices I focus on are key points at which access to the court and thus to alcohol and other drug treatment is realised; definitions of 'dependence' and its key underlying concepts are articulated and shaped; relationships between objects and subjects – such as drugs and crime – both materialise and are stabilised; and ideas, including about dependent subjects, are constituted. In this way, drug court practices offer especially powerful windows into how the court perceives (and shapes) the 'problem' of alcohol and other drug dependence, as well as some of the court's internal tensions and effects. In conducting this analysis, I follow participants along their drug court trajectory from the early stages of admission into the court program, through some of the different treatment phases of their drug treatment orders. Over the course of my research, I identified two key practices involved in the admission process into the drug court: screening for eligibility by legal actors, and clinical assessment conducted by alcohol and other drug clinicians. I review these practices in chapters 4 and 5. Chapter 4 is primarily concerned with how alcohol and other drug dependence is constituted, and how the nexus between dependence and criminality is made in the courtroom. In this chapter I draw on interviews conducted with drug court personnel, as well as observational data collected during drug court screening hearings. Using this data, I describe the drug treatment order application and screening stages and analyse several screening hearings alongside interviews with drug court professionals to demonstrate that legal actors make crucial decisions shaping drug court applicants' futures by relying on 'common sense' assumptions about dependence. These decisions, I argue, are related to the constitution of ambiguous 'evidence' of dependence. Second, I show that the screening processes observed merge traditional criminal justice and public health approaches, with non-experts making 'expert' decisions about dependence. In this way, arbitrary decision-making shapes the experiences of drug court participants, producing harmful effects. These findings are timely and should prompt and be considered in a revision of admission processes in Australian drug courts, especially in Victoria, where the drug court model is expanding.

My analysis continues in chapter 5, where I closely examine the suitability assessments conducted by the drug court's alcohol and other drug clinicians (the clinical assessment). This process is important because it contributes to key decisions, including whether the drug court applicant is 'dependent' on alcohol and other drugs and therefore a 'suitable' drug court participant. When this happens, I argue, drug court processes instantiate a unique subject identity ('dependent person in the law'). In this chapter, I apply Carol Bacchi's (2009) poststructuralist policy analysis framework to show how two seemingly incompatible approaches to dependence, those of treatment and punishment, reconcile or 'syncretise' in clinical assessment. By looking at how elements from both approaches are employed to establish dependence and some of its 'effects', I will reveal a new facet of the hybrid nature of drug courts. In the first part of chapter 5 I examine clinical influences on the assessment. I explore the way in which alcohol and other drug screening tools are utilised to assess applicants' treatment needs, motivation 'to change', and to diagnose dependence. The second part of the chapter shows that as the drug court is essentially embedded within the criminal justice system, distinctive elements of criminal justice or legal approaches to 'fact' finding exert a heavy influence on what is putatively a 'clinical' assessment. The exploration I undertake in this chapter adds substantially to the small field of sociology of alcohol and other drug dependence diagnosis in criminal justice system settings.

A key component of drug courts is the use of graduated sanctions and rewards to encourage program compliance. Despite their centrality to drug court models, sanctions and rewards have received surprisingly little scholarly attention. In chapter 6, I address this gap through presentation of a detailed study of the way in which sanctions and rewards are administered at the drug court. Drawing once again on observations of drug court proceedings, qualitative interviews with drug court participants and personnel, and analysis of selected drug court documents, this chapter examines how drug court participants and professionals view the sanctions and rewards system. By applying Carol Bacchi's (2009) poststructuralist policy analysis framework, I examine how the 'problem' of alcohol and other drug 'dependence' is conceptualised in the drug court's approach to the administration of sanctions and rewards, and I consider some of the 'effects' of this system. I argue that even though the drug court has a variety of non-custodial sanctions available to it when deciding how best to respond to program 'non-compliance', the most commonly applied sanction is actually incarceration. This is of note as the drug court model is publicly promoted as a 'therapeutic' alternative to prison. I also trace

some of the effects of the sanctions and rewards system on participants. They include the perceived value of prison in the treatment of 'dependence', that some participants serve out their sanctions in deplorable conditions, and the interruption of medication regimes such as pharmacotherapies used to manage alcohol and opioid withdrawal and to treat mental health conditions. I conclude with some reflections on claims about the therapeutic value and potential of drug courts and suggest opportunities for reform, along with recommendations on the applications of sanctions and rewards in drug court contexts.

Alcohol and drug testing is a cornerstone of many drug court models. Drug court advocates argue it acts as a deterrent to future drug usage; allows acknowledgment of participants who are remaining abstinent and guides rewards; identifies relapse, allowing for swift intervention, and enhances utilisation of limited resources by targeting those participants who continue to use alcohol and other drugs; and provides incentives to engage in the drug court program, and accountability (Auerbach, 2007; Cary, 2011). Despite the centrality of drug testing to the drug court model, it has not received much scholarly attention. In chapter 7, I address this gap through a detailed study of how alcohol and other drug-testing regimes unfold. Drawing again on Bacchi's (2009) work, I analyse drug court participants' experiences with the drug-testing regime, including experiences of random testing and urine collection. I also trace some of the effects of this policy and its implementation for participants. In my analysis, I suggest that the urine-testing regimen can intensify participant involvement in the criminal justice system. Further, I suggest that the court's use of an abstinence model may heighten exposure to alcohol and other drug-related harms and risks, segregate drug court participants from the 'rest of society', and increase their isolation. I also argue that it inhibits other aspects of their lives, including their relationships, social lives and employment prospects. Overall, I argue that these effects are at odds with the court's aims. However, despite the potential negative effects of the drug-testing regime, some participants find aspects of it beneficial. I conclude with some reflections on claims about the therapeutic value and potential of the drug court testing regime and suggest opportunities for reform.

In the conclusion to this thesis, Chapter 8, I draw together the themes and issues I have explored and argue for changes in the provision of court-ordered treatment in Victoria. I acknowledge that while the drug court program might be beneficial for some, it has deleterious repercussions or 'effects' for others, especially those who do not complete the program. In this chapter, I

summarise how drug court practices produce such deleterious effects and how they affect participants. I highlight the importance of interrogating drug court practices, as most drug court participants who do not complete their drug treatment order have experienced social disadvantage, abuse and neglect over the course of their lives. Many drug court participants are among the most vulnerable and marginalised members of the community. In many instances they have been involved in the welfare system since childhood and in the criminal justice system since adolescence. If drug court programs genuinely wish to break the perceived nexus between dependence and crime', those involved in the functioning of these programs must reflect on the harms produced by the program and try to reduce them.

Chapter 2: Literature review

One of the main conceptual logics underpinning drug courts is the notion that crime associated with alcohol and other drug use is often the product of 'dependence' or 'addiction'. King et al. (2014) note that the aim of drug courts is to reduce reoffending and imprisonment rates in a cost-effective manner. This is putatively achieved by using judicial and therapeutic interventions to 'eliminate, decrease, and manage' (p. 161) alcohol and other drug use and to provide offenders with a variety of life skills to facilitate community reintegration. Despite the central role that concepts of dependence play in drug courts, there has been a lack of critical research exploring the use of dependence language and concepts within drug courts, or how these are constituted in drug courts (Lyons, 2013, 2014; Tiger, 2011, 2012). A few studies have addressed conceptualisations of dependence in drug courts tangentially (Brook, 2010; Gowan & Whetstone, 2012; Murphy, 2011; Nolan, 2001, 2002a, 2002b), but all these studies were conducted in the US and Canada. None has yet been undertaken in Australia. Although they offer important insights into the function of drug courts, the findings from this research are likely to be of little relevance to Australia, because Australian drug courts operate under very different social, cultural and legislative conditions. Further, while the language of 'addiction' appears to be widely used in the US and Canadian drug court contexts, Australian drug courts tend to use different terms, including 'dependence' and 'substance abuse problems' (Parsons & Lauritsen, 2013). That said, key concepts of addiction (such as lack of volition and agency) are also in operation within Australian drug courts. It is important that we trace these concepts and critically assess their implications and effects.

Given the growing significance of drug courts across the world, including in Australia, there is a need to critically assess key assumptions in use within these courts, their implications and effects. My project is concerned with how both the language and concepts of addiction are used in drug courts, how drug courts construct and produce dependence concepts through their practices, and the implications of this for drug court participants and for broader public understandings of addiction. This literature review is divided in two parts. In the first part, I survey the Australian literature on drug courts. Here, I identify a lack of research exploring how dependence is constituted through drug court practices and the effects these practices might have on drug court participants. Given this gap in locally produced research, in the second part of this

chapter I turn to international research relevant to my project, which has been conducted mainly in the US and Canada.

Australian research on drug courts

Australian literature dealing directly with drug courts is scant. There is some literature reviewing diversionary programs in general, but the focus given to drug courts is minimal (Bull, 2003, 2005; Hughes & Ritter, 2008; Hughes, 2009; Loxley, 2005). A separate body of literature critically examines legal coercion (Hall, 1997; Hall & Lucke, 2010; Klag, O'Callaghan, & Creed, 2005). While critical research on Australian drug courts was conducted in the early years of drug court implementation (Bull, 2006, 2010; Fitzgerald, 2008; Indermaur & Roberts, 2003, 2005; Roberts & Indermaur, 2006), work of this kind has gradually subsided. Only three empirical studies (in the form of grey literature) using qualitative methods have been conducted. These explore the principle of therapeutic jurisprudence (Bull, 2006; L. Moore, 2012) operating in Queensland and Tasmanian drug courts, and the development, practices and consequences of the New South Wales drug court (Took, 2011).

In the first section of this chapter, I review published academic literature on Australian drug courts. As I will show, this literature is methodologically, theoretically and disciplinarily diverse. It is for this reason that I have divided it into three parts: legal, criminological and sociological.

Legal literature

In the following section I review published Australian legal literature on drug courts. It is of note that this body of work is based on analysis of legislation and review of grey and academic literature. One of the most notable and prolific figures in Australian drug court research is Arie Freiberg (2000, 2001, 2002a, 2002b, 2003, 2004, 2005). An academic criminologist and lawyer, Freiberg was actively involved in the implementation of the Drug Court of Victoria. It is important to note that Victoria was the last state (other than Tasmania) to pilot a drug court in Australia. New South Wales did so in 1999, Queensland and South Australia in 2000, Western Australia in 2001, Northern Territory 2003, and Tasmania in 2007[7]. Freiberg's work is important because, in order to propose a legal platform in which the drug court model could be

[7] Both Queensland and the Northern Territory closed their drug courts in 2012 (King et al., 2014), but Queensland re-opened a drug court in Brisbane in February 2018 (Caldwell, 2018). The Australian Capital Territory is projected to open a new drug court in 2018 (Trask & Inman, 2017).

implemented in Victoria, he studied the functioning of drug courts in other Australian states and international jurisdictions including the US and England, where drug courts per se had not been implemented, but an analogous program using 'drug treatment and testing orders' had (Freiberg, 2000). In doing so, he examined some of the sanctioning, sentencing and criminological issues which arose from these programs.

Freiberg (2000, 2001) argues that issues of eligibility and resource allocation raised the question of whether drug courts should target low-level offenders – that is, drug-dependent first-time offenders – who had been charged with use or possession, or 'chronic recidivists' – those charged with offences involving trafficking and other offences perceived to be the result of dependency, such as burglary or theft. Freiberg concludes that the latter group should be targeted, as they are more likely to utilise police, court and correctional resources. This is consistent with Makkai's (1998, 2002) views, whose work is reviewed in more depth in the latter part of this chapter.

Another important area Freiberg (2000) explores is whether drug courts should establish a nexus between offending and dependence in order to admit participants into the program. As he argues:

> On the one hand, a court's coercive authority should only be exercised where there is a link between the offence for which the person is before the court and being punished (and/or treated) and the problem which contributed to that offence. On the other hand, it could be argued that the commission of a precipitating offence which has brought the person before the court should merely be the trigger for treating the problem of drug dependency and possibly other personal, physical, psychological and social problems. (p. 16)

As it is now evident in the legislation that guides the operations of the Drug Court of Victoria (s. 18Z of the *Sentencing Act* 1991 (Vic)), Freiberg opted for including a demonstrable link between dependence and offending as part of eligibility. Presumably, this was done so that dependence only came within the purview of the drug court when it produced crime. This indicates that in the Drug Court of Victoria's legislation, dependence is not always constituted as a cause of crime. This view is also consistent with the practice of targeting 'chronic recidivists' rather than low-level offenders. However, Freiberg did not consider how the drug–crime nexus

was to be established, and who (within the drug court) was to establish it. The effects of this silence in the legislation are explored in detail in my first data chapter (4).

Another area that Freiberg (2000) considers important for the effective functioning of drug courts was the provision of a range of health and social services. As he argues, this would reflect sensitivity towards the lives of many of the participants, who face social and financial disadvantage. Moreover, Freiberg advocates for the principle of proportionality[8] to be reflected in the legislation. He argues that this principle should apply 'equally to treatment-based sanctions so that a sentence may not be extended beyond that which is proportional to the seriousness of the offence for the purpose of medical, psychiatric or other treatment' (p. 17). That is to say, a drug court magistrate should not escalate a sentence which would otherwise be appropriate in order to bring an individual under their jurisdiction, no matter how beneficial the court considers the treatment regime to be for the person (see also McGlone, 2003).

Freiberg (2000) also raises questions about the internal sanctioning regime of drug courts. First, he questions the potential for the sanctioning regime to be more severe and onerous than traditional sentencing options. He notes that in some Australian jurisdictions, a drug court participant could be subject to program sanctions for a considerable period of time, amounting in some cases up to three years in Queensland and longer in New South Wales. The requirement of abstinence is linked to this first issue because in these jurisdictions program participants were not able to complete the program if they had not been abstinent for at least six months. Freiberg questions how realistic it is for treatment programs to be built on 'an unnecessary and possibly unachievable premise' (p. 18). The second issue Freiberg raises in relation to the sanctioning regime is that in other Australian jurisdictions, legislation does not allow appeals against many of the decisions made by the drug court, including the decision not to accept an individual into the program, the original sentence, the conditions imposed, termination of a program, and sanctions or rewards imposed. As Freiberg points out, in legal and human rights terms this is highly questionable:

> A right of appeal against an adverse decision which affects a person's liberty or property is fundamental to the operation of any criminal justice system and should not be able to

[8] Holds that the sentence imposed should never exceed that which can be justified as appropriate or proportionate to the gravity of the wrongdoing and degree of responsibility of the offender for it (Freiberg, 2000).

> be waived, especially in circumstances where consent to the program cannot be wholly free, given the alternatives open to a defendant. (p. 19)

In drafting the Victorian legislation, Freiberg (2002a, 2002b) attempted to address the first issue (indefinite time to complete the order) by proposing that the drug treatment order should be terminated once two years had lapsed. This has an important effect on the requirement of abstinence because participants are able to complete the order without necessarily having completed phase three, which requires them to be abstinent from alcohol and other drugs for at least six months. This means that they can complete the order even if they randomly use alcohol or other drugs, as long as they are largely compliant with order conditions and manage to keep sanctions to a minimum so that the custodial element of the order is not activated.

Following this early exploration of interstate and international drug courts, Freiberg produced a discussion paper in which he presents the prototype of the legislation that would guide the operation of the Drug Court of Victoria (Freiberg, 2002b). This discussion paper raises the question of whether Victoria should introduce a court providing judicially supervised drug treatment and rehabilitation to 'drug offenders'. The passing of the legislation led to the roll-out of the first drug court in Victoria in May 2002. Freiberg (2002a) provides some of the background of the implementation of court and summarises the main elements of the drug treatment order and how it was going to operate (see thesis introductory chapter or the legislation for more detail).

In 2003, in response to Freiberg's work, McGlone published a paper that sets out additional concerns about the drug court model. First, McGlone argues that the number and complexity of drug treatment order conditions make it one of the more involved of the sentencing options available in Victoria. He raises the question of whether offenders, whose capacity is 'significantly impaired' by their alcohol and other drug dependency, are able to comply with the extreme demands of the order. He concludes that those individuals unable to comply with all program conditions would face the prospect of going to prison for non-compliance. Second, McGlone notes that drug courts encourage defence lawyers to relinquish their traditional adversarial role in order to be supportive of treatment programs that may be more onerous to participants. As he points out, this is problematic given that representation by defence lawyers in mainstream courts leads to lower conviction rates and less severe penalties. This skewing is also

exacerbated by the fact that that drug courts work in partnership with experts in the field of health care and alcohol and other drugs rehabilitation. According to McGlone, these professionals may encourage, in the legal profession, attitudes of trust and reliance that compromise the procedures of accountability that come with more openly punitive measures (see also Fox, 1992). In these ways, McGlone questions whether participants are adequately represented when they run contrary to professional assessments, particularly in circumstances where the individuals are perceived to be failing to 'take advantage of the opportunity'. Lastly, drawing on the work of Fox (1992), McGlone questions how genuine consent to participate in drug courts can be. He suggests that the 'freedom' of an individual to participate in a drug treatment order may be 'less real than apparent'. As he argues, an individual offered participation in the program in a court environment may feel compelled to accept it. This is because of 'the disparity in the power relationship', which is worsened when the individual is in custody and the offer involves a promise of release.

Looking at drug courts in a different way, Cappa (2006) situates the drug court phenomenon within the social, political and theoretical framework in which it operates. This includes theories of diversionary justice, restorative justice and therapeutic jurisprudence. Cappa (2006) suggests that drug courts are a possible template for the criminal justice system of the future. She argues that the drug court phenomenon came to the fore because of the view that when drug users commit crime, they are a danger both to themselves and to the community, and it is therefore in the interests of all that their 'addiction' be treated. Although in this view it is recognised that the various causes of addiction are complex, dependence is inevitably linked to the crime, and the individual is treated for both the 'problems'. Cappa notes two major influences on the advent of drug courts. First, society in general has demanded that crime perceived to be the result of drug dependence be punished; therefore policymakers are keen for the public to see this concern addressed. Additionally, the criminal justice system has faced criticism that it is inefficient and overly costly. In this way, claims about the cost-effectiveness of drug courts have enhanced their political accountability. While Cappa's exploration is important in providing background to the emergence of drug courts in Australia, her point of view about their potential 'effectiveness' appears over-optimistic, as she seems to take for granted many of the claims made about the 'success' of drug courts in the US. She assumes that dependence will indeed be enacted as a

medical condition by legal actors, and that the convergence of the therapeutic and judicial approaches to dependence will not produce tensions.

Writing as the same time as Cappa, King (2006) explores some of the challenges facing Australian court drug diversion initiatives. One of the issues he raises is eligibility criteria. He argues that eligibility criteria requirements can exclude some of the most vulnerable individuals involved in the criminal justice system. For example, some drug courts largely target illicit drug use rather than alcohol or solvent use, which are common issues among Aboriginal and Torres Strait Islander (ATSI) individuals in Western Australia. As he points out, alcohol is also linked to violent offending, but violent crimes are excluded from eligibility criteria. Additionally, King (2006) argues that ethical issues continue to challenge drug courts due to the intersection of two conflicting paradigms. On the one hand, the adversarial paradigm sees disputes best resolved through competing sides arguing before a neutral umpire. On the other hand, the health paradigm seeks to bring together team members in a collaboration designed to get the best outcome for participants. King considers, for example, the ethical issue faced by lawyers and community corrections officers due to the dual roles they might perform. As well as supporting their clients, they need to provide information potentially adverse to their clients' interests to the drug court team as a part of case management processes. As King states, the use of legislation and guidelines have not resolved these issues.

As this section on Australian legal literature shows, legal scholars have been sceptical of implementing the US model in local jurisdictions. Freiberg's study of the implementation of drug courts in international and Australian jurisdictions was particularly relevant to Victoria as he proposed to draft the legislation in a way that would avoid or mitigate problems emerging in other jurisdictions. Despite these efforts, problems persist, including eligibility criteria that often exclude some of the most disadvantaged individuals involved in the criminal justice system, and conflict in the roles of defence lawyers and drug court case managers.

Quantitative criminological literature

In this section I review quantitative criminological research on drug courts. Jones (2011) studied the 'effectiveness' of intensive judicial supervision in the New South Wales drug court. He assessed whether intensive judicial supervision during the early stages of the drug court program reduced drug use and sanctioning rates. His study employed a non-blinded randomised

controlled trial method to test the effect of intensive judicial supervision on early-phase substance use and sanctioning rates. All participants accepted onto the Parramatta Drug Court program between March 2010 and March 2011 were randomly allocated into either an intensive judicial supervision or supervision-as-usual condition. He found that participants in the intensive judicial supervision group were significantly less likely to return positive urinalysis tests and had a significantly greater number of episodes of abstinence than participants in the supervision-as-usual group. In addition, intensive judicial supervision participants were less likely to accumulate sanctions than participants in the supervision-as-usual cohort. However, there was no significant difference in the odds of having sanctions waived or having to serve sanctions in prison between the two groups. Jones' study suggests that intensively supervising drug court participants in the early phases reduces early-phase substance use and sanctioning rates.

A further study carried out by Jones and colleagues (Jones, Kemp & Chan, 2013) used the same data and hence the same methods to examine whether intensive judicial supervision improves adult drug court outcomes and to assess whether there were limits to the 'effectiveness' of intensive judicial supervision. Intensive supervision was found to be effective *only* for lower risk participants. Those who were assessed in this way were particularly less impulsive decision-makers and spent more of their leisure time in meaningful activity, associated with fewer criminal peers, and had less severe substance abuse problems. The only area in which intensive judicial supervision was found to be beneficial for higher risk participants was in improving attitudes toward the criminal justice system. Jones et al. (2013) recommend drug court interventions target impulsiveness and participants' social networks by designing policies and practices that focus on improving connections to 'prosocial' activities and organisations well beyond the drug court environment.

As I pointed out in the introduction, most Australian literature is composed of evaluations in the form of grey literature. I found only one article in a refereed journal that deals with the quality of Australian drug court evaluations. Kornhauser (2016) reviews all the Australian drug court evaluations to date and compares their research designs, including: treated groups, comparison groups, methods used to address selection bias and follow up periods. He then explores how the research methods shape the evaluation results. Additionally, Kornhauser considers the impact evaluations of Australian drug courts and how they support drug courts as being more 'effective'

than conventional sanctions in reducing recidivism. This review of drug court evaluations shares similarities with international findings (e.g., Lowenkamp, Holsinger, & Latessa, 2005; Mitchell, Wilson, Eggers, & MacKenzie, 2012). Overall, it indicates drug courts are more 'effective' at reducing recidivism. However, certainty in these findings is tempered by mixed results and methodological limitations (see also Wundersitz, 2007, p. 110). While the indications are positive – including, significantly, when looking at the strongest evaluations – Kornhauser concludes that Australia still lacks an 'unequivocal endorsement' (Indermaur & Roberts, 2003, p. 150) that the model is a comparatively effective method of reducing recidivism. Kornhauser notes that rigorous evaluation of Australia's drug courts remains necessary. He identifies three main methodological concerns of drug court evaluations: a lack of randomised experiments; weak quasi-experiments; and short and poorly defined follow-up periods. Kornhauser made two recommendations. First, comparison groups should be used because focusing on the most successful participants presents a distorted picture of the impact of drug courts – KPMG's (2014) evaluation of the Drug Court of Victoria is a prime example of this – as does making comparisons to those rejected or terminated from, or who refused to participate in, the program. Second, many of the Australian evaluations focused on drug courts during their initial pilot stages. Further follow-up studies after program inception may give a clearer picture of the long-term effects, while also allowing for larger research samples.

As this section shows, Australian research using quantitative methods focusses mostly on the 'effectiveness' of drug courts. The few studies conducted to date suggest that drug courts are more beneficial than supervision as usual, especially in the early stages of the program, because they reduce the incidence of drug use (Jones, 2011). However, they appear to be 'effective' only for low-risk participants (Jones et al., 2013). Research assessing the quality of Australian drug court evaluation suggests that the methods utilised are highly questionable and tend to inflate the 'effectiveness' of drug courts (Kornhauser, 2016).

Qualitative criminological and sociological literature

In this section, I review qualitative criminological and sociological research on drug courts. Tony Makkai is a criminologist based in Queensland. She reviewed the available literature on US drug courts to produce the first critical paper about drug courts in Australia (Makkai, 1998), in which she evaluated the US drug court model (courts following the 10 key components outlined in the

introductory chapter) and outlined their problems. These were that drug courts are more intrusive for individuals than a conviction or short sentence; are more expensive than traditional courts, but might be much cheaper than incarceration; and face challenges in integrating criminal justice and treatment agencies and cooperative arrangements between magistrate, prosecutor and defence. She identifies several factors that led to the implementation of drug courts in Australia, including unprecedented levels of 'drug-related crime', increasing rates of incarceration of drug users, prison overcrowding, high recidivism rates among people who use drugs, increasing workloads on the courts, and continued pressure by members of the community to address these issues. In a further paper, Makkai (2002) conducts an up to date review of literature on US drug courts, and analyses Australian drug policy, drug court legislation to place the emergence of Australian drug courts within the context of rising property crime rates, the development of open-air illicit drug markets, and the rise in opioid overdoses. She notes that initially the primary focus of Australian drug courts was on heroin, as up until the late 1990s and early 2000s (when most drug courts were first established) it was the primary drug of concern among drug users who came into conflict with the criminal justice system. In recent times, however, as she notes, methamphetamine has superseded heroin in drug court activity. Makkai (2002) also explains that the processes that led to the introduction of drug courts in Australia were different from those in the US, where local judges sought an innovative approach to dealing with 'the constant recycling of drug-affected offenders' (p. 1576). In Australia, however, the initial drive for drug treatment courts came from three sources: 'moral entrepreneurs'[9], senior politicians at state government level, and the media. As a result, while the operation of all drug courts in Australia is guided by legislation, in the US not all drug courts were established through legislation, so their practices are more disparate and inconsistent.

Makkai (2002) identifies three main 'implementation hiccups' that emerged following the establishment of some drug courts in Australia. First, some Australian drug courts had difficulty developing the required databases to allow for proper management and evaluation. Second, various problems arose in a key aspect of the drug courts – the provision of urine testing. Testing was not random. According to drug court best practice standards (National Association of Drug

[9] Such people 'represent, reflect, and grow out of the views and concerns of groups which they represent' (Goode & Ben-Yehuda, 1994). Ross Goodridge, a Sydney barrister, released a report indicating that the criminal justice system was failing to deal with the 'heroin epidemic' and that US drug courts may be the answer (Makkai, 2002).

Court Professionals, 2015), testing should be random and unpredictable. Moreover, there was conflict between the 'voluntary non-sanctioning' model that underpins most treatment provision in Australia, and the 'coerced sanctioning' model of the drug treatment court. This was illustrated by the fact that when health workers were required to administer urine tests, they were reluctant to disclose the results because the magistrate would use the information for sanctioning purposes. The third major problem Makkai (2002) identifies is that providing a high level of monitoring and intervention with a particularly difficult client group exacerbates the legal problems they faced. In the same way, the workload for authorities (courts and police) increases. Makkai concludes that more intensive engagement with this group multiplies the opportunities for tension and failure.

Following the implementation of drug court pilot programs in Australia, Indermaur and Roberts (2003, 2005) and Roberts and Indermaur (2006) review the existing literature on Australian and US drug courts to raise concerns about their operation and unintended effects in terms of net-widening.[10] Indermaur and Roberts (2003, 2005) argue that the manner and the speed with which drug courts have been embraced in Australia is remarkable and reflects the quality of a 'movement' which had been linked with drug courts in the US (Nolan, 2001). They note that the rapid spread of drug courts has not been a function of their proved 'effectiveness', but because they represent an idea 'whose time had come' (p. 137). They argue that most drug courts in Australia were implemented before any body of evidence on the effectiveness of these courts had accumulated, that such evidence is still far from complete, and that in any case it may only relate to certain types of drug courts and certain types of offenders (see also Kornhauser, 2016). Indermaur and Roberts (2003) explore the various reasons why the concept of a drug court has been so politically attractive. One appealing feature of the drug court, they argue, is the implicit assumption of an approach that is both 'tough' and 'effective' in terms of saving money and reducing crime. This is because much contemporary public policy on crime assumes that the 'causes' of crime, especially property crime, are closely associated with drug dependency.

[10] The concept of net-widening in the criminal justice system refers to the process of drawing more individuals into the criminal justice system or intensifying their involvement in it (Roberts & Indermaur, 2006). Different types of net-widening have been identified. Austin and Krisberg (1981) identified three types: wider nets (reforms that increase the proportion of subgroups in society whose behaviour is regulated and controlled; stronger nets (reforms that increase the state's capacity to control individuals through intensifying state intervention); and new nets (reforms that transfer intervention authority from one agency to another). Cohen (1985) also identified three types: wider nets (more people in the system), denser nets (increased intensity of intervention), and different nets (new services supplementing rather than replacing existing ones).

Hence, drug courts become attractive because they are seen as a way of addressing the 'underlying cause' of crime: dependence. Second, drug courts profit from the perceived benefits associated with diversionary approaches in general, understood to be cheaper than prison but still effective. The political prospects of being able to do more with offenders for less (cost) presents obvious political temptations (see also Cappa, 2006; Makkai, 2002).

Roberts and Indermaur (2006) also question whether drug courts really steer individuals away from the criminal justice system or simply add levels of complexity and supervision, thereby promoting the expansion of the criminal justice system. Drawing on the work of Tonry and Lynch (1996), who combined the concept of net-widening with an idea developed to understand how alternatives to imprisonment were designed within the criminal justice system. This is the notion of 'front-end' or 'back-end' alternatives to ascertain whether the alternative focuses at the front or back end of the criminal justice system. Front-end net-widening takes place when a greater level of involvement occurs at the point of contact with the criminal justice system. This may happen where an individual is 'diverted' to a program designed for those charged with more serious offences. In contrast, back-end net-widening refers to the increased likelihood of further sanctions for technical violations resulting from the greater surveillance and closer monitoring often associated with diversion programs. Any breaches, such as illicit drug use, are more likely to be detected when monitoring systems such as urinalysis testing are in place. Back-end net-widening is therefore more likely to occur in Australian drug courts, as they target 'chronic recidivists' rather than low-level offenders.

While Robert and Indermaur (2006) do not suggest that diversion programs are intentionally designed to be more onerous than traditional sentencing, they note that potential exists for interventions to be more onerous than traditional sentencing for individuals who do not meet, or just fall into, the target group for the program. This is because sanctions imposed during the course of the 'treatment' may exceed the sentence an individual would have received if not part of the program (Freiberg, 2000). Moreover, while drug courts are purportedly a 'better deal', the consequences of failure to comply with treatment conditions may be more severe than traditional penalties. For example, as drug courts impose imprisonment as a sanction during the program, in

some cases, accumulated imprisonment sanctions can exceed the length of sentence that may initially have been imposed if diversion had not occurred.[11]

Roberts and Indermaur (2006) conclude that drug diversionary programs might lead to potential wider, different and denser nets. They note that this highlights the need to plan these programs more carefully in order to reduce the potential for net-widening, as well as monitoring and evaluating programs to detect the extent and effect of inadvertent net-widening. What is more, they argue that in the absence of clear evidence about the 'effectiveness' of drug courts, 'best practice' of diversionary programs (Alcohol and Other Drugs Council of Australia, 1996) must ensure that offenders involved in drug courts are not disadvantaged:

"Good diversion practice will not compromise the rights the offender would enjoy during the normal course of the criminal justice process, in particular the rights to procedural fairness, the right to appeal and protection from self-incrimination" (p. 2).

Clancey and Howard (2006) review the literature on Australian diversionary programs (including drug courts) developed since the launch of the National Illicit Drug Diversion Initiative in 1999. They also raise concerns about the unintended effects of diversionary programs (including drug courts) in Australia. While acknowledging that numerous evaluations of diversionary programs had been undertaken, they argue that it is necessary to reflect on their wider consequences. They apply social control and criminological lenses to raise several concerns. First, they question whether these initiatives produce unintended negative consequences, such as net-widening and excessive intrusion into the lives of marginalised and disadvantaged members of society. Second, they examined whether the fixation on drug use as a determinant of crime blames individuals at the expense of wider public policy. Moreover, they considered some of the influences that have given rise to drug treatment within the criminal justice system. First, they acknowledge that while rigorous studies of the links between drugs and crime continue to highlight the complexity of the relationship, public policymakers and media commentators appear to assume a causal link too easily. They observe that diversionary initiatives encourage the view that individualised drug treatment and/or diversion is the only option; therefore the 'solutions' to the problem reside in individual action. In this way individuals undergoing diversionary programs are enacted as

[11] The Drug Court of Victoria legislation has safeguards that prevent this from occurring (s. 18ZE of the *Sentencing Act 1991* (Vic)). Additionally, if the drug court applicant serves the custodial sentence through custodial sanctions, the order is cancelled.

'rational choice makers', who are both capable of choosing to commit crime and of getting a job or abstaining from drugs. As a result, treatment of individuals is prioritised over policies that redistribute wealth, provide housing or create meaningful employment. As Clancey and Howard (2006) note, the second factor that has encouraged the growth of diversionary programs is governments' punitive agendas, and the idea that they must be tough on crime and on the causes of crime. As they argue, the punitive agenda encourages community fears, which increase demands for more and new ways of achieving safety. In this climate of control, personal security of the 'deserving' is prioritised over the rights of the 'undeserving'.

The review of qualitative research on drug courts suggests that Australian scholars are sceptical of the implementation of the US drug court model in Australia, and have raised concerns about the model, including possible implementation issues and net-widening effects. This body of work should be taken into consideration when planning and evaluating drug court programs, and is relevant to my project because it sensitised my own research methods to issues of net-widening, disadvantage and unintended negative effects. However, the reviewed research was undertaken soon after the Australian drug court pilots were implemented, and critical work of this nature has not been undertaken recently. In this thesis I extend the work of these critical criminologists, using qualitative methods with a poststructuralist approach.

Poststructuralist analyses

In this section I review the work of Melissa Bull, a scholar based in Queensland, and the only Australian who has produced sociological work on drug courts using a poststructuralist approach. Bull (2006) assesses the value of therapeutic jurisprudence as a foundation for the drug court by analysing how the rules, legal procedures, and the roles of lawyers and magistrates produce therapeutic or anti-therapeutic consequences for the individuals involved and how this works to govern the drug problem. This research was based on discourse analysis of drug court transcripts supported by observational research in drug courts in Queensland and New South Wales. Drug court transcripts were analysed using a governmentality lens. The results of the study identify practices that distinguish therapeutic jurisprudence from other forms of jurisprudence.

In her analysis, Bull disputed the view advanced by Fischer (2003) that drug courts are a network of strategies for surveillance to make behaviour visible and that they have a 'panopticon-like'

gaze. Here, drug courts constitute a comprehensive and pervasive regime of behavioural 'discipline acting upon the offender from many sides, triggering coercive interventions' (Fischer, 2003, p. 237). Bull (2006) found that although participants were subjected to surveillance, they also had opportunities for self-expression, delivered in partnership with a range of service providers linked to the court. These opportunities, Bull argues, allow processes of government to act *through* rather than *on* participants and rely on the freedom of subjects to be effective. For example, Bull notes that the submission of journal entries facilitated therapeutic processes like relapse prevention. Moreover, it provided opportunities for self-direction and the development of self-esteem, communication skills and confidence, which are all dimensions of behaviour well beyond the realm of traditional court concerns. Bull (2006) thus observes that drug courts can also be understood as a tentative engagement with a realm beyond the direct reach of laws and decrees. This is a space of freedom for participants who would normally be in prison. It includes liberal practices of government which rely on a range of institutions, experts and systems of thought that promise to create self-governing individuals. As a result, Bull concludes that drug courts 'reconcile' illiberal practices of discipline with liberal practices of freedom. This, she notes, requires special consideration for two reasons. First, it is extremely difficult to make these sets of practices compatible in practice. Second, this reconciliation produces a tension because the approaches are based on opposing understandings of subjectivity. On the one hand, disciplinary modes of compliance monitoring entail an environment of suspicion, in which participants are constituted as unable to regulate their behaviour in relation to drug use (and crime); hence they have little capacity for self-control. Indeed, lack of self-control is constituted as a key feature of drug dependence or addiction (Bull 1996; Sedgwick, 1994; Valverde, 1998). On the other hand, liberal techniques for the care of the self-assume a capacity for self-governance, rational choice and self-control. In contrast to popular belief, drug-dependent individuals have been shown to have these qualities. For example, they have demonstrated this in their management of injecting practices to prevent the spread of blood-borne viruses. These 'rational' choices are not always constituted as such by authorities such as the drug courts.

In a second analysis, Bull (2010) explores the phenomenon of drug courts in Australia and how they emerged. Bull argues that the characteristics Foucault links to the rise of the prison in the nineteenth century are also evident in the drug court. Offenders, their biographies and capacities for correction and change are the focus of judgment, rather than the offence. Entry into the

program relies on an admission of guilt and an assessment of capacity to comply with program conditions, to be reformed. The drug court team makes decisions in the areas of health, social wellbeing and risk of reoffending, explicitly illustrating expert intervention through the human sciences. What is more, despite being an alternative to prison, the court is part of what Foucault calls the 'carceral archipelago'. The panoptic qualities of its services ensure a network of surveillance and control. Bull argues that while drug courts' potential for net-widening warrants critical consideration, as an alternative to prison, they may offer some compensatory possibilities. As she states, remaining outside the 'total institution' allows drug court participants to avoid 'disculturation – the untraining that renders the inmate incapable of managing certain features of daily life following release from prison' (2010, p. 125). It also allows them to maintain connection with community supports and mainstream society.

In the first part of this literature review chapter I surveyed the Australian literature dealing with drug courts. As I showed, both legal and criminological scholars have been sceptical of implementing the US model in Australia. As a result, legislation governing the practices of drug courts has been developed to avoid or lessen the impact of unintended effects such as net-widening. Only 'chronic recidivists', for example, are targeted, and in Victoria the drug court order lasts a maximum of two years. Despite all these efforts, problems have emerged that might exclude some of the most disadvantaged individuals involved in the criminal justice system, and conflicting roles of defence lawyers and drug court case managers. This literature review also found that Australian research using quantitative methods focuses mostly on 'effectiveness'. Although research to date has found drug courts to be more beneficial than supervision as usual, especially in the early stages of the program because they reduce the incidence of drug use (Jones, 2011), they appear to be 'effective' only for low-risk participants (Jones et al., 2013). Research assessing the quality of Australian drug court evaluation suggests that the methods utilised are highly questionable and tend to inflate 'effectiveness' (Kornhauser, 2016). Only one Australian scholar, Bull (2006, 2010), has studied drug courts using both qualitative methods and a poststructuralist approach. Her insights are important as she complicates notions of power, and she shows that the drug court can produce therapeutic effects. Despite the central role that concepts of dependence play in drug courts, there has been a lack of critical research into the use of dependence language and concepts within them, or how these concepts are constituted and

mobilised in Australian drug courts. It is for this reason that in the second part of this chapter I turn to research from other jurisdictions.

Enacting dependence in international drug courts

In this section, I analyse how dependence has been defined within drug courts. Following this, I review understandings of the 'causes' and 'effects' of dependence within drug courts. I then look at the literature on how dependence is diagnosed in the drug court context and how eligibility for participation in drug courts is established. I then review literature on approaches to treating dependence in drug courts, and on some of the consequences of drug courts for dependence and crime. Finally, I review literature on the experiences of participants in drug courts. I argue that researchers have neglected individual experiences of drug courts and that more work is needed in this respect.

It is important to flag that most of the literature I review in the following section is from the US. Some studies have been conducted in Canada (Lyons, 2013; Dawn Moore, 2007a). England has implemented approaches inspired by the US drug court model, such as the drug treatment and testing order and the drug rehabilitation requirement, but not drug courts as such (for the difference between US drug courts and English court-ordered programs, see Bean (2014)). In this literature review section, I only include jurisdictions that have implemented the US drug court model in line with the 10 key components of drug courts, as outlined by the National Association of Drug Court Professionals (2004) (see p. 3).

Defining dependence

The way in which definitions and concepts of dependence shape practices within drug courts has received little critical attention. In the following text, I review the available qualitative research on drug courts' definitions of dependence, most of which has been conducted in the US and Canada. For example, Nolan (2001) conducted an ethnographic observation of 21 drug courts throughout the US over a period of four years. He interviewed judges and drug court officials and found that some of them understood addiction as a disease that (like diabetes) can be controlled and sent into remission with the 'proper' treatment. In another study, Murphy (2011) conducted interviews and observations in a drug court located in a north-eastern city in the US. She found that staff viewed addiction as a treatable 'disease', and exhorted participants to attend prescribed treatment sessions. Participants did not appear to have a choice regarding the type of

treatment they received. In another study, Gowan and Whetstone (2012) conducted ethnographic qualitative research in a drug court and one of its partner therapeutic communities in the US. They examined the overall process, beginning with the 'court-led diagnosis' of dependence, to the first exchanges between treatment and court staff over the eligibility of the client, to the progressive instilment of an 'addict' identity through the use of intensive cognitive therapy and behavioural modification. They note that in the therapeutic community addiction was defined, according to the guidelines of the National Institute of Drug Addiction (NIDA), as a 'biochemical brain difference' (Gowan and Whetstone, 2012, p. 76) and that educational materials presented to residents had been produced in partnership with NIDA. Residents were, for example, required to view a documentary that covered the way in which drugs affect the brain's functioning; genetic predisposition to dependence and how high-risk environments increase the likelihood of dependence; and concluded that addiction is not a choice, but a disease. However, as Gowan and Whetstone (2012) note, this discussion of dysfunctional brains did not persist beyond the presentation of educational materials. According to Gowan and Whetstone (2012), although biochemical understandings did not guide the operations of the facility, some biochemical concepts were used to promote individual accountability for dependence. This is best illustrated by the way the 'brain plasticity' concept was utilised. According to this approach, individuals are not just genetically predisposed to dependence but can change the functioning of their brain through repetitive alcohol and other drug use. This notion facilitated the drug court's goal of responsibilisation and self-management. Hence, as part of their treatment, participants were also taught about the 'nature' and 'origins' of their dependence in ways that align with an individualist, neoliberal health philosophy (Fraser, 2004). In another study, Lyons (2014) conducted an ethnography study in the Ottawa drug court, interviewing former participants and analysing policy documents to examine the discourses of dependence, the constitution of subjects and the treatment practices in use. She found that the Ottawa drug court defines dependence as a lifelong, chronic disease involving repeated relapses. Despite this, participants were also viewed as exercising 'free will' in relation to alcohol and other drug use. From these studies, we know that drug courts tend to define dependence as a disease. Some judges and drug court personnel explained dependence in medical terms and even likened it to physical disorders. Coerced treatment was perceived as the most effective way to manage the disease. Moreover, the emerging neuroscientific model of dependence seems to

influence the rhetoric. However, these views did not shape the practices used in drug courts and affiliated therapeutic communities as dependence was primarily understood as a choice. Those definitions are also consistent with the moral model of dependence, as participants were viewed as having a choice to avoid drug use and were sanctioned for relapsing. Overall, the research reviewed in this section suggests that drug courts use multiple and seemingly contradictory definitions of dependence. Researchers are yet to consider in depth the whole constellation of dependence definitions within drug courts, and how their interaction shapes treatment practices and drug court participants' experiences.

Causes of dependence

Proponents of drug courts argue that one of the central aims of drug courts is to facilitate 'recovery' (itself a disputed concept) from dependence (Hora, 2002). How drug court personnel and judges understand the causes of dependence is therefore crucial; it shapes how dependence is managed through drug courts and affiliated practices. Despite the centrality of causation to the drug court model, surprisingly little research has been conducted in this area. Nolan's (2002b) study, to which I have referred previously, is the only study of these issues to date. The judges interviewed in this study identified low self-esteem as the major cause of addiction. According to them, drug court participants came from backgrounds in which they received little affirmation and encouragement, hence they developed a low opinion of themselves; as a result, they were more inclined to use drugs and engage in 'unhealthy' activities. As such, some judges believed that their role was to build up participants' self-esteem by treating them with affection and respect. Nolan's (2002b) research downplays the inbuilt tensions of judges' conflicting role as alcohol and other drug 'therapists' and apportioners of punishment; these tensions were explored by Lyons (2013), who found that judges take on therapeutic practices that compromise their traditional role as neutral arbiter. Given the main cause of dependence identified to date within the drug court context has been low-self-esteem (Nolan, 2002b), there is a need for more research in this area. Judicial understandings of the causes of dependence shape and regulate alcohol and other drug treatment within drug courts, and the assumptions behind them. The effects they produce must be critically analysed and understood.

'Effects' of dependence

According to Fraser and David Moore (2011a):

> Drugs are often spoken of in terms of their physical and psychological 'effects'. In turn, they are generally treated as the origins and causes of other entities, crime being perhaps one of the most widely assumed. In this respect, beyond the commonplace observation that drugs as substances have 'effects' in the body and on society, we can also say that the idea of drugs (their malign powers, their ability to corrupt and so on) itself has effects at the level of politics and discourse. While the first of these two sets of meanings assumes drugs simply to be self-evidently concrete entities possessed of intrinsic characteristics and producing predictable results, the latter sees drugs and their effects as made in discourse, practice and politics: as constructed. (p. 1)

Drug court supporters and advocates' views of drug use appear to be compatible with the first set of meanings described above: drugs have stable and predictable effects on those who use them and on society. Some judges and drug court officials in Nolan's (2002b) study concluded that 'if drug use is a disease, and this disease is believed to cause other criminal behaviours, then these other behaviours are themselves symptoms of the disease' (p. 1170). In other words, as Nolan asserts, the criminal justice system has gradually evolved so that an increasing number of behaviours are now viewed through the lens of the 'disease' model. Nolan (2002b) offers two reasons for this. First, he argues that the assumption that certain offences are triggered by the consumption of alcohol and other drugs has become widely accepted. For example, some individuals might commit robbery, forgery and prostitution in order to fund their use. In this way the eligibility criteria for drug court participation (in the US, at least) has gradually expanded from drug-related crimes, such as the sale or possession of illicit drugs, to other offences (including those mentioned above) that are understood to be 'effects' or 'consequences' of habitual drug use. Moreover, instances of family violence, culpable homicide and other violent offences (albeit offences not included in the eligibility for most drug courts) might be seen to derive from loss of control and intoxication, which in turn are provoked by alcohol and other drug use. Second, Nolan (2002b) argues that expanding conceptualisations of drugs and drug effects are linked to the growing influence of therapeutic culture in wider society, through which anti-social or otherwise criminal behaviours have been pathologised.

In his analysis, Nolan appears to assume that dependence has undergone a process of 'medicalisation' and that – having adopted this disease model of addiction – drug courts offer treatment rather than punishment. However, other drug court scholars disagree. Tiger (2011) and

Murphy (2012) explore the concept of medicalisation to argue why dependence's 'symptoms' or effects are simultaneously treated and punished in drug courts. They refer to Conrad's (1992) medicalisation process, in which a problem previously defined in non-medical terms comes to be conceptualised in medical terms. It has been argued that one of the benefits of understanding a problem in medical terms is that it decriminalises the problem, so that individuals experiencing the problem are seen as 'sick' rather than 'deviant' (Conrad & Schneider, 1992). According to Conrad (1992) although this process is widely accepted, it is never completed and instead occurs in stages. The first stage, conceptual medicalisation, entails defining a problem in medical terms but does not require a physician to be associated with diagnosis or treatment. The second and third stages, institutional and interactional, involve a growing capacity for physicians as either validating experts or providers of treatment. Contrary to Nolan's (2002b) view, Tiger (2011) argues that drug courts are an example of conceptual medicalisation only, in that medical language is used but the involvement of medical professionals is limited (see also Murphy 2012; Vrecko, 2009). Further, Tiger (2011) found that proponents explained that drug courts focus on the ways in which the disease of dependence manifests itself through anti-social behaviours, producing detrimental changes in character and personality. She argues that this model is really a behavioural approach to dependence rather than a medicalised one.

In this section, I identified US studies suggesting that drug court supporters and personnel tend to explain dependence in terms of its 'effects'. Further, they see dependence as the main 'cause' of criminality. Critical research on drug courts indicates that dependence has not undergone the full medicalisation process described by Conrad (1992), since dependence is described in pathological terms but medical professionals are not involved. Despite the growing significance of court-ordered programs that view dependence as the main cause of crime, the potential unintended consequences of basing the delivery of alcohol and other drug treatment on this notion remain largely unexplored.

Diagnosing dependence

A key requirement of admission into drug courts is that judges are satisfied that the applicant is dependent on alcohol or other drugs and that this 'dependency' contributed to the commission of the offence (Freiberg, 2002a). Only a few studies have explored how eligibility is established, and the process of diagnosing addiction within drug courts has received even less attention.

Further, the question of how the relationship between dependence and offending is established has been neglected. In the following, I review research on how diagnosis is established in some drug court settings. Vrecko (2009) focused on a drug court in California that, as part of alcohol treatment, requires individuals convicted of repeat drink-driving offences to ingest a medication (naltrexone) to manage alcohol cravings. Using textual analysis of court documents, Vrecko found that the court does not use clinical evaluations to identify individuals with alcohol dependence; rather, the judge makes the decision based on vague statistical calculations of 'the number of prior driving under the influence convictions, the blood alcohol level, the pattern of alcohol use, and other alcohol related offences' (p. 224). Further, no attempt is made to qualitatively assess other areas of the individuals' lives that are typically explored in health or social welfare settings when identifying dependence and the likelihood of the treatment having the desired outcome. According to Vrecko, this constitutes a shift from clinical diagnosis by physicians, on which the criminal justice system has traditionally relied, to mere coding of prior offences by judicial figures. It is only after the court has diagnosed the participant with 'alcoholism' that the physician is called upon to prescribe the medication.

As I noted earlier, drug courts are inconsistent in their approaches to defining dependence; this creates a problem when it comes to diagnosis. Murphy (2011) identifies the issue of definitional ambiguity. The drug court staff in her study explained that even though some of the participants might not be dependent on drugs, they still required intensive dependence treatment because they were 'addicted' to the 'fast' money and material possessions brought about by the drug-dealing 'lifestyle'. Further, Murphy (2011) found evidence suggesting court personnel identified many participants as 'addicts', even though during the assessment for admission into the drug court, they reported only low to moderate alcohol and other drug use. For instance, individuals who used cannabis once or twice a week were assessed as being 'addicted' to cannabis and in need of treatment, whereas others who reported using alcohol twice a week were less likely to be given the label 'alcoholic'. This, Murphy notes, implies that the legal status of cannabis was more critical to diagnosis than was frequency of use. Moreover, she found that as long as the potential participant identified alcohol and other drug use as a 'problem', drug court staff were prepared to label them as addicts, irrespective of frequency of use.

In another study, to which I referred previously, Gowan and Whetstone (2011) explain that the drug court team (judge, prosecutor, public defender, probation officers and senior counsellors)

considered criminal and dependence treatment history when evaluating the level of 'criminogenic risk and clinical need' (p.315). A diagnostic assessment tool was employed to identify those at most risk of reoffending because of their addiction. Factors such as early onset of alcohol and other drug use or crime, homelessness, unemployment and prior forensic history increased the likelihood of identification as 'high risk'. Other factors such as withdrawal symptoms, craving and the presence of mental illness were also part of the assessment process. Applicants were rated in each dimension and given a final score. Gowan and Whetstone (2011) argue that this hybrid diagnostic model created the subject of the 'criminal addict', so that conviction becomes evidence of addiction, and addiction is made the main cause of involvement in the criminal justice system. These are useful insights, but leave much unexplored. For example, despite outlining some elements of the diagnostic process, Gowan and Whetstone do not specify which member of the drug court team directly assesses potential participants or other steps involved in the diagnosis, such as how the team reaches a decision.

In this section, I have identified a lack of research on how addiction is diagnosed in drug court settings. What little critical work exists in the area has focused instead on how general eligibility is established. Some key aspects explored in this research include reviewing forensic and alcohol and other drug treatment history using a diagnostic tool, and using criminal record in preference to clinical indications of dependence for determining admission to some drug courts. Finally, despite drug court personnel referring to dependence as a disease, health professionals are conspicuous by their absence in the diagnostic process, even when program participants are coerced into taking medication as part of their sentencing conditions. In this thesis I examine the dependence diagnosis process in the Drug Court of Victoria, including the professional background of the assessor and the diagnostic tools utilised during the assessment in order to gain an insight into how dependence is constituted in this setting.

Treating dependence

The way dependence is conceptualised and managed within drug courts appears to be heavily influenced by the 12-step philosophy,[12] at least in the US, where most of the research into

[12] A 12-step program is a set of guiding principles outlining a way to recover from addiction. They were originally proposed by Alcoholics Anonymous (AA) as a method of recovery from alcoholism, and published in the 1939 book *Alcoholics Anonymous: The Story of How More Than One Hundred Men Have Recovered from Alcoholism*. These guiding principles have been adapted and became the foundation of other twelve-step programs.

treatment practices within drug courts has taken place. Nolan (2002b) found that judges took the view that an 'addict' never fully recovers from dependence and will always remain in recovery. Murphy (2011) found that in the US drug court where she observed proceedings, 12-step program meetings were mandated and drug court staff used language from the 12-step programs to construct subjects as 'addicts' with a treatable disease. For instance, the judge in Murphy's (2011) study frequently asked participants to avoid 'people, places and things', a well-known 12-step slogan, referring to triggers for alcohol and other drug use and potential criminal behaviour. The judge also reprimanded participants when they were unable to avoid such triggers. Importantly, the judge gave little consideration to the neighbourhood context of young, African-American drug court participants living in racially segregated and marginalised areas, clearly assuming that they could easily remove themselves from their only familiar environments. Further, Murphy (2011) notes that regular use of the phrase 'people, places and things' in the drug court implied that dependence is produced by environmental conditions and a problem of the individual. Despite this, the individual was expected to take responsibility for avoiding environmental triggers and learning how to deal with them. In this sense, some drug courts have an internally contradictory approach to the agency and responsibility of individuals considered dependent. This aligns with drug court approaches to definitions of dependence, which, as I noted earlier, are also often internally inconsistent.

In her study of the treatment of dependence in drug courts, Tiger (2011) found that drug court advocates referred to 'the disease of addiction', but few were able to articulate in detail the attributes that make addiction a 'disease'. They were also unconcerned with its causes. Coercion was perceived as the key feature of successful treatment. The role of the judge was crucial to aiding the recovery process, in this way justifying high levels of court involvement in defendants' lives. Murphy (2011) provides an example of encroachment of drug courts into participants' lives. She found that the drug court monitored not only participant compliance with the treatment program, but how the treatment providers delivered treatment. This was achieved by visiting treatment sites, requesting progress reports and preventing alcohol and other drug service providers from altering treatment plan features without the approval of the drug court.

One of the core activities of drug courts is to refer participants to drug treatment programs and to monitor compliance with these programs. Research conducted in the US (Gowan & Whetstone, 2011; Kaye, 2013) has explored rehabilitative practices in therapeutic communities affiliated

with drug courts, which are considered to be one of the most intensive forms of drug treatment available. These have become the residential program of choice within the US criminal justice system. These researchers found that African Americans and Latinos from lower socio-economic backgrounds are over-represented not only in prison populations, but in drug courts and their affiliated therapeutic communities. Kaye (2013) conducted 13 months of ethnographic field research in two interrelated sites: a drug court in New York City and a therapeutic community to which the court refers participants. Kaye concluded that the aim of rehabilitative treatment is to address some of the characteristics of the 'drug lifestyle'. Importantly, however, features of this 'drugs lifestyle' appear to be compatible with descriptions of 'the culture of poverty', such as social disadvantage and cultural characteristics generally ascribed to certain ethnic minorities, including dress code and use of language. Residents are considered to be in need of discipline and must learn how to comply with rules and accept commands submissively. Further, residents were surveilled to identify any breach of rules, and were publicly sanctioned for non-compliance with rules in order to encourage accountability. They were also asked to participate in the surveillance of others and risked losing privileges if they neglected to do so.

To summarise, in this section I have identified that the 12-step program philosophy influences how dependence is conceptualised and managed in some US drug courts. Research shows that regular court appearances are perceived as central to ensure compliance with addiction treatment. The drug court was not only the authority that prescribed alcohol and other drug treatment, but heavily monitored progress with treatment providers. Additionally, critical research conducted in therapeutic communities affiliated with drug courts has indicated that participants are encouraged to regularly monitor one another and publicly shamed for non-compliance with highly structured routines.

These few insights into treatment within drug courts come from the US literature. Australian researchers are yet to engage in such an exploration or consider the implications of treatment practices for both participants' understandings of what dependence 'is' and how it relates to other aspects of their lifestyles, behaviour and relationships, and to shaping broader public understandings of the 'nature' and 'effects' of dependence.

Consequences of merging therapy and punishment

Therapeutic and punitive approaches to drug use are seemingly contradictory, with one calling for treatment and the other for punishment. Despite this contradiction, both approaches are combined in coercive drug treatment as a response for drug-related offences in drug courts (Murphy, 2011; Tiger, 2011; Vrecko, 2009). The 'blended model' of dependence, in which individuals are simultaneously treated and punished, is epitomised by the use of graduated sanctions and rewards to encourage compliance in drug courts (Tiger, 2011). Sanctions for noncompliance vary, but might include verbal admonition by the judge, demotion to a previous treatment phase, short-term incarceration and expulsion from the program. Rewards for adherence to program rules might include verbal praise or promotion to the next treatment phase (Parsons & Lauritsen, 2013). Some proponents of drug courts assume that punishment and rehabilitative approaches can coexist (Marlowe & Kirby, 1999); however, some researchers have noted the tensions that can emerge. Whiteacre (2007) conducted interviews with staff and participants in a juvenile drug court located in a city in the US. He also observed hearings and pre-hearing staff meetings over the course of one year. His research revealed two kinds of friction produced by the sanctioning system. First, drug court personnel had different opinions about the suitability of rewards as opposed to sanctions, as well as the severity of punishment methods used to motivate compliance. Second, drug court personnel were uncertain about whether sanctions worked effectively as a therapeutic tool, especially when dealing with participants who continued to be noncompliant despite repeated sanctions. Drug court personnel counteracted this tension by ascribing noncompliance to a lack of motivation on the part of participants, suggesting that coerced treatment only works for those who are 'ready'. According to Whiteacre, this poses a contradiction for coerced treatment, which is meant to stimulate compliance, especially among those who are unmotivated. This also leads to the question of why – if coercive treatment benefits unmotivated and motivated individuals equally – the admission processes for many drug courts place so much emphasis on screening out applicants who have 'a comprehensive lack of motivation' and favours those 'who are ready to work towards recovering from drug dependency' (Mackinem & Higgins, 2007, 2010; Parsons & Lauritsen, 2013).

Murphy (2011) also studied the many tensions associated with the use of sanctions. Her research uncovered a lack of understanding among drug court personnel and participants in relation to the purpose of sanctions deployed in drug courts. While court staff saw them as therapeutic

interventions, participants perceived them as punitive. For instance, on occasion, clients were ordered to attend drug treatment due to noncompliance with conditions that were not treatment related, such as failing to present for community service. Another contradiction of the 'blended model' to addiction in drug courts can be illustrated by the following example. Judges who participated in Nolan's (2002) study claimed to understand relapse as an inevitable obstacle to recovery. They were of the opinion that a participant who relapses should be dealt with using patience, compassion and understanding. However, research involving observations of court proceedings indicates that in practice relapses are often treated with sanctions (Burns & Payrot, 2003).

We can make two observations about drug courts based on this research. First, drug court advocates and proponents tend to treat the amalgamation of the therapeutic and punitive approaches unproblematically. However, some critical research has pointed to issues with these two approaches. For example, even though tolerance for relapse is key in the rhetoric of the drug court model, it does not translate into practice in some drug courts. Second, the sanctioning system creates disagreements between drug court staff members and between staff members and program participants, as at times participants do not understand why sanctions are being imposed.

Experiences of drug court participants

As they possess the most intimate knowledge of drug courts, participants can offer important insights into their operations. Despite this, little is known about how drug court participants experience drug court processes. More specifically, there is a lack of critical research into participants' experiences of dependence discourses and concepts within drug courts, especially in Australia. It is unclear, for example, whether drug court participants think of themselves as 'addicts' or as drug or alcohol 'dependent' before entering drug courts, and how their drug court experiences shape their ideas of alcohol and other drug use and dependence. This is important because these drug court experiences might shape their sense of self as well as their understanding of key related concepts such as their agency and capacity. It is important to note that my review of the literature did not identify any critical qualitative research on these issues. Instead, for example, there has been qualitative research into female drug court participants' perspectives on what elements of the program helped them most to complete the program; they

identified fear of punishment, program structure and supervision (Fischer & Geiger, 2011; Roberts & Wolfer, 2011). Fulkerson, Keena, and O'Brien (2013) compared the perceptions of eight drug court graduates to those of eight individuals who did not complete the program. The findings indicated that graduates and non-completers had different motivations for entering the program. Most graduates reported entering the drug court program because they wanted to receive treatment to address their alcohol and other drug use, whereas the main motivation reported for non-completers was to avoid imprisonment. Both graduates and non-completers were critical of aspects of the drug courts. They were of the opinion that too much personal information was disclosed in the regular court hearings open to the public. Other criticisms of court practice were that courts implement a 'one size fits all' approach to counselling and that judicial decisions were inconsistent. Fulkerson and colleagues ascribed the responsibility for failure solely to the non-completers themselves, arguing that they were unable to navigate the challenges of the program and were not as resilient as graduates. Importantly, this research did not interrogate how drug court staff and practices might produce failures.

Investigating drug court participants' perspectives is important if we are to understand how addiction and/or 'dependence' is enacted and produced in drug courts, and to how particular conceptualisations of dependence shape the way individuals view themselves, and how they accommodate, resist or otherwise engage with these conceptualisations of dependence. My review of the literature did not identify studies focusing explicitly on drug court participants' experiences of addiction. Instead, the small body of US research exploring what aspects of the program encourage completion and how the drug court experiences of graduates differ from those of non-completers treats dependence concepts and discourses as given. The effects of different language, concepts, diagnosis and treatment processes in shaping participant's experiences were not investigated. My project was designed to explore how drug court participants accommodate, resist or otherwise engage with conceptualisations of dependence in their drug court experiences.

Conclusion

My review of the literature on drug courts found that critical qualitative research exploring how dependence is defined, constituted and conceptualised in drug courts is scant. The research that has been conducted is largely limited to US and Canadian contexts. It suggests that drug courts

enact dependence as a treatable chronic relapsing disease but that 'addicted subjects' are also treated as agents with the capacity to choose whether or not to consume alcohol and other drugs. This internally inconsistent approach is also found in other areas of alcohol and other drug policy and practice (see Fraser & Seear, 2011; Keane, 2002; David Moore & Fraser, 2013). Despite presenting relapse as a normal part of the pathway to recovery, drug courts have low tolerance for it, often responding with sanctions. Drug courts, at least in the US, often use 12-step program philosophy, and some drug courts specify treatment for participants rather than using health experts. 'Anti-social' behaviours are often perceived as 'symptoms' or 'effects' of the disease of dependence.

This literature review found only one study of how drug court personnel understand the causes of dependence; it identified low self-esteem as the main cause. This area requires further exploration, as it will illuminate the basis on which judges make decisions about drug court participants, and how these decisions shape, in turn, the practices and processes of the court. Key features of successful treatment, as identified by drug court supporters in the literature, are coercion, the figure of authority of the judge, and graduated sanctions and rewards for compliance. However, tensions produced by the sanctioning system are also highlighted. Finally, the literature review showed that the experiences of drug court participants in relation to dependence have been neglected.

There are two points to be made about the existing literature. The first is that even when 'dependence' figures, there are many unexamined questions and assumptions regarding its 'nature' and the significance of the way it is conceptualised and operationalised. The second point is that even though there is some literature critically evaluating conceptualisations of dependence in the drug court context, much of it is confined to the US and Canada. Given the many cultural, social and economic differences between Australia and these two countries, research examining Australian approaches to dependence in drug courts is urgently needed. I investigated how dependence is produced and enacted in one drug court (located in Victoria, Australia) by exploring how drug court personnel define, diagnose and treat dependence, and how they conceptualise the 'causes' and 'effects' of dependence. Further, I investigated how drug court participants engage with enactments of dependence in their drug court experiences and the various implications and 'effects' of such approaches.

Chapter 3: Theory, methodology and methods

In this chapter, I outline the theoretical framework, methodology and methods used in this thesis. I provide an introduction to my framework, then explore theories that shaped my approach and how I apply this framework in this thesis. I then provide an overview of the three main methods used in this research: court observation, qualitative interviewing, and analysis of documents related to the Drug Court of Victoria (including policy and procedure documents, information given to participants and evaluations).

Approach: What is the problem represented to be?

The analysis presented in this thesis was framed using Carol Bacchi's (2009) work on analysing policy. Her 'What's the problem represented to be?' (or WPR) approach was designed to facilitate critical interrogation of public policy. She argues that policy does not 'simply "address" social problems, rather policies identify or constitute problems and give them shape' (Bacchi, 2009, p. x). In this sense, policy approaches do not simply respond to pre-existing, stable 'problems', but actually enact them. According to Bacchi, the way a problem is constituted has important effects for 'what can be seen as problematic, for what is silenced, and for how people think about these issues and their place in the world' (Bacchi & Eveline, 2010, p. 112). Here, the term 'effects' does not to refer to 'evaluation' or measurement of 'outcomes' (Bacchi, 2009, p.15), but to the repercussions of problem representations and their implications for how we can think about problems. Problem representations also have effects on how participants see and understand themselves, and most importantly they have material effects on lives (see Bacchi, 2009, 2012).

In her book *Women, policy and politics: The construction of policy problems* (1999), Bacchi introduced the WPR approach and applied it to specific areas associated with women's inequality. Since then the approach has been elaborated and applied in different parts of the world including India, New Zealand, Australia, the United Kingdom (UK), Germany, Canada, and Scandinavian countries (Fernandez, 2012; Manning, 2014; Fraser & Moore, 2011; Marshall, 2012; Greve, 2009; Alexander & Coveney, 2013; Jorgensen, 2012). Such work explores a wide range of policy areas, including health policy, welfare policy, education policy, development

policy and immigration policy (Bacchi, 2009). The WPR approach has also been used to examine a range of alcohol and other drug policies and treatment issues (see Fraser & David Moore, 2011b; Lancaster, Duke, & Ritter, 2015; Lancaster, Hughes, Chalmers, & Ritter, 2012; Lancaster & Ritter, 2013). This emerging body of work has identified the multiple ways in which policies do not merely address the 'problem' of alcohol and other drug use and 'addiction' or 'dependence' but discursively constitute it in particular ways. Other research within this 'new subfield of drug policy research' (Seear & Fraser, 2014, p. 828) used Bacchi's approach to critically examine the ways the law produces taken-for-granted assumptions about the 'problem' of 'drug use' and 'addiction', thus further stigmatising and marginalising people who use drugs through the subjectivities enacted (see Seear & Fraser, 2014; Lancaster, Seear, & Treloar, 2015; Spivakovsky & Seear, 2017). As Seear and Fraser (2014) point out, 'by considering the law through Bacchi's lens of problematisation, we can begin to see the ways the law produces (and reproduces) "particular categories of transgression" in particular contexts and times' (p. 828). This is an important point, as I aimed to study some of the practices, legislation and policies that frame the functioning of the Drug Court of Victoria, and hence shape the experiences of drug court participants.

The WPR approach consists of the following six interconnected questions (Bacchi, 2009, p. 2).

1. What is the 'problem' represented to be in a specific policy?

2. What presuppositions (background knowledge) or assumptions (about the world) underlie the representation of this 'problem'?

3. How has this representation of the 'problem' come about?

4. What is left unproblematic in the 'problem' representation? Where are the silences?

5. What effects are produced by this representation of the 'problem'?

6. How/where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

As noted, the approach was originally developed as a tool for policy analysis. However, it can be applied to many kinds of material, such as legislation; government reports; governmental technologies (such as forms); theories and concepts; websites and other forms of text, such as media reports and advertisements; and interview transcripts. Here, I use drug court policy and

procedure documents, assessment reports produced by alcohol and other drug clinicians, interviews with court personnel and participants, and observations of drug court procedures to study the practices of the Drug Court of Victoria.

The WPR approach is intended to be used as a resource and can be adapted to the particular needs of the researcher. It can be applied systematically (adopting all of the questions) or in an 'integrative' way (adopting only some of the questions) (Bacchi, 2009, 2012; Bacchi & Goodwin, 2016). Throughout the analysis that follows, I apply it in an integrative way. In the following sections, I briefly explain the goals of the approach, and where it sits in relation to contemporary social theory and other forms of policy analysis.

The WPR approach rests upon a simple idea: 'what we propose to do about something reveals what we think needs to change and hence what we think the "problem" is' (Bacchi & Goodwin, 2016, p.16). This insight permits the subjection of measures to a particular type of critical interrogation. Bacchi's main argument is that one can 'read off' how the problem is represented from examining the proposed solution; that is, how the problem is represented is implicit in the solution. In discussing the usefulness of the approach, Bacchi suggests that this starting point can revolutionise the way we look at policies and a whole range of other interventions (such as drug courts). Moreover, the main goal of the approach is to reflect on how we are governed, how governing takes place and how we are constituted as subjects within governing practices, and with what implications or effects.

Governmentality studies and 'ontological politics'

The WPR approach is influenced by governmentality scholars such as Foucault (1991), Osborne (1997), Rose (1999) and Dean (2006). They understand governmentality in a broad sense, and are concerned with how order is maintained and how society is administered. As Bacchi explains, the term 'governmentality' fuses the words 'govern' and 'mentality', and is used more generally to refer to different ways of thinking about governing. It comprises:

> Rationalities and technologies […] the ensemble formed by institutions, procedures, analysis and reflections, calculations and tactics that allow the exercise of this very specific, albeit very complex, form of power. (Foucault, 2007, p.144)

In this way, governmentality scholars concentrate on factors that include the state but that extend beyond it. Hence, they examine the diversity of authorities that seek to govern our behaviour including professionals, academics, experts and social workers. This point is particularly relevant to the drug court context, in which professionals from different disciplines and governing bodies (such as the criminal justice system and alcohol and other drug treatment sector) interact with one another and with participants, and as a result produce 'dependence' in disparate ways that might lead to deleterious effects for drug court participants.

In this broad approach to governing, policies (programs or courses of action) require rethinking. Conventionally, policy is understood as a tool of governance to address what needs 'fixing up' in society. Bacchi (2009) calls this conventional approach to governing a *reactive* approach because it is based on the assumption that governments react to 'fixed' and 'identifiable', 'out there' societal 'problems', and that they do their best to resolve them. In contrast, Bacchi (2014) argues that 'governments and indeed all of us give a particular 'shape' to problems in the ways in which we speak about them and in the proposals that we advance to so called 'address' them'.

In this understanding, governments are active in the creation or production of problems as particular types of problems. Rather than addressing them, they produce them. As Osborne (1997) states, 'policy cannot get to work without first problematizing its territory' (p. 174). In other words, in order to intervene, governments have to identify, organise and target something as a problem that needs fixing, and in this way, are involved in a practice of problematisation. Specific policy interventions reveal much about how any given problem is constituted.

It is important to clarify that in following Bacchi's approach, I am not suggesting, for example, that the Drug Court of Victoria literally produces alcohol and other drug 'dependence'. Rather, through its practices, the court identifies, organises, targets and produces it as a particular type of problem (it problematises dependence in specific ways). These problematisations become part of how drug court participants are governed. They are governed through drug court interventions such as the admission process, drug-testing regimes and the sanctions and rewards system (discussed later in detail). Further, the way in which 'dependence' is produced within the drug court through specific types of interventions is part of how drug court participants are governed. This is an important dynamic that I sought to explore.

According to Bacchi, a problem representation is the way in which a particular policy 'problem is constituted in the real' (Bacchi, 2014). Here, it is important to stress that the terms 'constitute', 'enact' and 'create' feature widely in the WPR approach and therefore in this thesis. As they are used here, these terms mean that concepts, categories, subjects and 'problems' are made to come into existence (with or without deliberate intent) through practices. For example, in chapter seven, where I explore the operation of the drug-testing regime in the Victorian Drug Court, I show some of the deleterious effects it has on some drug court participants. I do not argue that the drug court sets out to intentionally produce such harms; rather, those effects emerge through the development and implementation of specific drug-testing processes. Nonetheless, I ask why those involved are complacent about the harms.

Bacchi (2012) develops these ideas further in her adoption of the concept of 'ontological politics'. Here, Bacchi draws on the work of Annemarie Mol (1999, 2002), who argues that practices produce realities. Mol's argument is that these realities are not singular or stable, but multiple and unstable (and thus, subject to change). In other words, according to Mol, there are multiple practices and so multiple realities. Mol asks why, if that is the case, we conclude that there is a 'singular reality' and proposes that the real is produced though 'practices of coordination' (2002, p. 53) that enact apparently singular realities. Further, Mol notes that research is itself involved in producing the real; by doing so, she stresses the political character of research. The WPR approach also views research as a political activity. This is one of the reasons why Bacchi insists we subject our own proposals or proposed solutions to the WPR questions. This is what she calls 'self-problematisation' (discussed later in the chapter).

Foucauldian problematisations

As I have already pointed out, the WPR approach is a tool to analyse policy from a Foucauldian perspective. Bacchi (2012) points out that Foucault gives two different meanings to 'problematisation': as a mode of critical analysis, and as the way in which objects are constituted in practice. For example, how drug court participants are treated (assessed as criminal addicts, categorised as deserving/undeserving of entering the program, motivated/unmotivated, drug and alcohol tested, and punished or rewarded) tells us how they are thought about or problematised.

Foucault argues that governmental categories such as 'mad' and 'criminal', commonly thought of as fixed 'entities', are produced through the practices that purport to 'address' them as

problems. Foucault also proposes that if we want to access problematisations, we need to look at practices, and he recommends looking at 'practical texts' (regulations, legislation, government reports) to access them. In the WPR approach policies and policy proposals are treated as practical texts, and attention is directed to their constitutive effects: what they make come into existence and what they produce as the real. In my research, practical texts include drug court policy and procedure documents, evaluations, clinical assessment reports and the clinical assessment interview guide. Bacchi draws on Foucault's thinking on problematisation as producing objects for thought, but she does something different with it. Foucault tends to focus on what he called 'crisis moments' – times when one problematisation changes to another. Instead, Bacchi argues that it is not necessary to look for crisis moments, and that every policy contains an implicit problem representation.

In 2014, Bacchi delivered a lecture at the University of Adelaide explaining the WPR approach. The lecture focused on several further theoretical influences that shape the WPR approach. First, from social constructionism, the WPR approach accepts that things that are often taken for granted as true or real are in fact products of particular times and places; that is, they are socially produced. Second, as pointed out above, the WPR approach draws on Mol's (1999, 2002) concept of 'ontological politics', which takes social construction thinking a step further. Mol insists that we should not see social constructions as permanent or solid, but as always in flux. Further, realities are enacted in ongoing processes of formation and hence the activity of problematisation is always already political. More broadly, the WPR approach is deeply informed by post-structuralism, which among other things insists on the politics involved in assigning meaning to terms and practices. The primary focus in post-structuralism is on the contestable nature of 'reality'.

In summary, the WPR approach challenges conventional approaches to policy analysis that see the goal of policy as solving problems as if they exist outside the process waiting to be 'solved'. It conceives every policy as a problematisation that contains an implicit problem representation and argues that we are governed through problematisations rather than policies; hence, we need to study these problematisations. Importantly, the approach does not deny that issues such as poverty, homelessness or dependence exist; however, when they are targeted through policy, they become specific types of problems. Bacchi (2009) describes conventional approaches to policy analysis as reactive because policy is seen as a reaction to pre-existing problems that are

outside the process. In contrast, Bacchi describes policy in the WPR approach as constitutive of problems.

In the next section, I look more closely at Bacchi's approach, the questions it involves, the purposes behind each question, and how I applied them in my research. To do so I re-pose each of her questions using my key concerns.

1. **What is the 'problem' of dependence represented to be in the Drug Court of Victoria?**

   Bacchi calls this first question a clarification exercise. Asking what the problem of 'dependence' is represented to be in the drug court is central to my use of WPR for two reasons. First, it allows entry into the thinking (problematisation) behind the proposal with no need to step outside the proposal. This means that, as a researcher, I am not imposing my interpretation on what is taking place. Bacchi is not suggesting here that the researcher is objective. Instead, the researcher is not imposing an interpretation, insofar as the problem representation is obtained from the proposal. This way of proceeding provides us with a target for interrogation, a starting place for critical analysis.

   Bacchi argues that policies are complex and might combine a range of proposals. Therefore, there might be more than one problem representation within them. Further, these problem representations may contradict each other. In order to explore how 'dependence' is enacted in the Drug Court of Victoria, I identify four key 'sites' of drug court intervention into the lives of applicants and participants. These are where, following Foucault and Bacchi, governmental subjects are produced. The first two sites are the critical points of admission into the drug court: screening of eligibility by legal actors (chapter 4), and clinical assessment (chapter 5). The other two sites entail two of the main technologies the drug court uses to govern participants: the alcohol and other drug testing regime (chapter 6), and the sanctions and rewards system (chapter 7). In my analysis, I explore the way 'dependence' is represented in all of these sites and show how these enactments often conflict.

   Bacchi also refers to the 'nesting' of problem representations (that is, one problem representation may be embedded within another), noting that other 'problems' often require attention and interrogation. For this reason I choose to explore how other related

'problems' are constituted. For example, in chapter four I explore how the dependence-crime nexus is constituted, and in chapter five I explore how motivation is produced.

2. **What presuppositions (background knowledge) or assumptions (about the world) underlie the representation of 'dependence'?**

This is a key question in the approach. It has three goals. The first goal is to consider what presuppositions (assumptions, knowledges/discourses, and 'unexamined ways of thinking' (Foucault, 1984)) make proposals intelligible. Bacchi (2009) refers to these presuppositions as 'conceptual logics': ontological and epistemological assumptions underpinning the 'problem' representation. As Bacchi (2009) explains, this question is an exercise in Foucauldian archaeology, which involves exploring how it was possible for such proposals to be developed and make sense. That is, what meanings needed to be in place for them to emerge? This question focuses on the forms of knowledge that the proposal relies on; hence the purpose is to uncover the thinking that lies behind specific problem representations. Bacchi describes the analysis in question two as an analysis of discourses, with discourses understood as socially produced 'knowledges'. As Bacchi and Goodwin (2016) point out:

> This use of knowledges in the plural signals the scepticism [about policy or other interventions] – the premises and proposals associated with disciplines, including political science, psychology, epidemiology, social work, anthropology, and so on, are seen as contingent historical creations, human constructions, that need to be interrogated rather than enshrined as 'truth'. (p. 3)

In this thesis, I explore some of the discourses underlying the representation of 'dependence' in the key sites of intervention identified above. For example, I argue that the *Diagnostic and Statistical Manual of Disorders* (DSM: American Psychological Association, 2013), brain disease and 12-step models of dependence, behaviourism and legal 'knowledges' (among others identified throughout the thesis) are discourses underpinning the operations of the drug court. As a consequence, I scrutinise how together they constitute 'dependence' as different types of 'objects' or 'problems', and drug court participants (and applicants) as various types of 'subjects'. The second goal of question two is to consider who is targeted as in need of change. Throughout my thesis I

argue that drug court participants are targeted while other systemic issues (such as lack of housing and social disadvantage) that contribute to their plight are often dismissed. The last goal of question two is to reflect on possible patterns of problematisation that might provide a glimpse of governmental rationalities. One of the governmentality techniques used at the drug court, for example, is that of responsibilisation. Drug court participants who do not complete the drug treatment order are blamed for their 'unsatisfactory performance' while the deleterious effects of drug court interventions are ignored (see the effects of the drug-testing regime in chapter seven).

3. How has this representation of 'dependence' come about?

This question focuses on the historical development of a problematisation. In this thesis, I do not engage with this issue in depth. However, I briefly review its goals and identify the elements I utilise. In her 2014 lecture, Bacchi explained that questions two and three of the WPR approach reflect developments in Foucault's work. Question two, as I indicated above, adopts Foucauldian archaeology, drawing attention to the embedded knowledges that allow certain policies to emerge. As Bacchi (2014) explains, in the mid-1970s Foucault changed his attention from archaeology to what he called 'genealogy' because he wanted to highlight that battles had taken place over the nature of knowledge. He turned to genealogy to show that power is involved in producing knowledge. Question three encourages us to trace the diversity of practices involved in the production of the knowledges that are relevant to our analysis. By focusing on this range of practices and changes over time we are alerted to the possibility that things could have been different. The point of genealogy is to see that power is always involved in the production of knowledge and that things did not need to end up the way they did. If we can look at the many practices that lead to a particular outcome we can see uneven developments, and that things could have gone in a different direction. Hence, the point of a Foucauldian genealogy is to problematise that which is taken for granted and to demonstrate that things could be different.

For Foucault (1980), genealogy offers the opportunity to talk about what he calls 'subjugated knowledges' (p. 83). In my analysis subjugated knowledges include the

qualitative literature critical of drug courts, which, I argue, has been excluded by drug court proponents, who favour quantitative research and evaluations that have found drug courts 'effective' and simply benign. Also included in this thesis are the experiences of those who have an intimate knowledge of the drug court, such as drug court participants and other drug court insiders, whose views are marginalised in the operations of the court.

4. **What is left unproblematic in the 'problem' of dependence as constituted by the drug court? Where are the silences? Can the problem be thought about differently?**

   The point of question four is to see that there are other ways of thinking about the issue raised in a particular problem representation and that it is useful to explore what these might be. Bacchi (2009, 2014) recommends comparisons both across time and cultures. She suggests that a way of discovering other ways of thinking about the issues is to compare problematisations. For example, in chapter seven, I explore different ways in which drug testing is problematised in four different English-speaking jurisdictions that have implemented the drug court model, and I show that testing results are not always used to sanction participants as they are in the Drug Court of Victoria. Additionally, Bacchi (2009, 2014) points out that question four opens up the opportunity to be inventive, to imagine worlds in which specific issues are reconceptualised and reproblematised, or even not understood as problems. I do this in chapter four, where I imagine different ways of constituting the dependence–crime nexus.

5. **What effects are produced by the drug court's representation of 'dependence'?**

   Problem representations are interventions with important effects. In other words, 'they are active interventions in the co-fabrication of worlds' (Anderson & Harrison, 2010, p.14). Bacchi (2009, 2014) clarifies here that these effects do not refer to a specific type of cause–effect relationship or 'outcome'. Rather 'effects' refer to political implications or consequences of problem representations. Question five is an attempt to explore three interconnected and overlapping implications of problem representations: discursive effects, subjectification effects, and lived effects. As Bacchi (2009) explains, discursive effects link back to how 'discourses' or knowledges allow some things to be said while silencing others, and how they set boundaries on what can be recognised as relevant.

Subjectification effects are linked to Foucault's idea of power as productive. They encourage us to think about how power shapes subjectivity, for example, how drug court participants are constituted as governable subjects. However, Bacchi also tells us that the formation of subjects is not deterministic. Instead, the diversity of practices ensures that subjectivities are always in continuous formation. Moreover, attempts to make them governable may fail. I explore this in chapter seven where I show some of the ways in which drug court participants resist as well as accommodate and otherwise engage with the onerous drug-testing regime. Last, the exploration of lived effects is intended to show that the ways in which problems are represented has a material impact on how people live their lives. These effects were one of the main concerns of my research and I explore them in chapter four, five, six and seven. Question five is important because it creates the opportunity to detect implications in particular problem representations that may be harmful to particular groups of people. It allows us to identify what problem representations make possible, or what they do, leading directly to question six.

6. **How could the problematisation of dependence, as constituted in the drug court, be questioned, disrupted and replaced?**

The goal of question six is to highlight the possibility of contesting problem representations, to render the 'truth' fragile. In many ways it summarises much of what my thesis is about. Using the conceptual and analytical resources introduced in this chapter, I question and disrupt the current problematisations of dependence in the Drug Court of Victoria. In each chapter I refer to other qualitative literature critical of drug courts. This research provides additional insights into the limitations of the current problem enactments of dependence in drug courts. What of replacing these problems? This is one of my key tasks. I ask questions of current problematisations and offer alternatives. In order to do so, I draw on alternative discourses or 'forms of knowledge' to reproblematise 'dependence' in ways that reduce harm.

The last step in the WPR approach is an undertaking to apply the six questions to the researcher's own policy proposals and recommendations. Bacchi calls this 'self-problematisation' or reflexivity. As she explains, 'the rationale is that […] given one's location within historically and culturally entrenched forms of knowledge, we need to

> subject our thinking to critical scrutiny' (Bacchi & Goodwin, 2016, p. 24). This implies that there is no 'right' way to problematise the 'problem', and that we mobilise deep-seated presuppositions that shape our suggestions for change. However, the WPR approach presumes that that not all problematisations are equal and that some problem representations benefit some groups at the expense of others. It also takes the side of those who are harmed. The goal is to intervene, to challenge problem representations that have these deleterious effects, and to suggest that issues could be thought about differently, or reproblematised in ways that might avoid at least some of these effects.

In this section I reviewed the WPR approach. The main objective of the WPR approach is to subject a particular policy, or in my case, set of practices (in the form of drug court interventions) to critical scrutiny by identifying how the 'problem' is represented within these interventions. I accomplished this by adopting the six questions of the WPR approach and also by subjecting proposed solutions to the approach. In this chapter, I also explained the theoretical antecedents in the WPR approach, which was influenced by several major critical scholars. For example, the approach relies on several key concepts, including governmentality and subjectification, developed by Foucault (1991, 2007), 'ontological politics', developed by Mol (1999, 2002), and the critical stance to 'problem solving' approach (Deleuze, 1994). Next, I looked at what the approach involves, the questions it consists of, the purposes behind each question, and decided how to apply them in my thesis. I also discussed the political agenda of the WPR approach, which I consider essential because it acknowledges that some 'problem' representations might harm some groups. The aim of the WPR approach is to challenge those problem representations that have deleterious effects, and to suggest alternatives. In the next section, I outline in detail the methods utilised in my research.

Research methods

This section provides an overview of the three main methods used in this research: court observation, qualitative interviewing, and analysis of the textual materials related to the Drug Court of Victoria (including policy and procedure documents, information given to participants, and evaluations). In this section, I explain the rationale for my research design, give details of data collection and analysis, and the ethical dimensions of my research. I conclude by reflecting on my research methods.

Observational data

Conducting field observations was key to my project. I took this approach for several reasons. First, observation is a powerful tool for rendering visible hidden practices. As Lashley (2017) points out, in any given social setting (such as a drug court), there will always be practices or occurrences that are not evident to the research participants and which interviews struggle to reveal. The only way to see them is to observe in the field. Such insights can inform innovations and facilitate judgments about the likely effects of change and how harmful unintended consequences might be minimised. Second, sociological projects critical of drug courts in US and Canadian jurisdictions have used observation as a central method of enquiry (Colyer, 2007; Dawn Moore, 2007a, 2007b; Murphy, 2012; Nolan, 2001; Lyons, 2013; Paik & Harris, 2015; Whiteacre, 2007). As this work was fruitful, I emulated their approaches in my own research. Third, as I explain in more detail below, carrying out observations allowed me to become more acquainted with the processes of the court before interacting with participants. Indeed, I consider attending and watching a prerequisite to conducting well-informed interviews with drug court participants and professionals.

Observation has a long tradition in the social sciences. Both educational researchers and psychologists have used this method of data collection extensively. In qualitative research, the researcher makes observations in an open-ended way (Punch, 2014). My observations involved Drug Court of Victoria proceedings. Observational research can be covert or overt in orientation (Bryman, 2009), and the researcher may participate in the field of study (by living among a group for a period and participating in its rituals and cultural practices) or not. I used a non-participant observation method in that it involved observation of some activities of the drug court, in none of which I participated. I did not, for example, contribute to review hearings or case conferences. The project used a structured observation schedule (Bryman, 2009) to ensure that the observations were thorough, focused and systematic (see the observations schedule in Appendix A). This component of the project involved observations of the process of screening and admitting drug court participants, case conferences, reviews and termination hearings, with a specific focus on how dependence was defined, diagnosed and treated. This component provided an opportunity to see first-hand the nature and operation of the court. In this component of the project, I examined how the drug court operationalised ideas of alcohol and other drug use, dependence and crime and how dependence was constituted in practice.

Although much can be learnt from observing a criminal court's public processes, it cannot itself provide answers to many of the questions it is necessary to explore, because much of what happens in court hearings or trials has already been decided in backstage negotiations outside the courtroom (Baldwin, 2008). For these reasons, it is important to gain access to those backstage activities (Paik & Harris, 2015); however, multiple factors can impede this access. For example, judges, lawyers and other court personnel might be resistant or even hostile to social research (Baldwin, 2008).

I tried to gain entry to the drug court as an outsider. In preparation for my PhD candidacy, in the second half of 2014 I studied the information available about the drug court on its website (https://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/drug-court), the 2004 evaluation of the pilot program (Alberti et al., 2004) (the report was not released to the public until March 2015), the drug court's verbal and written submissions to the Inquiry (2013), and Hansard parliamentary debates that led to the establishment of the first drug court in Victoria. Through studying these sources, I identified key processes that would assist me to answer my research questions. I proposed to study the drug court by focusing mostly, but not exclusively, on public activities. Table 2 shows the drug court activities that I observed. It shows I mostly observed public proceedings but was also able to observe private case conferences. As will be made clear in due course, for reasons of ethics and access, the recruitment of drug court participants was designed based on the assumption that the drug court would not engage in facilitating this process.

Table 2 Drug Court of Victoria – activities observed

Activity	**Description**	**Access**
Screening hearing	The magistrate hears and determines eligibility issues that might be contested by the prosecution, such as whether the offences warrant an immediate term of imprisonment not exceeding two years, whether the defendant has links to the prescribed catchment area of the drug court[13] and whether the offences are drug related.	Public
Sentencing hearing	The magistrate considers the assessment reports, the court hears a plea and imposes a sentence of imprisonment according to the usual sentencing rules.	Public

[13] The usual place of residence of the applicant (if they have one) is within a postcode area within the specified catchment area of the drug court. If they are experiencing homelessness, they must have a connection with the catchment area. For example, they once lived there, have family there, or are involved with a social service agency in the catchment area.

Case conference	The drug court team[14] meets prior to the review hearing to discuss the progress of the participant; any sanctions or rewards are determined here. The drug court participant is not permitted to attend this conference.	Private
Review hearings	These hearings can be held weekly, fortnightly or monthly. The drug court participant appears in court so the magistrate can review progress and reward positive or sanction negative conduct. These reviews monitor overall progress. The drug court team is also present.	Public

By observing these different processes, my research struck a balance between studying public processes (public hearings) and private ones. I was able to observe privately held case conferences and interviewed a variety of drug court professionals. Additionally, while conducting the observations, I identified, collected and analysed non-publicly accessible documents, such as policy and procedure documents and de-identified assessment reports that provide insights into non-public processes and practices. It is important to mention that my research did not involve direct observation of the assessments conducted by community corrections case managers and alcohol and other drugs clinical advisors to the drug court.

For the observational component of the project, I contacted the presiding magistrate of the drug court via email in May 2015, outlining the nature of the project and requesting a meeting with him to provide more details about my research. I received a prompt reply from the magistrate, who agreed to meet me. I developed an agenda and met him to explain my research in more depth in June 2015. The response was positive: the magistrate agreed to facilitate the project pending final approval from the chief magistrate. I wrote another letter to the Magistrates' Court of Victoria's chief magistrate, who was also briefed about my research by the presiding magistrate of the drug court. I received court approval to conduct the research in June 2015, and commenced in July 2015. This approval was separate to the approval granted by my university's ethics committee (see below).

In order to understand the way the court functioned, the technical and legal processes, the language involved and how the court team interacted with participants, I conducted intensive observation for three weeks, attending four days a week, between July and August 2015.

[14] The drug court team in the Drug Court of Victoria consists of the magistrate, defence lawyer, police representative, community corrections services case managers, alcohol and other drugs clinicians, and housing workers. (Teams vary across jurisdictions; for example, the drug court team in NSW includes nurses instead of housing workers). I used the word 'team' because this is how the drug court literature describes this group of professionals involved in the drug court. I did not attribute this quality to them. When I designed my interview schedules and I recruited research participants, I was explicitly targeting members of the team.

As shown in Table 3, from Monday to Wednesday, the drug court holds case conferences in the morning and review hearings in the afternoon. Thursdays are scheduled for screening, sentencing, and cancellation hearings. I often heard drug court professionals refer to it as the 'adversarial day'. As I discuss in later chapters, legal actors (the prosecution, legal representatives and the magistrate) often argued about eligibility or whether to cancel a participant's drug treatment order. This appeared to contradict the supposedly non-adversarial nature of the drug court.

Table 3 Drug Court of Victoria schedule

	Morning	**Afternoon**
Monday to Wednesday	Case conferences	Review hearings
Thursday **'adversarial day'**	- Screening hearings - Assessment hearings - Cancellation hearings - Adjourned review hearings	
Friday	- No court sittings	

On the first day of the intensive observation period, and before the first case conference started, I was introduced to the drug court team as a PhD student. I briefly explained my research to the meeting attendees (they changed daily, requiring new introductions). After the initial observation period, I observed proceedings twice a week over three months. I chose to attend on Tuesdays and Thursdays for two reasons. First, during the initial observation period, I realised that Tuesday was the only day when all members of the drug court team were present at the case conference.[15] Additionally, the group of drug court participants reviewed on Tuesdays was larger than that on Mondays and Wednesdays. Because I did not observe the dynamics of the case conferences on Mondays and Wednesdays, when the legal aid representative and the police representative were absent, I do not know for sure whether the administration of sanctions and rewards differed that day. However, they were always present in the review hearings following the case conference and if a participant did not agree with the tally of sanctions, this would be

[15] This is because drug court funding only permitted the presence of the Victoria police representative at one out of the three case conferences held each week. Additionally, as a major role of the legal aid representative is to appear for participants who have offended while on the drug treatment order, such demands prevented this representative from attending more than one case conference each week.

raised in the hearing. Second, as explained above, Thursday was the only day when 'adversarial proceedings' were held. Observing these hearings was important because they offered insights into some of the adversarial dimensions of this purportedly 'non-adversarial' approach to justice. Two serious points of contention between legal actors in these proceedings were whether applicants were 'truly' dependent on alcohol or other drugs, and whether their dependence contributed to their offence. These were two key areas I sought to explore (see chapter four).

I recorded the data generated through participant observation in the form of field notes. As Tenzek (2017) points out, writing field notes is the process by which scenes, actions, dialogues and experiences are turned into written text that can later be coded and analysed. In some instances, it was possible to record almost verbatim examples of interaction as they happened in the courtroom and case conferences, as at times the court processes were very slow. In others, it was necessary to finalise the record after an event had occurred; this happened at the earliest opportunity in order to ensure all relevant details were captured. My collection of observational data ceased when I reached thematic saturation (Fusch & Ness, 2015) – that is, when no new cases were identified that modified the emerging analysis. I took notes during the review hearings and case conference and wrote more detailed field notes afterward. My notes were extensive and I took them openly.[16] They recorded interactions between drug court staff and participants during court hearings, and how members of the drug court team administered sanctions and rewards in the case conferences. These notes constitute the project's first dataset. Notes made in the field were typed up after each observational episode.

Interview data

The second dataset for this research came from semi-structured interviews. I conducted these interviews face to face with drug court stakeholders. There were two main categories of research participants: drug court participants (i.e. those on a drug court order) and drug court professionals. I interviewed 14 drug court participants and seven drug court professionals (a total of 21 participants). As mine was a qualitative study, the aim of recruitment was not to achieve a statistically representative sample. However, given the small-scale environment of the court in

[16] Because the court had a 'first come, first served' policy for the review hearings, drug court participants did not remain in the courtroom long and did not seem to notice or mind my note taking. During the case conferences my note taking also appeared to go unnoticed given that all the other members of the drug court team were themselves taking notes, documenting the sanctions and rewards of the drug court participants and other progress of participants for their own records.

terms of the number of both participants and professionals involved in the program over my period of observation, I interviewed a significant proportion of them (25% of drug court participants and 50% of drug court professionals).[17] This number of interviews is similar to those reported in previous critical qualitative research conducted in drug courts (Lyons, 2013; Murphy, 2011; Tiger, 2011). Conclusions drawn from the data were treated inductively – as a way of identifying and discussing issues, rather than as the basis for broad generalisations. Below, I describe the two main categories of research participants and their recruitment.

1. *Drug Court of Victoria participants who had been on a drug treatment order for at least three months.* This eligibility criterion ensured that the people I interviewed were familiar with the drug treatment order. These participants were interviewed to gather insights from the perspectives of those who possess the most intimate knowledge of the program. These participants were not approached directly. Instead, three welfare organisations that offered counselling and housing services to them as part of their drug treatment order were approached and asked to distribute letters of invitation and information about the research. The information made it clear that participation was entirely voluntary. A snowball recruitment technique was also used. As Bouma (2000) explains, this technique 'is used when you need to gain access to certain types of people or to a particular group, but you know only a few people who fit the category and there is no publicly available listing' (p. 122). Snowballing was necessary for my research because only two participants were recruited from the organisations mentioned above. These individuals were asked to disseminate research information through their social networks, as were other participants subsequently interviewed. Those interested in participating contacted me to find out more or to organise an interview.

   As noted earlier, I interviewed 14 drug court participants (for their gender, age and cultural identity details, see Appendix B). Note that I did not impose age or gender requirements. As can been seen in Appendix B, I interviewed only men. According to an evaluation conducted by KPMG (2014), 90% of Drug Court of Victoria participants are

[17] About 60 individuals are enrolled in drug court in Dandenong at any one time. However, not all of them would be active on the drug treatment order as some would be in custody, and others would have absconded. Approximately 14 professionals are engaged with the court.

male and 10% are female. I identified only four women with an active drug treatment order. I asked drug court participants whom I interviewed to inform women participating in the drug court about my research. Only one woman made contact with me, but she was unable to attend any of the meetings we organised. She was eventually remanded into custody and I became unable to contact her.

In accordance with the Australian Code for the Responsible Conduct of Research (National Health and Medical Research Council, 2007) all participants in this category were reimbursed AU$50 for their time and out-of-pocket expenses. This is common practice in the Australian alcohol and other drugs research context (Fry & Dwyer, 2001). Further, I assigned pseudonyms to drug court participants in order to protect their anonymity.

2. *Professionals involved in the drug court team*. I was interested in the operation of the drug court and the operationalisation of key concepts of dependence. All members of the drug court team could speak to these issues. Relevant individuals for this purpose included magistrates, the drug court program manager, case managers from community corrections services, clinical advisors, defence lawyers, representatives from Victoria police and housing officers linked to the drug court program. I did not intend to source one person from each of these roles, but was instead interested in speaking to anyone who worked within the drug court team. I wrote an invitation letter to the members of the drug court team. While conducting my observations, I handed out this letter in person and verbally explained the research objectives to invitees. Seven members of the drug court team expressed interest and were interviewed. Because this was the only drug court in the state of Victoria when this research was conducted, staff are readily identifiable so these participants' demographic details cannot be reported here. Further, in order to preserve the anonymity of participating staff, I have assigned only initials to drug court professionals. Participants in category two were not reimbursed, as the interviews were conducted within normal business hours with people working in their professional capacities.

Interview method

Social research uses a range of interview types. Structured interviews involve a highly structured interview schedule, whereas unstructured interviews often involve no set questions (Sarantakos,

1998, p. 247). Semi-structured interviews lie somewhere in between these extremes, using elements of both the structured and unstructured interview, but are more closely aligned to the latter (p. 247). In this project I decided to conduct semi-structured interviews because I was interested in hearing detailed narratives from the drug court participants about their drug court journeys, but I also wanted to ensure that certain areas (for example, experiences of alcohol and other drug testing and of the sanctions and rewards system) were covered. As Minichiello, Aroni, Timewell, and Alexander (2000) point out, semi-structured interviews allow 'richer responses [to be] elicited from informants by the use of open-ended how, when or what questions' (p. 80). I conducted all of the interviews, which lasted from one to two hours. I audio-recorded and transcribed them verbatim. Interview transcripts were analysed in relation to the research questions and were subjected to discourse analysis, which traces the production of meaning via speech patterns, and common groups of expression and concepts, and sees these as culturally and socially situated. I will provide more details about the data analysis below. The terms, concepts and expressions identified together with the research questions formed the basis for the codes applied in NVivo10 (QSR, Melbourne). These codes were my second dataset.

Question design

Before starting observations at the drug court, I prepared two sets of questions. The first set was developed for drug court participants. Key themes were drug court experiences, alcohol and other drug use, ideas of 'dependence', and whether they saw 'dependence' differently as a result of participating in intensive court-ordered treatment. Even though I asked participants how they became involved in the drug court, I did not ask them about the offences they had committed. When an assessment form had required me to ask this question when working as a social worker, I often found interviewees became defensive. Interestingly enough, many individuals I interviewed ended up talking about their offending history. This was relevant as it helped me to document their perspectives on the drug–crime nexus. It is important to clarify, however, that I did not explore and analyse every aspect of the drug court participants' journeys through the lifetime of their drug treatment orders because most of the participants I interviewed were still completing the order; some of them were still in the early stages of the program. In this way, I did not chart the journey of participants from start to finish. Instead, I focused on a selected number of drug court practices and examined how drug court participants experience them. As noted in the introductory chapter, these practices are key points at which access to the court and

thus to alcohol and other drug treatment is realised; definitions of 'dependence' and its key underlying concepts are articulated and shaped; relationships between objects and subjects – such as drugs and crime – both materialise and are stabilised; and ideas, including about dependent subjects, are constituted. In this way, drug court practices offer especially powerful windows into how the court perceives (and shapes) the 'problem' of alcohol and other drug dependence, as well as some of the court's internal tensions and effects. The interview questions were designed with this in mind.

The second set of questions was developed for members of the drug court team. I was aware that questions would vary depending on the role of these interviewees, but key themes were how they understood dependence; how they understood the relationship between alcohol and other drug use, dependence and crime; what they understood to be the root causes of the 'addictive' conduct of participants; how they rationalised and conceptualised the work they did in managing dependence; how they understood recovery; and how they understood the role and effects of drug courts.

As I noted earlier, I conducted the interviews after I had undertaken an initial period (one month) of observation. This allowed me to become more familiar with the different stages of the drug treatment order, the language used in the courtroom and at case conferences, the different drug court processes, and the particular roles of drug court team members. This familiarity allowed me to refine my questions (see Appendix C for interview schedules).

Documents related to the drug court

The third dataset comprises texts related to the drug court. These documents can be broadly separated into two categories. The first category contains documents about the court that are publicly available. This includes information available through the Magistrates' Court of Victoria website, two evaluations (Alberti et al., 2004; KPMG, 2014), a submission by the drug court to the *Inquiry into the supply and use of methamphetamines, particularly 'ice', in Victoria* (Parsons & Lauritsen, 2013) and transcripts of a hearing at which Drug Court of Victoria representatives provided evidence to the Inquiry (Parliament of Victoria, 2014).

The second category contains drug court policy and procedure documents not in the public domain that I requested from the court (see Appendix D). I identified these documents from the report on the most recent evaluation of the drug court (KPMG, 2014). A second subgroup of

these documents was 12 assessment reports prepared by drug court clinical advisors, which I received in a de-identified form. These reports map the substance use history of the drug treatment order candidates and highlight any health issues which it is thought might 'compromise' the candidate's capacity to undertake the order. They also present an evaluation of the candidate's awareness of the nature and extent of their drug 'dependence' and their readiness to work towards recovering from it. Further, the reports articulate a tailored treatment plan and the clinical advisor also makes a recommendation as to the candidate's suitability for a drug treatment order.

Data analysis

In conducting my analysis of all these datasets, I utilised the 'interactive model' developed by Miles, Huberman, and Saldana (2013). This involves three components: data collection, data display and drawing and verifying conclusions. Documentary evidence and the transcripts of my field notes and interviews were imported into NVivo. I coded the interview and observation field-notes using simple categories such as: definitions of dependence; causes and effects of dependence; diagnosis of dependence; and treatment of dependence. Guided by these categories and the questions of Bacchi's WPR approach, I compiled a series of data summaries or lists, in which I documented what participants said about each subject. From these initial data summaries, I developed a series of subcategories and prepared further data summaries. It is important to note two points in relation to the way in which I analysed these data. First, the three data sets (observation field notes, semi structured interviews and documents) were combined in various ways to articulate a picture of key topics/themes (in the form of thematically organised chapters). Given that not all data related to each aspect of the system, not all data are analysed in each chapter. Second, the arguments I make throughout the chapters are based on thematic analysis from the datasets, and I use a few cases studies to illustrate the broader themes identified in the research.

Ethical considerations

The project was given approval from the Curtin University Human Ethics Research Committee (approval number: HR84/2015). However, unexpected ethical questions arose during the course of my research. A few weeks after starting my fieldwork I realised that the assessment reports prepared by drug court clinical advisors (the second subgroup of textual documents described

above) touched on issues and areas highly relevant to the objectives of my research, insofar as they spoke to how the drug court and its staff conceptualised drug use and dependence, as well as its origins and 'nature'. These documents had not been detailed in my original ethics approval, and I did not have permission to access them. As a result, I submitted an amended ethics application requesting approval to access de-identified reports and to analyse those in my thesis. The amendment was also approved (approval number: HR84/2015/AR1). In the following section, I explore the ethical considerations relevant to each data collection method I utilised.

Observations

As explained above, for the observational component of the research, I attended the drug court activities outlined in Table 2. During public hearings, participants did not know that they were being observed for the purposes of the project and I did not interview or question them (except when they expressed interest in participating in the research after having been referred by a fellow drug court participant). Notes were taken on issues of key interest that arose during the proceedings.

The case conference was the only privately held activity I attended. Here, as explained above, staff met to discuss cases but the drug court participants were not present and did not know that I had attended a meeting where their progress in the drug treatment order was being discussed. I did not seek drug court participants' permission to attend case conferences because the information discussed here was similar to that in the (publicly accessible) review hearings. Additionally, doing so would have been impractical for at least three reasons. First, given that the participants being discussed varied from week to week, it would have been too difficult to locate and notify them beforehand. Second, I would have disrupted the field site or case conference by leaving and entering the room constantly to only listen to the discussions of those participants who provided consent, as participants were discussed in random order.[18] Third, I was not given advance warning of which participants were going to be discussed, and thus it would not have been possible or practical to seek consent in advance.

The main ethical risks of this component were in the identification of persons associated with drug court proceedings and distress to participants if they were to discover their legal issues had

[18] The meeting room, where the case conferences took place, could only be opened from the inside. I had to knock and wait for someone to open the door in order to enter.

been observed or heard. To reduce this risk my note-taking did not include identifying information (such as names of drug court personnel or participants). Instead, I assigned each of them a code. It was therefore not possible for individuals to be identified on the basis of those notes. Publications and presentations arising from the data do not allow identification of individual participants.

Interviews

As noted, I conducted 21 interviews for this project. Research participants provided informed consent beforehand. In adherence with the National Statement on Ethical Conduct and Human Research (National Health and Medical Research Council, 2007), interviewees were provided with a plain-language information sheet and consent form outlining the purposes of the research, implications of participation, data collection, storage, analysis and publication procedures, and approaches to protecting their confidentiality. I explained the consent form to interviewees and recorded their verbal consent. I reiterated that I was not conducting my research in conjunction with the drug court and that I was an independent party. Further, participants were informed that they were entitled to withdraw from the research at any stage and that withdrawal would not jeopardise them in any way. (No participants withdrew)

Interviews were conducted in locations convenient to participants. One of the organisations I contacted to assist with recruitment offered their counselling rooms to conduct interviews with drug court participants. When participants preferred to meet in non-clinical settings (such as parks and cafes), every attempt was made to ensure privacy and confidentiality when conducting interviews. As indicated above, drug court participants were allocated a pseudonym, and staff were assigned initials. Pseudonyms were stored separately from the data and kept in a locked cabinet and password-protected computer accessible only to me.

In case participants became distressed during the interviews, I established a set of procedures including the provision of contact details of counselling and support services such as Lifeline, Mensline and Beyondblue. Despite disclosing sensitive or potentially embarrassing information about their history of drug use, experiences on drug treatment orders and personal background, none of my interviewees became noticeably distressed as a result of the interview.

Court-related documents

The main risk for this component of the research is in the identification of individuals associated with the drug court clinical assessments. As noted earlier, the Drug Court of Victoria provided the records in a de-identified form. I also obtained clearance from the ethics committee to utilise these documents. Subsequent findings were written up in such a way so as to prevent identification of individual participants.

Reflexivity in the method

As Dowling (2012) points out, reflexivity is the acknowledgment that the researcher exerts influence on the research through the relationships she builds with participants and the field site. Adler and Adler (1987) argue that three membership roles exist in ethnographic research (peripheral, active and complete), and these define different research instrumentalities; each yields different, but equally important findings. My research is informed by poststructuralist theory; as Angrosino and Rosenberg (2013) note, postmodernist approaches to research emphasise the importance of understanding the 'situations' of researchers; that is, attributes such as gender, age, social class ethnicity and personality influence the relationship with the research environment and therefore help to constitute the research findings. Following Adler and Adler's (1987) field site membership classification (above), I would describe my relationship to the drug court as peripheral given that I observed some of its activities, but I was not a full participant. That is, I was not a member of staff or a drug court participant. Even though I developed relationships with drug court staff, I deliberately maintained distance from them in the courtroom, as I did not wish drug court participants to perceive me as a 'worker' or part of the 'team'.

Two aspects of my biography that in my opinion were relevant to my research process were my ethnic or cultural background, and my gender. As a migrant from a non-English speaking background, people often think that I am a tourist or newly arrived resident, and therefore unaware of how Australian society works. At times I feel that the simple act of uttering a word (with a 'heavy accent') can set me apart from others; it attracts unwanted attention. Over the years, some people have highlighted my 'otherness' (see Zeballos, 2011) in situations where I do not necessarily want to be perceived as different. Armenta et al.'s (2013, p. 131) words capture this feeling well:

> "Where are you from?" This is a common question that most people have asked and have been asked upon meeting someone for the first time. On face value, the question seems rather innocuous. However, it may pose a threat to one's personal identity if it calls into question membership in a group to which one [thinks one] belongs.

These words remind us of the ambivalent incorporation of the migrant or member of ethnic minority within the host society. In my view, my 'otherness' – whether as perceived by those I interact with, or only perceived by me because of my past experiences – shaped the interactions I had with research participants. This 'otherness' may have been a good way to break the ice with drug court participants. For instance, when they asked about my nationality, and I said I was Colombian, they appeared amused and wanted to know whether I was related to Pablo Escobar.[19] Some participants jokingly asked whether I was involved in the cocaine business (this is not something I have experienced only from drug court participants – it is a common comment that follows disclosure of my nationality). I believe that being Colombian was advantageous to my research as some research participants thought I might know something about drugs, and I sensed this gave me some added credibility.

Several research events or aspects led me to hypothesise that research participants did not perceive me as an authority figure. First, the perceived cultural or social distance explained above meant that I was not perceived as a threat. This seemed to encourage drug court professionals to speak relatively freely in their interviews. It appeared to me that they did not feel that I was judging their professionalism or rationale for doing things the way they did; they felt comfortable identifying as the experts. The second aspect that led me to think that I was not perceived as an authority figure was that even though before beginning the interviews I explained to drug court participants that they would be reimbursed for their time and out-of-pocket expenses, when providing the reimbursement some expressed concern that the money was coming from my own funds. They said they would not take if it were ('as long as it is not coming from your own pocket'). The third aspect that might have discouraged perceptions of me as an authority figure was my mode of dress. I wore plain casual clothing, which contrasted with the formal dress code of drug court staff (legal actors, case managers), who wore corporate attire. For example, women wore high heels, tailored skirts and blouses, and the men wore suits and

[19] Notorious Colombian 'drug lord' in the 1980s and early 1990s made popular by US media (most recently his life was depicted in the popular television series *Narcos*).

ties. This again contrasted with the attire of drug court participants, who dressed more casually, wearing runners,[20] tracksuit pants and jeans. It was relatively easy to guess who was a defendant or drug court participant and who was a court official based on what they were wearing.

Being a woman also impacted on the research. As I mentioned above, 90% of drug court participants are men (KPMG, 2014). When I first started my observations, I found it hard to negotiate a place in the predominately masculine domains of the waiting area and the courtroom. In the early days of my observations, I would sit very passively and hardly interact with anyone. I do not think this necessarily delayed my research, as my observations did not hinge on the contact I made with participants, and I could still observe the activities because I had received permission to access the courtroom and case conferences. I think that this gave me an opportunity to become more acquainted with the processes of the court before interacting with participants. Indeed, the observations were almost a prerequisite to conducting the interviews. Additionally, the fact that, the courtroom was a public place and I was anonymous meant that I could comfortably be a 'fly on the wall'. As I started to conduct interviews, I would encounter some research participants I had previously interviewed informally, they would introduce me to other fellow participants, and I would have more relaxed conversations with them. This made me reflect on the position of women in the drug court, and wondered whether some of them might find this masculine environment intimidating. I was unable to explore these issues, but it is an area that needs attention in Australian drug courts. Research has been conducted in other jurisdictions highlighting the difficulties women encounter in the program (Lyons, 2011, 2013, 2014; Allard, Lyons, & Elliott, 2011). Overall, I think that my personal attributes and biographical specificities aided my research.

Conclusion

This chapter is divided in two parts. In the first part, I reviewed the WPR approach and its theoretical antecedents. Next, I looked at what the approach involves, the questions it consists of, the purposes behind each question, and how I intended to apply them in my thesis. I also discussed the political agenda of the WPR approach. In the second part of this chapter, I outlined the main methods used in this research: court observation, qualitative interviewing, and analysis of texts related to the drug court. I began by explaining each research method in depth. I

[20] Trainers, sport shoes.

explored how I first gained access to the drug court, how I conducted my observations and my research interviews, and the rationale for choosing the documents. Here, I stressed that my research struck a balance between public and 'backstage' court activities. After this, I reviewed the ethical considerations of each method. The last section of this chapter focused on reflexivity. Here, I explored how aspects of my biography shaped the way I related to the field site and research participants and therefore the findings of this research. I now turn to the analysis of my data.

Chapter 4: 'On the balance of probabilities': Judicial enactments of dependence and the dependence–crime nexus

This chapter is the first of four in which I explore how alcohol and other drug dependence is enacted in the Drug Court of Victoria (drug court), and the repercussions for drug court participants and public understandings of 'addiction'. In conducting this exploration, I follow participants along their drug court trajectory from the early stages of admission into the drug court program through the different treatment phases of the drug treatment order,[21] which is imposed and administered by the drug court, to the cancellation or completion of their drug treatment order. Over the course of my research, I identified four stages in the process of admission into the drug court: application, screening for eligibility, clinical assessment and final admission. I review these stages in this chapter and the next. This chapter is primarily concerned with how dependence is constituted, as well as how the nexus between dependence and criminality is produced by legal actors when screening for admission into the drug court.

In undertaking this analysis, I draw on interviews conducted with drug court personnel, as well as observational data collected during drug court screening hearings. First, I review the literature on the general eligibility criteria for drug courts around the world, with a special focus on how dependence is identified and how the dependence–crime nexus is established at the screening stage of the admission process (hereinafter the 'screening stage'). Following this, I describe the drug treatment order application and screening stages. Then I analyse screening hearings alongside interviews with drug court professionals to demonstrate how legal actors such as police prosecutors, legal advisors and the presiding magistrate produce dependence and the nexus between dependence and criminality. Further, I argue that the key tool used to make these connections is the *summary of priors*, a document containing the drug court applicant's history of prior convictions, incarceration, community-based orders and summary of current charges. I argue that legal actors infer that an applicant has a 'dependence' and that the dependence is linked to their criminality by distilling indicators or 'clues' from this document. These comprise sporadic incidence of so-called drug-related offences, previous court-ordered alcohol and other

[21] The drug treatment order allows individuals who are facing an immediate term of imprisonment to serve the custodial period in the community on condition that they comply with a judicially monitored, highly structured and onerous alcohol and other drug treatment program (Parsons & Lauritsen, 2013).

drug treatment, instances of possession of empty 'deal bags' and objects produced as proof of drug self-administration such as syringes and 'ice pipes'. Additionally, I argue that subjective observations by police informants about drug court applicants' presentation at the time of the offences, applicants' own admissions of drug use and comments provided by alleged victims and witnesses about applicants' drug use are used to substantiate legal actors' claims about dependence and its link to offending. Indeed, they become key constitutive factors in the making of dependence and the dependence–crime nexus.

My discussion focuses on three aspects. First, I show that legal actors make crucial decisions shaping drug court applicants' futures by relying on their own 'common-sense' assumptions about dependence. This results in ambiguous 'evidence' of drug use being constituted as dependence. Second, I show that the screening process observed in the drug court highlights an unintended consequence of merging traditional criminal justice and public health approaches: non-experts making 'expert' decisions about dependence. Third, I explore the subjectification effects of the legal process of screening. Applicants are produced as 'deserving criminal-dependent', 'undeserving criminal-dependent', and 'plain criminal'. This further stigmatises those who are not deemed eligible. I begin by exploring the eligibility criteria for entering drug courts around the world and draw out differences and commonalities with those in the Drug Court of Victoria.

Literature review: eligibility criteria for entering drug courts

Eligibility criteria for drug courts vary from jurisdiction to jurisdiction. Generally, eligibility is determined based on the nature of the offences with which the applicant has been charged, the applicant's criminal history, the presence of dependence, links between this dependence and criminality, and motivation for treatment. In the US, processes of pre-adjudication (deferred prosecution or diversion, where defendants enter a treatment program before a charge is entered) in drug courts tend to target first-time, low-level offenders. Post-adjudication (after a person has appeared before a judge rather than before a person is charged (Csete & Tomasini-Joshi, 2015)), drug courts target more serious 'drug-related' offences. Importantly, what constitutes a 'drug-related offence' is rarely defined. The majority of US drug courts exclude offenders with a current or prior violent offence (Zweig et al., 2011) or a charge of drug distribution (Mitchell et al., 2012). Belenko, Fabrikant, and Wolff (2011) conducted a study in six drug courts in the US,

and found that exclusion factors included history of probation violations, owing more than a certain amount in restitution, lack of motivation for treatment, no reliable source of transportation, prior participation in the same drug court, severe mental illness, drug trafficking charges, receiving more than 100 milligrams of methadone, being homeless, and being associated with a criminal 'gang'. As I noted in the introduction to this chapter, while the causal relationship between drug use and crime is highly contested, the drug court model takes it for granted.

In Canada, eligibility criteria are similar in federally funded drug courts (Lyons, 2011). People charged with drug-related offences such as drug possession, non-commercial trafficking or property offences that are committed to support drug use such as shoplifting are considered eligible, as long as the applicant's criminality appears to be 'fuelled by addiction' (Lyons, 2011; Weekes, Mugford, Bourgon, & Price, 2007). However, charges that render applicants ineligible include offences such as assault or those involving a weapon (Lyons, 2011; Dawn Moore, 2007a), and major trafficking (Dowden, 2007). Further, some Canadian drug courts limit eligibility based on the type of substance on which the applicant is found to be dependent. For example, the Toronto and Vancouver drug courts only accept applicants who are dependent on cocaine, crack cocaine, amphetamines or opioids (Dawn Moore, 2007a).

Belgium, Norway, Ireland and Scotland have implemented the US drug court model (by adopting the 10 key components of drug courts and the program phases). For example, the Ghent drug court in Belgium accepts applicants who are 'suffering from dependence' and who are engaged in 'substance related crime' (Wittouck, Dekkers, De Ruyver, Vanderplasschen, & Vander Laenen, 2013). Applicants facing charges of a violent nature or who had been diagnosed with a mental health condition could still participate, while applicants charged with sexual offences and organised crime offences related to drugs were excluded (Freestone et al., 2014). In the Dublin drug court in Ireland, applicants must plead guilty to a non-violent criminal offence, be sentenced to a term of imprisonment if convicted, and be dependent on prohibited drugs or prescribed drugs (Department of Justice Equality and Law Reform, 2010).

Drug courts in the Latin American and Caribbean region tend to follow the US pre-plea drug court model in targeting first-time and low-level offenders. Both Chilean and Mexican drug courts include offences 'linked' to alcohol or other drug dependence (Droppelmann, 2010;

Inter- American Drug Abuse Control Commission & Justice Program Office, 2014). The Guadalupe drug court in Mexico does not consider applicants affiliated with organised crime or who have committed property offences, but includes charges of domestic violence, as long as the perpetrator has not inflicted bodily harm and the victim agrees that the offender should enter the program (Inter- American Drug Abuse Control Commission & Justice Program Office, 2014).

In the Asia-Pacific region, two countries have adopted the drug court model. New Zealand (Auckland and Waitakere District Courts) accepts applicants who face charges for which the sentencing starting point is imprisonment (for a period of up to three years), and are charged with offending that is 'driven' by alcohol or other drug dependency, and those who have a moderate to severe dependency. Exclusion criteria include having a serious medical or mental health condition that would prevent participation in the program; those facing charges involving sexual offending, arson and 'serious' violence are also excluded (Litmus, 2014). Australian drug courts also tend to exclude those facing charges of a violent or sexual nature (Freiberg, 2002a), although the Perth drug court deals with medium to severe levels of 'violent' offending and the Drug Court of Victoria considers applicants with a history of violence. All Australian drug courts consider illegal substances; the Drug Court of Victoria is the only one that also deals with alcohol. The Victorian, South Australian and Tasmanian drug courts explain clearly in their publicly available information that a demonstrable link between dependence and offending is part of the eligibility criteria (Courts Administration Authority of South Australia, 2017; Magistrates' Court of Tasmania, 2017; Magistrates' Court of Victoria, 2017), while the Western Australian and New South Wales drug courts do not (Department of the Attorney General, 2017; Drug Court of New South Wales, 2017).

As I have shown in this section, the criteria to enter drug courts vary between jurisdictions around the world. 'Drug-related' criminality is constituted in multiple ways. For example, some drug courts consider domestic violence and violent crimes as consequences of dependence (Ghent and Guadalupe drug courts), while others do not. The US drug court approach does not tolerate drug dealing, but drug dealing or 'trafficking' might be accepted as a consequence of dependence in other jurisdictions (Australia and Canada). Further, some drug courts deal only with a limited range of illegal substances (Canada, Belgium), while others include any type of illegal and prescribed substance, as well as alcohol (Victoria, Mexico, Chile and New Zealand). Many drug courts require a demonstrable link between dependence and the offences, including

those in Chile, Mexico and New Zealand, and some in the US; the Victorian, South Australian and Tasmanian drug courts also require it. However, other drug courts (such as the New South Wales and Dublin, Ireland courts) do not list this link as a requirement.

The Drug Court of Victoria has a set of established legislative criteria for eligibility, similar to some of the drug courts discussed above. To be eligible for a drug treatment order, the applicant must meet the following criteria outlined in s.18Z of the *Sentencing Act 1991* (Vic):

1. the applicant must not be subject to a parole order, combined custody and treatment order or a sentencing order of the County or Supreme Court of Victoria;
2. the applicant must plead guilty to an offence within the jurisdiction of the Magistrates' Court of Victoria and punishable upon conviction by up to two years' imprisonment;
3. the offence must not be a sexual offence or an offence involving the infliction of actual bodily harm;
4. the applicant's usual place or residence must be within a postcode area serviced by the drug court (greater Dandenong);
5. *On balance of probabilities* [emphasis added], the drug court must be satisfied that:
    - the applicant is *dependent* on drugs and/or alcohol and
    - the applicant's *dependency* contributed to the commission of the offence;
6. the drug court considers that under normal conditions, it would not have ordered that the sentence be served by way of intensive corrections order in the community, nor would it have suspended the sentence; and
7. the applicant must be willing to consent, in writing, to a drug treatment order.

For the purposes of this chapter, I classify these criteria into three types. First, the *demographic criterion* (item 4) determines whether the applicant is living in or has a significant connection to a suburb within the specified catchment area. Second, the *justice criteria* consider an applicant's eligibility for the drug treatment order based on prior and current offences (items 1, 2, 3, and 6). Third, the *clinical criteria* (sub-items in item 5) confirm that the applicant is dependent on alcohol or other drugs, and the applicant's alcohol or other drug dependence is both a significant and a *causal factor* in the current and/or prior offences committed. In this chapter, I largely

confine myself to an analysis of how the clinical criteria are established at the screening stage of the admission process.

Despite the differences in the criteria to enter drug courts around the world, it could be argued that there are two common requirements for entry. The first requirement is that the applicant must be 'dependent' on some type of substance (illicit and licit). The second requirement, although not as universal as the first, is that the dependency must have contributed to the offence or be the 'primary cause' of the applicant's criminality. This leads to the question of how these criteria are established. Examining who is involved in the process of determining criteria, and what factors are taken into consideration to make decisions, tells us a great deal about how dependence is enacted by drug courts, and the effects that shape the lives and experiences of drug court participants. Despite the centrality of these two eligibility criteria (clinical criteria in the Victorian context) in drug courts, it seems that the way in which they are first established – at the screening stage – has gone largely unexamined in the academic literature. In what follows, I review some of the available literature that has explored how drug courts establish the presence or absence of clinical criteria.

Establishing dependence in drug courts

In the US, guidelines produced by various authors recommend that trained professionals in the alcohol and other drugs field screen eligible individuals for dependence as part of admission into drug courts (Peters & Peyton, 1998; Knight, Flynn, & Simpson, 2008). However, some drug courts do not appear to follow these recommendations. For example, Cooper (1997) conducted a nationwide survey of US drug courts and found that once justice criteria are screened by legal actors, a clinical screening is conducted by staff from the court or affiliated services such as correction services. However, these staff may not have experience or qualifications in assessment, diagnosis, and treatment of alcohol or other drug dependence. As mentioned in my literature review, Vrecko (2009) examined a 'driving under the influence' court in California that, as part of alcohol treatment, requires individuals convicted of repeat drink-driving offences to ingest a medication (naltrexone) to manage alcohol cravings. Using analysis of court documents, Vrecko explored how naltrexone was used to treat 'alcoholism' in this court. He found that the judge identifies eligible 'alcoholic' individuals based on ambiguous statistical calculations of 'prior driving under the influence convictions, the blood alcohol level, the pattern

of alcohol use. What is more, no attempt is made to assess other areas of the individuals' lives relevant to the existence of dependence and the likelihood of the treatment working. According to Vrecko (2009), this constitutes a shift from clinical diagnosis by physicians, on which the criminal justice system has traditionally relied, to coding of prior offences by judicial figures. It is only after the court has 'diagnosed' the potential participant with 'alcoholism' that the physician is involved by prescribing the medication. Other evidence suggests that some US drug courts do employ alcohol and other drug clinicians to screen dependence. Belenko et al. (2011) conducted a study in six US drug courts and found that in all these courts the justice-related criteria were determined by legal actors, and in four, once the applicants were found to meet these criteria, they were assessed in depth by alcohol and other drug clinicians to determine the presence of dependence. In the remaining two courts, drug court staff (clinicians in one and a program manager in another) conducted clinical assessments at the first stage to determine the applicant's dependence. In both courts, alcohol and other drug diagnostic tools were used.

Little research has occurred in other jurisdictions. For example, Dawn Moore (2007a) reports that the intake of applicants in Canadian drug courts (Toronto and Vancouver) is driven largely by crown counsels (prosecution), who screen out applicants with histories of violence, weapons offences, or high-volume drug trafficking. In Moore's research, crown counsels reported that suitable applicants are identified by what they consider to be 'addict behaviour', such as a long history of property, possession, and prostitution offences. Moore concludes that at this stage of the admission process, the decision about whether someone is an 'addict' 'is very much one of common sense rather than one that emerges from clinical, expert observation' (2007a, p. 127). Moore goes on to say that once applicants are identified as 'addicts' and screened by crown counsel, they are referred to a therapist for assessment. Moore stresses that this screening is not designed to establish or confirm the presence of addiction, but to determine program suitability. Its purpose is more about ensuring that only applicants likely to succeed in the drug court are chosen to participate. However, the crown counsels appeared to identify whether applicants had a dependence by 'spotting' drug-related charges in the applicants' criminal record. While Moore's insights are important in this respect, she explains neither how crown counsels arrive at those decisions nor how the therapists conduct the assessment. Nor does she explore what 'common sense' means in this context. Further, she reports that over the course of her research in the two Canadian drug courts, she never saw an open debate in court about an individual's

dependence status. These findings contrast with those of Bull (2006) in Australia. Bull points out that the initial assessment and eligibility hearings had much in common with traditional court processes, consisting of adversarial exchanges between the magistrate, defence counsel and prosecution. However, like Moore, Bull does not explain how this occurs or what sort of submissions legal actors make.

Given that the Drug Court of Victoria is the subject of my study, it is important to describe how the process takes place. According to a number of official documents produced by the court and about the court (Drug Court of Victoria, n.d.-c; KPMG, 2014; Parsons & Lauritsen, 2013), a screening hearing is scheduled for applicants in which two important events take place. First, a case manager from Community Corrections interviews the applicant and assesses suitability to participate in the program against justice, demographic and clinical criteria (outlined above). The case manager uses a screening tool to aid this assessment. During this interview, the case manager also provides the applicant with detailed information about the expectations and requirements of the drug treatment order, so that the applicant can provide informed consent. Once the interview has been completed, the case manager gives the magistrate, prosecution and the defence lawyer a written report indicating eligibility. The second event that takes place in this screening hearing involves the magistrate hearing and determining any eligibility issues that might be contested by the prosecution. If the magistrate finds the applicant suitable, the matter is adjourned for approximately three weeks to allow for two assessments to take place.[22] If the applicant is found to be unsuitable, the applicant chooses whether to be sentenced at the drug court or in a mainstream court.

The literature reviewed in this section shows that, at least in the US, it is recommended that trained alcohol and other drug clinicians establish 'dependence'. However, this does not necessarily occur in all drug courts, and even in those courts where it occurs the process remains unexplored. In some drug courts legal actors or criminal justice system officials take on this role. No research project to date has examined how they do so, what tools they rely on and the potential consequences of their involvement. In this chapter I shed some light on these important

[22] A case manager from Community Correction Services undertakes the first assessment. This considers legal, imprisonment, family and social history, housing needs and current offences before the court. The second assessment is undertaken by an alcohol and other drug clinician (clinical advisor) employed through the drug court. This considers history of alcohol and other drug use, treatment, health status and motivation to change (KPMG, 2014).

but unmapped areas by exploring, at least in Australia, how the process of first establishing the presence of dependence unfolds in the Drug Court of Victoria.

Establishing the dependence–crime nexus

As I pointed out above, proving a relationship between dependence and crime is not a universal eligibility requirement of entry into drug courts; however, it is fairly common. Despite this, researchers have not looked at the way in which drug courts establish the 'dependence' and crime nexus at the screening stage. I argue that this is a crucial point to consider when exploring how dependence is enacted in drug courts because it appears that some courts constitute crime as an unquestionable consequence of dependence, while those drug courts requiring a demonstrable link as part of their eligibility criteria not only complicate this nexus but problematise it in multiple ways. For example, one common way of characterising this nexus is to say that dependence causes crime. As my review of literature about the causal relationship between dependence and crime showed, this formulation is 'unidirectional', determinist, and ignores the complexities of the relationship and the extent to which the relationship remains intensely debated (Bennett & Holloway, 2005a, 2005b; Mackenzie, 2011; Makkai, 1998; Seddon, 2000). Further, as Dawn Moore (2007a, 2011) reminds us, even as dependence is constituted as the primary cause of crime, drug use is only one among many factors that might be involved in criminality. Other factors are social disadvantage, histories of trauma, learning disabilities and individual psychological make up.

It is important to consider too that many drug courts restrict entry based on the type of charge. I argue that this has direct implications for how the relationship between crime and dependence is constituted and established in different drug courts. Generally speaking, the original drug court model, as conceived in the US and adopted in Victoria, assumes that certain offences such as possession, trafficking, property offences, driving under the influence of alcohol or other drugs, and prostitution are direct consequences of dependence (Nolan, 2001, 2011). Given that many drug courts allow entry only to those facing these 'drug-related charges', the link between dependence and that sort of criminality is taken for granted and often goes unquestioned. This might be a reason why the way in which the dependence–crime nexus is established in drug courts has been not been studied. However, not all drug courts limit entry to those who have committed 'drug-related' offences, and in any case 'drug-related' crime can be constituted in

multiple ways. In the case of the Drug Court of Victoria, the legislation (*Sentencing Act 1991* s 18Z) guiding its practices does not demarcate such precise boundaries in terms of type of charge. Instead, as noted earlier, the legislation states that in order to be eligible, the drug court must be satisfied *on the balance of probabilities* that the applicant's dependence contributed to the offences before the court, providing that the offences in question are not of a sexual nature or involve the infliction of actual bodily harm.[23] I argue that given that the Drug Court of Victoria does not restrict entry based on specific types of charges, as is the case with drug courts in other jurisdictions, 'establishing' the nature of that contribution becomes an interpretative exercise for judicial figures. In this chapter I explore how such an interpretative exercise unfolds at the screening stage of entry into the court.

Approach

My analysis in this chapter is framed by Bacchi's (2009) WPR approach, outlined in the previous chapter. As I pointed out, the WPR approach rests upon the idea that 'what one proposes to do about something reveals what one thinks is problematic' (Bacchi, 2012, p. 21). In this way, policy or interventions have implicit representations of what the 'problem' is considered to be. This is what Bacchi calls 'problem representations'. My main objective in this chapter is to critically explore the process of establishing clinical eligibility criteria to enter the drug court using the WPR approach. Earlier, I identified this process as a key site of drug court intervention into the lives of applicants. Here, I apply the WPR approach to a new field: court practice. In this chapter, I use questions one, two, four and five of Bacchi's approach, outlined in more detail in the theory chapter, to frame my analysis. First, I explore what the problems of dependence and the dependence-crime nexus are represented to be at the screening stage of entry into the drug court. Second, I examine some of the presuppositions that underlie these representations. Third, I examine what is left unproblematic in these problem representations. I point out some of the silences, and offer ways in which the 'problems' (dependence and the dependence–crime nexus) can be thought about differently. Lastly, I explore some of the effects produced by the representation of these 'problems'.

[23] Makkai (2002) explains that the exclusion of violent offenders is due to three factors. First, governments are concerned about community beliefs that violent offenders should be sent to prison. Second, many treatment agencies are reluctant to take particular kinds of offenders (for example, arsonists), because a subsequent offence could result in a lawsuit for the treatment provider. Third, courts and police are reluctant to send violent offenders to a program that would result in the offender being 'at large' in the community.

In the following section, I offer examples based on my screening hearing observations as well as on interviews with drug court professionals. First, I explore the steps involved in the screening process and I examine how clinical criteria are established at the screening stage. Second, I examine some examples in which applicants were found eligible and explore the reasons. Then, I present screening hearings in which applicants were found ineligible because the drug court found there was either no alcohol and other drug dependency or no nexus between the dependency and the offending.

Situating screening hearings in the admission context

Screening is a preliminary process in determining an applicant's suitability to participate in a drug treatment order. Suitability is determined against the specific eligibility criteria outlined above. Once applicants have identified that they are interested in being part of the program, they discuss the possibility with their legal advisor, who then lodges an application by completing a 'Request to access the Drug Court of Victoria' (see Appendix H). This form asks the applicant's lawyer to state whether the applicant meets the eligibility criteria for entry. If the lawyer is unsure of this, this can be indicated in the application. The drug court instructs legal representatives to provide reports showing evidence of meeting the eligibility criteria. Based on my observations of court proceedings, this evidence can comprise reports from pharmacotherapy prescribers, dependence specialists, detoxification or rehabilitation facilities, dispensing pharmacies stating that the applicant has received services, and psychological or psychiatric reports.

The completed form and supporting documents are then forwarded to the prosecution's office as well as to the drug court magistrate, and both the magistrate and the prosecution screen suitability independently. It is important to note that even though the prosecution is involved in the process of establishing suitability for a drug treatment order, the decision as to whether or not to agree is ultimately the magistrate's. If, after the screening process, the magistrate considers the applicant meets the eligibility criteria, the matter is adjourned for three weeks for a comprehensive assessment of suitability. In that time, the drug court team conducts two detailed assessments. The first assessment is undertaken by a case manager from Corrections Victoria (probation). This considers legal, imprisonment, family and social history, housing needs and any comments on current offences before the court. A clinical advisor employed through the

drug court undertakes the second assessment. This considers history of alcohol and other drug use, treatment, health status and motivation to change. (The content and structure of these assessment reports are examined more closely in the next chapter.) However, if the prosecution's office or the drug court magistrate has any objections to ordering the applicant's further assessment, a screening hearing is scheduled, in which these objections are raised and the applicant's lawyer responds to them. The applicant is also required to attend this hearing. In the following sections, I discuss five screening hearings to illustrate how legal figures make arguments about clinical criteria.

Screening hearings: Setting the scene

I observed that applicants relied completely on their lawyers to obtain information about the screening hearings. During my fieldwork, I did not see official information such as brochures or information sheets about the screening or application hearings circulating. Even though this type of information about drug court processes is available on the court's website, it is unlikely those applicants who are in custody (the majority) are able to access it while they are waiting to be screened. On the day of their screening hearings, applicants who are in custody are transported from prisons to the police cells in Dandenong. Abel's comments provide an insight into how applicants experience the screening day:

> It is an awful day, in the cells there, it is just terrible. They get you up at four o'clock in the morning from jail and they strip search you, feed you, throw you in a room and then put you on a bus and you sit in this awful dingy room with twenty guys, waiting.

When their hearing is about to begin, applicants in custody are escorted by two police officers into the courtroom dock. Almost without fail they wear the distinctive dark green sweatsuit and white slippers provided in Victorian prisons. On being brought before the magistrate, those who have family or friends attending court greet them through mimed conversations. Frantic gesticulation can be observed: kisses are blown, and smiles and complicit glances exchanged. The applicants who are on bail attend court independently. A few applicants are alone, with no one to support them. I was often the only person sitting in the benches during their hearings. As the Dandenong police cells are located next to the courthouse, where drug court proceedings take place, shouting, banging and general commotion can often be heard. While court observers

become aware of such happenings, and exchange quizzical looks, court officials do not display curiosity about these noises.

Making applicants ineligible

In the following section I review two case studies of applicants (Franz and Gunther) who were found to be unsuitable for the drug treatment order because the court considered they did not meet clinical eligibility criteria. As I explain, the drug court found that Franz did not have a dependence, and that Gunther's dependence did not contribute to his offending. In what follows, I explore how the drug court reached these decisions.

Dismissing the 'presence' of dependence

A 'drug treatment order may be made in respect of *one* or more offences committed by an offender' (s. 18ZA *Sentencing Act 1991*). During the screening and assessment hearings I observed lawyers put forward the charges that they believe best illustrated a causal link to dependency. Similarly, when the prosecution raised objections about the eligibility of an applicant, only the charges supporting these submissions were read out. In the following screening hearing extract, taken from my field notes, Franz was found not to have a dependency. The dependency–crime nexus nominated by his lawyer was also found to be unsatisfactory to the drug court.

> Franz is a man in his early 50s. His lawyer explains that he had been up for sentencing in the general division of the Magistrates' Court of Victoria, and that 'the magistrate there flagged that Franz could be eligible for a drug treatment order.' The lawyer nominates one of the offences: a theft from a supermarket. The lawyer submits that Franz committed this offence to fund his heroin and ice[24] use. She adds that Franz had started using heroin at the age of 16 and that during the past three years his use had increased, eventually leading to the commission of some of the current offences. The magistrate says that the history of offending does not indicate a dependency because 'there is no evidence in the police summaries.' He explains that the Act (*Sentencing Act 1991* (Vic), s. 18X to s. 18ZS) requires the drug court to be satisfied that: a. there is a dependency and b. that the dependency made a material contribution to the offence. He adds that '*authentic and*

[24] Crystal methamphetamine

> *independent'* evidence is required to prove this. The magistrate seems to be about to reject Franz's application when the lawyer asks to receive instructions from Franz. She approaches the dock and whispers to Franz for some time. After speaking to Franz, she submits that he had been on the CREDIT[25] program before and that he had been on methadone maintenance treatment for some time. Following this submission, the magistrate does not shift his position on Franz's eligibility. The lawyer requests an adjournment to gather more evidence about Franz's dependency. The adjournment is granted.

This screening hearing highlights the importance of police summaries to the drug court's determination of whether an applicant meets clinical eligibility criteria. In Bacchi's terms, the magistrate is engaging in a 'dividing practice' (Bacchi & Goodwin, 2016, p. 49) by producing police summaries as authentic and independent sources of information while enacting Franz's instructions to his lawyer as inauthentic and unreliable. (This is a recurrent theme in the chapter, and its effects are analysed towards the end.) The magistrate also reminds the lawyer that the dependency must make a 'material[26] contribution' to offending, not only a contribution (as the *Sentencing Act 1991* (Vic) ss 18X to 18ZS stipulates). But, what is meant by this phrase, and how can such materiality be gauged? The lawyer constitutes the contribution as playing *a part*, but the magistrate seems to require a contribution that is *significant.* This shows that in practice the 'contribution' of dependence to the offending can be enacted in multiple ways, and therefore its meaning is not fixed (as it appears to be in the legislation). In the following comments, provided during an interview, drug court professional ***A*** considers why Franz was found ineligible:

> He had a drug prior twelve years ago, there was nothing in his prior convictions, most of the offences were driving offences, there was nothing about [dependence] – there was summary after summary of about six coppers involved, and they would have searched the car every time because of his priors. Not a hint of any drugs in the car, never a complaint

[25] CREDIT stands for court referral and evaluation for drug intervention and treatment. The CREDIT/Bail support program seeks to increase the likelihood of an accused being granted bail and successfully completing a bail period by providing individuals with access to alcohol and other drug treatment, accommodation, material aid and other support (Magistrates' Court of Victoria, 2018).

[26] Of evidence or a fact: significant, influential, especially to the extent of determining a cause, affecting a judgment (Oxford English Dictionary).

> and even if they found drugs on him, why is it that his driving should, how is it that his drug dependency contributes to a charge of driving without a license? I don't get that. But that lawyer has to work hard because there was nothing that suggested anything. That is why he was sent away. He wasn't going to be put on the drug treatment order, so the Act says that the drug court has to be satisfied on the balance of probabilities that: a. He has got a dependency, and b. that it has contributed to the offending.

Most of Franz's offences appear to be driving offences, but ***A*** does not understand how Franz's alleged dependency could have contributed to driving without a licence, especially because, when intercepted by police, Franz was never found in possession of drugs. This highlights that for some drug court professionals one of the indications of dependence is that the person is found in possession of drugs *at the time of offending*. Further, it seems that ***A*** is looking for a somewhat regular pattern of 'drug-related offences' emerging in the priors rather than isolated cases. However, it is unclear what 'drug related' means in ***A***'s mind.

In Franz's hearing, the magistrate states that he did not find Franz eligible for a drug treatment order because there was no evidence of dependence in the summary of priors. This leads to the question of what other factors the drug court professionals involved in the screening of applicants consider indicators of dependence. Drug court professional ***A*** explains:

> A history of alcohol and other drug counselling, a criminal history involving a lot of drugs. They often have them, you know, they just get charged, ten charges of possession, or multiple prior convictions for driving under the influence of the drugs, um, usually these people will have had – I mean coming to the drug court, we are talking about the serious, hard end offender. They have usually had corrections orders before, they have had alcohol and other drugs treatment conditions. They [Community Corrections Services] don't make those treatment conditions if there is no evidence in the earlier matters of some kind of alcohol and other drug issue in their lives. So, you look for those kinds of *clues*. Sometimes they tell the police, and we don't read out all the statements in open court. But, sometimes they are all in the police materials that the police were saying, you know, 'he admitted he was doing this because he has got a habit and we saw the bottom of his car, he had eight old syringes and thirty empty deal bags' – if people are busted at home and they got lots of drugs and drug paraphernalia around their houses and

> glass pipes and stuff like that, you know, that is important. If police report when they intercept someone that they are acting in a drug-affected way, that they might be intoxicated, that is important. The criminal histories are important. What they say to the cops *at the time* is important, not what they say from the dock because they have been in the nick[27] for, you know, they will say anything when they have been in custody. They know that if they say the right thing they will get out of custody, that doesn't weigh very heavily at all, but what they say at the time of arrest certainly does, so there is a whole different area they can look at to make that determination.

In ***A***'s opinion, certain 'clues' found in the summary of priors are evidence of a dependence. They include at least a sporadic occurrence of 'drug-related offences', possession of drugs or drug using equipment, admissions of drug use at the time of the offence, and observations by the police informant indicating that the person uses drugs. Ordinarily, if people are found in possession of 'drug paraphernalia' and other drug using equipment such as 'ice pipes' or syringes, this might be taken as evidence of drug use and self-administration, and they might be charged accordingly. In the drug court context, it seems that possession of drug using equipment is constituted as dependence. Further, ***A*** engages in the same 'dividing practice' the magistrate did by making an important distinction between those applicants' statements that one can rely on and those one cannot. Those statements made *at the time* of arrest are regarded as genuine, while those made *after* the applicant has been charged are not to be trusted because of the knowledge developed about the criminal justice system and their capacity, therefore, to manipulate it, so that they can avoid going into custody. This distinction is significant because of the 'lived' and 'subjectification' effects it produces. First, it silences and hence disregards the circumstances of the arrest and potential consequences of making any statements to the police for the arrestee. For example, people are not legally required to give a statement to police (they have the right to remain silent: Victoria Legal Aid, 2018). This is also known legally as the 'privilege against self-incrimination'[28]. However, suitable drug treatment order applicants are expected to waive these

[27] A prison; police station. Slang (Oxford English Dictionary)

[28] The privilege against self-incrimination is 'a basic and substantive common law right, and not just a rule of evidence'. It reflects 'the long-standing antipathy of the common law to compulsory interrogations about criminal conduct'. In 1983 the High Court described the privilege as follows: a person may refuse to answer any question, or to produce any document or thing, if to do so 'may tend to bring him into the peril and possibility of being convicted as a criminal'. Similarly, in 2004 the Full Federal Court said: the privilege is that a person (not company) is not bound to answer any question or produce any document if the answer or the document would expose, or would have

basic rights or (potentially) be penalised if they do not (this is explored in more detail later in the chapter). Additionally, not only are applicants enacted as manipulative and opportunistic, but submissions by legal advisors based on applicants' instructions are ignored if there is judged to be no supporting evidence or 'clues' in the summary of priors. This might have important material consequences for applicants (or 'lived' effects, in Bacchi's terms). For example, this may preclude drug court access to those applicants with a long history of involvement in the criminal justice system, and who are interested in addressing their drug use, but who have no history of alcohol or other drug treatment, and whose summary of priors shows no 'clues' indicating that they meet clinical eligibility criteria. At the same time, this practice might unintentionally target applicants with little or no criminal justice history, no history of incarceration, and whose charge before the court is constituted as a clear consequence of their dependence (because 'clues' are found in their summary of priors).

According to ***A***'s comments, other 'evidence' of dependence not necessarily found in the priors, but still relevant, includes previous alcohol and other drug treatment court orders and a history of alcohol or other drug treatment. If we return to Franz's case, his lawyer submitted that Franz had been on the CREDIT bail program, and that he had been on pharmacotherapy for some time. However, the magistrate seemed to require more evidence of the link between Franz's dependence and his offending because the evidence (recorded in the summary of priors, to which the magistrate also has access) of previous court-ordered alcohol and other drug treatment was considered insufficient. Franz's case study illustrates how dependence is established in the court's screening hearings. Police summaries are enacted as 'authentic and independent' sources of information, which provide 'clues' regarding the existence of dependence and the dependence–crime nexus. Further, some drug court staff engage in 'dividing practices' (Bacchi, 2009) by making a sharp distinction between those applicants' statements that can be believed and those that cannot. Those statements made at the time of arrest are regarded as genuine, while those made after the applicant has been charged are considered less trustworthy.

---

a tendency to expose, the person to conviction for a crime. The common law privilege is available not only to persons questioned in criminal proceedings, but to persons suspected of a crime, to persons questioned in civil proceedings and in non-curial contexts (Australian Law Reform Comission, 2015, pp. 339-340)

Problematising the link between dependence and crime

In this section I present another case in which the applicant, Gunther, was found ineligible. He was found unsuitable on the grounds that his dependence did not contribute to his offending. Before I go on to describe his screening hearing, I will explore why the drug court is interested in the dependence–crime nexus in the first place. The following comments by drug court professional ***A*** highlight the importance of finding this nexus:

> The applicant might have a dependency that doesn't contribute to the offending, which means if we cured him [sic] of his dependency, he is still going to be committing crimes because there is no link between his dependency and the offending. So there has to be both. There has to be the dependency and the contribution to the offending. The legislation sets it all out there and the drug court has got to follow that.

Here, ***A*** suggests that dependency is not always the underlying cause of offending. In the process, ***A*** enacts dependence as a curable condition, and the drug court as the remedy. Further, ***A***'s comments imply that the real goal of the drug court is to reduce reoffending, that curing dependence is the means to that end, and that it is futile to treat an individual whose dependence does not cause their criminality. In these ways, dependence is conceptualised as ontologically multiple, following Mol (2002), because its causes and 'effects' are produced in different ways. In the following comments, drug court professional ***C*** also complicates the link between dependence and offending:

> House burglaries are really where I would probably do a lot more reading and researching because there is some people that just like to burgle. But if you read their entire history, there won't be any indication that it [evidence of drug use] has ever been picked up or searched, or [when they] come in contact with police that they have had drug evidence, like I said about the deal bags and things like that [ice pipes]. There will be other ones who are doing burglaries, but then you will see shoplift in it [the summary of priors], or then you will see they have just been searched at a train station, and they were found with empty deal bags. The two pictures are very different. One, where there is not drug activity you know that, like some criminals aren't drug addicts, and some drug addicts aren't criminals. So, it gives me the picture that for some people the drugs actually motivate the crime, whereas some people are just motivated by crime.

Here, ***C*** uses the term 'drug evidence' to refer to drug using equipment and empty deal bags, and constitutes such 'evidence' as evidence of alcohol and other drug dependence. It is of note that the 'deal bags' do not have to contain an illegal substance. In this way, possession of an otherwise innocuous object such as a small, empty zip-lock bag becomes a symbol of dependence. Further, even if one were to follow ***C***'s method to establish clinical criteria, it would involve assuming that the summary of priors contains every single incident of 'illegal' activity. Following Bacchi, silences can be found in ***C*** and ***A***'s representation of the dependence–crime nexus. For example, what if by chance those individuals were not searched when they were in possession of evidence of drug use because the intercepting police officer did not think it was necessary? What if they were able to evade interception when they shoplifted? What I am trying to illustrate is how arbitrary and haphazard the establishment of dependence criteria appears to be here. Both ***A***'s and ***C***'s comments highlight how the drug court complicates the dependence–offending nexus, in that they do not perceive crime as an inevitable consequence of dependence, hence criminality and dependence can coexist independently of each other. One effect of this is that it is only those whose crime can be established by the drug court as driven by dependence who emerge as deserving of community-based alcohol and other drugs treatment. In this way, then, ***A*** and ***C*** engage in the creation of three governmental categories: 'deserving criminal-dependent', 'undeserving criminal-dependent', and 'plain criminal'.

The following excerpt is taken from my field notes. It describes a screening hearing involving Gunther, a slightly-built young-looking man, whose dependence was implicitly accepted by two of the parties involved (magistrate and legal representative). However, the drug court was not satisfied that there was a link between the offence nominated by the lawyer and dependence.

> Gunther's screening hearing was scheduled because the drug court is not satisfied that there is a link between dependency and offending. Gunther's lawyer starts by submitting that he is also facing weapon charges and has been using heroin daily for the past 14 years. Gunther was arrested in possession of drugs (not specified). The lawyer submits that Gunther stole number plates and put them on his car in order to drive 'to score heroin'. He then used heroin and was found 'asleep'. The lawyer argues that a strong dependence underlies this offending because part of the lifestyle of a person who is using daily is not thinking about the consequences of their actions and associating with others involved in crime (the lawyer appeared to be suggesting that the weapons found in the car

were not Gunther's, but his associate's). The lawyer recommences: 'This sort of offence is suggestive of a person who is living a drug lifestyle. The daily use of drugs clouds his judgment process, and he steals the number plates to score.'

The magistrate states the following: 'I accept that he has a drug issue, but it is very common for a person to *offer self-serving* explanations. By stealing the number plates and putting them on his car, he knew that he would be deceiving police and other people. There has to be clear evidence of drug dependence. The legislation requires me to be satisfied that there is a nexus. The driving charges are not sufficient evidence to order further assessment.'

Even though the magistrate and the lawyer disagree that a heroin dependency caused the offence, there seems to be a consensus that Gunther has some sort of 'drug issue'. Moreover, they both mobilise typical stereotypes about 'addicts', or in Bacchi's terms, they both attribute certain features to Gunther that produce him as an addict subject. The legal representative argues that Gunther is impulsive and lacking in consequential thinking due to drug use. However, it is unclear how heroin, Gunther's alleged drug of choice, clouds his judgment. Is it the use per se? Is it in the context of withdrawal or being under the influence of it? The lawyer's submission silenced such details. Likewise, the magistrate views Gunther as calculating. He implies that there was a degree of planning in stealing the number plates in order to avoid police detection. That is, the action of stealing the number plates might have occurred before his drug-using episode and not as a consequence of it. A relevant aspect silenced by this representation of Gunther's dependence–crime nexus was the 'craving' typically felt when withdrawing from opioids, which is often thought to be a factor associated with offending (for instance, in the context of property crime). Additionally, consistent with other court proceedings observed and interviews with drug court professionals, the magistrate appears to constitute Gunther's explanations as *self-serving* because they were provided *after* he was remanded and not at the time of interception by the police. However, drug court professional ***D*** enacts Gunther's dependence–crime nexus differently, and voices some of the silences found in the magistrates' representation:

He was a young boy, early twenties. He was seen the day he was remanded, and people that saw him said that he was probably in the worst condition they had ever seen anyone,

> really unfit. He couldn't be seen for two days. The nurse had to take him, covered in sores, just absolutely out of it. [Gunther reported using] massive amounts of heroin daily and I think also the ice. He also had about five different police matters. There was a theft of *number plates from a vehicle, so he could basically put those on his car to drive and score heroin*, there was some anti-social type behaviour. I think there might have been some thefts and, you know, a couple of other matters, possession of some weapons. [The magistrate] was of the view that there was no nexus between drug use and offending, and the lawyer's argument was 'well, absolutely' [there was a nexus]. He [the magistrate] said 'look maybe he just got a personality disorder, just social defiance', and the fact that he would be stealing plates to put on his car to go to the dealer's. He said 'well, those were just the instructions [Gunther gave to the lawyer].' The lawyer said, 'Well, if they found him asleep in the car, he had obviously used and fallen asleep.' [The magistrate said] 'No, no he didn't tell the police that is why he had stolen the plates', and again the lawyer is saying 'well, of course he isn't telling the police that.' The magistrate wouldn't accept that there was anything drug related about that offending, which I just thought was crazy because clearly this is a young man who is completely engulfed in the – his lifestyle is all about the drugs. That leads to impulsive behaviour, carrying weapons 'cause if you are involved in that kind of group, you know, a lot of them will be carrying weapons, they will be engaged in criminal activity.

D's comments suggest that Gunther's 'massive' use of heroin and methamphetamines led to his poor physical condition when remanded, and to being involved in criminal activities. His other offences before the drug court included thefts and possession of weapons, but the one chosen by Gunther's lawyer to best demonstrate the link between his dependence and criminality was the theft of number plates to put on a (unregistered) car as a means to go to his dealer to obtain drugs. It seems that one of the reasons why the magistrate was not satisfied with such a connection was because Gunther did not disclose the connection between his drug use and offending when intercepted by the police. ***D***'s account further suggests that Gunther was 'asleep' when police found him. While for ***D*** and Gunther's lawyer this seems to demonstrate a connection because Gunther was intoxicated when intercepted, the magistrate remains sceptical. He accepts that Gunther was heavily affected when intercepted, but seems to assume that a

person in such a state would be able to articulate lucid and repentant explanations about what led to the offending.

There are several silences made in this assumption. First, it implies a lack of understanding regarding how an individual might present when intoxicated. Further, the applicant is expected to articulate a link at the time of arrest without being prompted. What if the applicant is not of the view that there is such a link between the drug use and offending? This shows an important contradiction occurring in drug court screening hearings. On the one hand, applicants produced as dependent are enacted as having clouded judgment, and this is seen to lead to offending. On the other hand, they are produced as rational actors able to discern the best course of action in order to comply with the law. What is more, they are expected to show insight during what must be a very stressful event (arrest), even when they might be presenting as highly intoxicated. By placing emphasis on an applicant's self-admissions about drug use, the magistrate is looking for applicants that have provided an insight into their drug use to an 'independent party' such as the police. This is another example of an implicit criterion for eligibility into the drug court. Further, the magistrate seems to neglect the implications of such admissions because individuals who are arrested have the right to remain silent and the privilege against self-incrimination, or in Bacchi's terms, the magistrate seems unaware of the 'effects' produced by this representation of the problem. These effects will be discussed later in the chapter. Gunther's hearing suggests that in order to support applications for access to the program and emphasise that the contribution of dependence to the offending is 'material', advocates tend to overstate the role of drug use in the applicants' lives and to attribute all their misfortunes to it. Further, it also demonstrates variabilities in approach to the dependence–crime nexus.

The comments of drug court professional ***A*** about a case comparable to Gunther's provide a rationale for why Gunther's dependence was not found to 'make a material contribution' to his offending:

> How is it that his drug dependence contributes to a charge of driving without a licence? I don't get that, and if people say 'well, he was probably driving to his dealer', [it is] still not good enough, you know, it is not a good enough connection. I mean, he could have used his myki [Melbourne's public transport travel] card and gone to his dealer, it does not make – it is not a *material* contribution.

Here, ***A*** does not believe that committing a driving offence such as driving without a licence is necessarily related to cravings that were so intense that the individual drove to the dealer to 'score'. As does the magistrate in Franz's case, ***A*** seems to be looking for more proximal causation without intervening events. This might be what both ***A*** and the magistrate mean by *material*. ***A*** suggests that the 'dependent' individual in question could have used public transport instead of driving. This produces him as a rational decision-maker capable of measuring the pros and cons of his actions, rather than as a compulsive subject suffering loss of control (a common characteristic attributed to individuals with dependency). ***A***'s position also assumes several ideal conditions, such as the possession of a travel card with credit, and convenient access to public transport at all hours. Additionally, the assumption silences the scenario of withdrawal and its avoidance, which is commonly enacted as a motivation property crime (Bennett & Holloway, 2005a; Makkai, 1998).

In this section, I showed that some drug court professionals complicate the dependence–offending nexus, in that they do not perceive crime as an inevitable consequence of dependence. Individuals whose crime can be established by the drug court as driven by dependence are enacted as the only ones suited to the program. By analysing Gunther's case study and exploring how drug court professionals establish the dependence–crime link, I found that some professionals constitute dependent applicants as compulsive and lacking in control, while other professionals produce them as rational decision-makers. Moreover, the court relies on police materials gathered at the time of arrest to make decisions about clinical eligibility. The effects of this problematic practice are analysed later in the chapter.

Making applicants eligible

Having explored the ways dependence and the dependence–crime nexus are denied in screening hearings, I present some cases in which applicants were found to meet the clinical eligibility criteria, and explore why this occurred. The following extract describing a screening hearing is taken from my field notes:

> The lawyer starts by saying that two of the briefs involve shop theft where there is a link to dependency. Adolfo has been using heroin on and off for the past 10 years, has been on community-based orders where drugs have been an issue. He has been on methadone, and his prescriber is Dr [X]. During the course of the matters Adolfo was homeless,

> living in his car, and dependent on heroin. This dependency led to poor decision-making and to the offences.
>
> The magistrate states 'I have seen all his matters, but I do not see much evidence of dependence in the briefs. Most of the matters are driving matters.' The lawyer refers to the reference number of a charge summary listed in the priors, which I do not have access to, where the police informant stated that 'Adolfo has a clear problem with drugs.' The magistrate checks the charge sheet. As a result he does not oppose the lawyer's submission, nor does the police prosecutor. Finally, the magistrate says 'Adolfo, I am ordering that you are assessed for the drug treatment order. We expect you to be honest and open, be straight with the people who will be working with you.'

In this instance, Adolfo's lawyer attempts to demonstrate the presence of dependence in multiple ways. He cites the length of Adolfo's dependence to heroin, explains that Adolfo has had alcohol and other drug conditions attached to previous community-based orders and that he has been on pharmacotherapy. He mentions consequences of Adolfo's dependency: poor decision-making, criminality and homelessness. These submissions do not seem to convince the magistrate because as he states, he cannot identify 'evidence' in the briefs. It is not until Adolfo's lawyer points out that there is one charge in which a police informant commented that Adolfo had a drug problem that the magistrate is convinced and orders further assessment. This observation seems consistent with how drug court professional ***A*** says the court makes the association between drug use and offending. ***A*** uses two examples (Ivan and Vanko):

> It is a key question when people come onto the order because the legislation requires the drug court to find that connection. The only way it can be analysed is to look at all the facts and circumstances surrounding the offending and see if it can be gleaned from that that the behaviour is partly driven by the dependency. Yesterday, for instance, a bloke (Ivan) was screened who has got two or three charges of drug driving in a setting where he has got a lot of priors for drug and alcohol driving. So, it is easy, you know, it isn't hard. The very offence itself involves the use of drugs, and the drug court could be satisfied from a whole lot of other evidence, mainly about the amount of drugs found on him every time he is picked up. The cops have found a lot drugs on him, yeah, every time they empty his pack, there is, um, it is only half a gram, it is not a big deal, and he is not a

> trafficker. But, it is always there, it is always in his glove box, it is always in his pocket and he has got charge after charge of drug driving. So, it is easy, clearly he has got a dependency and on the balance of probabilities the dependency is, in fact, beyond reasonable doubt, the dependency is contributing to the offending.

In ***A***'s view, Ivan has a dependency that contributed to his offending because, as ***A*** sees it, most of the offences are drug related, in that one of the elements of the offence involves drugs (unlike shoplifting, for example, where drugs are not an element of the offence itself). Additionally, whenever Ivan was intercepted by police and searched he was in possession of small quantities of drugs. ***A*** concludes that possession of drugs indicates repetitive use and therefore dependence. The next example provided by ***A*** illustrates how some drug court professionals establish clinical criteria when the charges are not obviously 'drug related'. This appears to involve the formulation of more assumptions.

> The other one was Vanko, who was charged with storing a bomb, with a lot of family violence stuff, and a number of charges in drug possession. Again, it was classic. It was, I think, he had been picked up three or four times and at least two of those occasions, he had personal quantities of methamphetamine on him, and he had some at home. So, it is pretty easy to assume that he has got a drug problem. It wasn't a trafficking situation at all, no scales, no messages on his phone, you know, no deal bags all over the place. It was just clearly personal use. His family violence stuff were threatening text messages to his ex-partner, who said to the police 'he is an ice head, he is completely uncontrollable, I don't want him anywhere near me. I want an intervention order, he is crazy.' She had thrown him out, but there is clear evidence that he has got an ice problem and the text messages, you know, ninety text messages in a day. That is classic methamphetamine behaviour, he just sits there going [A pretends to be texting] angry, angry, angry, he never stops, goes all the day. So I've got no problem with that one. He has got a drug dependency, big contribution to the offending.

Here, ***A*** takes several factors into account to identify dependency. According to Vanko's priors, on numerous occasions he has been found in possession of small quantities of drugs (ruling out trafficking), mostly methamphetamines. In the family violence charge, the comment of the individual applying for the intervention order against Vanko is taken into consideration to

confirm that he has a methamphetamine dependency. In this way, her account (as it relates to Vanko's dependence) is given weight whereas, as discussed earlier, applicants' own comments after arrest are rarely taken into consideration. Dividing practices are again at work here (Bacchi, 2009: Foucault, 1980) with the same effect, pointed out above, being a pattern in the selection of 'evidence'. Further, this leads to the question of what the anatomy of a summary of priors is: what sort of information does it capture? At a very superficial level it could be said that it is an amalgam of informants' observations, statements of alleged victims and witnesses, which to a degree, are subjective interpretations of events, and subjective claims about the nature and origin of problems. However, when the person is being screened at the drug court some of the claims contained in this document become 'facts' and are used as the basis of identifying a 'dependence'. ***A*** drew the inference that sending repetitive threatening text messages is typical of methamphetamine dependency. This shows how ***A***'s 'common-sense' assumptions about what constitutes 'classic' dependence behaviour play a major role in identifying dependence in this scenario. Further, in order to arrive at such a conclusion, ***A*** relied only on these assumptions about dependence and did not need further 'evidence'. These findings align with those of Dawn Moore (2007a) on Canadian drug courts. As described in this chapter's review of the literature, she found that crown counsels' decisions about whether someone is an addict 'is very much one of common sense rather than one derived from clinical, expert observation' (p. 127). Importantly, my research suggests that alleged victims and witnesses – like police informants – play a vital role in enacting alcohol or other drug use *as dependence*. Like the lawyers in Seear's (2017) study on addiction in the law, these various actors are not conventional alcohol and other drug experts. Despite this, their opinions and perspectives are given an elevated status, and can be treated as evidence of dependence. In this way, these figures take on the status of what Seear (2017) has called 'quasi-experts'. These 'quasi-expert' assessments are often privileged over and above applicants' own accounts of their alcohol and other drug use.

Effects of judicial 'diagnosis'

So far, in this chapter I have shown how drug court legal actors establish the presence of dependence and the dependence–crime nexus. The main tool they use to guide these decisions is the summary of priors, which also includes information police officers gather at the time of arrest. I explore the effects of this practice in the following section.

Summary of priors as a diagnostic tool

All the case studies presented above illustrate that the summary of priors plays a key role in determining clinical eligibility criteria. In this section, I further explore the importance of the summary of priors for some drug court professionals. As ***A*** explains:

> It [summary of priors] is one source of information. It isn't the only source but it is […] if they [police informants] can establish the link, it makes it really easy, you know. If they say 'he was unconscious in his car, and we had called the ambulance, and while we were searching his car, we found forty grams of methamphetamines and a litre of GHB and we opened up his mobile phone and it had all these messages about trafficking', you know, that is the perfect storm. It is easy, um, he has overdosed, he is in the car, they called an ambulance, and they got the evidence there of the drug use and the commission of the offence. So, you look for the *clues* […] there has to be factual support for that because of the access. The drug court can only be satisfied on the basis of evidence. If it has to be satisfied of anything whether it is beyond reasonable doubt or it is on the balance of probabilities that is a signal from parliament saying 'there must be evidence' the drug court just can't be told 'oh, well, he has got a drug problem.' That is not good enough.

Here, ***A*** provides a scenario in which, as ***A*** understands it, the police informants can easily establish the link between dependence and offending. ***A*** indicates that in this case there is enough factual support for the link. ***A*** considers a set of 'facts' to be valid evidence. First, the individual was found unconscious. According to ***A***'s account, the police summaries seem to assume that the individual in question was in this state because he consumed excessive amounts of illegal substances or illegally obtained legal ones, discarding other potential explanations or, in Bacchi's terms, producing silences. For example, the person could be suffering from a medical condition or could have consumed a cocktail of prescribed medications and a legal substance such as alcohol. Neither of these explanations involve the person doing something illegal to become unconscious. Until medical professionals evaluate the individual, all of these possibilities are equally plausible. Further, ***A***'s account does not tell us whether the individual was even asked how he became unconscious. However, because he possibly had 'priors', police officers drew the conclusion that he overdosed on an illegal substance. Second, the individual was found in possession of drugs and there were text messages allegedly alluding to drug deals. It is unclear

what further subjective interpretation by both police officers and the magistrate was necessary to draw such conclusions about the text messages.

A suggests that only those individuals for whom police officers have established the link between dependence and crime are suited to drug court assistance. Additionally, submissions made by legal representatives are not considered independent because the drug court 'can't just be told that the applicant has a drug problem, there must be evidence'. However, based on my observations, police summaries are not subjected to the same level of scrutiny that legal submissions are. Again, what counts as 'evidence' is the information contained in the priors, and some voices are valued and privileged above others. This reveals that in the screening process of admission into the drug court, the observations of police informants are decisive, and the accounts of applicants are treated as largely irrelevant.

Drug court professional ***C*** also discusses what constitutes evidence:

> Everything is evidence-based, so I need to have evidence of the dependence. That is why I rely on the reports. We have what they call a dossier on people, and so I read that to give me background into how many arrests they have had, how many are drug related, um, and things like that, 'cause there would be just comments from different informants about how they view them, how cooperative they were – there will be obvious evidence that [there] is drug relationships in most of [the offences].
>
> *Eliana: Could you give me an example of that relationship?*
>
> Um, so say someone has been pulled up for a random car check, but they have been found with an ice pipe, or they have got small empty deal bags, but they haven't got lots of, you know, traffickable amounts. But, each time when they are searched, there is things that indicate that they are drug using. They might not be charged with it. But, it will go on their report that at the time [they were intercepted by police], that was found. So, it just gives you a broader picture that they are always involved in some sort of drug activity.

C explains what kind of evidence counts. The centrality of the priors in determining the applicant's *clinical* eligibility (dependence and the dependence–crime nexus, as classified at the beginning of the chapter) is mentioned. According to ***C***'s comments, different informants making

observations about the applicant's 'drug use' can be read together to corroborate an applicant's dependence.

A and ***C***'s comments highlight some important discursive effects of legal approaches to 'fact' finding. First, it appears that the way in which police report and record events is highly significant, and that these incident reports are vital in establishing dependence and the dependence–crime nexus. Although incident report writing is a highly subjective and contingent enterprise, and there might be further interpretation of the 'facts' in the police summary by the readers (lawyer, magistrate, police prosecutor), these processes are rarely acknowledged. Given the importance of the police summaries at the screening stage of the admission process, it seems that in the drug court context, what I will call the dependence-making process, has its genesis in how the police informant both interprets and reports events. This leads to the question of how qualified police officers are to identify dependence. Do they receive any training in this area? These questions are worth asking and exploring not only because of their relevance to drug courts as the model continues to expand globally and locally, but because they apply more generally to other alcohol and other drug court-ordered treatment programs, as well as to the ever-expanding 'problem-solving' courts approach, in which the way police officers report events might have other repercussions.

Another effect of using the summary of priors as the primary 'authentic and independent' source of evidence to identify dependence and the nexus between dependence and criminality is the way in which legal advisors now identify dependence. As drug court professional ***D*** explains:

> Unfortunately, it is a task for the solicitor, where it isn't obvious just on the paperwork [priors], um, the solicitors are trying to have to scramble for information and so forth to try to establish that there is a dependence, which – is crazy. So, unfortunately, it is almost up to them now to be trying to work out if there is a dependence. Often, they go through old files to look for reports and stuff that might have been prepared in the past where there is one mention of the word 'drug' because [the magistrate] will sometimes say: 'If there isn't mention of drugs in the summary or the priors, no, [I] won't accept that there is drug use' and then you start to think 'Well, should the applicant be called to give that evidence?', which I don't think it should be happening.

Here, ***D*** suggests that any mention of drugs in the priors can go towards the 'diagnosis' of dependence. As a consequence, a method of securing dependence before the drug court is to refer to quotes of medical reports or the like where 'drugs' are mentioned.

Dissatisfaction with the current screening processes

Perhaps unsurprisingly, drug court professionals' comments reveal dissatisfaction with the way in which clinical eligibility is established at the screening stage. For example, ***D*** observes that legal actors are not qualified to screen for clinical eligibility:

> You've got defence and prosecutors making submissions about whether or not there is a dependence, and I think that is wrong. I don't think they are the ones who are qualified to be making that assessment.

Drug court professional, ***P***, explains the central role of police summaries when establishing clinical eligibility, expressing concern about this role:

> The current position is more that if an applicant is arrested with drugs on them, or the police mentioned or commented on something about dependence, the court seems to accept that as established.
>
> *Eliana: so it is up to the police summaries then, how they describe –?*
>
> Yes, but it shouldn't [be]. That has a huge influence. It isn't a position I agree with because there are many reasons why a drug treatment order applicant wouldn't tell the police that they had an addiction or dependence because (a) they could be treated differently, (b) they could be charged if they admit that they have used.
>
> *Eliana: Does it also depend on the way the police officer that attended to the incident interprets things? It seems very subjective.*
>
> Absolutely, and again the question of that nexus and dependency should be a clinical one, not one that is put into the hands of the lawyers and police. But, that is the current position.

Drug court professional ***D*** elaborates on the drug court's assumption that applicants would disclose that they use illicit drugs at the time of the arrest:

> [The magistrate] has a number of times said 'well, there is no evidence of dependence because the person hasn't admitted to the police that they have used drugs.' Things like that, or 'look at their priors, there is nothing drug related.' My argument is 'well, people aren't necessarily disclosing to a police officer that they are using drugs.' I think it is very simplistic and very naïve to say 'well, if an applicant hasn't volunteered to the police that they are offending, that they are a drug user, that there is therefore no dependence or there is no nexus between it.' So, I find that quite nonsensical and very frustrating as well.

P and ***D*** do not agree with the position of the court that clinical eligibility should be determined mainly by the summary of priors. They point out that there might be repercussions – or in Bacchi's terms 'lived effects' (Bacchi & Goodwin, 2016) – for individuals if they admit to drug using at the time of arrest, such as being treated differently or being charged with further offences. This is consistent with observations from the Australian Injecting and Illicit Drug Users League (2010), which asserts that many people are convicted by their own admissions of offences involving illicit drugs. This is particularly the case with instances of self-administration or possession. While ***A*** assumes that the natural response is to tell the police, ***D*** thinks that this is a *naïve* assumption. ***D*** enacts applicants as subjects aware of their right to remain silent, and privilege against self-incrimination. Indeed, apart from giving their name and address, they do not have to speak to the police until they have had the opportunity to receive legal advice. In this way, ***D*** enacts applicants as individuals who are cognisant of their rights and exercise them, as well as aware of the repercussions of their admissions. However, for ***A***, applicants suited to treatment are those who have revealed that drug use is the cause of their criminality *at the time of the offence*, not later. By doing this, these applicants have shown not only awareness about their 'problem', but some sort of compliance with authority. This, it seems, makes them suitable candidates for the rigours of the drug treatment order; another implicit eligibility criterion. This practice seems to be contrary to the principles of best practice in diversion: Good diversion practice will not compromise the rights an offender would enjoy during the normal course of the criminal justice process, in particular, rights to procedural fairness, the right to appeal and *protection from self-incrimination* [emphasis added] (Alcohol and Other Drugs Council of Australia, 1996, p. 1).

In the interview extract above, ***P*** refers twice to the *current* position of the court. Here, it is important to note that the screening process identified through my fieldwork differs considerably from the drug court processes described at the outset of this chapter and outlined in the official documents such as the latest drug court evaluation (KPMG, 2014), the *Screening and Assessment Policy (*Drug Court of Victoria, n.d.-c), the drug court website (Magistrates' Court of Victoria, 2017) and the submission by the drug court to *The inquiry into the supply and use of methamphetamines particularly 'ice' in Victoria* (Parsons & Lauritsen, 2013). ***P*** and ***D*** also elaborated on the *former* process and raised concerns about the *current* one. As ***P*** states, the Community Corrections Services case manager previously conducted the screening:

> [The way in which the dependence-offending nexus is established now reflects] a change in drug court practices. Historically, probably some time ago, that screening criterion, that nexus, was decided on a clinical level. So, I think if you booked in for screening, it was basically stood down.[29] [So that] the case managers could have a discussion [with the applicant] [using] a screening form, looking at those [clinical] criteria, and then [they would] make a recommendation to the court as to whether the applicant should get to the next stage.

D confirms that the change is recent, but says that the alcohol and other drug clinical advisors, rather than the case managers from Community Correction Services, conducted the assessment:

> It is relatively a new thing that has happened, and I would say really only in about the last eighteen months are we now starting to really argue about the nexus between drug dependence and the offending. It used to be that if there was a screening listed at court, one of the clinical advisors from the drug court would meet the person, go and see the person in the cells, and they would make that diagnosis. And, um, I am of the view that the clinical advisor is the person best able to see whether or not a person meets that diagnosis as per DSM-5, and then if the applicant was found suitable, if the clinical advisor said 'Yes, this person does have a dependence.' Issues that may be addressed at the screening are: is there a nexus between that dependence and the offending? Which was usually quite straightforward. Now, for some reason, the [opposing party] are arcing up a lot more saying that person doesn't have a drug dependence, because now we don't

[29] The case is put on hold briefly and usually called back on that same day for completion (Victoria Legal Aid, 2018).

> have the clinical advisor going in. What we do is the matter just comes in front of the magistrate. I think this is where the clinical advisor needs to be meeting with the client because the clinical advisor knows the questions to ask: [D pretends to ask questions as the clinical advisor] 'In terms of interference with, you know, your lifestyle, this, that and the other, how do you feel if you aren't using? How does your body feel if you aren't? Are you craving? Are you withdrawing?'

Although ***D*** remembers the screening officer as the clinical advisor and P as the Community Corrections Services case manager, they are both of the opinion that this was a 'clinical' decision because the officer used a checklist or screening tool. What ***P*** and ***D*** are articulating here is a shift away from medical or clinical determinations to legal assessments. This phenomenon was also identified by Vrecko (2009) in his research in a US driving-whilst-disqualified court and Seear in her work on the constitution of addiction by lawyers in Australia and Canada (2017). However, it is important to take into consideration that according to the documents the drug court uses to identify itself (Drug Court of Victoria, n.d.-c; KPMG, 2014; Parsons & Lauritsen, 2013), the 'clinical' screening to which they are referring was conducted by a case manager. The position description for this role does not specify special qualifications in identification of dependence (Community Corrections, 2018). Typically, the screening took place over a period of 45 minutes, and not only involved clinical factors, but demographic and justice-related criteria. Also, during this time, the case manager provided the applicant with detailed information about the expectations and requirements of the drug treatment order. This means that the 'clinical' screening element comprised the administration of an unknown dependence screening tool over a short period of time by a criminal justice system official who might not have had clinical training. Moreover, even though this individual made a recommendation, the decision was still ultimately the drug court magistrate's. I argue that the identification of dependence at the screening stage does not appear to have ever been totally in the hands of individuals with dependence expertise. In the changes described by ***P*** and ***D***, responsibility continues to move further to legal actors. The process now involves the magistrate, legal representatives and police prosecutors. What is also of interest is that relatively recent documents produced by the drug court, and about the drug court, listed above, do not reflect the changes that have taken place in terms of screening practice. What does this suggest about the importance given to dependence identification processes by the drug court? To return to Bacchi's ideas, it is possible to observe

that major changes in the identification of dependence processes are produced here as not consequential enough to warrant documentation, and therefore silenced in this representation of dependence. Yet, as we have seen, they are fundamental to drug court access.

Conclusion

In this chapter I explored how the Drug Court of Victoria determines who is eligible for enrolment in the court through an in-depth examination of what is known as the 'screening stage' of admission. As I explained at the outset of the chapter, all drug courts around the world have eligibility criteria, but these eligibility criteria differ across jurisdictions. Despite these differences, most drug courts require applicants to establish that they have an 'addiction' or 'dependence' to alcohol or other drugs, and in many cases, that there is a link between that dependence and their offending. In the Drug Court of Victoria, these eligibility criteria are enshrined in legislation. Despite both the ubiquity and significance of eligibility criteria to drug courts, little is known about how courts conceptualise dependence or the dependence–crime nexus. In this chapter I sought to address this gap in the literature, based on court observations, interviews with drug court personnel and analysis of other literature.

I argued that a range of actors are implicated in diagnosing dependence and in construing the nexus between dependence and criminality. Further, I demonstrated the court produces dependence and the dependence–crime nexus in multiple and sometimes conflicting ways. This has implications for equity and fairness, as it means that entry into the drug court and diversion out of the traditional criminal justice system may be unpredictable, arbitrary and inconsistent (see Bull, 2005). Some drug court staff were of the view that there had been a change in screening practices over time. While there were indications that court officials who might have had dependence training were previously involved in the screening of clinical eligibility criteria, this responsibility had now been entrusted to legal actors. I argued that the identification of dependence at the screening stage did not appear to have ever been *totally* in the hands of individuals with dependence expertise partly because, as drug court policy and procedures documents indicate, the magistrate has always had discretion to make the final decision over who is eligible for further clinical assessment. Indeed, it appears that as the Victorian legislation does not guide any of the clinical criteria screening processes, they have been developed somewhat haphazardly in the course of the drug court's lifetime. These findings differ from those made in some other jurisdictions (Belenko et al., 2011), where legal actors make

decisions only about judicial criteria and the task of making 'clinical' decisions is the preserve of clinical staff (although see Vrecko, 2009).

The key tool used to enact the 'problem of dependence' is the summary of priors. I showed how legal actors establish clinical criteria by distilling a variety of 'clues' from this document: sporadic 'drug related offences', previous court-ordered alcohol or other drug treatment, instances of possession of 'deal bags' (even if they are empty) and objects such as syringes and 'ice pipes'. These objects thus become not merely 'symbols' of dependence, but *constitutive of dependence*, playing a role in the materialisation of the applicant's drug 'problem'. Additionally, I argued that there were an implicit set of eligibility criteria produced through the practices of key decision-makers in the drug court. For example, applicants are deemed to be more suitable to a drug treatment order if their summary of priors includes references by police informants to their alcohol or other drug use, self-admission of alcohol or other drug use at time of arrest, and the presence of corroborating 'evidence' of dependence in the form of comments from alleged victims and witnesses about an applicants' alcohol or other drug use. In this way, the opinions and perspectives of police informants, victims and other witnesses play a vital role in the identification of dependence. These perspectives are elevated to a 'quasi-expert' status (following Seear, 2017). Importantly, such claims are rarely scrutinised in the way that expert evidence usually is in conventional legal proceedings. Perhaps even more importantly, the constitution of implicit eligibility requirements and the acceptance of 'quasi-expert' perspectives results in certain people's subjective accounts being given more weight than others (that is, those of drug court applicants themselves). Indeed, their perspectives are frequently discounted, dismissed or silenced. I described this process of privileging some perspectives over others as a 'dividing practice' (following Bacchi & Goodwin, 2016, p. 23).

This distinction is significant because of the 'lived' and 'subjectification' effects it produces (Bacchi, 2009; Bacchi & Goodwin, 2016). First, it silences and hence disregards the circumstances of the arrest and potential consequences of making statements to the police for the arrestee. Suitable drug court applicants are expected to waive their privilege against self-incrimination; in this way rights they would enjoy during the normal course of the criminal justice process are compromised. This indicates that the court does not necessarily follow the principles for best practice in diversion (Alcohol and Other Drugs Council of Australia, 1996). Additionally, not only are applicants enacted as manipulative and opportunistic subjects, but submissions by legal advisors based on applicants' instructions are ignored if it is deemed that there are no corroborating 'clues' in the summary of

priors. In these ways, the process of enacting dependence and the dependence–crime nexus has the effect of producing and reproducing people who use drugs as disingenuous and untrustworthy, and as unreliable claimants in their own lives. These were not the only dependence (or 'addiction') stereotypes to be instantiated via the screening stage. Applicants were also enacted as having clouded judgment and suffering from 'loss of control' that was often said to lead to offending; paradoxically, they were simultaneously produced as rational actors able to discern the best course of action in order to comply with the law. Also, I argued that the drug court perpetuates the idea that dependence is causally connected to criminality (even though it occasionally disrupts this link). I noted that the reproduction and reinforcement of the idea that drug use or 'dependence' causes crime has negative consequences. For example, other potential structural contributors to criminality such as social exclusion (Clancy & Howard, 2006; Mackenzie, 2006; Seddon, 2000) may be overlooked and continue to go unaddressed. Those who do not respond to the sort of dependence treatment provided may be held responsible for their own 'failure' and further stigmatised. These potential effects, contradictions and stereotypes have been identified in previous studies of people who use drugs (Fraser & Seear 2011; Fraser & valentine 2008; Keane, 2002; Sedgwick, 1994). All of this raises serious questions about claims that drug courts do things 'differently', 'therapeutically' and/or more sensitively, or that drug courts put participants *at the centre of things*, as some others have claimed (Freiberg, 2005; Hora, 2002; KPMG, 2014). As we shall see, concerns about the putatively therapeutic or beneficial nature of drug courts surface again in later chapters. In the next chapter I review the clinical assessment stage, and explore what happens when drug court alcohol and other drug clinicians become involved in the assessment process.

Chapter 5: Syncretic assessment: Clinico-criminal enactments of dependence and its 'effects'

As explained in the introduction to the previous chapter, over the course of my research I identified two key stages in the admission process into the Drug Court of Victoria. They comprise the screening of eligibility criteria by legal actors, and the assessment of suitability for the drug treatment order by alcohol and other drug clinicians and Community Corrections Services case managers. In the previous chapter, I was primarily concerned with how legal actors identify and constitute dependence, and how they enact the nexus between dependence and criminality at the screening stage of entry into the court. In this chapter, I examine the assessment of suitability conducted by the drug court's alcohol and other drugs clinicians (clinical assessment). This assessment considers the applicants' history of substance use and treatment, health status, motivation to change, a treatment plan, and a recommendation as to their suitability for a drug treatment order. This process is important because it contributes to key decisions, including whether or not the drug court applicant is understood to be 'dependent' on alcohol and other drugs, and therefore a 'suitable' drug court participant. When this happens, I argue, drug court processes and personnel instantiate a subject identity ('dependent person'). In the following sections, I show how two seemingly incompatible approaches to dependence, treatment and punishment, reconcile or 'syncretise' in the clinical assessment. By looking at how elements from both approaches are employed to establish dependence and some of its 'effects', I demonstrate a new facet of the hybrid nature of drug courts.

The first part of this chapter focuses on the clinical influences on the assessment. I explore the way in which alcohol and other drug screening tools are utilised to assess applicants' treatment needs and motivation 'to change', and to diagnose dependence. The second part of the chapter shows that as the drug court is essentially embedded within the criminal justice system, distinctive elements of criminal justice or legal approaches to 'fact' finding exert a heavy influence on what is putatively a 'clinical' assessment. The exploration I undertake in this chapter contributes substantially to the narrow field of sociology of alcohol and other drug dependence diagnosis in criminal justice system settings. My findings are important because they

tell us whether the court does indeed constitute dependence as a health issue, a criminal problem, or both, and what the implications of this are for drug court participants.

Approach

In this chapter, I again follow Bacchi's (2009) WPR approach to examine how the clinical assessment process represents the problem of dependence and its 'effects'. Unlike Bacchi, I do not use policy as my 'practical' text; instead, I extend Bacchi's approach to the use of other texts, which I argue are comparable to policy texts in that they 'make it possible to identify and interrogate governmental problematisations via understandings of practices, events, and relations' (Bacchi & Goodwin, 2016, p. 34). These practical texts include the drug court clinical assessment reports, interview guide and the dependence diagnostic tools informing the assessments. I focus on questions one, two and five (the latter only briefly) of Bacchi's WPR approach. First, I explore how the problem of alcohol and other drug 'dependence' is represented in one of the key stages of entry into the court: clinical assessment. Second, I examine some of the presuppositions or assumptions that underlie the representation of dependence and its 'effects' in two of the evaluative tools used in the clinical assessment process. In conducting this examination, I engage in an excavating exercise or Foucauldian archaeology (Foucault, 1994) to uncover the 'knowledges' or discourses, in Bacchi's words, that underlie the clinical assessment. By doing so, I also explore how these tools enact dependence. Third, I explore some of the lived, subjectification and discursive effects of 'diagnosing dependence' in a legal setting such as the Drug Court of Victoria.

Literature review: diagnosing dependence in drug courts

As I have noted previously, a key requirement for admission into the court is that the magistrate is satisfied that the applicant is 'dependent' on alcohol or other drugs and that this 'dependency' contributed to the commission of the offence (*Sentencing Act 1991* s.18Z). As pointed out in the previous chapter, only a few international studies have explored how drug court eligibility is established. The process of diagnosing dependence, or of identifying its 'symptoms' and 'effects' has received even less attention. In what follows, I outline research on how a 'dependence' diagnosis is established in some drug court settings.

In 2007, Colyer reported on observational research conducted in a drug court located in the north-eastern US. He found that certified alcohol and other drug clinicians from a local welfare

agency are responsible for diagnosing dependence in this drug court. The assessment interview takes about an hour. It includes a review of the applicant's alcohol and other drug history and 'general attitude' towards alcohol and other drugs. Further, the clinicians assess environmental factors that may impede the 'success' of applicants in the program, such as their family situation and ability to pay for treatment. The clinicians compile a summary of the participant's needs that they match to alcohol and other drug treatment services offered in the community. As well as gathering information from the applicant, the clinicians gather information from other sources, including from other social service providers that have a relationship with the applicant. Colyer found that clinicians used the Addiction Severity Index (ASI) tool to guide their assessment, but relied mostly on open-ended questions they formulated based on their experience and subjective perception. Colyer observes that this flexibility introduces opportunities for inconsistency in clinicians' diagnostic decision-making. Further, he points out the importance of the role of clinician because they act as 'gatekeepers, wielding substantial discretionary power. Decisions made at the diagnostic stage dictate a participant's trajectory through the program. The clinicians' diagnostic discretion determines the parameters for treatment or if the applicant is appropriate to participate at all' (Colyer, 2007, p. 319).

While the drug court team collectively discusses each applicant's case by reviewing their legal history, life circumstances, and chances of program completion, generally the clinician makes the final decision based on 'clinical judgment'. This decision is not open to appeal.[30] In this way, Colyer concludes, the clinician's authority is similar to that of a judge imposing a sentence without the possibility of it being reviewed or otherwise scrutinised.

As I noted earlier, drug courts are inconsistent in their approaches to defining dependence. Murphy (2011) identified the issue of definitional ambiguity in a drug court located in a US north-eastern city. The drug court staff explained that while some of the participants might not be found to be dependent on drugs, they still required intensive dependence treatment because they were addicted to the 'fast' money and material possessions brought about by the drug dealing 'lifestyle'. In this respect, the definition of 'dependence' in use in that court was broad, exceeding the consumption of drugs. Further, Murphy (2011) observes that court personnel

[30] The Drug Court of Victoria has a different process. Both prosecution and defence lawyers can challenge the results of the clinical and case management reports (Drug Court of Victoria, n.d.).

identified many participants as ‘addicts’ when participants reported only low to moderate drug use or identified drug use as a ‘problem’.

In another recent study, to which I referred previously, Gowan and Whetstone (2011) explain that in the US drug court where they conducted their research, a hybrid approach to diagnosis was in use. The drug court team (judge, prosecutor, public defender, probation officers and senior counsellors) considered criminal and dependence treatment history to evaluate the level of ‘criminogenic risk and clinical need’ (p. 315). A diagnostic assessment tool was employed to identify those at most risk of reoffending because of their dependence. Factors such as early onset of alcohol and other drug use or crime, homelessness, unemployment, and prior forensic history increased the likelihood of a person being diagnosed with a ‘dependence’ and thus being ruled eligible for the court program. Other factors such as withdrawal symptoms, craving and the presence of mental illness were also part of the assessment process. Applicants were rated in each dimension and given a final score. Gowan and Whetstone (2011) argue that this hybrid diagnostic model created the subject of the ‘criminal addict’, so that conviction becomes evidence of dependence, and dependence the main cause of involvement in the criminal justice system. As I pointed our earlier, these are useful insights but leave much unexplored. For example, despite outlining some elements of the diagnostic process, Gowan and Whetstone (2011) do not specify which member of the drug court team directly assesses potential participants, or other steps involved in the diagnosis such as how the team reaches a decision. Moreover, clinical assessments of participants, including dependence diagnosis processes, vary according to drug court jurisdiction. It is of note that studies of this nature have been only conducted in the US, and might not be relevant to other jurisdictions that have adopted the drug court model such as Canada, the UK and Australia.

Given that the drug court model claims to understand dependence as a medical issue (KPMG, 2014; National Association of Drug Court Professionals, 2004), also relevant to the concept of diagnosis of dependence in drug courts is the process of medicalisation in which a ‘problem’, in this case dependence, previously defined in non-medical terms, comes to be conceptualised in medical terms (Conrad, 1992, 2005). As noted earlier in this thesis, it has been argued that a benefit of understanding a problem in medical terms is that it decriminalises it, so that individuals experiencing the problem are seen as ‘sick’ rather than ‘deviant’ (Conrad & Schneider, 1992). According to Conrad (1992, 2005) although this process is accepted, it is never

completed and occurs in stages. The first stage, conceptual medicalisation, entails defining a problem in medical terms but does not require a physician to be associated with diagnosis or treatment. The second and third stages, institutional and interactional, involve a growing capacity for physicians as either validating experts or providers of treatment. Tiger (2011) and Murphy (2012) (studies I reviewed earlier) argue that drug courts are an example of conceptual medicalisation only, in that medical language is used but the involvement of medical professionals is only partial. As the process of diagnosis is key to how a condition (in this case dependence) is constituted, the clinical assessment process is also an important target for investigation, because who diagnoses dependence and the way in which they do it indicates, as Bacchi would put it, how dependence is problematised and how drug court participants are governed in the process.

Before I begin my analysis, however, it is important to consider research on how screening and diagnostic tools used by alcohol and other drug clinicians produce dependence. Dwyer and Fraser (2015, 2016) argue that screening and diagnostic tools are a key element in expert 'knowledge' making (Bacchi, 2009) through which realities of dependence are revealed. As Dwyer and Fraser (2016) suggest, these tools work to establish dependence as an independent, anterior condition located within individuals, in this way silencing the complexities and subjective interpretation of individual experiences.

In this section, I have identified a lack of international and Australian research on how dependence is diagnosed in drug court settings. What little critical work exists in the area has focused more generally on how eligibility criteria are established. Such research has only tangentially explored how dependence is diagnosed (Colyer, 2007; Gowan & Whetstone, 2011; Murphy, 2011). Some key findings of this research are that diagnostic tools are sometimes used to review participants' alcohol and other drug use, or to establish 'dependence', but that the tools are used inconsistently. In addition, some research suggests that conceptualisations of 'dependence' are highly subjective, inconsistent and arbitrary, and that they are influenced by factors such as the type of drug consumed and other activities in which the participant engages, even in lieu of actual drug consumption. Importantly, those tasked with making these determinations act as 'gatekeepers' for entry into the drug court, and such assessments are not always subject to separate rights of appeal.

In the last section of my literature review I explored the constitutive role of dependence screening tools. In the following section I examine the clinical assessment process in the Drug Court of Victoria.

Drug Court of Victoria clinical assessment process

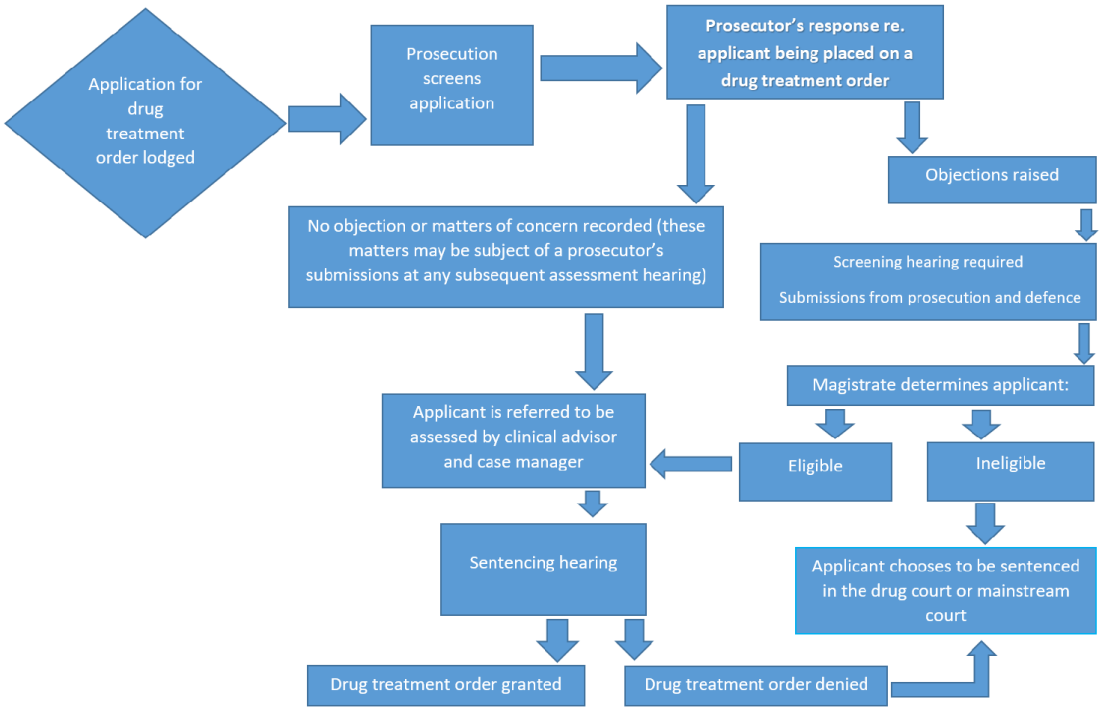
According to the Drug Court of Victoria's submission to *the Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria* (Parsons & Lauritsen, 2013), its assessment process examines in-depth factors relating to an applicant's criminality and permits the formulation of strategies that address the applicant's alcohol and other drug treatment needs and other social or material needs. The assessment also identifies the need for further specialists' reports, such as psychological or neuropsychological reports. As I explained in the introduction to this chapter, after the drug court applicant is considered to meet the eligibility criteria (a process reviewed in the previous chapter), the matter is adjourned for three weeks for a comprehensive assessment of suitability. In that time, the drug court team conducts two detailed assessments. The first assessment is undertaken by a case manager from Community Correction Services Victoria, and considers legal, imprisonment, family and social history, housing needs and current offences before the court. The second assessment is undertaken by an alcohol and other drug clinician (clinical advisor) employed through the drug court; this considers history of alcohol and other drug use, treatment, health status and motivation to change. Both assessments take approximately one and a half hours and occur either face to face or via video or telephone link. In my fieldwork, I observed that if an applicant had been granted bail during the three weeks after they had been found to be eligible, the assessment took place face to face in the 'drug courthouse'. This is a building located across the road from the Dandenong Magistrates' Court, where drug court participants are tested for alcohol and other drugs, attend appointments with members of the court team and group programs and, if required, undertake their community work[31] in a communal garden. Towards the end of my fieldwork, the drug courthouse building caught fire and was badly damaged, so assessment of new applicants who were on bail took

[31] The majority of offenders in Victoria are required to undertake unpaid community work as a condition of their community based orders. Community work programs vary widely and can range from outdoor work programs such as graffiti removal and parks maintenance, to indoor programs such as cooking and soft toy making (Community Corrections, 2018). Drug court participants can reduce custodial sanctions by conducting community work. During my field work they were doing this community work by working in a large community garden attached to the drug court house.

place in Community Corrections Services' headquarters in Dandenong. For those applicants remanded in custody (the majority), assessment always takes place via video link or phone.[32]

Both assessment reports contain recommendations regarding the 'suitability' of the applicant for a drug treatment order, together with a case management and treatment plan, and any special conditions attached to the order. The assessors lodge the reports prior to the adversarial assessment hearing, so that the rest of the drug court team, the prosecution and the applicant's legal advisors can access them (Drug Court of Victoria, n.d.-c).

As Figure 1 shows, after the assessment reports are completed and submitted, the applicant returns to the drug court for a sentencing hearing. In this hearing, the magistrate considers the assessment reports along with any submissions (from defence or prosecution) on whether the applicant should be placed on a drug treatment order. If the magistrate determines the applicant is not suitable for the drug treatment order, the applicant may decide to be sentenced immediately or have the matter referred back to the general division of the Magistrates' Court of Victoria. If the magistrate determines that the applicant is suitable for the order, the court hears a plea and sentences the applicant to a two-year drug treatment order.



[32] Most of the assessment reports produced by drug court clinical advisors that I reviewed were conducted via phone.

Figure 1 *Drug Court of Victoria admission procedural diagram*[33]

Now that I have described the context in which the assessment reports take place, I will move on to describe the clinical advisor's report and analyse how dependence is diagnosed.

Clinical elements

As I explained at the outset of this chapter, clinical assessment in the drug court is a process composed of seemingly incongruous clinical and legal elements. While, as I showed in my literature review, this idea of this process as hybrid (or syncretic) is not entirely new (see Gowan & Whetstone, 2011; Dawn Moore, 2007a), I develop it further in this chapter. I use Bacchi's (2009) WPR approach to explore the assumptions underlying the representation of dependence in both the clinical and criminal justice system tools employed to identify dependence and its 'effects' (including crime). In this section I explore the clinical elements shaping the assessment.

Exploring the assessment interview guide

As pointed out previously, the clinical assessment considers several issues: the applicant's alcohol and other drug use and treatment history, health status and motivation to change. It is conducted by court clinical advisors – accredited alcohol and other drug practitioners with unspecified 'qualifications in social sciences' (Parsons & Lauritsen, 2013, p. 5). The interview is conducted using an interview guide developed for the Victorian Department of Justice court projects by Caraniche (2018), a major provider of psychological and alcohol and other drug counselling services for the forensic population in Victoria. The rationale of the interview guide, which was provided to me during my fieldwork, is to (Drug Court of Victoria, n.d., p.1):

> Provide knowledge and raise awareness regarding alcohol and other drug problems of the drug treatment order applicant, facilitate improved practices and more effective interventions. It is the basis of a drug treatment order plan for the applicant and can be used to monitor their progress and outcomes throughout the duration of a drug treatment order.

[33] This diagram is modelled on one section of the official Drug Court of Victoria process (KPMG, 2014, p.13), but modified and adapted to reflect the processes that were in place when I undertook my fieldwork between July and December 2015.

In this passage, alcohol and other drug problems are depicted as self-evident, and as pre-existing the assessment process. Indeed, the aim of the interview – in part – is to help raise awareness of the applicant's 'problem'. Bacchi would instead argue that the assessment process actively constitutes the problem, a matter to which I shall return.

The interview guide is a composite of two screening tools widely used in the alcohol and other drugs field: the ASI instrument and the stages of change readiness and treatment eagerness scale 8D (SOCRATES) (Drug Court of Victoria, n.d.-a). A brief examination of the interview guide sheds light on some of the approaches (or 'knowledges' in Bacchi's terms) that inform these tools and are centrally implicated in the enactment of dependence in the drug court. In the following sections I briefly explore how dependence is constituted through elements of the ASI and SOCRATES instruments, how they are used in the clinical assessment at the drug court, and some of the effects of this use.

Assessing treatment needs: Addiction severity index

The ASI tool was developed in 1980 (McLellan, Luborsky, Woody, & O'Brien, 1980). It is probably the most widely used standardised instrument in the alcohol and other drug field, and it has been translated into several languages (Denis, Cacciola, & Alterman, 2013; Grissom & Bragg, 1991). It is used for client clinical assessment and research and in a wide range of adult populations. The ASI instrument has six sections: medical status, employment/support status, alcohol and other drug use status, legal status, family/social relationships and psychiatric status. However, the interview guide used by the drug court includes only three of these sections: medical status, psychiatric status, and alcohol and other drug use. It appears that the sections on employment/support status, legal status, and family/social relationships are omitted because they are examined in the case management assessment conducted by Community Corrections Services Victoria. McLellan et al. (1980) point out that the design of the ASI instrument is based on the assumption that:

> Addiction must be considered in the context of those treatment problems which may have contributed to and/or resulted from chemical abuse. The objective of the ASI is to produce a problem severity profile of each patient through an analysis of six general areas [sections of the instruments outlined above] which commonly result in treatment problems. (p. 27)

Here, the designers of the ASI produce the different areas covered by their instrument as both causes and effects of dependence. Additionally, they enact severity as 'need for additional treatment'. They acknowledge that this definition might differ from other perspectives on severity, and justify it by providing an example:

> The patient who has very poor uncorrected vision, but has been fitted with glasses which allow him to see adequately, would still be considered to have a severe vision problem if severity were defined as 'deviation from optimal function'. However, the ASI estimate would be quite low since no additional treatment would be required. This operational definition of severity was adopted since it relates directly to the primary mission of health care facilities: delivery of treatment (McLellan et al., 1980, p. 27).

Here, the authors equate the treatment of dependence with the treatment of a visual problem, constituting dependence as a disease comparable to a physical condition, which does not need to be cured if it is managed effectively – as with glasses. Additionally, while the tool subjects the assessees to a battery of questions in the six areas mentioned, its main objective is to identify only those areas requiring treatment. This seems somewhat counter-intuitive if the user of the tool does not know the special meaning the developers of the tool ascribe to severity. For example, a user might think that the results yielded by the instrument indicate how severe 'dependence' is and not that it actually aims to measure 'the areas in need of treatment'. This might lead to duplication of services for the assessee. In fact, the developers report elsewhere that the meaning has been a source of misunderstanding among ASI users (McLellan et al., 1990). I have pointed out that the developers had a particular perspective on 'severity' to illustrate one of the conceptual logics underpinning dependence representation in the tool. Dependence is represented here as a condition that might be 'corrected' if areas of treatment identified by the tool are addressed.

According to the court interview guide, applicants for a drug treatment order are asked to use a five-point scale to rate the extent to which they have been bothered by 'problems' in each of the three areas (medical status, psychiatric status, and alcohol and other drug use), and the extent to which they feel that treatment for those 'problems' is important. The 5-point scale for each of these questions ranges from 0 to 4, as follows: (0) Not at all, (1) slightly, (2) moderately, (3) considerably, (4) extremely important. The court interview guide instructs clinical advisors to

use these severity ratings; however, my analysis of 16 assessment reports produced by the clinical advisors indicates that scores are not recorded. Indeed, the ASI instrument developers advise that it is 'entirely acceptable' to use it without the severity ratings (McLellan et al., 1990). What is more, introductory advice provided in the interview guide to the court clinical advisors tells us that the three sections of the ASI instrument used in the interview should act only as prompts (Drug Court of Victoria, n.d., p.1):

> Interviewers may vary the wording as necessary in order to make questions more comprehensible or to maintain rapport (e.g., paraphrase questions to suit applicant's response style). The interviewer should ask questions in such a way that the applicant could express him or herself fully. Ask open-ended questions that do not lead clients to give desirable answers. It is possible to combine this style of interviewing with the more structured requirements of the assessment by asking specific written questions and then saying, 'could you tell me more about that?' The more applicants are encouraged to speak, the more they feel that there is genuine interest in them and their difficulties. More generally, questions act as cues for the interviewer to follow to obtain necessary and relevant information in order to plan a drug treatment order.

This extract shows that the assessment interview is a hybrid of open and closed questions, and that clinical advisors are at liberty to paraphrase the prescribed questions of the dependence instruments assembled in the interview guide. This is consistent with reports by drug court professional ***H***:

> While that is just a guide, the conversation allows to open up, to look at what point did use escalate. Why did it escalate? What was going on around them at the time of escalation? And then we might find things like 'Oh, my mother died, or I had a relationship breakdown, it was going well before that', and away we go, and then that takes care of that.

Despite using screening tools developed by the 'psy' disciplines, originally conceived with the aim of 'objectively' measuring dependence along with its perceived 'effects' or causes, in practice these tools are used only to 'guide' the interview. In this way, the instrument's supposed advantages or claims – of objectivity, value neutrality and the ability to quantify aspects of the nominally pre-existing 'problem' of dependence – appear unjustified. Further, the interview

guide allows assessors to be flexible with their approach in a bid to 'find' dependence and its causes, as ***H***'s comments indicate. However, different assessors might arrive at different conclusions, and hence enact dependence in distinct – or even, following Annemarie Mol (2002) – 'multiple' ways. While I am not discounting the role of the instrument in framing the outcome of the assessment, the information elicited from the applicant is also highly contingent on subjective factors including the assessor's interviewing style, their views about what is important or relevant to dependence, the interview setting, the applicant's understanding of the process, past experiences and interactions on the day. For example, traditionally the production of 'accurate' clinical reports has rested on clinicians' acute observation and listening skills, and their capacity to build rapport, which relies on conducting the interview face to face (Hulse, White & Cape, 2002). This might not be easily done in a time-limited interview conducted via phone, as often occurs at the Drug Court of Victoria.

Another important aspect of the ASI tool to consider here is that since its development the tool has been updated several times, so it has several versions. The version differ subtly in the language used and hence the dependence 'effects' they identify. For example, the first version of the ASI did not include questions about routes of drug administration (oral, nasal, smoking, non-intravenous injection, intravenous injection). These were included in the 1996 ASI (5th edition) because of growing concerns at the time about the 'generalised' use of smoke-able crack cocaine (in the US) and the threat of blood-borne viruses such as HIV and hepatitis C. Moreover, this updated edition added two charges to the legal problem area: prostitution and contempt of court. These additions were made based on the tool developer's assumption that these crimes are common amongst this population. This change resulted in the expansion of crimes attributed to dependence. No research is cited that supports the change. The team amending the ASI (5th edition) even encourages those using the instrument to add whatever charges are locally common (McLellan et al., 1992). In this way, not only are the 'effects' of dependence produced quite differently in various editions of the ASI tool, but a larger number of social ills are enacted as consequences of dependence.

Assessing motivation: SOCRATES

As pointed out above, the second tool in the interview guide is called SOCRATES 8D. This tool was originally developed to assess motivation to change alcohol use, but was later adapted to

other drug use as well (Miller & Tonigan, 1996). This tool builds on the so-called trans-theoretical model, which depicts a sequence of stages through which people progress as they initiate and maintain behavioural change: pre-contemplation, contemplation, action and maintenance (Prochaska, 1999; Prochaska, Velicer, DiClemente, & Fava, 1998). Through the administration of the tool, dependence is enacted as a behaviour which can be eliminated, and drug court applicants are categorised as being either ambivalent about whether they have a drug problem, aware they have a problem, or already taking steps to change their problematic use. In other words, as Dawn Moore (2007a) points out, this tool is a way to assess whether applicants are in denial about their alcohol and other drug use.

To administer the tool, 19 statements that describe the way the applicants might feel about their drug use are read out. The applicant must indicate how much they agree or disagree with each statement using a Likert scale from 1 (strongly disagree) to 5 (strongly agree). The use of this tool produces important discursive and subjectification effects (Bacchi, 2014), which – as we will see – are interconnected. This is because the administration of this tool imposes 'limits on what can be said or thought' (Bacchi & Goodwin, 2016, p. 35). For example, the tool assumes that all drinking is problematic and asks applicants to explicitly self-identify with labels such as 'drug addict' or 'alcoholic', given that the tool includes statements such as: 'I am a drug addict/alcoholic', 'my drug/alcohol use is causing a lot of harm'. In this way, the tool invites applicants to take up certain 'subject positions' (attitudes and identities), but also to draw connections between their alcohol and other drug use and 'harms'. While it can be argued that applicants are 'free' to strongly disagree, the unequal power dynamics of the context in which the assessment takes place, together with the high stakes for the assessee (who may face prison if not placed on a drug court order) exert force to produce such subject positions (Bacchi, 2014). This context includes the setting: a criminal justice system venue (either drug courthouse or custody), the individual formulating the questions (an agent of the criminal justice system whom applicants might perceive as a figure of authority) and the perceived consequences of 'strongly disagreeing' with the statements (serving a prison sentence) (see also Fox, 1992; McGlone, 2003). Even posing some problems and not others acts to constitute them. This is important because previous drug court research shows that in order to become part of the program applicants need to self-identify as 'addicts' (or as 'dependent' in the Australian context) (Murphy, 2011), but not *how* this happens. The administration of the SOCRATES tool shows

that if one wants to become a 'drug court participant', it is preferable to take up the subject position of 'problematic' drug user or drinker, with all its implications and associations. However, as Bacchi and Foucault remind us, subject positions are not fixed, they are always in continuous formation (Bacchi, 2014), and there are opportunities for rejection. (Later in the chapter I use Jacob's case study to show how this can occur in the clinical assessment.)

For now, let us return to the assessment of motivation. In the 16 clinical reports I analysed, 14 individuals scored high for recognition of 'problematic' alcohol or other drug use, and there were various scores for ambivalence and taking steps to reduce this use. This is a typical excerpt found in the reports dealing with a participant (Gabriel)'s motivation to change:

> Application of the SOCRATES 8D personal drug use questionnaire resulted in a high rating for recognition of drug use and taking steps to change, and a low rating for ambivalence. Ratings such as these generally suggest the individual recognises the harm associated with their *lifestyle* [emphasis added] and that they are already making plans and taking steps to make changes. Gabriel indicated that he has reached a point in his life where he is ready to make changes, he cites his son and mother as his motivating factors, and expressed a desire to be a good father and provide for his son.

Here, the assessor gives a general indication and interpretation. Further, the assessor indicates Gabriel's sources of motivation to change drug use. In the documents I examined, family members were often cited as important factors motivating willingness to enter into the drug court program. The word 'lifestyle' is a euphemism for alcohol and other drug use. This is of note because this word appeared in multiple clinical assessment reports several times. What does the use of such language imply? One would expect to see only the use of 'clinical' terms in an assessment produced by the court's 'addiction experts', as they were often referred to in the courtroom. These are terms that reflect the understanding that dependence is a health issue, as they claim to understand it. Instead of precise medical terminology, everyday vocabulary about dependence permeates the clinical reports, suggesting that the personal views of the assessors influence the outcomes of the reports. If dependence is a 'lifestyle', it is a way of living among many ways; it implies that the individual somehow freely chooses such a 'lifestyle', and by implication, to engage in illegal conduct. It also concedes that regular drug use is a social rather than narrow health one.

It is important to point out that scoring low for recognising the harms of alcohol and other drug use, and being ambivalent about such use were not necessarily disqualifying factors to get into the drug court. Jacob's case illustrates this point. As his clinical assessment report indicated, he had a history of 'drink driving' and:

> Application of the SOCRATES 8D personal drug use questionnaire resulted in a low rating for recognition of drug use and taking steps to change and a high rating for ambivalence. Ratings such as these suggest the individual does not view their drinking as problematic, which was consistent with Jacob's self-report, as he initially reported that he didn't see his alcohol use as a problem; however, later identified that it was an issue from a legal perspective. When challenged as to the amounts consumed, Jacob denied drinking in excess of half a bottle [of spirits]. However, his alleged offences and criminal history suggests otherwise, indicating that he may be under-reporting his use and/or denying a problem exists.

Here, Jacob did not identify as an 'alcoholic'. However, he acknowledged that his drinking was a problem from a legal perspective. In his view, he did not experience any other harms. Indeed, additional information provided by the defence lawyer in the assessment hearing showed that Jacob was employed full time, the main breadwinner in the family and paying a mortgage. Because Jacob did not identify as an 'alcoholic', he was challenged by the assessor who had access to his criminal record showing a lengthy list of criminal driving charges and the results of the breath test showing his blood alcohol content at the time of the offences before the court. However, despite such 'evidence' of 'alcoholism', Jacob resisted the label. This tells us that during the assessment assessors adopt a range of evaluative roles: they treat applicants' accounts with suspicion, check for consistency in statements, introduce extraneous materials (such as an applicant's criminal record) into the assessment, and use these materials to dispute or challenge an applicant's self-perception. Drug court professional ***H*** explains how this occurs:

> On the questions 'I really want to make changes in my use of drugs'; well, obviously every person will answer 'yes'. But, then the assessor can take that statement, and is it consistent with what the person said during the assessment? And that is why the assessor would use it: to look for consistency on the statements for motivation to change, and is that consistent with what the applicant said during the [prior] interview process for the

> assessment? Generally it matches, sometimes there is a bit of discrepancy because the assessor would generally conduct the motivation to change tool at the end of the assessment, so once the assessor has spent something like about one hour and a quarter […] they can see a lot of stuff for the consistency aspect and they kind of know: OK, this person has got some degree of motivation. Generally, participants are on the contemplative stage.

H's comments suggest that assessors do not take for granted what individuals say about themselves. Despite the fact that the assessment process is based on an assumption that drug problems are self-evident and will be 'detected' during the interview process, as ***H*** reveals, this process of 'detection' and problem identification is complex and *requires work*. The 'problem' of drug dependence emerges as part of a dynamic process of discussion, interpretation, questioning and re-questioning. This, as ***H*** sees it, might indicate what 'degree of motivation' or state of denial the person is in. What is more, the finding that the drug court does not assess levels of motivation to exclude applicants suggests that the outcomes of the SOCRATES tool are used to formulate treatment options instead. This contrasts with the drug court admission processes in other jurisdictions, where being 'treatment ready' is a prerequisite to being part of the program (Belenko et al., 2011; Colyer, 2007; D. Moore, 2007a).

In this section, I have made several points about the representations of dependence in the ASI and SOCRATES tools used in the clinical assessment for entry into the drug court. First, I pointed out that the designers of the ASI produce the different sections of their instrument as both causes and effects of dependence. Additionally, they gave 'severity' a special meaning: need for additional treatment. In this way, dependence is represented as a disease which is comparable to a physical condition that will be 'corrected' if the areas of treatment identified by the ASI are addressed, and that does not need to be cured if it is managed effectively – as vision defects can be managed with glasses. This simplifies the complexities of dependence treatment to an untenable extent. Second, the three sections of the ASI instrument used in the interview act as prompts only. There is no evidence that the drug court assessors employ the scoring system designed to be used with the ASI. This shows that despite using screening tools originally conceived with the aim of 'objectively' measuring dependence, in practice, such tools are used only to guide a semi-structured assessment interview. In this way, the instrument's supposed

benefits (objectivity, consistency and quantification) disappear. This finding is similar to Colyer's (2007) findings.

The second part of this section demonstrated that the SOCRATES tool is used to assess whether applicants are 'in denial' about their alcohol and other drug use. I argue that (following Bacchi, 2009) the tool encourages applicants to take the subject positions of 'alcoholic', 'drug addict', or 'criminal addict', and therefore may influence how they understand themselves and their options. This might be because of the environment in which such questions are asked and the perceived consequences of 'strongly disagreeing' with the statements in the tool, such as serving a prison sentence, but also by virtue of the assumptions and connections embedded in the tool (e.g. alcohol and other drug use inevitably produces harms). The clinical assessment I presented above contains various scores for ambivalence and taking steps to reduce alcohol and other drug use. Surprisingly, scoring low for recognising the harms of alcohol and other drug use and being ambivalent about such use was not necessarily a disqualifying factor for entrance into the court.

Both the ASI and the SOCRATES tools purport to be fixed and objective tools that will help uncover or detect the problem of dependence. In practice, however, various other factors shape how those data collected during the assessment are produced and interpreted. For example, assessors supplement the tools with their own questions. Because of these other factors, dependence emerges as multiple – it is not fixed or stable in meaning, but changeable. Despite its mutable and emergent nature, assessors act as if it is stable and require the applicants to both: (a) identify that they have a problem; and (b) demonstrate that they are motivated to fix this problem. This would seem to be a difficult task for the applicant, at the very least since dependence does not have a fixed meaning, and can be shaped by a range of factors. In other words, applicants are expected to demonstrate insight into a perpetually unstable and fluid phenomenon. If they do not demonstrate 'sufficient' motivation then they might be deemed to be ineligible for the program. Paradoxically, (as we saw with Jacob's case) a person's 'lack of insight' might also be the reason they are accepted into the drug court – because the assessor might decide that this 'denial' is itself a manifestation of the 'problem of dependence'. This analysis reveals that the clinical assessment process involves as much discretion as the determination of clinical criteria by legal actors I explored in the previous chapter. It also raises questions about the demands made on individuals in the criminal justice system to adopt poorly defined but heavily stigmatising diagnoses and identities. In the final section of this chapter, I

show that the arbitrary and inconsistent nature of the overall process of admission into the court has real implications for participants.

Diagnosing 'dependence': Conflating DSM IV and 5 criteria

As was shown in the previous sections of this chapter, the interview guide used in the clinical assessment of court applicants is a combination of two screening tools used in the alcohol and other drugs field: the ASI and SOCRATES. The information collected through these two tools is compiled in the clinical assessment report. The reports also contain a paragraph with a 'dependence' diagnostic statement, which shows that the assessors also use the DSM-5 (American Psychiatric Association (APA), 2013). In this section I focus on the diagnostic statement. The following is a diagnostic statement typical of those in the reports I analysed:

> According to the information provided by Marco at the time of interview, his description of his level of substance use *at the time* [… offences were committed …] indicated a condition whereby physiological opiate and cannabis dependence was present. This is in accordance with the criteria listed in the DSM-5.

There are several elements to note in this diagnostic statement. First, it tells us that Marco was diagnosed with 'a physiological opiate and cannabis dependence', that this diagnosis was made 'in accordance with' criteria listed in the DSM-5 and that it was based solely on Marco's description of his level of drug use 'at the time' of the offence. According to the DSM-5, in order to be diagnosed with a substance use disorder (SUD) a person who uses alcohol and other drugs must meet at least two of 11 criteria. Table 4 shows the criteria set for opioid use disorder.

Table 4 DSM-5 opioid use disorder criteria

Diagnostic Criteria
A. A problematic pattern of opioid use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:
1. Opioids are often taken in larger amounts or over a longer period than was intended.
2. There is a persistent desire or unsuccessful efforts to cut down or control opioid use.
3. A great deal of time is spent in activities necessary to obtain the opioid, use the opioid, or recover from its effects.
4. Craving, or a strong desire or urge to use opioids.
5. Recurrent opioid use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued opioid use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of opioids.
7. Important social, occupational, or recreational activities are given up or reduced because of opioid use.
8. Recurrent opioid use in situations in which it is physically hazardous.
9. Continued opioid use despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance.
10. Tolerance, as defined by either of the following:
a. A need for markedly increased amounts of opioids to achieve intoxication or desired effect.
b. A markedly diminished effect with continued use of the same amount of an opioid.
Note: This criterion is not considered to be met for those taking opioids solely under appropriate medical supervision.
11. Withdrawal, as manifested by either of the following:
a. The characteristic opioid withdrawal syndrome (refer to Criteria A and B of the criteria set for opioid withdrawal, pp. 547–548).
b. Opioids (or a closely related substance) are taken to relieve or avoid withdrawal symptoms.
Note: This criterion is not considered to be met for those individuals taking opioids solely under appropriate medical supervision.

Source: DSM- 5 (APA, 2013)

As the DSM-5 (2013) points out, these criteria can be applied to nine separate classes of drugs. Additionally, the DSM-5 instructs clinicians to not only consider the 11 criteria, but to specify the severity of the SUD and whether it is in remission. As the APA (2013) explains:

> SUD occur in a broad range of severity, from mild to severe, with severity based on the number of symptom criteria endorsed. As a general estimate of severity, a mild substance use disorder is suggested by the presence of two to three symptoms, moderate by four to five symptoms, and severe by six or more symptoms. Changing severity across time is also reflected by reductions or increases in the frequency and/or dose of substance use, as assessed by the individual's own report, report of *knowledgeable others* [emphasis added], clinicians' observations, and biological testing. The following course specifiers and descriptive features specifiers are also available for substance use disorders: 'in early

> remission', 'in sustained remission', 'on maintenance therapy' and 'in a controlled environment'. (p. 484)

While Marco's 'dependence' diagnostic statement purports to have been made in accordance with DSM-5 criteria, it could be that DSM-IV criteria were used instead (APA, 2000). Multiple factors that indicate this: the term 'dependence' is used rather than 'substance use disorder', there is no indication of severity, and the statement refers to physical 'dependence', which is not specified in the DSM-5. This raises questions as to why the court's experts are using what would now be considered obsolete terminology and concepts to diagnose dependence. Why has the transition not taken place despite the new edition of the manual having been introduced in 2013? What are the implications of this for practice? Fraser, David Moore, and Keane (2014) point out that 'the DSM-5 includes significant changes in the nomenclature of SUD. These changes are not only a matter of terminology but represent a redefining of addiction' (p. 45). First, the DSM-5 SUD replaces the two DSM-IV disorders of substance dependence and substance abuse. SUD is composed of 11 criteria (all but one of the DSM-IV substance abuse items and all of the DSM-IV substance dependence items). This results in an increased number of symptoms and possible manifestations of the disorder, and therefore a kind of addiction net-widening. Another important difference is that in the DSM-5, the criteria of withdrawal and tolerance are not to be counted towards a diagnosis of SUD if they occur in those taking medications under medical supervision.

It is also of note that in the clinical report's diagnostic statement, 'dependence' appears to be produced merely through mentioning DSM-5 criteria. I argue that this propels the expert's report to the status of an objective medical diagnosis; however, distinctive elements of DSM IV or 5 criteria are absent. For example, the report interprets Marco's reports of substance use as 'dependence', but does not tell us why. It does not provide any supporting information, nor highlight which items of DSM criteria Marco meets, nor what he said to indicate that he meets such criteria. All the reports that I examined were void of such diagnostic details. They should tell us how the assessors arrived at their conclusions, and provide support to the finding that the individual has a 'dependence', but they do not. One might think that the information the assessor recorded about Marco's history of opioid and cannabis use would shed some light on how he or she arrived at such conclusions. However, the content of the section on the history of alcohol and other drugs only responds directly to questions in the ASI tool (explored in the previous section).

This analysis of how dependence is diagnosed indicates that, while in the Drug Court of Victoria, dependence is referred to as a medical condition, rigorous engagement with what this means or entails is minimal. In this sense, my findings are consistent with those of Murphy (2011) and Tiger (2011). These researchers pointed out that drug courts are an example of conceptual medicalisation only, in that medical language is used but the involvement of medical professionals is limited. The case of the Drug Court of Victoria seems somewhat different to the drug courts explored by those researchers, however, because it shows that involvement of qualified alcohol and other drugs clinicians to 'diagnose' dependence does not necessarily guarantee meaningful medicalisation of dependence. As I showed above, even though the diagnosis is said to be made according to DSM-5 criteria, clinical advisors conflate DSM-IV and 5 criteria. This suggests a lack of engagement with key developments in the dependence field. Second, stating that an individual is 'dependent' on alcohol and other drugs according to DSM criteria seems to be sufficient to prove that they have a 'dependence'. The reports do not show how the criteria are met. This is important because the reports purportedly establish one of the key criteria of entry into the drug court: the fact that an individual has a 'dependence', and provide recommendations about the *suitability* of the applicant for the drug treatment order. The analysis further suggests that the evidence produced by the court's 'addiction experts' does not undergo the same rigorous review as the evidence presented by applicant's advocates at the screening level of entry into the court (as discussed in the previous chapter). As I showed in that chapter, legal actors have authority over the identification of dependence at the screening stage of admission. However, they cede this authority to clinical advisors at the assessment stage of admission into the court, who exercise considerable discretion, making the results of the clinical assessment inconsistent and arbitrary. It is worth noting that the drug court does not record the numbers of people denied entry after courtroom screening (KPMG, 2014, p. 25).

Criminal justice system elements

As I flagged at the beginning of the chapter, the clinical assessment conducted at the Drug Court syncretises two incompatible approaches to dependence: treatment and punishment. In the previous section I reviewed the treatment elements of the assessment. In the following section, I review how criminal justice system or legal approaches to 'fact' finding are utilised to assist with the 'clinical' diagnosis of dependence in the drug court. By doing so, I make two key points. First, the drug court clinical advisors treat applicants' accounts with high levels of scepticism.

However, the information in the police briefs (discussed in the previous chapter) continues to be privileged as 'objective'. Second, the diagnosis of dependence is retrospective, and the summary of priors is used to confront applicants and to explore what the 'symptoms' of dependence were *at the time* of the offence. In this way factors such as the drug–crime nexus which might be relegated in a health setting become influential in a medico-legal hybrid such as the drug court.

Police informants: 'knowledgeable others'

As noted earlier, in order to make a diagnosis, the DSM-5 instructs clinicians to not only consider the 11 criteria, but to specify the severity of the SUD and whether it is in remission. Further, the DSM-5 notes that SUD diagnosis relies on self-report, 'knowledgeable' others and biological testing (APA, 2013, p. 484). Here, 'knowledgeable' is open to interpretation. What kind of knowledge is required? Are only certain categories of persons considered sufficiently knowledgeable? Is a relative or a close friend knowledgeable enough, or perhaps only a clinician who has been professionally involved with the individual? Who decides who is sufficiently knowledgeable? In the context of the drug court, do applicants have a say about this, or is information simply exchanged without telling them to whom the drug court clinician speaks? The main source of information is the telephone, video, or face-to-face interview with the applicant. Other sources include psychiatric or psychological reports, mental health plans completed by general practitioners, and past screening or assessment documents (for previous participants or applicants). In addition, given that the causal link between drug use and criminality is cemented in the assessment interviews undertaken by the court's alcohol and other drug clinical advisors and case managers, the police summaries become a key source of information. As court professional ***H*** explains when discussing what sources of information are used in the assessment:

> It depends on what [information] comes [in]. Sources of information could be the psychiatrist report, [… or] something from the doctor. If it is a person who has been previously on the order, and we hold a neuropsychological report or something that is current, so whatever is current to use. We look at the police briefs – so that we can [ask the applicant]: 'So, look on the fourth of April, it says that you did this [committed crime]. What was your level of drug use on that day, or at that time?' So we are looking for a link of drug use and criminal behaviour as well.

H's comments and diagnostic statements in the analysed reports indicate that the court focuses on determining the absence or presence of a 'dependence' at a fixed point in time – 'at the time of the offence', rather than over time. This is in contrast with the timeframes used by other tools employed in the interview assessment. For example, the ASI was designed to gather information about the level of substance use over the past 30 days; the DSM-5 considers dependence 'symptoms/signs' that have manifested within a 12-month period. This indicates conflicting goals in terms of dependence assessment timeframes. While the court sets out to discover whether there is a 'dependence' at a fixed point in time, the assessment tools require the presence of dependence over more extended time spans. According to Fraser et al. (2014), the DSM-5 conceptualises dependence in a synchronic manner; that is, dependence is situated in a particular time rather than as an historical development. They contrast this conceptualisation with the enactment of dependence in the 12-step model, where there is gradual decline until 'rock bottom is reached'. They argue that the effect of the DSM-5 is of 'a snapshot, extracted from space and time, rather than a temporal process' (p. 35). This effect is even more pronounced in the court context, where what matters is the level of substance use at the crucial time of arrest. In practice, this means that when assessed the applicant is asked not so much to focus on the present but to remember what their level of alcohol or other drug use was like at the time of being charged, which is generally at least two to three months earlier. As court professional ***A*** states:

> About two thirds of participants are in custody when the drug treatment order is imposed. Cases usually involve the consolidation of several police briefs, with time flowing as prosecution briefs are gathered by defence counsel and charges negotiated. Anecdotally, very few people enter the program earlier than three months after being charged.

This suggests that the diagnosis is essentially retrospective because it focuses on the 'symptoms' the applicants report to have experienced when they were charged, typically three months before the assessment. If we return to ***H***'s comments (above), they suggest that the sources of information selected to inform the assessment are contingent on what the assessor considers relevant and what they decide or are able to retrieve. This means that in practice, there are two main sources for the clinical assessment in the court: the data collected from the applicant via the screening tools and the clinician's general clinical observations, and the police briefs, given that the other sources such as medical reports are not always available. I argue that this elevates police informants to the status of 'knowledgeable others' and that the clinical diagnosis of

dependence in the assessment process relies heavily on their observations and reports. For example, one could argue that the breath tests taken by police officers at the time of the offences equate to 'biological testing' (another source of information that can support assessment and diagnosis of dependence according to the DSM-5). This can be elucidated by reference to Jacob's case (as described earlier, he refused to identify himself as an alcoholic):

> When challenged as to the amounts consumed, Jacob denied drinking in excess of half a bottle [of spirits]. However, his alleged offences and criminal history suggests otherwise, indicating that he may be under-reporting his use and/or denying a problem exists.

Here, the assessor contrasts Jacob's 'denial' of daily alcohol use with evidence of dependence distilled from 'his alleged offences and criminal history'. This can lead one to suppose that the clinician uses the breath test results showing the blood alcohol content levels, recorded when Jacob has been charged, as a kind of 'diagnostic marker'. Further, the clinician might also treat the police's comments about Jacob's presentation when intercepted as the comments of a 'knowledgeable other' (as per the DSM-5 diagnosis advice). For example, is there any mention in the reports of signs of intoxication when Jacob was charged? Did he smell of alcohol? Was his speech slurred? Was he unsteady? It appears that the clinician uses the police brief to secure 'concrete' signs of intoxication. This contrasts with the way in which legal actors use the police briefs at the screening stage of admission. As I showed in the previous chapter, these legal actors browsed police briefs in search of vague statements about alcohol and other drug use, which are then constituted as 'clues' of dependence. I argue that given that the accounts of court applicants continue to be regarded with high levels of scepticism or suspicion, and that the police briefs are privileged, the latter remain instrumental in informing the clinical assessment and diagnosis of dependence in the court. This is also partly because, as the reports analysed show, dependence diagnosis in the court focuses on the level of substance use *at the time* of the offence. When asked how the police briefs assist in the dependence assessment context, court professional ***H*** explained:

> Well the thing is: have they been using? Were they sedated by drug use at the time? Um, were they out seeking drug use? So, the person said 'Look I got caught' and the brief says 'possession'. OK, what were you doing at that time? Why were you possessing? Why did you have so much drugs on you at the time? Um, was there trafficking going? Was it for

personal use? [Pretends to be assessee responding] 'Well, I wasn't using drugs but I was withdrawing. [Assessor]: Describe the withdrawal symptoms. [assessee]: At the time I was behaving erratically, or, you know, I was looking for heroin, I was hanging out, and I went to steal something.' It is that sort of conversation. Well, the assessor would look at drug use *at the time*, withdrawal *at the time*, if they weren't using, the assessor would look at, for example, the person might say 'Oh well, I was going down to meet my dealer and I drove a car that wasn't registered.' Ok, we'll talk about that conversation, 'How long did it take for you to make the call to the dealer, the time that you actually pick up the drugs' and stuff like that. So, the links are extremely important for the court, there has to be a link between the drug use and the criminal behaviour.

Eliana: […] Are the impressions that the informant had at the time of the offence important too?

Yeah, for example, if at the time of the offence the informant asked the prospective participant 'why were you driving?' and the person says 'Oh, because I wanted to go to McDonald's', um, you know, well you could have said 'because I was looking for drug use' or you know. Or the [police] informant says 'I looked in his pockets and there was the presence of heroin' and the person says 'Well, that is not mine', well, 'Why did you say that? Was it yours or not?' So, that information is extremely important to assist the assessment process, to look for the links in the area.

Here, ***H*** suggests that the police briefs are used as a platform to explore the presence or absence of drug use and other 'symptoms' of dependence such as withdrawal *at the time* of the offence. It is noticeable that ***H*** makes reference to a 'driving without registration' offence, which the assessee justified by stating that she was driving to her dealer's home 'to score'. ***H*** appears to accept this as a valid explanation, and suggests that the assessor should probe further to elicit more details. This is in stark contrast with the stance of drug court professional ***A*** and the magistrate, whose comments were reviewed in the previous chapter. They did not think that driving to the dealer's was a 'material contribution' to the commission of a comparable driving offence. This suggests that clinical staff and legal actors enact the dependence–crime nexus quite differently and, once again, highlights the arbitrariness of the admission process into the court, including the salience of dependence to the commission of the crime.

Further, this poses the question of why the court seems to duplicate the scrutiny of the dependence–crime nexus in two consecutive stages of the admission process (screening and assessment), especially in light of the fact that neither the section of the legislation that deals with the drug treatment order assessment reports nor the relevant drug court policy (*Sentencing Act 1991* (Vic) s.18ZQ; Drug Court of Victoria, n.d.-c) explicitly state that the assessment reports should examine and find a link between alcohol and other drug dependence and offending. This suggests that this practice has emerged organically over the lifetime of the court. Moreover, given that demonstrating a link between dependence and offending is a requirement to enter the program, it is plausible that the magistrate makes his or her decision based on this information. Entry into the court is constituted as a privilege reserved only for those offenders who are 'truly' experiencing an alcohol or other drug 'dependence'. From this point of view, it is also possible that the court does not perceive it as a duplication, but as an important, rigorous and/or objective method for factual corroboration and/or clinical confirmation. Nevertheless, it shows that factors such as the crime–drug use nexus, which might be relegated in making a diagnosis in a health setting, become determining in a medico-legal hybrid setting such as the court. These differences are important because they suggest that, as I pointed out above, dependence has not undergone the full process of medicalisation in the drug court.

Double agents: 'Are you an investigator or a clinician?'

One of the consequences of using the police briefs to confront the applicants about their drug use at the time of the offence is that the applicants are sceptical about the role of the clinician. As Cirilo, a drug court participant, explains:

> [Clinicians] think they are investigators mate, you know. Honestly, they think they are, like they are supposed to be clinicians, like they are always trying to catch you out lying, like you know, [pretends to be clinician] 'But you said this before', you know. I go 'Are you an investigator or a clinician?' Like at my first interview with them, I was in custody at the time […] the whole interview, they were just doing all these little things like, 'But, you said this before'. They were trying to investigate it like to see if I am lying – I just didn't know what to do with that at the start. First thing. I just thought 'oh, wow, how do you talk to someone like that'? I wasn't sure what to say.

Here, Cirilo suggests that he felt confused and uncomfortable because the clinician kept probing him, trying to contrast what he was saying at the time of assessment with what he had said to the police at time of the offence. The use of the police summaries to inform a dependence diagnosis shows that they are deployed to confront drug court applicants about their alcohol and other drug use. When clinicians present applicants with 'evidence' of their criminality and alcohol and other drug use, in the shape of textual passages 'objectively' narrating isolated episodes of offending (police briefs), and they offer a way out of the stark realities of custody, admitting that dependence is the main cause of such criminality might seem a sensible proposition for court applicants (see Fox, 1996; McGlone, 2003). Further, the use of police briefs to inform assessment of dependence highlights an important difference between dependence diagnoses in medico-legal hybrid settings such as drug courts and purely medical settings. In the court context, applicants do not have a choice over what sort of information is taken into consideration to make the diagnosis. By agreeing to be assessed they give the court the right to access any records. Given their status as 'criminals', this includes, of course, police briefs, which are essentially produced by law enforcement agents rather than medical professionals. Generally speaking, in a health setting the patient has the choice of deciding what sources of information are used to inform assessments; for example, they might not consent to clinicians speaking to significant others or to access certain medical records. In the previous and current chapters, my analysis has shown that the clinical assessment process involves as much individual judgment as does the determination of clinical criteria by legal actors. In the following section I briefly return to the courtroom scene to show that the arbitrary and inconsistent nature of the overall process of admission into the court has real implications for applicants.

Arbitrariness of admission processes: 'lived effects'

The following screening hearing illustrates the case of individuals who want to access the drug court program because of lack of alcohol and other drug treatment in the community. It shows that the assumptions about and representations of 'problems' – including the nexus between dependency and crime, and the nature of those connections – along with decisions made by legal actors and clinical advisors about whether or not such connections are made out – have real and material consequences on the applicants' lives, or what Bacchi (2009) would term 'lived' effects.

In some screening hearings I observed, the lawyer provided detailed information about the applicant and his background. The case study that follows is a typical screening hearing in which dependence featured more centrally, seemingly due to the familiarity of the lawyer with drug court processes. What follows is an account of a screening hearing, extracted from my field notes, which took place because the prosecution opposed the entry of the applicant into the drug court. This opposition was based on two grounds. First, his past offending was of a serious nature, hence his release would jeopardise the safety of the community. Second, his 'dependency' was not linked to his offending.

> Gaspar is escorted by two police officers to the dock. He waves at two teenaged girls, and two middle-aged women who are sitting in the benches. The prosecution opposes ordering further assessment for the drug treatment order. The police prosecutor reads out one of the charges before the court: 'Gaspar was intercepted in a vehicle for assault with a weapon. He was in a service station, there was a scuffle, Gaspar retreats to his vehicle, gets a screwdriver and attempts to attack the service station operators.' Prosecution argues that there is concern for the community and drug court staff because Gaspar uses weapons when there is conflict.
>
> The prosecution makes reference to another offence before the court. The police prosecutor clarifies: 'a burglary that occurred in a house where every room is ransacked'. The prosecution submits that the offence was committed while Gaspar was abstinent. It seems that the medical certificates provided by defence showing the dates when Gaspar underwent home detoxification have been used by the prosecution to make this point. They argue that while he was undergoing the home detoxification program, he was abstinent, and therefore there is no relationship between drug use and offending.
>
> The defence lawyer makes his submissions. He provides some background about Gaspar. He explains 'Gaspar was arrested in May this year. He is facing charges associated with the possession of firearms and ammunition. He is a 33 year old, and grew up in greater Dandenong. He completed year 11, worked as an electrician apprentice. Later, he went on into other areas of work, bought an excavation business, and had major contracts; but, he ran into major financial difficulties. His sister, wife and two step-daughters are here supporting him. He and his wife have three other children aged 10, 6 and 2. They

purchased a house. But, after the financial difficulties, they could not maintain payment of the mortgage and the house was repossessed. Because of the stress brought up by the financial difficulties, he started using ice after an employee introduced him to it. Ice use affected his work, of course, and became problematic in 2014. He had to leave his house; however, with the assistance of his wife and Dr [X] (a GP well known for working with people interested in ceasing methamphetamine use) he has taken steps to do something about the ice problem'.

The solicitor acknowledges the firearm offences, and submits that 'at that time Gaspar was homeless and living in his car. They were weapons that belonged to his father. The guns had been dismantled and wrapped up, and unfortunately they were not registered.'

The lawyer continues talking about Gaspar's methamphetamine use. 'His regular GP could not help him because he has an ice dependence. His wife contacted an organisation called the Ice Meltdown Project. He attended some meetings and had a sponsor. He was referred to Dr [X], who started treating him in January this year. He underwent four home detoxification programs as part of the ice dependence treatment with Dr [X]. He was also taking antidepressants and mood stabilisers (pharmacotherapy typically prescribed by Dr [X] to manage methamphetamine dependence). Unfortunately, he relapsed and reoffended in April this year. Gaspar has expressed that if he were successful in the drug treatment order screening process, he would plead guilty to all outstanding charges. The underlying cause of his offending is ice dependence, which he has had trouble controlling. He commenced use in 2013 and it became problematic. He has been supported by his family and has always been well regarded by them up until his ice use. His family knows that there is a good person underneath. He has expressed desire to overcome the problem with ice use. He has not been on any medications since being in custody. His wife says that he is clear-headed and is looking forward to being in the community and complying with the drug treatment program; he has a desire to go to rehab. The community will benefit from him undergoing treatment.'

The lawyer presents evidence from Dr [X] who had been seeing Gaspar for a few months before his arrest. Lawyer continues: 'A referral to [a residential rehabilitation program] was being considered, but put on hold because of his offending and subsequent

incarceration. It is hoped that Dr [X] can help him organise admission to [the program], once Gaspar is released.'

The prosecutor adds that the Community Correction Services (CCS) report highlights a lack of compliance with previous community correction orders. She continues 'There is no motivation to contact CCS about his absence in appointments. This is a blatant disrespect and demonstrates that he is not committed to rehabilitation.'

Ultimately, the magistrate does not find Gaspar suitable for the drug court. This decision hinges on a previous charge where he appeared to have inflicted injury. Gaspar's wife, who is sitting on the benches, says out loud 'How do you get help for a drug addict?' The lawyer makes a hand gesture as to instruct her to be quiet. She sobs and says 'Gaspar did not attend the appointment with CCS because he was sick. I have the medical certificates here.' Court officials ignore her. She gets up, walks out, and shouts 'Fucking cunts!'

Gaspar's application was denied on the grounds that he had previously committed serious offences and hence was a risk to the community. It seems by this example that only those individuals whose crimes can be established by the drug court as driven by dependence are suited to community-based alcohol and other drug treatment. Also, this screening hearing serves to illustrate how emotionally charged the hearings can become for applicants and their loved ones. In this case, the reaction of Gaspar's wife suggests that she perceives the voluntary alcohol and other drug treatment system as inadequate, and sees the drug court as an opportunity to access care for Gaspar that is otherwise hard to obtain.

Gaspar's hearing also sheds light on how dependence can be enacted through prosecution and defence submissions. According to Gaspar's lawyer, his dependence was initiated by a tragedy, in this case financial bankruptcy. Gaspar is portrayed as a weak individual who succumbed to the power of methamphetamine. In this way, the lawyer attributes agency to the substance. Further, up until the point of using methamphetamine, Gaspar was a well-respected, hardworking entrepreneur and family man. Following his methamphetamine use, Gaspar's life took a sudden turn. This is consistent with depictions of methamphetamine use in the media (Carney, 2006). Through his submissions, the lawyer enacts methamphetamine dependence as a medical condition that must be managed by a specialist; a general practitioner does not have the necessary expertise to treat it. Gaspar's methamphetamine dependence was being treated with a

cocktail of brain-targeting medications (antidepressants and mood stabilisers); however, despite complying with the medication regime, Gaspar relapsed and this led to offending.

This screening hearing also shows the type of evidence presented before the court to prove dependence. In this case evidence includes reports from the treating specialist stating that Gaspar underwent home detoxes and that he was on medication, evidence of involvement with a self-help group, and proof of referral to a long-term residential rehabilitation program. In this submission, the lawyer enacts Gaspar as an individual who has shown willingness to manage his dependence by undergoing different treatment modalities such as home detoxification, pharmacotherapy, self-help group meetings, and a long-term residential rehabilitation program. In this way, the defence lawyer implies that Gaspar acknowledges his 'problem' and has demonstrated high motivation to change. The lawyer highlights Gaspar's several attempts at recovery and subsequent relapses, and provides evidence of both. His submissions suggest that he expected drug court officials to empathise with such struggles. However, the prosecution uses the same evidence to oppose the grant of drug treatment order on the grounds that Gaspar was abstinent (because he was undertaking a home detoxification program) when committing the last offence. By doing so, they suggest that criminal offending can only occur while the person is under the influence of the substance, or even that dependence is only present when a person is intoxicated. Of course, this also assumes that Gaspar did not use drugs while he was undergoing the home detoxification program. This contradicts the common belief that people commit acquisitive crime such as burglaries to feed their 'dependence' and that dependence is a chronic relapsing condition, which is how the drug court claims to understand it (KPMG, 2014).

Overall, Gaspar's hearing reveals the adversarial nature of some screening and assessment hearings, and shows the ways decisions made by the court about clinical eligibility or by the clinical assessors about drug treatment order suitability have significant lived effects on individuals and their families. Moreover, through the analysis of Gaspar's case, we see multiple and sometimes conflicting enactments of dependence and the dependence–crime link emerging through the submissions of the defence and prosecution.

Conclusion

In this chapter I examined the second phase for admission into the drug court, known as the clinical assessment phase. Unlike the screening stage, discussed in the last chapter, the clinical

assessment stage involves the use of clinical tools to 'diagnose' dependence via a putatively clinical or medical approach. Other drug courts around the world also use these tools and employ clinical staff to assist in the diagnostic process. As I noted at the start of this chapter, however, the literature contains silences regarding how these tools are used and how diagnoses are made. What little critical work exists in the area has focused on how general eligibility is established, and suggests, among other things, that the process of identification of dependence (or 'addiction', in some countries) may be inconsistent. These findings are important, given that clinicians may act as gatekeepers to drug courts, or because they can help to determine whether someone gains admission into such a court. We know less, however, about how these diagnostic processes unfold in Australian court settings or their implications. I sought to fill this gap in this chapter, by analysing the assessment and screening tools used by drug court clinical advisors, alongside assessment reports and interviews with both drug court personnel and drug court participants about their experiences of and approaches to assessment.

I argued that a key presupposition (Bacchi, 2009) of the drug court clinical assessment process is that dependence is a pre-existing problem that will be revealed through the court's clinical assessment process. The ASI and SOCRATES 8D tools are ostensibly the tools that will help to 'unearth' the applicant's 'problem'. The tools are thus positioned as capable of 'objectively' measuring the applicant's 'dependence', and as an aid to the court's work. My analysis troubled these claims in several ways. First, my analysis suggested that those who administer the tools used them inconsistently. For instance, clinicians were at liberty to paraphrase the prescribed questions of the dependence instruments assembled in the interview guide, or to use them selectively. This suggests that the interview guide allows assessors to be flexible with their approach in a bid to 'find' – or enact – dependence, its causes and consequences (Colyer, 2007). I also found that despite the fact that the ASI instrument uses 'severity' ratings, and the drug court interview guide instructs clinical advisors to document such ratings, such scores are not actually recorded. This suggests that despite using screening tools developed by the psy disciplines, originally conceived with the aim of 'objectively' measuring dependence along with its perceived 'effects' or causes, in practice, these tools are used only to 'guide' the interview.

Although the clinical assessment phase appears to be a 'clinical', 'medical' or 'diagnostic' process, I argued that in practice the process uses a hybrid methodology, drawing upon criminal justice concepts, materials and processes, and medical practices, tools and procedures. I asserted

that these two vastly different approaches 'come together' or *syncretise* to constitute alcohol and other drug dependence in the Drug Court of Victoria. This illustrates the hybrid character of governance regimes (Bacchi, 2009, p. 121). The use of elements from both approaches reveals a new and more nuanced facet of the hybrid nature of drug courts than was identified in previous literature (Gowan & Whetstone, 2011). Importantly, the drug court's putatively clinical or medical assessment process was in fact influenced by key materials acquired or developed through the criminal justice system. The two main sources of information constituting the diagnosis of dependence are the information provided by the applicant and the police briefs (given that other sources such as medical reports are not necessarily always available). However, as with applicant accounts in the screening stage (chapter four), the accounts of court applicants are regarded with high levels of suspicion; my observations showed that this is not the case with police briefs (see chapter four). In this way, the latter remain instrumental in informing the clinical assessment and diagnosis of dependence in the court and play a vital role in both materialising a putatively 'medical' diagnosis and thus in the enactment of a particular form of dependence itself. Legal actors – especially police – and factors such as the drug–crime nexus, which might be relegated in making a diagnosis in health settings, are hugely influential in the 'clinical' stage of assessment. The use of the police briefs to inform a dependence diagnosis confirms the hybrid nature of the diagnostic method. This hybrid produces a particular problem of dependence: an intrinsically medico-legal phenomenon – a solvable problem if the sufferer submits to the state's wisdom and methods. The legal side of 'medico-legal' turns a health issue into a matter of compliance with a state-defined model of wellness and applies force to the diagnosis.

These practices have a range of lived, subjectification and discursive effects (Bacchi, 2009). First, they have the effect of constituting dependence as both a health problem and a criminal one, although the latter appears to be privileged over the former. The use of distinctive criminal justice elements such as the summary of priors to identify dependence suggests that in the Drug Court of Victoria the process of medicalisation of dependence is not comprehensive and only the 'conceptual medicalisation' stage (Conrad, 2005) has been achieved. What is more, my research suggests that the involvement of qualified alcohol and other drug clinicians to 'diagnose' dependence does not necessarily guarantee the complete medicalisation of dependence. My interviews with drug court participants suggested that the process of clinico-criminal

syncretisation that I have identified in this chapter also had troubling implications for how participants thought about the drug court and those entrusted with 'supporting' them through the treatment process. The use of legal actors and/or policing approaches to establish dependence 'facts' (or in Bacchi's (2009) term, 'knowledges') led to some participants feeling that clinicians were 'double agents'. This appears to undermine the drug court's credibility and raises questions about the putatively 'therapeutic' nature of the court – a theme I considered in chapter four – including the extent to which participants might see the drug court as genuinely therapeutic, non-punitive and/or distinct from traditional criminal justice systems.

The court's hybrid nature also has other concerning implications. In the assessment interviews, for instance, applicants are invited to take up certain subject positions, and asked to explicitly self-identify with labels such as 'drug addict' or 'alcoholic'. While it can be argued that they are 'free' to strongly disagree, these ostensibly 'free' and 'voluntary' processes of 'self-identification' occur in a context of unequal power dynamics, where the spectre of criminal justice sanctions (notably, imprisonment) are ever-present. It is important to note that, in keeping with Bacchi, merely constituting the problem this way has performative effects. The context and conditions of the clinico-criminal assessment are thus centrally implicated in the enactment of the 'dependent' subject, in part because the context and conditions of clinical assessment foreclose other ways of being, knowing and seeing one's alcohol or other drug use, working to produce the very 'problem' that purportedly pre-exists the interview. Finally, I considered how applicants might be excluded from the drug court as a result of the admission process, and the profound lived and subjectification impacts of this on applicants and their families, especially when those applicants are experiencing barriers to accessing alcohol and other drug treatment through more conventional means. All of these processes raise questions about the equity and fairness of drug courts. Participants who are unable to meet the (flexible, fluid and inconsistently applied) criteria may be denied the opportunity to enter the drug court, where they wish to do so. While drug courts have been subjected to a range of criticisms, and I do not argue that access is an unalloyed good, I do query the basis on which admission occurs. At its worst, not gaining access might mean that participants miss out on the opportunity to receive alcohol or other drug treatment, and the intensive support that some applicants desire. This raises questions about whether the assessment processes need to be reviewed, or approached differently. I will examine these questions in the concluding chapter of this thesis.

Chapter 6: 'Lived' effects of custodial sanctions

A key component of drug courts is the use of graduated sanctions and rewards to encourage compliance with program requirements. Despite their centrality to drug court models, sanctions and rewards have received surprisingly little scholarly attention. In this chapter, I undertake a detailed analysis of the way in which sanctions and rewards are administered in the Drug Court of Victoria. Drawing once again on observations of drug court proceedings, qualitative interviews with drug court participants and personnel, and analysis of selected drug court documents, in this chapter I examine how drug court participants and professionals view the sanctions and rewards system. Drawing on Carol Bacchi's (2009) poststructuralist policy analysis framework, I examine how the 'problem' of alcohol and other drug dependence is conceptualised in the drug court's approach to the administration of sanctions and rewards, and I consider some of the effects of this system. I argue that even though the drug court has a variety of non-custodial sanctions available to it when deciding how best to respond to program 'non-compliance', the sanction most typically used is incarceration. This is of note as the drug court model is publicly promoted as both 'therapeutic' and an alternative to prison. I also trace some of the effects of the sanctions and rewards system on participants, which include the perceived value of prison in the treatment of 'dependence', deplorable conditions for some participants serving out their sanctions, and the interruption of medication. I conclude with some reflections on claims about the therapeutic value and potential of drug courts and suggest opportunities for reform, along with recommendations on the applications of sanctions and rewards in drug court contexts. This chapter builds upon the previous two chapters by exploring in detail one of the ways in which drug court participants are managed or governed (in Bacchi's terms) once they start their drug treatment order. I begin by providing some background on the application of sanctions and rewards in drug courts.

Background: application parameters of sanctions and rewards in drug courts

Therapeutic and punitive approaches to drug use are seemingly contradictory, but both are associated with coercive drug treatment as a punishment for drug-related offences (Murphy, 2011; Seddon, 2007; Tiger, 2011; Vrecko, 2009). The 'blended model' of responding to dependence, in which individuals are simultaneously treated and punished, is epitomised by the use of graduated sanctions and rewards that arguably encourage compliance (Tiger, 2011). Drug

court programs are designed to closely monitor participants' conduct, report progress and noncompliance immediately, and identify and implement a range of sanctions and rewards (KPMG, 2014). The administration of rewards and sanctions in the drug court model is done according to techniques of 'contingency management' that involve the application of consequences to promote changes in alcohol or other drug use or other therapeutic goals such as attendance at therapy sessions and medication compliance (Higgins & Silverman, 2008). Contingency management is widely thought to be effective to change 'problem behaviours' within the psy disciplines (see Appendix E for guidelines on how contingency management is applied in drug court contexts (Marlowe & Wong, 2007, p. 337)).

Rewards and sanctions serve different but complementary purposes (Marlowe & Kirby, 1999). Rewards are used to increase the frequency of actions that the drug court considers desirable or pro-social, while sanctions are used to reduce the frequency of those actions considered undesirable or anti-social, such as engaging in drug use and crime considered to be produced by drug use (Marlowe, 2007; National Association of Drug Court Professionals, 2015). Sanctions and rewards vary according to jurisdiction, but common examples of sanctions include verbal reprimands, writing assignments or journals (Bull, 2006), increased counselling, fines, more frequent contact with court, increased urinalysis, community service, and brief intervals of jail detention or 'shock incarceration' (KPMG, 2014; National Association of Drug Court Professionals, 2015). It is of note that interventions such as counselling and journaling are defined as both additional supports and punishments. Common examples of rewards include verbal praise, applause from the courtroom audience, token gifts, certificates of recognition, reductions in treatment or supervisory obligations, and waiving of accrued sanctions (Jones, 2011).

Guidelines about how sanctions and rewards are to be administered in drug courts exist (Marlowe, 2012; National Association of Drug Court Professionals, 2015). Further, individual drug courts produce policy documents or schedules identifying the 'target behaviours' to be sanctioned or rewarded (e.g., Drug Court of Victoria, 2013). These guidelines and policies are inspired by the parameters of operant conditioning techniques mentioned above (Appendix E). These parameters are celerity, certainty, magnitude and fairness (Marlowe, 2007, 2012; Marlowe & Wong, 2008). Certainty refers to ensuring that drug court participants understand that their actions will be met with a response. The assumption here is that failure to sanction each negative

'behaviour' may encourage it by indicating that infractions are not treated seriously. Alternatively, failure to reward positive behaviour may discourage that action from being repeated. Celerity refers to immediacy or swiftness of response. Drug courts are encouraged to impose sanctions and rewards as close as possible to the time the action occurs. The rationale is that the longer the time between an action and response, the less impact the response will have on modifying the behaviour (Marlowe, 2007; Taxman, Soule, & Gelb, 1999). Magnitude refers to the intensity of the sanction or reward. The intensity must be proportionate to the behaviour for which it was imposed. Marlowe (2007) argues that sanctions tend to be least effective at the lowest and highest magnitudes and most effective in the moderate range. As he explains, sanctions that are too weak may lead to habituation, in which the individual becomes accustomed and less responsive to punishment. Sanctions that are too harsh can produce 'iatrogenic' reactions such as resentment and avoidance. For example, Marlowe (2012) says, if a drug court imposes high-magnitude sanctions for substance use early in treatment, it is likely that the drug court team will run out of sanctions before the participant has had a chance to engage in treatment and be linked to support services. This can lead to 'ceiling effects in which further escalation of punishment is impracticable' (Marlowe, 2007, p. 323). In this way, the participants who are subjected to high-magnitude sanctions such as incarceration early in the program may abandon the program. This practice, as Marlowe (2007) argues, can make the individuals who are most in need of treatment more prone to failure.

While certainty, celerity and magnitude are parameters used to apply sanctions and rewards, the way in which participants perceive this process is also important. Participants are thought to be most likely to react favourably to sanctions or the withholding of rewards if they believe fair procedures were followed. For example, Goldkamp, White, and Robinson (2002) and Satel (1998) conducted focus groups with drug court participants to learn whether they perceived graduated sanctions to be motivators to perform well in treatment. They argue that participants perceived the threat of sanctions as an incentive to complete the program, but only when the sanctions were viewed as following principles of procedural fairness.[34] Sanctions were viewed as detrimental to treatment goals when they were administered arbitrarily and inconsistently.

[34] These are common law principles implied in relation to statutory and prerogative powers to ensure the fairness of the decision-making procedure of courts and administrators. The term 'procedural fairness' is used interchangeably with 'natural justice' […] whether one talks in terms of either, the concern of the law is to avoid practical injustice.

In this section, I have reviewed the main parameters understood to govern sanctions and rewards in a successful drug court environment. In Marlowe's (2007, 2012) view, if these parameters are applied incorrectly, the 'effectiveness' of the intervention diminishes. Further, Marlowe contends, the interventions might produce 'iatrogenic' effects (Marlowe, 2007, p. 323). Marlowe and Wong (2008) further elaborate on these effects. They point out that some drug courts can be criticised for producing reactions of 'learned helplessness'.[35] Marlowe and Wong argue that learned helplessness can be triggered by a lack of controllability and predictability.[36] They contend that drug courts often place numerous demands on participants that may be difficult to meet concurrently. For example, participants may be required to attend a myriad of commitments such as counselling, alcohol or other drug treatment, court hearings, community service and urine testing. Further, they may be sanctioned for failure to comply with any one of those conditions. The burden of response requirements can be so overwhelming as to produce a learned helplessness response. Although guidelines for implementing effective systems of sanctions and rewards have been produced and disseminated, and, as pointed out above, are largely based on operant conditioning models produced by the psy sciences, little is known about how such systems are actually implemented in drug courts. Moreover, the range of 'effects' (in Bacchi's sense) produced by the sanctions and rewards system have been left largely unexplored. In the following section I review some of the research that has been conducted on the use of sanctions and rewards in drug courts around the world.

Literature review

Proponents of drug courts assume that punishment and rehabilitation can coexist (Marlowe & Kirby, 1999). However, a few studies have been conducted on the tensions that can emerge in the administration of sanctions. As described in an earlier chapter, Whiteacre (2007) interviewed staff and participants in a juvenile drug court in the US, and observed hearings and pre-hearing staff meetings over the course of one year. His research described two difficulties produced by

---

The two rules of procedural fairness are the hearing rule and the bias rule […] Denial of procedural fairness in the making of a decision is a ground for judicial review of the decision (Encyclopaedic Australian Legal Dictionary, 2017).

[35] The term, originally coined by Seligman (1975), refers to a process by which individuals become angry, aggressive, or despondent if they are sanctioned for failing to comply with excessive or unrealistic demands. Under such circumstances, behaviour may fail to improve and clients may sabotage their own treatment goals.

[36] Predictability refers to a participant's ability to anticipate the precise conduct that will elicit a sanction or reward, and controllability refers to a participant's ability to engage in a desired target behaviour or refrain from an undesired behaviour (Marlowe, 2007, 2012).

the sanctioning system. First, drug court personnel had different opinions about the suitability of rewards as opposed to sanctions, as well as the severity of punishment methods used to motivate compliance. Second, personnel were uncertain about whether sanctions worked effectively as a therapeutic tool, especially when dealing with participants who continued to be non-compliant despite repeated sanctions. Drug court personnel counteracted this tension by ascribing noncompliance to participant lack of motivation, suggesting that coerced treatment only works for those who are 'ready'. According to Whiteacre, this posed a contradiction for coerced treatment, which is meant to stimulate compliance, especially among those who are unmotivated. Similarly, Murphy (2011) identified a lack of consensus among drug court personnel and participants in relation to the purpose of sanctions deployed in drug courts. While the drug court staff saw them as therapeutic interventions, participants perceived them as punitive. Another contradiction of the 'blended model' in drug courts can be illustrated by the following example. In a US drug court study, Baker (2013) found that case managers in the court relied on the sanction system to help them teach participants about the consequences of 'bad behaviour'. The case managers became frustrated when the judge ordered a 'softer' punishment, delayed a punishment, or eliminated a punishment completely. These disagreements surfaced because the parties held different views about the role of punishment in drug treatment. For the case managers, punishment could be a therapeutic tool if used 'correctly'. They would have liked to see the judge use sanctions more often and remove consistently 'difficult' participants from the program, while the judge was resistant to the use of punitive sanctions and believed that the participants should receive as much treatment as possible.

Research has also shown that drug courts do not necessarily follow the parameters of certainty, and that participants are not always able to anticipate what actions lead to sanctions. Burns and Peyrot's (2003) study, based on data from drug court observations in the US, revealed that when drug court judges make decisions regarding what sanctions to apply, they consider the participant's commitment to 'recovery' (particularly manifested when a client volunteered a confession or displayed repentance). This is consistent with the findings of Lindquist, Krebs, and Lattimore (2006), who conducted interviews with stakeholders in drug courts and traditional courts in five judicial circuits in Florida. They found that drug courts appeared to emphasise tailoring the sanction to the individual participant rather than applying sanctions in a standardised manner. Tiger's (2011) study (reviewed previously) also indicates that rewards and

sanctions tend to be tailored to the individual's circumstances. She found that drug court staff learn about what is important to individual participants and use this personal knowledge to devise punishments and rewards. Lindquist et al. (2006) compared drug courts with traditional courts. They found that many more sanctions were used and more behaviours were identified as being likely to result in a sanction in drug courts. Additionally, some sanctions used in drug courts required participants to engage in drug and alcohol treatment. In contrast, they found that traditional courts made use of purely punitive sanctions. It is important to keep in mind that the results of this research might not be applicable to the Australian context, where alcohol and other drug treatment can be ordered in more traditional court settings.

In relation to the use of sanctions and rewards, Burdon, Roll, Prendergast, and Rawson (2001) reviewed literature describing the growth, operations and evaluations of drug courts in the US. They argue that drug courts emphasise punishment and make insufficient use of positive reinforcement to promote behaviour change and reduction in drug use. They point out that operant conditioning procedures that have been found to be effective for the treatment of substance dependence rely on reinforcement rather than punishment, and argue that there are two primary reasons for this. First, treatment providers do not punish behaviour that is viewed as a manifestation of the 'disease' of 'addiction'. Second, most operant conditioning-based treatment takes place in community settings, so if patients were punished, it is likely that they would not return to treatment. For these reasons, they argue that an integration of the drug court model with current contingency management techniques focusing on positive reinforcement (such as vouchers) will improve effectiveness.

In the research reviewed above, drug court proponents treat the merging of the therapeutic and punitive approaches unproblematically. However, some researchers have criticised these two approaches to treating dependence. Some argue, for example, that the sanctioning system creates disagreements between drug court staff members (e.g., treatment staff and magistrates) (Baker, 2013; Whiteacre, 2007) and between staff members and program participants (Murphy, 2011). Some argue that in practice some drug courts do not necessarily follow the parameter of certainty and that the sanctions are tailored to individuals rather than applied in a standardised manner (Burns & Peyrot, 2003; Lindquist et al., 2006; Tiger, 2011); this means that participants are not always able to anticipate which behaviours lead to sanctions. Lastly, when compared to traditional courts, drug courts identify a wider range of 'undesirable' behaviours and therefore

make more use of sanctions (Lindquist et al., 2006). Further, drug courts emphasise punishment and make only limited use of positive reinforcement to incentivise 'desirable' behaviours (Burdon et al., 2001). While the insights of this research are important, it is not clear how relevant they are to sanctions and rewards systems in Australian drug courts. Additionally, some aspects of their effects on participants remain unexplored. In the sections to follow I will address these issues.

Approach

As in the previous chapters, the analysis conducted in this chapter is framed through Carol Bacchi's (2009) WPR approach. Bacchi argues that policy (or in this case court practice) does not simply 'address' social problems, rather policies identify or constitute problems and give them shape. My main objective in this chapter is to use the WPR approach to critically analyse the drug court's practice of applying sanctions and rewards to treat participants' dependence. In doing so I touch upon questions one and two of the WPR approach, but focus primarily on question five.

Question one of the WPR approach asks us to explore what the 'problem' is represented to be in a specific policy. I used this question to explore how dependence is represented in the drug court's practice of administering sanctions and rewards. This includes their official policy as well as actual practices, which, as I show, are not necessarily compatible. Question two of the WPR approach asks what assumptions underlie the representation of the 'problem'. I use this to briefly explore the 'knowledges' that are in place to make the practice of utilising sanctions and rewards intelligible. Question five is used to explore three interconnected and overlapping implications of problem representations: discursive effects, subjectification effects, and lived effects. As I have previously noted, Bacchi (2009, 2014) clarifies here that these effects do not refer to a specific type of cause-effect relationship or 'outcomes'. Rather 'effects' refer to political implications or consequences of problem representations. As Bacchi (2009) explains, discursive effects link back to how 'discourses' or knowledges allow certain things to be said but sequester others, and how they set boundaries on what can be recognised as relevant. Subjectification effects are linked to the idea of power as productive. They encourage us to think about how power creates and shapes subjectivity, so we can focus on the subject positions made available within particular discourses or knowledges. However, Bacchi tells us that the formation of subjects is not

deterministic; instead, the diversity of practices ensures that subjectivities are always in continuous formation. Moreover, attempts to make subjects governable may fail. The exploration of 'lived' effects, a task I also undertake in this chapter, will show that how problems are represented has a material impact on how people live their lives. Question five is important because it creates the opportunity to detect implications in particular problem representations that are harmful to particular groups of people. It allows us to say that there are parts of this problem representation that are themselves problematic.

Applying sanctions and rewards in the Drug Court of Victoria

Before I go on to analyse some of the findings of my research, it is important to provide background information on how sanctions and rewards are applied in the Drug Court of Victoria. As explained in the methods chapter, the drug treatment order comprises three phases (KPMG, 2014), shown in Table 1 (see p. 5). If participants follow the phase requirements, they are rewarded; if they do not comply, they are penalised or sanctioned. The drug court uses rewards and sanctions as tools 'to encourage positive behaviour and support participants to engage in treatment' (KPMG, 2014, p. 34). The range of sanctions and rewards identified as available to the court is outlined in Table 5 (KPMG, 2014; Parsons & Lauritsen, 2013); however, my research indicated that this range is more limited in practice.

Sanctions and rewards are first determined in the case conferences, which are held prior to each participant's review hearing and attended by members of the multidisciplinary team to discuss the progress of the participant.[37] During the case conference, approximately 10 to 12 participants are reviewed. A copy of a drug court participant conference review and feedback sheet (see Appendix F for a template of this sheet) is given to each attendee. This sheet shows the alcohol and other drug urine/breath testing results and the drug court professionals' feedback about treatment progress over a week, fortnight or month, depending on the participant's phase of drug treatment order. It also contains the previous number of sanctions and a sanction tally column, so that during the review of test results and professional feedback, every attendee can keep a record of sanctions and rewards as they are being administered.

[37] The meeting is always attended by the magistrate, the court registrar, the community corrections case manager, the clinical advisor and the housing worker. Due to funding restrictions attendance by the Victoria police representative and the Legal Aid lawyer is limited to Tuesdays.

Table 5 Drug Court of Victoria sanctions and rewards

	Guideline sanctions	Guideline rewards
Low	• Verbal warning • Keep a drug diary	• Verbal praise
Moderately low	• Verbal admonishment by magistrate • Write a journal entry or an essay	• Verbal praise and clapping
Moderate	• Court review sit-in sanction[38] • Community work days imposed • Increase in frequency of court appearance • Increase in frequency of case management • Increase in frequency of drug testing • Imprisonment days imposed	• Court review quick list[39] • Reduction of community work days • Reduction of imprisonment days • Reduction in frequency of court appearance • Reduction in frequency of case management • Reduction in frequency of drug testing • Fishbowl reward[40]
Moderately high	• Phase demotion • Activation of imprisonment days	• Phase progression
High	• Warrant of arrest issued • Order suspension • Order cancellation and resentencing	• Order completion • Order graduation

Source: (KPMG, 2014, p. 22)

During the review hearings, the magistrate discusses progress and issues raised during the case conference directly with the participant. The participants is subsequently permitted to give their opinion or version of events in relation to the issues raised (KPMG, 2014). After hearing from the participant or the duty lawyer, the magistrate then decides whether a reward or sanction should be imposed. According to policy documents, rewards and sanctions in the drug court are administered according to the parameters of application of operant conditioning techniques (discussed above): certainty, celerity, immediacy and magnitude.

Analysis

In the following section I explore key aspects of the ways in which sanctions and rewards are administered in the Drug Court of Victoria and the material effects they produce. I use Bacchi's WPR approach to guide my analysis.

[38] Sanction for attending a court review late. Participants who receive this sanction are required to attend the next review hearing on time and sit at the back of the courtroom to listen to all other participants' review hearings on that day; the participant is not allowed to leave the courtroom until the court day is complete.
[39] Reward for attending a court review hearing punctually. If a participant's name is put on this list, they are one of the first participants to have their case heard, and are automatically put on the quick list for the following review
[40] A fishbowl reward is a chance to take a 'lucky dip' from a large fishbowl that contains a variety of prizes, including vouchers to various events and social activities, and large and small gifts.

'Our default position is imprisonment'

The drug court has different expectations of participants depending on which phase they are in and the length of time they have been on the drug treatment order. For example, as seen in Table 1, expectations grow the longer participants have been on the order. In *Defining Drug Courts: Ten Key Components*, the National Association of Drug Court Professionals (2004) provides a rationale for the escalating gradient of sanctions:

> An established principle of alcohol and other drug treatment is that addiction is a chronic, relapsing condition. A pattern of decreasing frequency of use before sustained abstinence from alcohol and other drugs is common. Becoming sober or drug free is a learning experience, and each relapse to alcohol and other drugs use may teach something about the recovery process […] Although drug courts recognise that individuals have a tendency to relapse, continuing alcohol and other drug use is not condoned. Drug courts impose appropriate responses for continuing alcohol and other drug use. Responses increase in severity for continued failure to abstain. (p. 13)

Drug court proponents developed the escalating sanctions because they constitute dependence 'as a chronic relapsing condition' and they claim to understand that relapse is part of 'recovery'. As I pointed out in the introductory chapter, the Drug Court of Victoria subscribes to this view by adhering to the 10 key components of drug courts (Parsons & Lauritsen, 2013). However, my fieldwork observations indicated that tolerance for drug use was short lived, and that escalation in the severity of the sanctions was abrupt rather than gradual.

Table 6 shows the typical escalation of sanctions for new drug court participants I observed during my fieldwork. The sanctions in response to drug use and non-compliance escalated from verbal warnings to the application of 'variations' to the drug treatment order.[41] Once the third variation had been applied to a drug treatment order, the participants began being sanctioned with one community work day each time they failed to comply with order conditions. Once six community work day sanctions had accumulated, the magistrate began imposing the imprisonment sanctions in response to drug use or lack of compliance with order conditions,

[41] In the case conferences, these were referred to as 'variations', but they are called 'applications to vary'. The treatment and supervision component of the drug treatment order can be varied by the magistrate through addition or removal of one or more program conditions (*Sentencing Act 1991* (Vic)).

such as failing to attend appointments, testing or attending testing but failing to produce a urine sample. Very rarely did I see the pattern of escalating sanctions shown in Table 5.

Table 6 Escalation of sanctions observed during fieldwork

Substance use detected in testing	**Sanction**
First time	Informal verbal warning
Second time	Formal verbal warning
Third time	Variation one is applied to the drug treatment order: • To attend only one doctor for all medical needs.
Fourth time	Variation two is applied to the drug treatment order: • To follow doctor's recommendations regarding treatment.
Fifth time	Variation three is applied to the drug treatment order: • All the medications prescribed with the exception of antibiotics must be on daily pick up at the chemist of the participant's choosing.

In the early stages of the drug treatment court (while participants were becoming familiar with the order commitments), they were verbally warned instead of being sanctioned with community work days or imprisonment days. However, following these verbal warnings, they were sanctioned with community work or even incarceration if they did not change. Some examples are shown in Table 7. It is of note that while alcohol and other drug test results were seen as 'objective' and were rarely challenged,[42] other actions constituted as noncompliance were more open to interpretation and the drug court could consider the circumstances surrounding them. For example, participants had more leeway for non-attendance if they could produce a medical certificate excusing them.

[42] Although participants have the opportunity of challenging test results and get confirmatory tests, this is a more expensive and time-consuming process. This decision is made by the magistrate.

Table 7 Examples of sanctionable conduct by drug court participants

Conduct	**First Sanction**
Not admitting to drug use	Verbal warning
Failing to attend an appointment with treatment provider	Verbal warning
Not making contact when failing to attend appointments with Drug Court professional	Verbal warning
Multiple substances detected in the urinalysis	Multiple use warning. Here, participants are reminded that the urine test results show the substance used and that they will be sanctioned not on the basis of a positive result, but on the basis of the number of substances showing 'fresh use' in the results.[43]

My observations above that the court's tolerance for drug use was short lived, and that the escalation in the severity of the sanctions was abrupt rather than gradual, are supported by the comments of two drug court professionals. As ***P*** states:

> The stick is probably applied more than the carrot. I think that all treatment options should be looked at before we go down the path of incarceration. I think that there are times where ultimately people aren't compliant with the order and this is the way the system is set up, but the ultimate sanction is [incarceration]. The sanctions aren't supposed to be just imprisonment. Sanctions are supposed to be a whole range of things […] it is just that *our default position is imprisonment*, but an actual sanction is supposed to – community work is a sanction, coming to an extra review [hearing] is a sanction, having extra appointments with your case manager could be a sanction.

Here ***P*** reminds us about the whole range of sanctions the court has at its disposal but does not use. ***P*** believes that sanctions that involve engagement in treatment should be used before incarceration. This is consistent with comments by drug court professional ***D***:

> I think there is too much stick and not enough carrot, and I think as well the stick can be wielded really hard […] A stick can be wielded in a respectful manner and it is not. I see people as being crushed, I see people being unfairly sanctioned, I see people ['s order] being cancelled. With the sanctions, I think people are sanctioned for really petty things, which means they lose a little bit of respect for the order. I think, where there have been

[43] There is a cap of maximum three sanctions per test. For example, if three different substances are shown in the results and the participant did not admit to having used them, the participant will get three sanctions, as opposed to six (ordinarily not admitting will attract one sanction).

> significant achievements, or even sometimes they are just small achievements, which in the circumstances are significant for that person, I don't see any significant rewards or acknowledgment. Nah, there might be a clap.

Both ***P*** and ***D*** observe that the drug court has a predilection for the use of custodial sanctions. This is consistent with Burdon et al. (2001) who suggest that drug courts emphasise punishment and make limited use of positive reinforcement. What is the effect of applying severe sanctions such as imprisonment so early in the program? As Marlowe (2007) proposes, harsh sanctions can lead to 'ceiling effects' and 'iatrogenic' effects such as resentment and avoidance reactions, and ultimately early expulsion from the program and further entrenchment in the criminal justice system. I argue that drug court participants with complex support needs are especially vulnerable to experiencing these lived effects (following Bacchi's approach). For example, during my fieldwork I observed that if participants continued using alcohol or other drugs, and some of their basic needs such as housing remained unmet, they usually exhausted their verbal warnings, drug treatment order variations and non-imprisonment sanctions within the first two to three weeks. As a result, they were given imprisonment sanctions very soon after beginning the program. This contrasted with the case of those drug court participants who used alcohol or other drugs intermittently, did not have such complex support needs, and had more supports available within the community. These participants seemed to have more time to adjust to the order before they were exposed to custodial sanctions. Adelino's case exemplifies the situation of vulnerable participants with higher needs. He was a participant with an ATSI background and was accepted into the program shortly after I started my field observations. I observed his short-lived drug court journey, including his sentencing hearing, a few review hearings and his eventual termination hearing. What made Adelino's case stand out was his background. The following excerpts are taken from my fieldnotes:

> Adelino is in his mid-30s. He has a long history of incarceration. His first contact with the criminal justice system was at the age of 14. He has been given approximately 20 prison sentences in the past 18 years. The more recent 13 months' imprisonment period included sentence management issues of possible self-harm. The majority of his history appears to be offences 'against property', mainly drug and driving related charges.

Family and social history issues mentioned in the various hearings and case conferences I attended included the following:

> Adelino reports that his mother died of cirrhosis of the liver due to excessive alcohol consumption when he was 11 years of age. He states that he left home after her death and appears to have entered a period of transience after that, living with family members or sleeping on the floor in friends' homes […] He adds that in year eight, he was expelled from school for fighting. He states he attended school until his mother died, after which he started missing school and hanging around on the streets […] Adelino states he has difficulty both reading and writing because he has dyslexia. He has no recorded employment history.

Adelino was experiencing homelessness when he was released from custody into the drug court. He was referred to the court's housing assistance program. However, due to the pressure on housing services in the state of Victoria (Victorian Council of Social Services, 2017), he received emergency accommodation only for a few days, and his name was placed on long waiting lists.[44] As a result Adelino had to find his own shelter, and initially did so by couch surfing at two relatives' homes. One of them lived a very long way from the drug court catchment area (about 55 kilometres away). He relied on infrequent and unreliable public transport to attend his various drug court commitments, and therefore was often late or missed them. His housing arrangements collapsed after a few days, and Adelino was soon sleeping rough again. He also continued to use drugs and they were detected through testing. Consequently, he exhausted his verbal warnings and community workday sanctions very early in his order, and began accumulating imprisonment sanctions very rapidly. His engagement with the drug court program dwindled, and he did not present to a review hearing. As a consequence, a warrant for his arrest was issued.[45] His order was eventually cancelled after he committed further property offences.

I argue that Adelino's involvement in the drug court and the manner in which the imprisonment sanctions were rapidly applied intensified his involvement in the criminal justice system, and that this was an important 'lived' effect of the way in which the drug court administered sanctions.

[44] Drug court participants have access to the court's homelessness assistance program, which manages 30 transitional housing properties. However, this stock of properties is insufficient for the demand, and participants face long waiting times to secure long-term housing.

[45] If a warrant is issued because the participant did not present to a review hearing, the participant is further penalised with seven imprisonment sanctions.

Furthermore, in penalising Adelino with imprisonment so early in the program, the court silenced important individual and broad-based social factors that had shaped Adelino's life and his engagement with the drug treatment order. For example, the drug court did not seem to take into consideration Adelino's long history of incarceration and other personal hardships he endured given his family circumstances. It also disregarded his long-term homelessness and its debt to the overburdened public housing system in Victoria. Also ignored was his location in a historically disadvantaged community that has experienced sustained periods of discrimination and reduced social opportunities (Delfabbro, Hirte, Rogers, & Wilson, 2010). Notably, Adelino's treatment did not reflect broader policy that prioritises the diversion of ATSI people, consistent with the Royal Commission into Aboriginal Deaths in Custody's (Australian Government, 1991) recommendation that 'custodial sentences for Indigenous Australians should be avoided wherever possible' (p. X). Instead, the drug court constituted the outcome of the order as his responsibility. This reveals an important subjectification effect produced by court practices, and a key regime of governance used by the court. By holding participants accountable for their own health and welfare, participants are made into 'responsibilised or choosing subjects'. According to Rose (1999), the making of responsibilised subjects is a key feature of neoliberal governmental rationalities. This is consistent with Seddon's (2011) exploration of 'subjectification effects' (Bacchi, 2009, p. 69) of the sanctions and rewards framework used in court-ordered treatment. Seddon points out that such a framework produces drug court participants as hybrid human subjects. On the one hand, they are constituted as rational actors 'responsive' to possible gains and losses. On the other hand, they are constituted as compulsive individuals suffering from loss of control, who need to be coerced into treatment via the drug court because they cannot control their drug-motivated offending.

In this section, I have shown that the drug court's tolerance for drug use is short lived and that escalation in the severity of the sanctions is abrupt rather than gradual. The drug court has a tendency to exhaust non-imprisonment sanctions very early in the program. As a result, the most vulnerable participants are not allowed to become familiar with the program and are sanctioned with imprisonment for failing to comply with demands that are excessive given their difficult circumstances. In this way, the drug court produces some of the 'iatrogenic' effects Marlowe (2012) proposes, such as resentment and ceiling effects. I illustrated this using Adelino's case study. My analysis of this case also revealed that the court responsibilises its subjects, and by

doing so silences individual and broad-based social factors that shape the lives of participants. In the next section, I explore how drug court professionals constitute custodial sanctions. While some of them view them as therapeutic, others think they are detrimental towards participants' recovery

The therapeutic value of prison

Several drug court professionals were of the view that imprisonment had therapeutic benefits. For example, ***A*** stated that custody is beneficial when participants present as a risk to themselves or to the community:

> There is unquestionably [therapeutic value of time in custody] particularly short periods in custody […] I am not sure if you were in court when Norbert [went] inside about a week ago. He was utterly paranoid, he was full of methamphetamine. He hadn't slept for a month and was verging on complete psychotic breakdown. He was a mess. It was either hospital or jail […] He came out a week later, big smile on his face, rested, fed and we could talk to him – he was fantastic – seriously people who use a lot of ice probably get twenty hours a week sleep, and sooner or later they are going to become psychotic because their brain just doesn't ever get the chance to switch off and recover, and it has been assaulted by the stimulant. He was exactly in that space, he was really a danger to himself, and the rest of the community. That week in jail might have saved his life.

Here, ***A*** provides an example to illustrate the effectiveness of short-term custodial sanctions to prevent participants from harming themselves and the community. Norbert is constituted as chaotic and incapable of making the right choices. ***A*** attributes this solely to methamphetamine use, disregarding other potential causes such as a pre-existing mental health condition, cognitive impairment, or other precipitating environmental factors. It also reproduces the normalising binary logic of 'order' and 'chaos' that underpins dominant conceptualisations of people who use (or 'depend' on) drugs, as noted by some scholars (Fraser & David Moore, 2008; Fraser & valentine, 2008). ***A*** uses a neuroscientific understanding of dependence to illustrate what happens to the brain following the use of methamphetamine, which ***A*** believes will inevitably lead to a psychotic episode due partly to lack of sleep. Moreover, by saying that there were only two options left for Norbert (either 'hospital or jail'), ***A*** seems to enact the 'problem' of alcohol and other drug use as at least partially medical. However, ***A*** does not say why Norbert was not sent to

hospital instead. Admittedly, the drug court does not have the power to send Norbert to hospital. Nonetheless, this demonstrates that even if drug court professionals produce alcohol and other drug use as a medical issue, the responses available to them are punitive in nature because the drug court is essentially embedded in the criminal justice system. Further, ***A*** contrasts the 'paranoid' state Norbert was in before going into custody with his orderly presentation following his stint in custody. Indeed, according to ***A***, short custody stints have the potential to save lives. Here, ***A*** assumes that custody is a safe and drug-free environment that will assist Norbert's brain to rid itself of the powerful stimulant. Comments by drug court professional ***H*** parallel ***A***'s:

> I do see that there is positive aspects to [imprisonment]. The one is that it breaks the cycle of the use, at least. Two, if the person was really erratic at least we would know that they are in a safe place, so to speak. I mean custody is never safe, who knows what happens behind those walls. But, at least we know that they aren't going to use a whole bunch of drugs in their home by themselves and overdose. Some people have actually come out [of prison] and they said 'It was really good that I went, I didn't like going in, but it was really good that I did.' So it has its place. It is unique to suggest that custody is good. But, it does break the cycle – if we had a different place to send them other than the punitive method of custody for that period of time that they are going, it would be fantastic. But, we don't. So, it is – the next best option that we have. Look, it allows for them to break their cycle of drug use, um, and whether the person uses that time to sleep it all off, get fat, as we see some of them do, they put on weight, they get healthy, or whether they just use that time where they might be involved in drug use whilst they are in custody, and we have had that before, then it is sad. But that is their decision.

Initially, ***H*** appears convinced about the alleged 'benefits' of custody: it breaks the drug use cycle, and it provides participants with a safe space to do so. However, as ***H*** reflects on these benefits, ***H*** becomes ambivalent about their value. For example, towards the end of the excerpt ***H*** concedes that custody is indeed 'never safe' and that drugs are available. Although ***H*** seeks to justify imprisonment as a 'therapeutic' and even life-saving measure, where it fails to be so (because, for example, an inmate still uses drugs) this is positioned as an individual failing, rather than one of the system itself. In other words, ***H*** does not seem to consider that this may actually render prison non-therapeutic. The system, in other words, is always already therapeutic, and when it is not, this is to be attributed only to actions of the drug court participant.

Additionally, ***H*** tells us that while custody is a punitive measure, it is the only readily available option to 'break the cycle' when participants' drug use becomes unmanageable. Drug court professional ***J'***s comments are consistent with this view:

> There are times when we need to intervene and we need to manage the risks because they [participants] aren't doing that. So, we have to have that ability to pull the lever of the sanctions and remove them from the community, refocus them on their goals, and get things back on track in terms of what they are trying to achieve. But, obviously prison is not an ideal way to do that, and if there was a more therapeutic space to do that then that is far superior.

Here, ***J*** constitutes participants as unable to exercise control. ***J*** explains that the court has the ability to 'pull the lever' of sanctions when participants become a risk to the community following repetitive substance use, which will inevitably lead to crime. ***J*** acknowledges that prison is not 'ideal', but implies that it can be therapeutic. According to ***J***, custody gives participants an opportunity to 'refocus' on their goals. This tells us that ***J*** sees prison as a way of incapacitating participants to satisfy the demand for public safety, and that the web of surveillance in the program incorporates what participants *might do* (because they use substances), and not what they *have done* (Bacchi, 2009).

In this section I have reviewed the perspectives of drug court professionals on the benefits of custodial sanctions. Some drug court professionals justify their use when participants are constituted as a risk to themselves or the community. Others are of the opinion that custody helps to break the cycle of alcohol or other drug use, and to remind them about their goals. The putative effectiveness of custodial interventions rests on the assumption that custody is a safe and drug-free space. At the same time, these professionals' comments often suggest that prison is not necessarily or always entirely safe or therapeutic. The following extracts from interviews with drug court participants further complicate these assumptions. Gabriel's comments provide an example of why custody is not necessarily a safe environment. According to him:

> People on drug court are [potential] mules. They are used to smuggle in drugs and they get a lot of pressure on them, especially, because you usually end up in PPP [Port Phillip Prison] or the MRC [Melbourne Remand Centre], which are maximum security prisons. [Pretends to be another prison inmate] 'Oh, you are on drug court, start kicking

> [smuggling drugs into custody]', otherwise you get stood over […] They would try any tactic, especially the ones that are doing a long time, they will threaten you, your family. They will try anything just to get you to smuggle some. [They would say] 'Oh, it is only seven days, you are only doing seven days, come on and use, go and throw a few dirties [drug tests] and bring some in for us', you know. And if you promise them, then you are opening doors and if you stand up against it, it is a bad situation. I was even offered once they found out I was going on drug court. That is probably why I don't want to bloody relapse and go there because I know what could be waiting […] I would go into solitary. I would put meself in the slot because I just don't like them. I know a lot of the [prison] way, their mentality and the way they operate. It is just barbaric.

Here, Gabriel shares an additional pressure some drug court participants might encounter while in custody. Gabriel fears for his own safety if he returns to the mainstream custodial system as a result of the pressures other inmates serving long-term sentences might place on him. Consistent with Gabriel's comments, Vicente confirms the availability of drugs in custody:

> I took Xanax[46] in jail. My clinical advisor goes 'Why did you do that for?' I go 'Are you serious?' I go 'I don't know if anybody has ever told you, especially in jail, any day, *any day* you can escape it, you will.' So, if it is a drug, you will take it, you know, without a doubt. So, that is one day less you got to do.

Here, Vicente explains that some participants use substances to 'escape' the harsh realities of custody. In this way, rather than deterring drug use, custody appears to encourage it.

Police cells: 'The most horrendous place to serve sanctions'

It is important to note that not all drug court professionals hold the view that custodial sanctions have therapeutic benefits. As ***P*** explains:

> I don't consider jail to be therapeutic, and I have never met a participant who has said to me that they thought jail is therapeutic. Our participants largely spend sanction days in the police cells. No access to outdoors, fresh air, very, very extreme conditions. I think that therapeutic detoxification of a participant should occur in a therapeutic environment.

[46] Xanax is the trade name of Alprazolam, as a potent, short-acting benzodiazepine anxiolytic. It is commonly used for the treatment of anxiety disorders.

In these comments, ***P*** suggests that there are tensions within the drug court team about the therapeutic value of prison. While both ***A*** and ***H*** (reviewed earlier) tell us that participants have expressed the benefits of going to prison, ***P*** says that no participant has *ever* told him that prison is 'therapeutic'. Additionally, consistent with my observations, ***P*** tells us that oftentimes drug court participants serve their custodial sanctions in police cells rather than in prisons. The nature and significance of this requires some explanation. In order to reach prison, participants go through a series of processing stages within the corrections system. When they are first arrested, they are held in police cells, then they are supposed to go the Melbourne Assessment Prison (MAP) for further processing, and then to a prison. However, as ***D*** explains:

> Because there is not enough beds up at MAP or the Melbourne Remand Centre for participants to be moved up there, they get held in the Dandenong [police] cells.

This indicates that on some occasions, drug court participants may serve out the period of custodial sanctions in the police cells, without ever going to MAP or onto a prison. This shows that the overburdened prison system disrupts the prompt processing of drug court participants. ***D*** agrees with ***P*** in saying that custody has no therapeutic value, and elaborates on the hard conditions participants face in the police cells:

> [The police cells] are detrimental for a person's rehabilitation because you basically have a couple of big rooms, big glass. You will see thin little mattresses. There might be eight mattresses on the floor with blokes with the blankets up because it is freezing in there, the air con is full on, the smell hits you when you walk in […] fifteen days, twenty-one days lying on a mattress with a blanket up, that is all they can do. They rarely shower. No fresh air, [in] some of the cells there is no fresh air at all. All they can really do is watch television. They don't have phone calls, you aren't allowed visits. So, a lot of them say they go mad … because all they have are their thoughts. People start getting narky with each other and then you got the new remands, who are aggro, picking fights, standing over people, horrible, horrible. But, again, the drug court does not see that. [Some staff] are of the view that they [participants] brought it upon themselves, whereas there are

magistrates on the record for saying that the conditions in the police cells are in direct breach of the human rights charter[47], disgraceful and disgusting.

Here, ***D*** denounces the difficult conditions participants experience in the police cells (on occasions for extended periods – 15 or 21 days) by providing several examples. It is of note that the memorandum of understanding between Victoria Police and Corrections Victoria recognises that 'where practicable, no prisoner should remain continuously in police cells for more than 14 days' (Victorian Auditor General, 2014). Indeed, the conditions ***D*** describes are consistent with concerns raised by a Victorian Ombudsman's investigation in 2006 in response to numerous complaints from individuals held in police cells or prison. This investigation resulted in the *Conditions for Persons in Custody* report (Victorian Ombudsman & Office of Police Integrity (OPI), 2006), tabled in the Victorian Parliament. This found that conditions for detainees were unsatisfactory in several regards. As a result, a set of recommendations was made, including the development of standards for police cells (OPI, 2008) with a special focus on respecting the human rights of detainees. However, further reports found that not all the recommendations had been implemented (OPI, 2010). Moreover, an investigation of deaths and harms in custody (Victorian Ombudsman, 2014) found that the conditions in some police cells and the Melbourne Custody Centre (MCC) are incompatible with the United Nations' guidelines related to inmates' access to natural light, floor space, heating and ventilation (Office of the United Nations High Comissioner for Human Rights, 2017). The conditions in the police cells, described by ***D***, also appear to be in breach of section 21 of the Charter: the right to humane treatment when deprived of liberty, which states that 'people have the right to be treated with humanity if they are accused of breaking the law and are detained' (Victorian Equal Opportunity and Human Rights Commission, 2017). Indeed, ***T***'s comments suggests that the following police cells standards developed by the OPI (2008, pp. 4-12) are being breached:

- Cells are clean, kept at a comfortable temperature and well ventilated.

[47] 'The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) is a Victorian law that sets out the basic rights, freedoms and responsibilities of all people in Victoria. It is about the relationship between government and the people it serves. The Charter requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights specified in the Charter. Twenty fundamental human rights are protected in the Charter because the Victorian Parliament recognises that, as human beings, we have basic rights, including the right to be treated equally, to be safe from violence and abuse, to be part of a family and to have our privacy respected' (Victorian Equal Opportunity and Human Rights Commission, 2017).

- […] Detainees have access to natural light during the day.
- Detainees are able to take warm showers in clean conditions that allow privacy.
- Detainees held for more than 24 hours have access, for at least an hour a day, to an outdoor exercise yard.
- Each detainee has reasonable access to a telephone.
- Each detainee has access to their lawyer, without restriction to the number or length of visits, detainees have access to a visit from family at least twice a week.

The full extent of the breach of section 21 of the Charter, and other police cell standards (OPI, 2008) will become starkly apparent when I review some of the data from interviews with drug court participants. For now, let us return to ***D***'s comments, which show the tensions between drug court professionals about the use of custodial sanctions. Contrary to other drug court professionals, ***D*** believes participants' dependence should be treated in a therapeutic environment rather than in custody. Drug court professional ***J*** concurs with this opinion about the cells:

> The cells is certainly the most horrendous place to serve sanctions. That is why we credit people for every three days they spend in the cells because we recognise that they don't have access to basic human rights. When they are in the cells they don't have access to services, they don't have access to sunlight, yards and those sorts of things. So, it is definitely the toughest way to do the time and also probably a way that builds a bit of resentment for the system, and it is quite challenging for the individuals going through that.

J tells us that in acknowledgment of the difficult conditions participants face when serving sanctions in the cells, one custodial sanction is removed for every three days of incarceration. However, if the court concedes these difficult circumstances, why, as drug court professional ***E*** stated, does its 'default sanction' continue to be imprisonment? And what is the significance of this for the claim that the drug court is always already therapeutic? The search for alternatives to the premature (over) use of custodial sanctions becomes especially pressing in light of the appalling experiences of participants serving sanctions in the cells. The following are some of their accounts. Henri thinks that:

> They are shit, I mean, it is like the dogs that you put in a cage and you just, you know, there is four, five of them in a cage, and you just go there and feed them two, three times a day and that is it. The lowest part of everything is the police cells, you know, there is nothing to do there. They don't even let you out to have fresh air […] your brain just switches off 'cause you are in another land then. As soon as that door shuts and they put you in that cell, that is it. You are in another part of the world sort of thing. You are slowly going through a wormhole. You are in civilisation in one minute, and the next minute you are in your fucking little world in the cells.

Apart from describing the atmosphere in the police cells, Henri tells us that he copes by 'switching off'. Below, two drug court participants elaborate on the difference between prison and the police cells. Bernard says:

> I would rather be in an open jail than in a [police] cell […] The difference is that you are locked up like a chicken in a shed, in a little cage, where at the PPP you can walk around, you can socialise, you know, and stretch your legs out, where in the cells you are locked up in a room […] It was making me break a bit. I was ready to snap and about the fifth day I was starting to feel like I wanted to hurt myself because I just wanted to get out of there. You start breaking down, it starts getting to you because you are locked up in the cell, so yeah. It is not like you can go out and go for a walk or kicking a footy or whatever it might be, you know, you are locked up in a confined room and that is it.

Bernard confirms that the conditions faced in police cells, such as isolation and lack of fresh air, sunlight and space, are extreme. Bernard also tells us that a lived effect of serving sanctions in the police cells is a decline in mental health, to the point that he contemplated hurting himself. Bernard suggests that going for a walk, an opportunity he has had when in a mainstream prison, can make a difference to his state of mind. Vicente, below, also prefers to serve custodial sanctions in a prison:

> You prefer obviously going to the jail, police cells is the worst […] it is like sitting in a public toilet, it is exactly like that. That is how it is built, and that is how it looks like, and that is how it smells.

Both Bernard and Vicente's comments suggest that they perceive serving sanctions in the police cells, which often occurs when the custodial component of the drug treatment order is activated

due to 'non-compliance', more onerous than doing so in a mainstream prison. This is especially the case for those participants who do not end up completing the order but regularly come in and out of custody, and therefore spend prolonged periods of time in police cells while they are on the order. I argue that for those participants the combination of attempting to complete the drug treatment order and serving the original prison sentence is more harmful than serving the original sentence alone. The conditions drug court participants face in police cells suggest that the court responds to the problems of dependence and program non-compliance with punitive and disciplinary approaches, constituting repetitive drug use as a crime in itself.

Drug court participant Matthew mentions other differences between police cells and mainstream prisons and hypothesises why drug court participants are kept in police cells rather than being transported to mainstream prisons:

> Now, they are keeping us in the police cells so there is no getting out to the assessment prison where there is [a] canteen, or people you will know. It is all in the police cells, so three microwaved meals a day, dealing with the police officers all day. Fucking … it is the worst, I can see why they do it because it keeps us segregated, I guess, from the other mainstream prisoners. In a sense that we can't get access to drugs, um, we can't, there is no point bringing drugs into the system because you aren't making it out to these mainstream prisons, you know. It kind of keeps us separated from the whole corrections program. We are sitting there doing the time in the cells.

Here, Matthew proposes that the drug court deliberately sets out to hold in the cells to keep them 'segregated' from mainstream inmates so that they are not tempted to use drugs, and at the same time they are unable to take substances into the corrections system. He constitutes this as premeditated punishment. Program non-compliance, including repetitive substance use, is constituted as a law and order problem, and the police cells are used as a strategy to incapacitate and punish. Priority is given to demands for retribution and public safety rather than to the rehabilitation of drug court participants. In other words, dependence – elsewhere in the system conceptualised as a 'health problem' for which treatment is necessary – is simultaneously enacted as a crime to be treated punitively. I argue that this exemplifies a way in which some drug participants build resentment towards the system. This is consistent with the comments of drug professional ***J***, and Marlowe (2012), who asserts that harsh custodial sanctions may lead to

'iatrogenic' effects. Further, there is a paradox associated with the imposition of custodial sanctions, in that – despite the fact that the drug court is supposed to relieve the custody system – it appears that the drug court's use of custodial sanctions increases the burden, at least in the first stages of prisoner processing.

'I will make sure that you get all your medication'

My field observations showed that another lived effect of the use of custodial sanctions is the interruption of medication regimes such as opioid replacement substitution therapy, and medications to treat alcohol withdrawal and mental health conditions while in custody. For example, during my fieldwork, I observed instances in which participants who were withdrawing from alcohol (a potentially life-threatening process) were not given medication while serving sanctions in the police cells. ***D***'s comments support my observations.

> The other problem is a lot of people are having their medications cut off. The magistrate didn't accept that, but participants have time and time again said they are taken off their anti-depressant. There is no way if someone is on dexamphetamine for ADHD [Attention Deficit Hyperactivity Disorder] that they will be allowed to stay on that, so that comes off. So there is also a disruption to the therapeutic process. In fact, there was a participant who went and they took him off, I think it was his antidepressants. So when he was out, he was very, very suicidal – and I think he might have even tried to commit suicide. He went back into custody and – he was out for a while, he was back on his antidepressants and he said 'You know what? I am feeling so much better', and his real concern was [if he] was going back into custody, he'd be kicked off the antidepressant. He was someone who had made several suicide attempts.

Matthew's experience is consistent with **D**'s concerns:

> The first time I went into custody, they were sporadic in giving me the medication. So, some days I would have this antidepressant, some days I wouldn't, and I am doing my first time in jail; like my head is already fucked enough.

Drug court professional ***D***, above, also suggests that it is because some substances are considered drugs 'of abuse' that they are not administered in custody. Vicente's comments are consistent with this view:

> They decide what they want to give you, you know. [Pretends to be a prison staff member] 'We don't give these pills in jail anymore, we only give these ones, or these ones.' I have been on a tablet, which is for sleep, you know, for the last two years of my life. So, as soon as you get there, they are like 'No, we don't give sleepers, or we don't give this or that' you know. But, as the judge assures you [before going into custody], [pretends to be magistrate] 'Tell me what you are on exactly?' You know, he writes it down, '… and I will make sure that you get all your medication'. And I am thinking 'Who are you talking to?' you know, 'Am I that stupid? Haven't I done this before?' Like I [know] I am not going to get shit.

Here, Vicente cites an example where he describes expecting not to get sleeping medication. Further, he narrates a typical scene I also observed when participants were about to be taken into custody. Drug court staff take for granted that participants are going to receive their medications promptly. This assumption silences the systemic issues that individuals on medication regimes face when they enter the custodial system. Vicente appears to show frustration also because he feels underestimated, and suggests that the magistrate's words are merely a tokenistic gesture.

Drug court professional ***P*** also raises concerns about interruption of medication:

> I think that the majority of times that participants get their medications, [but] there may be delays that sometimes occur. There are some instances where they don't receive their medications whilst they are in custody, which is hugely problematic. Lawyers have argued participants to be allowed to access their medications before they go into custody, um, the police submissions are that medications will always be provided to them in custody. But, I don't think that is always the case. It is just madness if they go into custody, and don't receive their medications and then come out and have to re-establish those medications and then get back on a stable dose. The time that that takes them to then restabilise could be the time that it takes for them to pick up sanctions and go back in again.

Here, ***P*** illustrates more tensions between drug court staff. Some seem to acknowledge the possibility that a drug court participant's medication regime will be interrupted, while others appear to deny it. ***P*** also explains that some medications need to be 're-established', but what does this mean? Here, ***P*** refers to medications such as methadone maintenance therapy (MMT).

In the state of Victoria, 'if the dose has not been collected for three or more days, the dose is withheld [by the dispensing pharmacy] until the patient has been assessed by the prescriber' (Henry-Edwards et al., 2003, p. 34). This means that if drug court participants who are on MMT spend at least one week in custody, by the time they are released, they do not have a current prescription in order to be dosed. As a consequence, on their release day they must return to their prescriber to get it, and re-establish contact with the pharmacy. They are expected to organise this without having made previous appointments. These might become onerous tasks when one considers that on this same day, after having endured all the hardships of custody described above, they are required to attend other court commitments such as a review hearing, urinalysis, and Centrelink[48] in order to re-establish their income payments. If the participant is unable to meet all these demands, and uses non-prescribed opioids in order to control withdrawal or misses one of these commitments, they will be sanctioned (for every single episode of 'non-compliance'). I argue that this is another way in which the court process can produce harmful effects. Alex's hearing partly illustrates this point. The following excerpt is taken from my field notes:

> Alex appears before the magistrate for a review hearing. He has just been released from custody. He seems to be in his late 50s, physically frail, and agreeable to the magistrate's comments and suggestions. I have difficulty understanding his speech – he does not seem to be wearing his dentures – he complains of back pain. The magistrate addresses him: 'You had 17 days in the Melbourne Custody Centre (MCC). Because you served your time in a difficult way, the court is going to credit you for this (one further sanction will be removed for every three days spent in the police cells or MCC).' Alex continues complaining of back pain. He asks whether he can test (urinalysis) tomorrow because it is nearly four o'clock pm, and he needs to go to Centrelink to try to get his welfare payment reinstated before five o'clock. The magistrate denies the request.

Here, the magistrate partly acknowledges the difficult conditions Alex faced in custody by 'crediting' him. However, the magistrate silences other circumstances, including Alex's physical presentation, self-reports of back pain, and the difficulties drug court participants experience in dealing with government agencies such as Centrelink. In this way, Alex faces a dilemma. He has

[48] The Australian Government agency that delivers social security payments and services.

to choose to either get his welfare payment reinstated or attend urinalysis. If he does not attend testing, he will be penalised with two sanctions, but if he does not go to Centrelink he will have no income. The magistrate appears to disregard this dilemma.

The comments reviewed by drug court professionals and participants in this section suggest that more police cell standards are being breached. As the police cells standards document states (OPI, 2008, p.10):

- Detainees with health needs are provided with health services equivalent to those available to the community as a whole.
- Detainees requiring medication should have access to appropriately prescribed, dispensed and administered medication by a medical practitioner, pharmacist or nurse (this includes methadone).
- Medical advice is obtained for detainees appearing to withdraw for drug or alcohol addiction.

The effects of the custodial sanctions that I have explored in this chapter remind us that the parameters of the application of sanctions and rewards, reviewed at the beginning of this chapter, are difficult to put into practice. As Rose and Miller (1992) point out when discussing governmental practices:

> The sublime image of a perfect regulatory machine is internal to the mind of the programmers. Things, persons or events always appear to escape from the bodies of knowledge that inform governmental programs, refusing to respond according to the programmatic logic that seeks to govern them. (p. 175)

When referring to diversion programs in Australia, Bull (2006) also argues that strategies for governing yield unexpected problems or unintended effects, are vulnerable to underfunding, professional rivalries, and fail to replicate the ideal technical conditions that will guarantee their functioning. This also applies to the Drug Court of Victoria, whose functioning is affected by underfunded public housing and health services and an overburdened custodial system. This indicates that the court does not necessarily set out to produce the harmful effects that some of the participants experience because they participate in the program. Additionally, the court is part of a network of programs and services, and relies on them for optimal functioning. It is important to acknowledge these systemic deficiencies, and their impact on participants because,

as this research indicates, they are silenced to a large extent. Instead, participants are predominantly produced as 'choosing subjects' who deserve to be punished.

Conclusion

In this chapter I explored the use of rewards and sanctions in the Drug Court of Victoria, and considered some of the lived and subjectification effects of their use. As I noted at the outset of this chapter, rewards and sanctions are used in many drug courts around the world. Despite the fact that they are one of the central mechanisms through which people enrolled in the drug court are managed, and through which alcohol and other drug dependence is addressed, little is known about their implementation. Previous research tells us that:

- Drug court staff sometimes disagree about the use of rewards and sanctions.
- The use of rewards and sanctions is not always predictable or consistent.
- Various actions can be the subject of rewards and sanctions.
- Drug courts use sanctions more frequently than rewards.

Although these are valuable insights, there has been little critical analysis of the range of effects that the imposition of rewards and sanctions might produce. I argued that, given the centrality of rewards and sanctions to drug courts, it is essential that we study how they are utilised and how their deployment impacts on people enrolled in drug courts. Hence, in this chapter I showed how drug court participants and professionals view the sanctions and rewards system. Drawing on Carol Bacchi's (2009) poststructuralist policy analysis framework, I explored how the 'problem' of substance dependence is constituted in the drug court's approach to the administration of sanctions and rewards, and I considered some of the effects of this system.

I found that the Drug Court of Victoria's tolerance for non-compliance with drug treatment order conditions, and illicit alcohol or other drug use, is short lived and that – contrary to the formal policies of the court – the escalation in the severity of the sanctions is abrupt rather than gradual. Following Marlowe (2007), I argued that this leads to 'ceiling effects in which further escalation of punishment is impracticable' (p. 323). In other words, the court may run out of options for participants who are subjected to high-magnitude sanctions such as incarceration early on in the program, with one potential effect being expulsion from the drug court and reintegration into the regular criminal justice system. In many instances, the imposition of more severe sanctions

occurs without sufficient regard to the individual circumstances of drug court participants, including how people's personal, social, familial and financial circumstances shape their ability to comply with court orders. This is a troubling finding for a range of reasons. Most importantly, it seems that certain – often already marginalised – individuals are at greater risk of 'failure', as they lack the resources and supports needed to enable compliance with drug court requirements. As I argued throughout this chapter, these participants may be sanctioned with imprisonment for failing to comply with court demands, potentially exacerbating existing forms of disadvantage and marginalisation. In this way the court produces a range of effects, including effects that are arguably anti-therapeutic and at odds with the court's stated aims and objectives. My analysis also suggests that the drug court responsibilises its subjects, and in so doing silences individual and broad-based social factors that shape participants' lives.

I then reviewed the perceptions of drug court professionals about the benefits of custodial sanctions. Some drug court professionals justify their use when participants are constituted as a risk to themselves and the community; others are of the opinion that custody helps to break the 'alcohol and other drug use cycle', and to remind participants about their goals. The (arguable) effectiveness of custodial interventions rests on the assumption that custody is a safe and drug-free environment. The comments of other drug court professionals and participants complicated these assumptions. Additionally, they revealed two important lived effects of custodial sanctions. First, drug court participants sometimes endure extreme conditions when serving custodial sanctions because they often do so in police cells, with poor or no access to natural light, fresh air, open space or ventilation. This can adversely affect participants' mental and physical wellbeing, and leads to resentment towards the program. Second, participants might also have their medication regimes interrupted while serving sanctions in either the police cells or in prison; this disruption also has detrimental effects on wellbeing. The implicitly unsympathetic and punitive approach here casts into doubt claims that the drug court sees dependence as a health issue amenable to therapy. It seems that the idea of therapy needs to be considerably warped to allow incarceration to be described as therapeutic. Substance dependence is therefore represented as a law and order issue, and the demands of retribution and public safety are always prioritised over the therapeutic needs of participants.

As I pointed out at the beginning of the chapter, the development of drug courts was based on the premise that the imprisonment of individuals who used alcohol and other drugs was harmful, and

that an alternative, more 'therapeutic' approach was needed. Under this reasoning dependence is represented as a health issue amenable to therapy. Although the Drug Court of Victoria purports to follow this reasoning and to operate as an alternative to the traditional criminal justice system, the findings in this chapter raise questions about the extent to which such claims are sustainable. There is no doubt that the drug court model differs from traditional court approaches in many respects, but the use of premature and excessive custodial sanctions puts into question its putatively 'therapeutic' value. In this sense, my findings about the effects of drug courts overlap with those of other scholars who have questioned the therapeutic claims of drug courts. My research adds to this literature in key ways. It demonstrates that sanctions and rewards are one of the key mechanisms by which drug court subjects are governed, responsibilised and punished (Bacchi, 2009). I continue these observations in the next chapter, as I examine another of the court's central processes – urinalysis testing. Given that I have only observed these processes in one Australian drug court, it is possible that rewards and sanctions play out differently in other courts, with a variety of (more positive and/or problematic) effects. As such, there is a need for more analysis of how these mechanisms are deployed and with what effects in other settings. In the Victorian context at least, the search for alternatives to the use of custodial sanctions becomes especially pressing in light of the appalling experiences of participants serving sanctions in police cells.

Chapter 7: Enacting alcohol and other drug (testing) related harms

Originally used in the military with returned Vietnam veterans (Campbell, 2005; Paik, 2006), alcohol and other drug testing has since extended to a variety of environments. It is now used in employment (American Society of Addiction Medicine, 2013), schools (Mosher & Akins, 2014), sports (Wilson & Derse, 2001), social services (Wincup, 2014), child custody (Campbell, 2005), addiction treatment (Rzetelny et al., 2016) and in the criminal justice system (Powell, Bankart, Christie, Bamber, & Arrindell, 2009; Seddon, 2005; Singleton, 2008; Wish & Gropper, 1990). According to Wish and Gropper (1990), this testing achieves four goals in the criminal justice system: detection of recently ingested substances, identification of 'chronic' alcohol and other drug users, monitoring and deterrence of consumption among those on parole or community-based orders, and discovery of national and local alcohol and other drug use trends among criminal justice system populations. Testing is also the cornerstone of many drug court models. Drug court advocates identify several advantages of testing in a drug court environment: deterrence to drug use; identification of individuals who are abstinent for allocation of incentives or rewards; and identification of relapse, allowing for swift intervention and effective use of limited resources by targeting those participants who continue to use substances (Auerbach, 2007; Cary, 2011). Despite the centrality of testing to the drug court model, it has not received much scholarly attention. In this chapter, I add to the research in this area through a detailed study of testing regimes at one Australian drug court. In what follows, I provide an overview of the Drug Court of Victoria's testing regime. Next, I discuss the critical literature on drug courts with a special emphasis on studies of drug-testing regimes in drug courts. Third, I provide an overview of the aspects of Bacchi's (2009) policy analysis framework that I draw on in my analysis. Following this, I analyse drug court participants' experiences with its drug-testing regime, including experiences of random testing and urine collection, and trace some of its effects. In my analysis, I suggest that the urine-testing regimen can intensify participant involvement with the criminal justice system. Further, I suggest that the court's use of an abstinence model heightens exposure to alcohol and other drug-related harms and risks and segregates drug court participants from the broader society, increasing their isolation. I also argue that it inhibits other aspects of their lives, including their relationships, social lives and employment prospects. Overall, I argue that these effects are at odds with the court's aims. Nevertheless, despite the potential negative effects of the drug-testing regime, some participants

find aspects of it beneficial. I conclude with some reflections on claims about the therapeutic value and potential of drug courts and suggest opportunities for reform. In this chapter I build upon the previous three chapters by exploring in detail another way in which drug court participants are managed, or governed (in Bacchi's terms), once they start their drug treatment order. I begin by providing some background into how the substance testing regime operates in the Drug Court of Victoria.

Background: The alcohol and other drugs testing regime

The stated objectives of the Drug Court of Victoria are: to improve the health and wellbeing of participants through reducing alcohol and other drug use and criminal behaviour and improved connection to the community, and to reduce the severity and frequency of offending for participants (KPMG, 2014). As pointed out in the previous chapters, drug court participants are sentenced to a drug treatment order, which lasts from one to two years. The order consists of two components: alcohol and other drug treatment and supervision, and a custodial component which is suspended while the participant undergoes treatment in the community. The treatment component of the order includes specific conditions intended to address the participant's dependence, such as attendance at appointments with drug court case managers and clinical advisors, alcohol and other drug counselling, regular attendance before the drug court magistrate, and regular drug testing. In addition, the order comprises three phases. In order to progress from a lower phase to a higher phase, participants must have achieved the specific goals of their current phase. For example, one of the goals of phase three is that the participants become 'fiscally responsible' (KPMG, 2014, p. 19).

Testing regimes in the criminal justice system typically involve collection of multiple specimens: oral fluids, hair, urine, sweat, blood and urine (Auerbach, 2007). Urine is generally accepted as the gold standard for drug testing because most of the published scientific literature and legal/court precedents associated with drug testing have been established with urine, but disadvantages to using urine have also been identified (Cary, 2011). First, it requires invasive, witnessed collection procedures (McIntire & Lessenger, 2007). Second, urine drug levels do not provide interpretive data on dose/concentration relationship, or level of impairment. Third, the urine collected is susceptible to tampering via dilution or adulteration, and samples can be substituted. The last of these disadvantages is based on the assumption that donors will try to

conceal their alcohol and other drug use, and will engage in illicit strategies (such as drinking copious amounts of fluid to dilute the sample, or using devices to substitute their sample with a 'clean' one). Because of the perceived potential for collection scams, steps are often taken during sample collection to ensure test integrity, such as direct observation of urination and checking for the use of devices through which samples might be substituted.

According to the Drug Court of Victoria (2012), the drug classes its testing targets are amphetamines, opiates, benzodiazepines, cocaine, cannabinoids, and alcohol. This is based on the premise that they are the most frequently 'abused' drugs in the forensic environment. Additionally, at the special request of the court, testing can confirm use of opioid replacement therapy drugs such as methadone, suboxone, naltrexone and buprenorphine. The court's urinalysis and breath testing policy (Drug Court of Victoria, 2012, para. 3.1.2) lists four main advantages to having such information. It allows:

1. appropriate decision-making based on accurate information;
2. credibility of the program in determining success and progress of participants;
3. ability to intervene before a lapse or relapse leads to offending; and
4. ability to monitor compliance with pharmaceutical treatments and/or psychiatric medications.

Some drug court participants must undergo both urinalysis and breath testing. As noted earlier in this thesis, participants pass through different phases of the drug court program. Testing frequency depends in part on which phase a participant is in: those in phase one are required to undergo a urine test three times a week, while those in phases two and three are required to undergo a urine test twice a week (Drug Court of Victoria, 2012, KPMG, 2014). Those on alcohol orders must test more often than others because the body metabolises alcohol much more rapidly than other substances, and the testing technology available to the court is unable to detect it after a few hours. The frequency of urinalysis or breath testing can be increased in any phase by the magistrate as a punishment for lack of compliance with order conditions (KPMG, 2014). Further, case managers can ask participants to undertake random tests at any time.

Literature review

As I pointed out in chapter 2, a growing body of literature critiques the operation, objectives and effects of drug courts around the world (Boldt, 2010; Bowers, 2008; Burns & Peyrot, 2003; Colyer, 2007; Fischer, 2003; Fitzgerald, 2008; Gowan & Whetstone, 2011, 2012; Hoffman, 2000; Justice Policy Institute, 2011; Kaye, 2013; Lyons, 2013, 2014; Mackenzie, 2008; Miller, 2004, 2009; Dawn Moore, 2007a, 2007b; National Association of Criminal Defense Lawyers, 2009; Seddon, 2007; Tiger, 2011; Whiteacre, 2007). Within this literature, there are very few in-depth analyses of the process of urine testing in drug courts. Mackinem and Higgins' (2007) four-year participant observation study in three US drug courts found that while urinalysis is considered an 'objective' and rigorous method for drug testing, its use is highly subjective in drug court settings. For example, in the testing process known as line identification (which refers mainly to an on-site screening methodology), a chemically embedded paper interacts with drug metabolites in the urine sample. If no illicit drugs are in the urine, a line appears in a field indicator. If a drug is present, no line appears. Because individuals perceive colour differently, personnel at times debated whether the line had appeared. Mackinem and Higgins also note that drug court personnel had the discretion to decide whether a participant had intentionally diluted the sample by drinking too much water. In a second study, Paik (2006) analysed how drug test results were used in court decision-making. She found that depending on the participant, personnel anticipate, recognise and treat some drug test results (originally reported as either positive or negative) as 'false positives', 'false negatives' or 'inconclusive'. They do so by using interpretative tools, including participants' patterns of behaviour, history of substance use, understandings about their client population, and their own assessment of their colleagues' competence in administering tests and 'interpreting' drug concentration levels.[49]

In addition to this work, some research on drug courts outside the US has looked tangentially at drug testing. In the UK, Powell et al. (2009) point out that unlike the US drug courts, where the aim is to achieve almost immediate abstinence from drugs, UK staff seemed to operate under a philosophy of harm reduction (Bean, 2014; Powell, Bamber, & Christie, 2007). In the UK, drug testing as part of a treatment order is only used as an indication of compliance, with frequency of testing set by the court at sentencing. The tests are not linked to sanctions, because legislation

[49] See also Cary (2004, 2011).

prohibits the administration of such sanctions (McSweeney, Stevens, Hunt, & Turnbull, 2008). In her report on a Canadian drug court, Dawn Moore (2011) observes that drug testing was conducted randomly once a week, and although drug use was not punished, not admitting to drug use was. While these studies offer insights into how drug court personnel engage with drug testing technology, and illuminate the test results and how they interpret them, drug testing in drug courts remains largely unexplored. This is especially the case in Australia (where alcohol and other drug testing regimes and technologies might be very different from those reviewed above). This lack of research is important because drug testing is presented as an 'objective' way of measuring the extent of alcohol and drug use and as central to the management of dependence. Hence, examining it closely will reveal key representations of dependence, and ways in which drug court participants accommodate, resist or otherwise engage with enactments of dependence in their drug testing experiences. This is important because drug court participants' voices remain largely unheard on this issue. In what follows, I aim to address these gaps with a detailed analysis of how urine testing unfolds in one Australian drug court.

Before I begin my analysis, however, it is important to consider research on opioid pharmacotherapy treatment (OPT). Many OPT programs also require urine-testing regimes like those used in drug courts, and some of the research on OPT explores issues that overlap with those of drug testing regimes in drug courts. For example, Strike and Rufo's (2010) study of drug testing in MMT found that some patients considered urinalysis procedures (including witnessing) degrading, embarrassing and invasive, and felt it reinforced 'lying junkie' identities they were trying to escape. However, other patients came to accept it as part of the treatment. Further, while some clinical staff considered urinalysis beneficial, others believed that it jeopardised the development of the therapeutic alliance between clinicians and clients. Another important similarity between drug testing regimes in drug courts and OPT is the limited opening hours of drug testing facilities, dispensing pharmacies and clinics. Fraser (2006)'s analysis of dosing in methadone clinics and pharmacies in Australia found that the model of waiting and dependence created by dosing processes produced the very kind of methadone subjects ('disorderly, illicit and unproductive') that the program assumed existed prior to intervention and that it was intended to reform. While this dynamic was identified specifically in relation to MMT, as will be shown below, her analysis offers a useful starting point for identifying similar counterproductive effects in drug courts.

Approach

My analysis in this chapter is again guided by Bacchi's (2009) WPR approach (explained in detail in chapter 3). In this chapter, I extend Bacchi's ideas further through a detailed analysis of the way one drug court constitutes the problem of alcohol and other drug dependence and seeks to respond to it through the administration of an onerous drug-testing regime. In doing so, I touch upon questions one, two, four and five of the WPR approach. Question one assists me to explore how the problem of dependence is represented in the court's urinalysis and breath testing policy and practice. Question two of the WPR approach asks what assumptions underlie the representation of the dependence in this policy. Question four is used to explore what is left unproblematic in the representation of dependence. Question five assists me to consider some of the effects of the drug testing practice.

Analysis

As I noted earlier, the stated objectives of the Drug Court of Victoria are to improve participants' health and wellbeing through reducing alcohol and other drug use and criminal behaviour and improving their connection to the community, and to reduce their severity and frequency of offending (KPMG, 2014). This focus is instantiated in the legislation establishing both the court's jurisdiction and the eligibility criteria for participants (the aforementioned *Sentencing (Amendment) Act 2002*, s18Z). Through these criteria, the drug court explicitly problematises both: alcohol and other drug dependence itself and criminal offending thought to be related to (or caused by) such dependence. I argue that these objectives are also underpinned by an implied subject (those who are both 'dependent' and 'criminal'). From the outset, in other words, the drug court's objectives and underlying premises produce a set of problematic *objects* ('dependence' and 'dependence-related crime') and *subjects* ('dependent criminals'), even though these objects and subjects are assumed to pre-exist the establishment of the court itself. A key question for consideration then becomes: if the court's objectives and eligibility criteria enact these as their problems, do the court's practices and processes – and particularly, for the purposes of this chapter, the urine screening process – enact or assume the same kinds of problems, or different ones? And what is the significance of these alignments or misalignments between the court's stated objectives/foci, and the effects it actually produces? I consider these issues in what follows, as I analyse experiences of drug court participants with the court's drug

testing regime. As we will see, these experiences include random testing. I also trace some of the effects of the alcohol and other drug-testing policy and its implementation for participants. In doing so, I make three key points: the regime is likely to intensify participants' involvement in the criminal justice system; its emphasis on abstinence may heighten exposure to alcohol and other drug-related harms and risks, and isolate participants from broader society; and it inhibits participants' social relationships and employment prospects. In all these respects, the court can be said to create the very ill-effects it is aiming to avoid. Ironically, both problem and solution are underpinned by the same idea: damaged/problematic drug-using subjects. As I will also note, however, despite these negative effects, some participants find aspects of the drug testing regime beneficial.

Urine collection process

As pointed out in the background section of this chapter, one of the disadvantages of urine collection as a means of monitoring conduct is that urine specimens are susceptible to tampering via dilution or adulteration, and can be substituted. This disadvantage is based on the assumption that donors will try to conceal their alcohol and other drug use, and will engage in illicit strategies (such as drinking copious amounts of fluid to dilute the sample, or using devices to switch their sample with a 'clean' one). Because of the believed potential for collection scams, steps are taken during urine sample collection to avoid them, and some of these are invasive. In this section, I explore how urine sample donations are witnessed at the court and how participants accommodate, resist or otherwise engage with such close supervision. This refers to one of the objectives of my thesis (objective 3 – see page 2). The following excerpt, taken from McIntire and Lessenger (2007), instructs drug courts on the 'proper' method for conducting urine sample collections and captures the invasive nature of collection. Interviews with Drug Court of Victoria participants suggest that the process described below is consistent with court practices.

> After clients [participants] are processed and present themselves to have a urine specimen taken, they are required to wash their hands under direct supervision. This procedure is intended to remove any substances on their hands or under their fingernails. This activity prevents them from urinating across their hands or fingertips and introducing a foreign substance (adulterants) into the sample cup. The collection areas should have installed mirrors that provide visual access to all areas of the client's body from all angles. This

> not only provides clear viewing of the voiding process by the collector but also serves as an effective deterrent for those clients inclined to attempt an adulteration or substitution activity. An effective urine sample collection is best accomplished when a clear view of the genital area of the client is created while the void is taking place. Anything less allows the clients to creatively conceal various devices that, if undetected, will frustrate the testing process and delay the client's recovery process. A collector should be immediately present during the collection process, anywhere from 12 to 36 inches from the client, and adjust themselves as necessary in order to directly view the sample collection. If necessary, the clients should be required to remove certain items of clothing that block the genital area from view while the void is taking place. Once the client is clearly in view of the collector, the client is instructed to provide a midstream sample. The client is instructed to start the urine stream and then stop. At that point, the collector hands the client the collection cup and the client is instructed to continue the void into the cup with a minimum of 30 millilitres of urine. After filling the collection cup, the client hands the cup back to the collector and finishes voiding into the urinal or toilet. (McIntire & Lessenger, 2007, p. 239)

This excerpt produces drug court participants as potential 'cheaters' who will conceal their use at any cost, trying to beat the system through creatively adulterating or substituting their sample. Hence, they are thought to require tight supervision at every step of the urine donation process. Multiple justifications are given for the intrusiveness of the procedure. First, if the sample is adulterated, the test results will be rendered invalid. Second, tight supervision is an 'effective deterrent' to cheating or adulteration. Third, if participants are successful at beating the system, their 'recovery' will be delayed because the drug court will not be able to intervene.

When asked to describe the drug-testing process, court participants responded with varying degrees of detail. Some were reluctant to speak about the process, but others provided very detailed descriptions. Kermit's was the most complete account. In the excert below he explains the collection process at the court, which is largely consistent with McIntire and Lessenger's (2007) recommendation (above). Additionally, Kermit reports witnessing the initial tests conducted on the specimen to determine that it is valid for subsequent testing,[50] checking colour,

[50] The first tests are employed to determine if a specimen is adulterated, diluted or substituted (Auerbach, 2007).

pH (acidity or alkalinity), temperature[51] and creatinine[52] levels. Kermit also tells us that before providing a new sample, he must report all drugs taken since his last test; this includes alcohol and drugs taken under prescription (but not caffeine or tobacco). All this information is documented in a form called the 'chain of custody'[53] or 'admit sheet', as court staff and participants call them.

> There is a nurse [sample collector] and they got a little toilet to the side. You go in there, you give her your ID, she asks for your name, date of birth [...] She asks who your case worker is, so you tell her that. You wash your hands, put on a pair of gloves. She has got like a sheet she fills out, she has got like to test for pH level, temperature and creatinine levels, I think, so she is getting the sheet ready. When she has got the sheet ready, there is like a little urine cup. She gives the cup, you go to the toilet. She stands behind you, there is a mirror to the left, there is a mirror in front of you, so that she can see from behind, so you pee on the cup, you hand it to her and she goes off and she starts testing for the pH and all that. And, then you are washing your hands, you come back and, um, she signs that sheet because they are getting the sheet ready because they ask you medication or drugs, so you tell them what medication or what drugs you are on. So she is filling that sheet out, she has got some test tubes, sucks the pee up in that, and sticks bar codes on them. You are watching, she does it in front of you […] Out of that sheet there is three copies: one is for you, one goes with the pee because it has got all your details and all that on it, and what drugs you have used, and one must stay there.

The 'admit sheet' requires the participant's signature to confirm that the containers were sealed in their presence with tamper-evident seals. This is done in order to avoid claims of misidentification. Further, participants are given copies of the 'admit sheet', so that if they disagree with any sanctions imposed they can produce them in the review hearing. In this respect, the court expects relatively high levels of organisation from participants.

[51] The temperature has to be measured within four minutes of donation. The accepted temperature range is 33 to 38 °C (specified on the admit sheet a participant showed me).

[52] Creatinine is a biological waste material that is produced by muscle metabolism. The measurement of creatinine allows the determination of the strength or concentration of a donor's urine sample. Urine samples with creatinine levels less than 20 milligrams (mg)/decilitre (dL) are not normal. It is unusual for a healthy individual to produce a sample with a creatinine level of less than 20 mg/dL. Therefore, urine samples from donors that yield a creatinine concentration of less than 20 mg/dL are considered dilute (Cary, 2011, p. 133).

[53] The procedure used to document the handling of the specimen from the time the donor gives the specimen to the collector until the specimen is destroyed after laboratory analysis. (Auerbach, 2007, p. 216).

Frequency of urinalysis and breath testing

As explained in the background section of this chapter, testing frequency depends on the participant's program phase and the substances they have been assessed as 'dependent' on. Participants deemed to be dependent on substances other than alcohol are tested only through urinalysis. These participants are required to undergo urine testing three times a week during phase one, and twice a week during phases two and three.[54] Participants who are assessed to have a 'dependence' to alcohol, or whose alcohol use is constituted as a 'gateway' to the use of 'harder drugs', are placed on an 'alcohol ban'. They attend urinalysis as described above, and also submit to breath testing. Participants in phase one are required to undergo breath testing twice a week. Participants in phases two and three are required to have their breath tested once a week. This means that participants deemed to be dependent on or to have a 'problem' with alcohol test much more frequently than those who are only tested for other drugs. The following comments by drug court professional ***A*** illustrate why this is the case:

> Alcohol is the most difficult substance to detect in abstinence monitoring [...] the rapid elimination of alcohol from the body makes conclusive screening difficult. By way of example, court participant, Nevada, has admitted that he consumes eight bottles of wine per week, but his drug tests have been clean for over a month and, by the usual measures, he is entitled to be promoted to phase two. He tests every weekday. He informs us that he beats our testing regime by testing early in the day then in the next few hours he consumes at least a bottle of wine. Applying the usual formula, the alcohol, eight standard drinks, is eliminated after eight hours. He has no trouble providing a clear test the following day.

In this excerpt, ***A*** explains the reason why those on alcohol orders must test more often than others: the body metabolises alcohol much more rapidly than other substances, its short window of detection is much reduced and testing technology available to the court[55] fails to detect it after a few hours (the detection window for ethanol using breath or urine screens is usually measured in hours rather than days (Cary, 2011)). Dependence is constituted as a problem that is tangible

[54] This was the testing frequency during my fieldwork (July 2015 to December 2015).
[55] This technology tests ethanol. New technology not yet available to the court involves testing alcohol metabolites (ethyl glucuronide and ethyl sulphate); the detection window for these metabolites is 48 hours. The court is currently considering use of this technology.

and measurable through testing, and testing is enacted as a reliable and objective way to monitor substance use and capture 'dependence'. However, the excerpt above suggests that drug testing is not infallible. It also shows how Nevada became familiar with how his body metabolises alcohol and was able to continue using alcohol without being detected. I argue that this shows a high degree of resourcefulness and self-control, but it is the kind of self-control that would usually be described as duplicity. The frequency of urinalysis or breath testing can be increased in any phase by the magistrate as a reward or sanction in response to compliance with drug treatment order conditions. Further, case managers can require participants to undergo testing at short notice (Drug Court of Victoria, n.d.-b, p. 27). The following is an excerpt of case notes written by a corrections case manager, ***T***, discussed in a case conference.

> Pablo presented as substance affected during the telephone call. He was queried in relation to this and stated that he is often asked this question when in contact with the drug court team, he denied any substance use today. The writer [case manager] directed Pablo to attend for a random urine screen today before four pm. Pablo argued the point and indicated that he would prefer to attend tomorrow […] The writer stated that he was directed to attend and failure to do so would incur sanctions. He stated that he would 'just incur the sanction then.' The writer reminded him that his sanctions are high and this decision could result in a custodial term.

As this case note indicates, when staff suspect drug use, a participant can be directed to undergo a test. According to the note, ***T*** 'heard' the signs of intoxication in a telephone conversation, but does not explain the nature of these signs. ***T*** also notes that Pablo became irritated by the accusation, and resisted attending testing that day. Ultimately, ***T*** resorted to the use of the threat of custody to coerce Pablo into undergoing a test.

This section has shown that drug testing in the court is largely a scheduled affair, but participants may be asked to test randomly. This is of note as the drug court US based model recommends that *all* testing should be random (McIntire & Lessenger, 2007; National Association of Drug Court Professionals, 2015); however, it appears that this requires additional logistical resources that the Drug Court of Victoria lacks. While still a repressive testing regime, the fact that it is mostly scheduled means that those participants who wish to use drugs, like Nevada, can plan

their use according to testing times. Additionally, they can plan other daily activities around their testing times. This shows how participants resist the stringency of the testing system.

'You are employed by your order'

Collection processing time is lengthy, in part due to the need to carry out specimen validity tests. According to the urinalysis and breath testing policy (Drug Court of Victoria, 2012), collection takes eight to 10 minutes per participant. Given that 60 participants are enrolled in the program at any one time, and testing windows are short (see Appendix G for testing times), participants often face lengthy waits (and testing windows are adhered to strictly). The drug court participant manual (Drug Court of Victoria, n.d.-b) – given to participants when they begin their orders – lists 'tips on how to test quickly' (p. 27):

1. Arrive early to test.
2. Better manage your time.
3. If you drink a good amount of water before you test, you will avoid having to wait around for your bladder to be ready. But, make sure you do not drink too much because this may dilute your urine. If your urine sample is negative but dilute, it will be not counted as a clear test.

These tips are important in the way they constitute responsibility for processing times. The first two tips place all the onus of meeting testing requirements on the participant. They imply that if participants do not arrive early, this is because of poor time management skills. Little attention is paid to participants' need to attend several commitments related to their orders, such as appointments with court professionals and alcohol and other drug service providers, court hearings, community work and daily collection of medication. Further, this approach neglects at least three important contributing issues: that the testing process (provision of specimen, subsequent validity tests and documentation) is itself time consuming, that times for testing are limited, and that many court participants need to be tested.

How does this process and the logic on which it works affect participants? One of the most important effects is that in order to fully comply with the order, some participants feel forced to neglect other areas of their lives, such as employment. During the observational component of the study, I noted the magistrate saying to many participants 'you are employed by your order'.

Indeed, some of my research participants were forced to turn down employment offers because they conflicted with court commitments. This conflict between adherence to the court order and pursuit and maintenance of paid employment is significant in that it contradicts one of the goals of the court, which is to 'improve their connection to the community' (KPMG, 2014, p. 51). As one participant, Cirilo, explained:

> So [while working, I] missed a few appointments and he [magistrate] goes 'Your priority' [is the order]. I said 'I know my priorities. You know what? I need to pay rent. If I am not paying rent and I am living on the street, like, this whole thing is pointless.' […] He goes 'Yeah, you can only work two days a week at the moment' and he put an order [a further condition on the existing order] only to work two days a week […] and I was trying to tell my case worker, like, 'Listen, you know, like the eight hours that I work, I don't think about drugs, I am not battling in my head all day and then I go home, I am tired, and I just sleep', you know. I said 'If you look at all my clean urines, it would be the days that I worked' you know what I mean? So, and, they go to me 'Yeah, but you got to earn, you got to earn [it]'.

It seems that even though the court aims to make participants 'fiscally responsible' (one of the stated goals of phase 3 (KPMG, 2014)), the many conditions of the order can act as a barrier to obtaining or maintaining employment. My observations indicated that many participants stay in phase one for a considerable proportion of their order (two years), when court commitments are very intense and holding a job is challenging. During the KPMG (2014) evaluation period (July 2010 to June 2013), only 70 of 130 participants progressed to phase two, and only 29 of 130 progressed to phase three (some of those who progress to phase two or three may drop back again). Importantly, my observations of drug court proceedings also indicated that some participants in phase one or two who found employment and still used alcohol or other drugs, were told that working was not conducive to their 'recovery' because the extra funds could allow purchase of alcohol and other drugs. Instead, and contrary to court policy, they were told to focus solely on 'recovery'. In this way, the court enacted these participants as unable to control their own finances, and enacted alcohol and other drug use as an activity that cannot coexist with the fulfilment of other obligations, and dependence as a lack of control. In this example, I note two things. First, the subjects that are implied in the court's objectives are enacted by the court's practices. In this sense, both the aims and processes of the drug court appear to be aligned.

Second, the outcomes produced by the court (unemployed and/or less fiscally capable subjects) are at odds with the discrete goals of one of the court phases (phase 3). In this sense, the court's processes produce outcomes that simultaneously align with and diverge from the court objectives, depending on which of the court's objectives one is focusing on.

Like Cirilo, Erik expressed frustration with the commitments associated with testing, including the waiting times he faced:

> The waiting thing is like it is on purpose. It is like they are trying to get you to wait, and we are always waiting with other people on the order, which isn't good because then I start hearing things and talking about drug dealers and talking about which one is good, and which isn't and, you know, things like that. So, I don't like the waiting at all.

In both these cases, participants view testing as impeding activities conductive to recovery and reintegration: employment and disentanglement from criminal associations and activities. These findings are consistent with Fraser's (2006) discussion of MMT, which also found that urine testing and the waiting associated with it and other aspects of treatment caused delays, created unwanted social proximity, and interfered with employment obligations. As with OPT clients, court participants faced officially induced social isolation and segregation. By demanding compliance with the gamut of alcohol and other drug treatment and monitoring modalities (testing, review hearings, Alcoholics Anonymous and Narcotics Anonymous meetings, and daily OPT collection), the court excludes participants from employment opportunities and other meaningful relationships, further steering them into circles exclusive to drug use. At the same time, and quite paradoxically, the court can add 'association clauses' to orders, prohibiting them from associating with individuals considered to put them 'at risk' of drug use. Thus drug-testing regimes simultaneously demand wholesale lifestyle (including relationship) changes while reducing participants' opportunities for employment and increasing their exposure to drug-use relationships. These demands are arguably in contrast to the court's stated purposes and claimed therapeutic approach. In this respect, some of the problems drug court proponents associate with alcohol and other drug dependence (including 'chaotic' lifestyles, inappropriate priorities and friendships, poverty and unemployment (National Association of Drug Court Professionals, 2015)) can be *produced by* drug courts themselves (as with OPT regimes (Fraser, 2006)). As I have already noted, however, there is still an alignment of sorts between the court's aims and its

processes: both involve particular enactments of drug-using subjects as problematic, chaotic and disordered.

If we return to the 'tips to test quickly', we can see that the third tip is somewhat contradictory, and illustrates another challenge drug court participants face. They are advised to drink enough water to have a full bladder by the time they test, but not to drink too much because it might cause a dilute sample. Erik illustrates the consequences of living with such conflict:

> It has happened to me three times this month, where I have missed the train or some stupid thing on the public transport, and I had to go to [void bladder in] train station [midway through home and testing venue], and then I start drinking water again, and then I get done for dilute sample because the water I drink, the two litres, comes through quickly sometimes and they say 'you are dilute'. It comes out like water, it looks like you can drink it, it is so clear!

In this instance, Erik puts himself at risk of being sanctioned for non-compliance with the testing regime. I argue, however, that the specificities of the testing process, including lengthy delays, create conditions conducive to Erik's sanction.

Shaping the nature of alcohol and other drug-related harms and risks

According to drug court policy, the drug classes tested are amphetamines, opiates, benzodiazepines, cocaine, cannabinoids, and, as indicated above, alcohol. As noted earlier, this is based on the premise that they are the most frequently 'abused' drugs in the forensic environment. At the special request of the court, testing can confirm drugs such as methadone, suboxone, naltrexone and buprenorphine. Other substances may be tested for if, during the clinical assessment, the court deems the participant 'dependent' on them, or suspects they are using them while in the program. For example, by sitting in on the case conferences (held before review hearings), I found that on rare occasions participants were being tested for GHB.[56] The court is unable to test for some drugs because the testing technology available through the contracted pathology service cannot detect them. As Auerbach (2007, p. 220) points out, 'as designer drugs evolve, there may be a lag in availability of an appropriate test for the substance'. Court participant Mateo illustrates this point:

[56] GHB (gamma hydroxybutyrate) is a depressant drug that slows down the messages travelling between the brain and body (Julien, Advokat & Comaty, 2011).

> I had a conversation with my doctor yesterday about Valium[57], two by five milligrams every day […] I have found that has helped in the past, so I will use that and a combination with perhaps some synthetic drugs, um, for a couple of weeks so that I pass my urine screens […] It will just allow me to have, to give those couple of weeks of clean urines whilst still smoking [synthetic] 'cannabis' and having the Valium to lean on as well.
>
> *Eliana**:** So when you say synthetic drugs, they are drugs that aren't picked up in the tests?*
>
> **Mateo**: Correct […] this is something that I discuss with you. I have to compartmentalise certain things depending of who I am talking to, so if I am talking to my doctor I am not mentioning the synthetic weed, it is about me relieving the craving for cannabis.

Here, Mateo shows us another way in which the specificities of the testing process (i.e., which substances are tested for) may produce the very kinds of problems that are thought to pre-exist drug policy and procedures. He tells us that he circumvents penalties associated with drug use by devising his own cannabis 'replacement therapy': a cocktail of 'synthetic weed' and (prescribed) Valium. In order to do this, Mateo must draw on several resources and skills. For example, he must investigate which synthetic drugs go undetected by consulting with other more seasoned court participants, and 'compartmentalise' information in a highly surveilled environment involving a network of professionals who are in constant communication. Here, Mateo resists the power of the court through a form of entrepreneurship that would usually be characterised as duplicity. For the purposes of my analysis, it is important to note that in this outcome the court may be achieving exactly the opposite of its aims. As Mateo's case illustrates, some participants use alternative drugs to avoid sanctions, some of which have the potential to be more harmful (Valium and synthetic cannabis) than the substance sanctioned (cannabis). As with Erik's case, involving relationships and employment opportunities, the drug court appears to be at risk of producing the very kinds of problems it treats as anterior to its own actions, problems it has been established to solve.

[57] Diazepam, first marketed as Valium, is a medicine of the benzodiazepine family that typically produces a calming effect.

'Peeing on demand': Adapting to the testing regime

Participants described various degrees of adaptation to the intrusiveness of the testing process**.** Most participants explained that getting used to the drug-testing regime was difficult at the beginning, but that they adapted over time. As Simon explained:

> It is, it is intense, it is hard, it is very hard to pee on demand, at the start I couldn't do it, but over time you just get used to it, you know. Sometimes I can only pee a couple of times a day. Like once I get up in the morning, I will go to the toilet and then I will think 'Oh, shit! It is Monday or I got to pee today!' then I won't be able to pee until three o'clock. You know, it is hard to, you got to just keep it in your mind *all the time*, you know […] It is hard if you are not a big [water] drinker. At the start I thought it was me because I – I had to go and get me prostate checked and everything because I honestly thought I could not do it, like I was having trouble and that was one of the reasons why I did get sanctions at one stage. If you don't produce, they put you as failed to produce or dirty. You might as well say it is dirty, but if you can't do it, you can't do it, can you? That always makes it hard, but over time you learn just to do it, I suppose, I don't know. Sometimes you are pushing, pushing, pushing and you feel like you just want to blow up, you know, It is hard, yeah, and they change the lady all the time. It is a different person, you are not just getting used to one lady all the time.

Simon tells us that he found the testing regime most difficult at the beginning. His comments suggest that the days he tests, he has to remain attentive to his body *all the time.* The testing regime governs one of Simon's basic body functions on testing days, and he has to plan other activities in the day around it. Simon's account also indicates that he was sanctioned for failing to produce samples at the beginning of his order. This suggests both the court's scepticism about Simon's account and its normative assumptions (his body works differently from 'the norm', or to what is expected). The fact that he had his prostate 'checked' was not enough to alter the court's view. Instead, according to Simon, the court asserted that if Simon was 'failing to produce' it was because he was trying to hide his substance use. Additionally, Simon's account suggests that even though he has accepted that he must submit to testing to comply with order conditions, and hence avoid custody, he remains reluctant about the process. This is partly due to being 'observed' by different female collectors.

Below, Erik's comments tell us that 'invasiveness' is a matter of perspective. He says that he would prefer blood samples, which in medical terms are usually considered more invasive than urine samples:

> I wish they would take my blood instead of my urine. I don't know why they can't take our blood instead of our urine. I don't know why they have to degrade us like that in front of a person. No one likes it. If you have prostate cancer and you can't go, they kick you off the order – I found it very, um, it took me about six months to get used to that. It is not the same as in jail, when you have an officer telling you to do it, you don't have to do it. Here, you have to do it or you are going to go there [prison].

Erik's comments are consistent with Simon's account above and suggests that one of the most coercive elements of the order is the drug-testing regime. As Vrecko (2009) points out, coercion in drug courts does not occur within institutions that prevent individuals from moving about in the community. Instead, it involves a commitment by the individual 'to submit to relatively mundane, but technically precise interventions that target only particular, "dividual" elements of the offending subject' (p. 223). Urinalysis is a clear example of such an intervention because it aims at a selected action by the participants: the daily and seemingly mundane ritual of urination.

The comments of Marco and Gabriel, below, contain contrasts in the way they depict participants feeling when they first encountered the testing routine, and how they came to adapt to it:

> Marco: [It is] sort of intimidating at the start, even though you could be busting to go to the toilet, it is not sort of natural to go with someone standing there, looking over your shoulder […] they stand behind you, you have to stand at the side of the urinal and they have got mirrors all behind the toilets, so they watch you like a hawk, so you pretty much have to take jackets, everything off, pull your pants down to a certain distance […] So a few times in the early days I had to go in there, failed to go, [had to] go out, wait for a bit longer, tried two or three times to sort of get used to someone watching over your shoulder. But you seem to get used to it. Now, it is funny going at home with no one watching you [chuckles].

Marco's comment at the end of the excerpt suggests that the feeling of supervision lingers even when he is not drug testing. It is a vivid example of the subjectification effects of the drug

court's testing regimen, even if mentioned as a joke. Gabriel's comments, below, suggest a somewhat greater degree of adaptability to testing:

> At first, it was very 'wow'. It flipped me out, who is this person? Especially a female standing next to me while I am piddling. I wasn't used to that! But now I am fine with it, um, my trousers down, my top is up, not a problem. The ladies [collectors] actually laugh because a lot of the guys just do the fly and just do the top button. It is like jeez you are shy! Drug addicts, are you shy? I have never heard of a shy drug addict. They are drug addicts, mate, you know. Anyway, that has taken me a long to be like that, I used to be like 'Uh, uh-ho'. But now, it is a process, they got to see, make sure there is no tubes and straps, bags and stuff like that, so I am fine – I actually enjoy it now, I am trousers down, top is up, yeehaw! I am so liberated [chuckles]. It is so funny, I laugh at myself, I just can't believe that I have become this person because I used to be so shy. They just want to do their job and go home, so you might as well make it as easy and as funny as possible – they have a laugh, I have a laugh.

Here, Gabriel again tells us that it has taken him a long time to be relaxed with the testing process. Throughout our interactions (interview and informal chats during my fieldwork), Gabriel identified as an 'addict' in the early days of recovery. He was highly compliant with the order and avoided contact with other court participants as a way of protecting himself. Further, he did not see 'addiction' as a permanent condition, and often attributed negative traits to 'addicts'. It was as if he was trying to separate himself from the identity that had been bestowed on him through many years of involvement in alcohol and other drug treatment and the criminal justice system. The more he distanced himself from that identity, the more he seemed to denigrate 'addicts', almost to the point of viewing them with disgust. This is somewhat reflected in the comments above suggesting that 'addicts' are devoid of shyness. Gabriel accepted that, by virtue of being a drug court participant, he was still perceived as belonging to the group of 'addicts' who would likely use 'straps, and tubes and that sort stuff' to corrupt the testing process. However, the word 'liberated' suggests that there is almost a sense of pride in showing others that he does not have to resort to such stratagems to provide a clear sample. This serves to set himself apart from the 'others'. Gabriel's compliance and clear intent to distance himself from the abject subject position of the drug-dependent person indicates the role of the drug-testing process in social control processes designed to 'reform' the subject (Vrecko, 2009) or in

Bacchi's terms, to govern participants through the employment of 'dividing practices' (Bacchi & Goodwin, 2016, p. 49). This excerpt also tells us that Gabriel's approach to the invasiveness of testing is to 'make it as easy as possible' by facilitating the process.

In this section, I have attempted to demonstrate the various degrees of adaptability to the 'intrusiveness' of the testing process. The common theme among participants was the intimidation of the high level of supervision when they first encountered it. Most participants accepted that it was part of the 'deal' of being in the community, but some of them remained uncomfortable with the process. This tells us that for many participants, drug testing is one of the most coercive elements of the order and an important form of social control (following Vrecko, 2009). In the following section, I illustrate some of the lived effects of extreme distrust of participants while drug testing.

Intensifying exposure to the criminal justice system

Drug-testing regimes instantiate the notion that participants are untrustworthy and will try to beat the testing system. At times this distrust prompts decisions that result in life-changing consequences for participants, including ejection from the program and further enmeshment in the criminal justice system (see Cohen (1985) and Roberts & Indermaur (2006) for a more detailed discussion of net-widening effects of diversionary programs in the criminal justice system, and Fraser (2006) for related effects in OPT). These effects can be observed in Cirilo's case, which I encountered in a review hearing. Cirilo was accused of 'corrupting' the urine-testing process. He had not attended his regular review hearing earlier that week because he was unwell. Although he had provided a valid medical certificate, the magistrate insisted he attend court. Despite his illness, Cirilo did so. The following excerpt, taken from my fieldnotes, shows the exchange that took place between the magistrate and Cirilo's lawyer:

> **Lawyer**: I understand that there was some suggestion or thought that perhaps there was a false device being used in relation to Cirilo's presentation at testing.
>
> **Magistrate**: I think it was something strongly thought. It was absolutely observed by the collections officer who saw the fake penis, saw him try and manipulate it, challenged him on it, told him to drop his pants, saw the harness arrangement in amongst his underclothes.

Lawyer: Well, your honour just on that note, I have received the review sheet[58] in terms of the feedback, but an incident report with those sorts of details has not been provided to me. So on the basis of the information that I had received both through the case management team and the review sheet, there was an allegation, but certainly there wasn't confirmation of that. He denies vehemently that he was using any sort of device.

Magistrate: That was part of the report that I had received: that he denied vehemently, as he did when he tampered with the testing process [a few weeks before] when he delivered a cold urine sample.[59]

Lawyer: Again, your honour at this stage my understanding is that no device has been seized – so that there was some sort of evidence that could have been more compelling to consider imposing sanctions in relation to that. What I would be asking the court to consider is – Cirilo has been advised of these concerns this week by his case manager, they have had a discussion in relation to it. I would be asking that the court consider imposing a warning on him, advising him that these concerns have been raised by the tester and that if there were further concerns raised that imprisonment sanctions would then be imposed. But, certainly I would submit that for him to receive essentially ten days jail for what is an allegation that there is no proof in relation to –

Magistrate: Well, I am utterly satisfied of the observations of the collections officer and it is the second time that he has tried to corrupt the testing process in a month. It displays an absolute contempt for this program and for the drug treatment order that he's on.

Lawyer explains that Cirilo's compliance on the order has greatly improved and that decisions should be made in that light. The magistrate interrupts lawyer's submission and continues.

Magistrate: Cirilo, this is the second time in a month that you have tried to corrupt the testing program. This matter is extremely serious. It undermines the program for the whole drug court community and it displays the worst attitude that one could expect to

[58] Review sheets show the performance of the participant on the order since they last had a review hearing. They include the results of substance tests, appointments missed and attended, areas considered to be of 'concern' and a tally of the sanctions and rewards.
[59] On this occasion, Cirilo's sample was allegedly below the required temperature range (33 to 38° C).

> see in this program. You are required to serve ten custody days sanctions[60] today, and an application to cancel your drug treatment order will be listed next Thursday. Thank you, take a seat please.
>
> *Cirilo appears dumbfounded, tries to address the magistrate with no success and eventually sits down looking resigned.*

In this review hearing, the court imposed 10 custody days, based, as the lawyer indicated, only on the allegation of the collector. In the process, the magistrate shows a fluctuating degree of certainty about the allegation, first saying it was 'something strongly thought' (a suspicion), then that 'it was absolutely observed' (a fact). It is also of note that the magistrate refers to a separate occasion on which Cirilo allegedly tampered with his urine sample. This acts as an important precedent, so much so that the magistrate does not require evidence to make the decision to sanction Cirilo. Later, I interviewed Cirilo about his drug court experiences. His account of the incident was as follows:

> I went to do a urine test […] I start urinating, filled up the jar, and she [collector] goes to me, 'Oh! That doesn't look real, that doesn't look real to me.' I go: 'What? What are you talking about?' and I actually showed *it* [my penis] to her. I go, 'What are you talking about?' and then because I had a cup in my hand […] I said 'Hold the cup and stay right there!' you know. So I dropped my pants, I dropped my underwear, I lifted up my top; I said 'Are you happy with that?' She goes 'Yeah, fine', you know, and that was it. I thought 'OK, that is it' [later] my case manager rang and she goes, 'What happened today?' I explained it to her, and she goes, 'Just be more careful next time.' I said 'Listen, I have done everything she [collector] asked, did she say that to you?' She [case manager] goes 'Yes, she did say that', you know. I said 'OK, sweet, at least she was honest about that.' Next thing, I go to court [for weekly review] and I am hearing 'There was a harness strapped on.'

In responding to the magistrate's ruling, Cirilo's defence filed an application for the magistrate to disqualify himself from hearing the application to cancel the order on the basis of an apprehension of bias. A special hearing then took place to hear this application. In this hearing,

[60] Imprisonment sanctions are activated when participants reached what was known as the 'magic number': seven imprisonment sanctions.

Cirilo's lawyer contrasted the magistrate's statements in the initial review hearing with the content of the incident report. The incident report did not, for example, make reference to a 'harness', but in the review hearing the magistrate declared there was one. The lawyer submitted that as the magistrate had not read the report, he had made the decision based solely on hearsay. The lawyer also pointed out the very tentative language used by the collector in the report:

> The notes [by the collector] are 'I *thought* there may have been a fake penis, I asked [Cirilo] to pull his pants down, I *thought* I saw something under his undies, but I didn't feel comfortable to ask him any further.'

During this hearing, the prosecution advised that Cirilo was under investigation and that they would seek to charge him with 'perverting the course of justice'. As a result, the magistrate ordered the urine sample subject to the collector's observations to be tested for DNA. If the sample was not Cirilo's, the charge would be laid. The lawyer asked that Cirilo be able to continue accessing the treatment component of the order while the investigations were undertaken. The magistrate refused this request.

Cirilo was later involved in a serious car accident and the application to cancel the drug treatment order hearing was adjourned on several occasions. He was not reinstated on the order, and the urine sample subject to all the contention was found to be consistent with 'human urine'. The police did not pursue the charge of 'perverting the course of justice'. A magistrate from the general court division involved in Cirilo's subsequent sentencing hearing declared that urine cannot be tested for DNA.

In this example, not unique, we see the program's ability to intensify participants' involvement with the criminal justice system. During my research, I observed participants charged with 'deception' after being found to be providing fraudulent medical certificates[61] or committing serious crimes while on the order. Many eventually served more time than they perhaps would have served had they gone through an ordinary criminal court. In such cases, the participants were enacted as primarily responsible for their own 'failure'. While such experiences are not the case for all the participants, it is clear that, at least for some, the intensity of the drug court program increases the risk of criminalisation. Highly regimented and onerous urine testing is the

[61] A participant has to file a 'suitable' medical certificate from the date of the absence. According to the medical certificate policy (Drug Court of Victoria, 2013), the participant's regular GP should prepared a medical certificate, specify the type of illness and note that because of it the participant is unable to attend court commitments.

central mechanism by which this effect arises. At least one drug court professional, ***D***, concurred with this interpretation:

> I find that participants are really over-prosecuted, really, yeah. I would often just think 'you are probably better off on a corrections order and doing a bit of time than being put on a [drug treatment order].'

Again, ***D***'s comments suggest that drug court exists to solve the problem of crime, and that the goals of rehabilitation are relegated. In this way, repetitive drug use is represented as a crime in itself, and penalised accordingly.

Drug testing: A way to 'keep me in check'

Importantly, while these examples raise significant questions about urine testing and its role in producing undesirable drug court effects (and undesirable drug court subjects), not all experiences with the drug-testing regime were negative. Some participants found aspects of it valuable, as was the case with Simon. Having been promoted to phase two, the frequency of his testing had decreased from three times a week to two times a week, but he asked that the earlier testing pattern continue:

> I am a hundred per cent sure [testing] is what keeps my head going in the way of – I know if I do, do dirty [provide positive drug test results], I've got to answer to three, four people plus the judge, you know […] then I can be locked up, you know. It is as easy as that […]. When I know that I have to do the three urines, it just keeps me in check more, so that I know what I am looking forward to, you know. I know it is a good feeling walking out, doing three clean urines a week, you know. At the start it was hard to do three. I was only doing one or mainly none [chuckles]. But, to walk out now, and have three [negative drug tests] a week is good.

Simon used the drug-testing regime to 'keep himself in check' and to generate a sense of satisfaction. In his view, this helped him reduce his drug use, a wish he expressed during his interview.

Conclusion

In this chapter, I examined the approach to drug testing in one Australian drug court. Drawing on Carol Bacchi's poststructuralist approach to policy, I explored the problem representations

inherent in the drug court's policy with respect to drug testing and considered some of the underlying presuppositions and assumptions embedded in that policy. I then explored some of the effects of the policy and the process of its implementation, including the effects for drug court participants subjected to the testing regime. I argued that the everyday and seemingly mundane ritual of urination is of central importance to the drug court model, a mechanism by which the drug court seeks to govern participants and solve their problems (particularly their alcohol and other drug 'dependence'). As Vrecko (2009) points out, the coercion in drug courts is not carceral; it involves a commitment by the individual 'to submit to relatively mundane, but technically precise interventions that target only particular, "dividual" elements of the offending subject' (p. 223). Urinalysis is a clear example of such an intervention because it targets a specific activity of the participants: the several-times-daily, mundane ritual of urination. In my view, for many participants, the governance of urination is one of the most coercive elements of the order and an important way through which particular problems are constituted and particular forms of social control are enacted.

In urine testing, the problems participants face are constituted as anterior to the operations of the drug court. In this sense, urine testing helps constitute the legal and social rationale for the court: it deters alcohol and other drug use, alleviates participants' dependence, and in so doing, resolve associated problems such as criminality. However, as I have argued, the specific practices of urine testing documented in the drug court may actually allow or even produce the very kinds of problems thought to justify participants' commitment to the court. Urine-testing regimes are onerous, demanding, and intrusive and time consuming. Although the drug court purportedly adopts a model of harm reduction, testing regimes are more consistent with abstinence models since alcohol and other drug use is heavily monitored and sometimes formally sanctioned through custodial sentences. This focus on abstaining from alcohol and other drug use can have a range of effects. It can, for example, magnify entrepreneurial efforts on the part of some participants to avoid detection through complex and potentially harmful alternative drug-taking regimes. In this sense, drug courts may allow or encourage the very kind of drug-related harms that are assumed to be resolved by them, and which are often claimed to be the effects of 'addictive' drugs 'themselves' (see Fraser & David Moore, 2011b).

The policy of urine testing has other effects. For instance, frequent attendance and waiting times, added to other drug court commitments, constitute barriers to securing and maintaining

employment for some participants (see also Fraser, 2006). Paradoxically, these kinds of broader lifestyle changes (securing stable, ongoing employment) are one of the aims of the drug court model, in that the court problematises participants as insufficiently gainfully employed and lacking engagement with the broader community (Fraser, 2006). Second, even though the treatment and monitoring modalities to which participants submit are community-based, they might further direct participants to the periphery of society and encourage them to form relationships with others who use alcohol and other drugs. Again, this is often in conflict with the stated aims of the drug court, which problematises participants as margin-dwellers. These findings are consistent with Fraser's (2006) findings about MMT, which, in its quasi-coercive forms, bears similarities to drug court approaches. Finally, I have argued that the process of urine testing can intensify rather than reduce participants' exposure to the criminal justice system and increase criminalisation. Again, criminal behaviour in drug court participants is often naturalised and positioned as an effect of drug use and/or 'dependence', a problem that pre-exists enrolment in the drug court and is likely to be alleviated by it. This increased risk of criminalisation raises important questions about the efficacy of the drug court model and its putatively more therapeutic approach.

My analysis suggests that the drug court enacts a wide range of problems, and that the effects it produces, in Bacchi's sense, are sometimes uneven and contradictory. In some respects, the court's drug-testing processes produce effects that converge with the court's stated aims. Other effects diverge from them and are more clearly anti-therapeutic, in contrast with the underlying objectives and claims of the drug court as a remedial alternative to traditional criminal justice systems. While similar concerns have been raised before in the context of US drug courts targeting low-risk or low-level offenders (Belenko et al., 2011; Justice Policy Institute, 2011; Makkai, 1998, 2002), the analysis that I offer in this chapter differs from that work in two key ways. First, I have provided examples of how an Australian drug court, which focuses on individuals with a long history of offending, might intensify involvement in the criminal justice system through the mechanism of drug testing. Secondly, my work demonstrates the simultaneously divergent and convergent effects of these processes and the tensions and overlaps between these and the court's stated aims. As we know, Carol Bacchi's framework demands a focus on the ways in which policy processes enact problems. These findings suggest that the 'effects' of drug court processes may not always align, at least at first glance, with the formally

stated ‘problems’ that lodge within and underpin the rationale of the court. This is most obvious when we consider the extent to which the court’s focus on improving community connections, fiscal responsibility and reducing criminalisation are actually achieved. These divergences (between problem representation and ‘effects’) expose the difference between the palatable public account and the messy, often negative motivation and logics the court entails. What is more, they pose some challenges for my use of Bacchi’s framework. I argued, however, that the various effects produced by the drug court align with the key presuppositions lodged in the rationale for the court. This involves the presupposition of the abject subject (those who are both ‘dependent’ and ‘criminal’) in the court’s aims and objectives, and the abject subject that drug courts often (although not always) enact.

In this chapter I addressed my aims by exploring different representations of dependence in a key governing practice of the drug court: alcohol and other drug testing. Additionally, I investigated how drug court participants accommodate, resist or otherwise engage with enactments of dependence in their experiences of testing. Research remains to be undertaken in other drug courts to establish whether these issues apply elsewhere, and to consider the effects of this seemingly inadvertent drift away from harm reduction. I argue that courts should rethink the very central emphasis they place on alcohol and other drug use per se. It is possible that the drug court’s intense focus on alcohol and other drug consumption forecloses other ways of thinking about participants and their lives, their needs and priorities, and the kinds of supports that might benefit them and improve their wellbeing. In other words, the focus constitutes the court’s problems in certain ways, and as Bacchi notes, alternative ways of constituting problems can produce significantly different effects. Several of the drug court participants I encountered for this research were socially and economically disadvantaged and struggling with fundamentals such as food and housing. It is important to ask whether the drug court’s particular emphasis on urine tests and urine test results is productive, given the adverse outcomes I have identified. This is not to suggest that drug courts should abandon alcohol and other drug testing altogether, especially as some participants find it valuable. I instead question what drug courts prioritise and how these priorities stem from problem representations, presuppositions and assumptions that lodge in the design of drug courts from the outset. Might things be done otherwise? In Victoria, where this research was based, there have been recent calls to roll the drug court model out across the state (Parliament of Victoria, 2018). The considerable resources given over to an

onerous testing regime might be better directed elsewhere (e.g., into assisting participants to secure housing, employment and other social supports). The approach I am advocating demands a major shift in thinking about what kinds of 'problems' should be enacted in relation to alcohol and other drug use and 'dependence' and what it is – exactly – that drug courts are trying to solve. I argue that a new approach to problematisation is likely to have a range of other, more productive benefits for people who use alcohol and other drugs.

Chapter 8: Conclusion

My research was motivated by five objectives:

1. to investigate how concepts of dependence are enacted in an Australian drug court;
2. to explore how the relationship between crime and dependence is established and constituted in a drug court setting;
3. to investigate how drug court participants accommodate, resist or otherwise engage with enactments of dependence in their drug court experiences;
4. to contribute to the academic literature about the operation of Australian drug courts, and their implications for official and public understandings of addiction concepts; and
5. to provide possibilities for redesigning the provision of court-ordered alcohol and other drug treatment.

As I noted at the beginning of this thesis, drug courts are often described as a special kind of 'problem-solving' court. I argued that drug courts make assumptions about the kinds of problems that pertain to drugs (including, for example, the relationships between substance use and crime) and the origins of those problems. I argued that much could be gained by examining these assumptions carefully. In order to assist me with this task, I turned to the work of poststructuralist policy scholar Carol Bacchi, whose 'what is the problem represented to be' (or WPR) approach (2009) has been used extensively in the study of alcohol and other drug issues in recent years. Bacchi's central thesis is that policies 'give shape to "problems"; they do not address them' (p. x). She argues that policy 'problems' are not fixed or stable phenomena that exist 'out there' in the world, waiting to be 'solved'. Instead, 'problems' are constituted and given meaning through the implicit representations contained within public policy. Inspired by Bacchi's work, which is itself influenced by Foucault's work on 'thinking problematically', I set out to examine how one Australian drug court thinks about – and thus gives shape to – alcohol and other drug 'problems'. I used three main methods: court observation, qualitative interviewing, and analysis of the textual materials related to the operations of the Drug Court of Victoria (including policy documents, information given to participants, evaluations and clinical assessment reports). As I noted in the introduction, when I conducted my research (July to

December 2015), the only existing branch of the Drug Court of Victoria was located in Dandenong. This is the branch I studied. Since then, a second branch opened in the Melbourne Magistrates' Court in April 2017. This branch has seen the reorganisation of presiding magistrates but is run using the same legislation and policies as the Dandenong branch. Given the overlaps in policy and personnel, this thesis and the possibilities to bring about change it suggests have relevance for both settings.

In undertaking my fieldwork research at the Drug Court of Victoria, I identified four key 'sites' of drug court intervention into the lives of applicants and participants, where, following Foucault and Bacchi, governmental subjects are produced. I focused on four drug court practices that are key points at which access, definitions, relationships and ideas about alcohol and other drug dependence are constituted. I argued that these practices offer especially powerful windows into how the court perceives (and shapes) the 'problem' of alcohol and other drug dependence, as well as some of the court's internal tensions and effects. The first two sites were the critical points of admission into the drug court: screening of eligibility criteria by legal actors (explored in chapter four), and the clinical assessment (chapter five). The other two sites were two of the main technologies the drug court uses to govern participants: the sanctions and rewards system (chapter six) and the alcohol and other drug-testing regime (chapter seven). I explored the way 'dependence' is represented in these sites, and showed how these enactments often overlap and conflict. In what follows I summarise the analysis I made in relation to each site.

Chapter 4 was primarily concerned with how dependence and the dependence–crime nexus are constituted in the courtroom. In this chapter, I drew on interviews conducted with drug court personnel, as well as observational data collected during drug court screening hearings. Using these data, I described the drug treatment order application and screening stages, and analysed screening hearings alongside interviews with drug court professionals. I argued that legal actors make crucial decisions shaping drug court applicants' futures by relying on 'common sense' assumptions about dependence. These decisions, I argued, are related to the constitution of ambiguous 'evidence' of dependence. Second, I showed that the screening process merged traditional criminal justice and public health approaches, with non-experts making 'expert' decisions about dependence. I also argued that there was a degree of arbitrariness to the decision-making process, and that these processes shape the experiences of drug court participants, producing harmful effects.

My analysis continued in chapter five, where I closely examined the suitability of assessments conducted by the drug court's alcohol and other drug clinicians (the clinical assessment). This process is important because it contributes to key decisions, including whether or not the drug court applicant is 'dependent' on substances and therefore a 'suitable' drug court participant. When this happens, I argued, drug court processes instantiate a unique subject identity ('dependent person in the law'). In this chapter, I applied Bacchi's (2009) framework to show how two seemingly incompatible approaches to dependence, that of treatment and punishment, 'syncretise' in clinical assessment. By looking at how elements from both approaches are employed to establish dependence and some of its 'effects', I proposed a new facet of the hybrid nature of drug courts. In the first part of the chapter I examined clinical influences on the assessment. I explored the way in which alcohol and other drug screening tools are utilised to assess applicants' treatment needs, motivation 'to change', and to diagnose dependence. In the second part of the chapter I showed that as the drug court is essentially embedded within the criminal justice system, distinctive elements of criminal justice or legal approaches to 'fact' finding exert a heavy influence over what is putatively a 'clinical' assessment.

In chapter six, I examined the way the Drug Court of Victoria administers graduated sanctions and rewards, a key component of the drug court model utilised with the purpose of encouraging program compliance. Drawing once again on observations of drug court proceedings, qualitative interviews with drug court participants and personnel, and analysis of selected drug court documents, in this chapter I also examined how drug court participants and professionals view the sanctions and rewards system. Again applying Bacchi's (2009) framework, I explored how the 'problem' of substance 'dependence' is enacted in the drug court's approach to the administration of sanctions and rewards, and I considered some of the 'effects' of this system. I argued that even though the drug court has a variety of non-custodial sanctions available to it when deciding how best to respond to program 'non-compliance', the most typically applied sanction is actually incarceration. This is of note as the drug court model is publicly promoted as a 'therapeutic' alternative to prison. I also traced some of the effects of the sanctions and rewards system on participants. They include the perceived value of prison in the treatment of 'dependence', exposure among some participants to difficult conditions in which they serve out their sanctions, and the interruption of medication regimes such as pharmacotherapies used to manage alcohol and opioid withdrawal and to treat mental health conditions. I argued that the

court's use of sanctions and rewards reveals much about how dependence is conceptualised. Although the court purports to approach drug use as a health 'problem' (and often does), it simultaneously punishes participants for drug use. The court thus instantiates a conception of dependence as both an illness and a crime. Among other things, these findings raise questions about the viability of the court's claim to being therapeutic and fundamentally distinct from traditional (more punitive) criminal justice responses to drug use.

In chapter seven, I used Bacchi's work again, this time to examine how alcohol and other drug-testing regimes unfold at the Drug Court of Victoria. Here, I analysed drug court participants' experiences with the drug-testing regime, including experiences of random testing and urine collection. I also traced some of the effects of this policy and its implementation for participants. I argued that the urine-testing regimen can intensify participant involvement in the criminal justice system. Further, I noted that the court's use of an abstinence model may heighten exposure to alcohol and other drug-related harms and risks, segregating drug court participants from the 'rest of society' and increasing their isolation. I also argued that it inhibits other aspects of their lives, including their relationships, social lives and employment prospects. Overall, I argued that these effects are at odds with the court's aims. However, despite the potential negative effects of the drug-testing regime, some participants find aspects of it beneficial. In the following section, I show in more detail how I engaged with Bacchi's (2009) WPR approach questions.

The value of the WPR approach

The WPR approach allowed me to make several unique observations about the enactment of alcohol and other drug dependence 'problems' through the Drug Court of Victoria. For example, although the clinical assessment phase appears to be a 'medical' or 'diagnostic' process, in practice the process uses a hybrid methodology, drawing upon criminal justice concepts, materials and processes, and medical practices, tools and procedures. This hybrid diagnosis produces a particular problem of dependence: an intrinsically medico-legal phenomenon – a solvable problem so long as the 'sufferer' submits to the state's wisdom and methods. Many of the problems participants face are constituted as anterior to the operations of the drug court and/or as effects of the 'problem' of drug use 'itself'. For example, in chapter five, I argued that a key 'presupposition' (Bacchi, 2009) of the drug court clinical assessment process is that

dependence is a pre-existing problem that will be revealed through the court's clinical assessment process. The ASI and SOCRATES 8D tools, and the DSM IV and 5 criteria (and the knowledges that underpin them) are ostensibly instruments that will help to 'unearth' the applicant's 'problem'. Dependence is constituted as a phenomenon that is possible to measure through drug testing, which is enacted as precise and reliable. The legal side of 'medico-legal' turns a health issue into a matter of compliance with a state-defined model of wellness and applies force to the diagnosis. Dependence is enacted as a behaviour that can ultimately be modified – or a 'problem' that can be 'solved' – by the use of sanctions, rewards and other measures. Additionally, the way in which the court applies sanctions and rewards is assumed to be effective and harmless. I also explored some of the silences in the court's representations of dependence, and proposed other ways of thinking about the issues by comparing problematisations. For example, in chapter seven, I explored different ways in which drug testing is problematised in four different English-speaking jurisdictions that have implemented the drug court model, and I show that testing results are not always used to sanction participants as they are in the Drug Court of Victoria. Additionally, Bacchi (2009, 2014) points out that question four also opens up the opportunity to be inventive, to imagine worlds in which specific issues are reconceptualised and reproblematised, or even not understood as problems. I did this in chapter four, imagining different ways of constituting the dependence–crime nexus in which broad social factors are also given importance.

Exploring the effects of the multiple representations of dependence produced by the drug court was one of my key tasks. In chapter 4, I showed that entry into the drug court can be arbitrary and inconsistent. This has implications for equity and fairness, and it produces 'lived' and 'subjectification' effects (Bacchi, 2009; Bacchi & Goodwin, 2016). The constitution of implicit eligibility requirements and the acceptance of 'quasi-expert' perspectives results in certain people's subjective accounts being given more weight than others. Indeed, the perspectives of drug court participants are frequently silenced. I described this process of privileging some perspectives over others as a 'dividing practice' (following Bacchi & Goodwin, 2016, p. 23). These dividing and silencing processes were just one of the many lived, subjectification and discursive effects (Bacchi 2009) that I identified as effects of the drug court's approach to dependence. My interviews with drug court participants suggested that the process of clinico-criminal syncretisation that I identified had troubling implications for how participants thought

about the drug court and those entrusted with 'supporting' them through the treatment process. The use of legal actors and/or policing approaches to establish dependence 'facts' (or in Bacchi's (2009) terms, 'knowledges') led to some participants feeling that clinicians were 'double agents'.

The court's hybrid nature also has other concerning implications. In the assessment interviews, for instance, applicants were invited to take up certain subject positions, and asked to explicitly self-identify with labels such as 'drug addict' or 'alcoholic'. It is important to note that, in keeping with Bacchi, merely constituting the problem this way has performative effects. I also considered how applicants might be excluded from the drug court as a result of the arbitrary admission process, and the profound lived and subjectification impacts of this on applicants and their families, especially where those applicants are experiencing barriers to accessing alcohol and other drug treatment through more conventional means, and wish to access the Drug Court of Victoria. In chapter six, I found that the court's tolerance for non-compliance with drug treatment order conditions, and illicit alcohol or other drug use, is short lived and that – contrary to the formal policies of the court – the escalation in the severity of the sanctions is abrupt rather than gradual. I argued that this leads to 'ceiling effects in which further escalation of punishment is impracticable' (Marlowe, 2007, p. 323), with one potential effect being expulsion from the drug court and reintegration into the regular criminal justice system. In many instances, the imposition of more severe sanctions occurs without sufficient regard to the individual circumstances of drug court participants, including how people's personal, social, familial and financial circumstances shape their ability to comply with court orders. This is a troubling finding for a range of reasons. Most importantly, it seems that certain – often already marginalised – individuals may be at greater risk of 'failure', as they lack the resources and supports that are needed to enable compliance with drug court requirements. The comments of some drug court professionals and participants, and my observations, revealed two important lived effects of custodial sanctions. First, drug court participants sometimes endure very extreme conditions when serving custodial sanctions because they often do so in police cells, with poor or no access to natural light, fresh air, open space and ventilation. This may adversely affect participants' mental and physical wellbeing, and leads to resentment towards the program. Second, participants might also have their medication regimes interrupted while serving sanctions in either the police cells or in prison, a disruption with obvious detrimental effects on wellbeing. In chapter seven, I pointed out that the focus on abstaining from substance use can

have a range of effects. It can, for example, magnify entrepreneurial efforts on the part of some participants to avoid detection through complex and potentially harmful alternative drug-taking regimes. In this sense, drug courts may encourage the very kind of drug-related harms that are assumed to be resolved by them, and which are often claimed to be the effects of 'addictive' drugs 'themselves' (see Fraser & David Moore, 2011b). The policy of urine testing also has other effects. For instance, frequent attendance and waiting times, added to other drug court commitments, constitute barriers to securing and maintaining employment for some participants. Paradoxically, these kinds of broader lifestyle changes (securing stable, ongoing employment) are one of the aims of the drug court model, in that the court problematises participants as insufficiently gainfully employed and lacking engagement with the broader community. Second, even though the treatment and monitoring modalities to which participants submit are community-based, they might further direct participants to the periphery of society and encourage them to form relationships with others who use alcohol and other drugs. Again, this is often in conflict with the stated aims of the drug court, which problematises participants as margin-dwellers. Finally, the process of urine testing can intensify rather than reduce participants' exposure to the criminal justice system and increase criminalisation.

Finally, I explored how problematisations of dependence constituted in the drug court can be questioned and replaced. Using the conceptual and analytical resources introduced in chapter three, I questioned and disrupted the current problematisations of dependence in the Drug Court of Victoria. In each chapter I referred to other qualitative literature also critical of drug courts. This research provided additional insights into the limitations of the current problem enactments of dependence in drug courts. What of replacing these problems? This is a key task of my research. I asked questions of current problematisations and offered alternatives. In order to do so, I drew on alternative discourses or 'forms of knowledge' to reproblematise 'dependence' in ways that reduce harm. I respond further to this question by proposing several possibilities for redesigning drug court practices in the section below.

The contribution of this research to the Australian drug court literature derives mainly from the novelty of the qualitative methods employed, which to my knowledge had never been used in combination in Australian or international research. Second, the use of Bacchi's (2009) WPR approach afforded a critical stance on drug courts, which has been absent for many years in Australian drug court literature. Third, I included what Foucault (1980) calls 'subjugated

knowledges' (p. 83). They comprised, first, the qualitative literature critical of drug courts, which has been excluded by drug court proponents, who favour quantitative research and evaluations that have found drug courts 'effective' and simply benign, and secondly, the experiences of those who have an intimate knowledge of the drug court such as drug court participants, and other drug court insiders whose views are marginalised in the operations of the court. In reviewing qualitative literature critical of drug courts I revisited the early Australian research (Bull, 2006, 2010; Clancey & Howard, 2006; Fitzgerald, 2008; Freiberg, 2000, 2002a, 2002b; Indermaur & Roberts, 2003, 2005; Makkai, 1998, 2002; McGlone, 2003; Roberts & Indermaur, 2006), which in my view has been neglected. This seminal body of research must be taken into consideration when conducting evaluations.

The work of previous Australian scholars has been vital in avoiding the ill effects some drug courts have had in the US (Drug Policy Alliance, 2011, 2015; Hoffman, 2000), and therefore had a powerful effect on drug court policy in Australia. This critical work must continue. It should not be forgotten that when drug courts were first implemented in Australia, they were not seen as a panacea, but as part of the overall approach to addressing 'drug-related' crime (Nolan, 2011). It is concerning, however, that this appears to have been forgotten. For example, the state of Victoria is experiencing a resurgence of enthusiasm for drug courts, with supporters from a range of perspectives now advocating for the expansion of the model around the state (Parliament of Victoria, 2018). They often cite the questionable 'effectiveness' of international drug courts, and the 'successes' identified in an evaluation that was methodologically flawed (KPMG, 2014) because it only included those who completed the program, silencing the experiences of the remaining 60% (Kornhauser, 2016). While I do not deny that those individuals who complete the program might benefit from it, we also need to know how the program impacts on those who do not complete. My research suggests that some of the effects for those enrolled in the drug court – although likely unintended – are nevertheless harmful.

It should be stressed that drug court participants are some of the most disadvantaged and marginalised individuals in society. Indeed, demographic data suggest they experience heightened levels of social disadvantage including low levels of education attainment, high rates of unemployment, high incidence of mental illness, and institutionalisation through multiple periods of incarceration (KPMG, 2014). I argue that in most cases this disadvantage predates the

use of drugs or the commission of crime. Individual interventions such as alcohol and other drug treatment, psychotherapy, or intensive judicial supervision alone will not address their complex needs. These are individuals who have not only been 'recycled' by the criminal justice system, but quite possibly by the social support system, so it is important to monitor whether this intervention might be exacerbating social disadvantage and further enmeshing individuals in the criminal justice system. In the following section I offer some possibilities for redesigning drug court practices (some of which are already mentioned in earlier chapters) that should inform and lead to improvements in the provision of court-ordered alcohol and other drug treatment. In this way, I address the last of the five objectives of my research.

How can the harmful representations of dependence be disrupted and replaced at the drug court?

As Bacchi (2009) notes, one of the goals of the WPR approach is to pay attention to the possibility of challenging problem representations that are judged harmful. In the next section, I go on to offer some possibilities for a recalibration of drug court practices to avoid the pitfalls identified in this thesis. My findings raise concerns about the current operation of the drug court model in Victoria. These include concerns about uneven practices in admission and screening, equity and access to justice, the effects of reliance on police briefs/summaries and prior convictions, a magnification and intensification of criminalisation, and the various lived, subjectification and discursive effects that are associated with enactments of dependence in the drug court, many of which appear to be counter-therapeutic, in direct opposition to the stated aims of the court. With these insights in mind, I offer the following possibilities to bring about change.

1. **Eligibility**. The drug court legislation gives magistrates the power to make final decisions about dependence and the dependence–crime nexus. Clear guidelines for determining eligibility criteria should be developed, such that legal actors only make decisions about legal and demographic eligibility criteria. While assessing the level of substance use is important, the emphasis should be placed on assessing the needs of the applicants as a whole. The drug court model should rethink the very central emphasis they place on alcohol and other drug use *per se*. It is possible that the drug court's intense focus on alcohol and other drug consumption forecloses other ways of thinking about participants

and their lives, their needs and priorities, and the kinds of supports that might benefit them and improve their wellbeing. It is recommended that such guidelines are enshrined in the legislation to ensure that as the model expands around the state, future drug court practices will be governed consistently by these guidelines. My findings suggest that the focus on the dependence–crime nexus to establish eligibility of entry into the court should be abandoned because the best way of determining the relationship between dependence and crime in a drug court context is unclear. The method utilised by legal actors at the Drug Court of Victoria and reviewed above is flawed and arbitrary. Might it suffice to give comprehensive information about the program to those applicants interested in addressing their substance use (and otherwise eligible for the program) so that they can make an informed decision about participation? In this way, the association between substance use and offending, if there is any, will be self-identified. This is important because if the summary of priors is removed as a tool for determining dependence and the dependence-crime nexus, neither the views of the police informants nor the comments by the drug court applicants at the time of the offence are relevant to determine eligibility. This also means that those applicants who did not waive their privilege against self-incrimination will not be unfairly excluded from the program. In addition:

- Assessment of the co-existing needs of applicants should be comprehensive and holistic and include evaluation of social, physical, psychological, cultural and spiritual needs.
- Treatment plans should include ways of addressing all the needs identified in the comprehensive assessment. In this way, substance use issues will still be addressed, but will not be the main or only focus.
- The purpose of the assessment tools should be evaluated to see if they are meeting their stated purpose. The assessment should take place face to face rather than via phone.
- The assessment report should at least provide evidence of how the DSM eligibility criteria are met.
- While police briefs might be used to establish demographic and legal criteria of entry into the court, they should not be used in the clinical assessment.

2. **Accessibility**. It appears that all the information about how to access the drug court program is targeted at legal professionals and can be difficult to obtain, especially for those in custody. Information resources such as pamphlets and fliers in plain language, or even short video clips with factual information about the program and what it entails, should be made available for potential applicants who are in custody in order to help them make a more informed decision. This is especially relevant now that the model continues to be adopted in different jurisdictions around Victoria. In a related sense, special consideration should be given to the circumstances of members of disadvantaged communities (such as participants from ATSI backgrounds).

3. **Sanctions**. If sanctions are informed by and in turn shape dependence concepts, then refashioning the sanction system will remake dependence. The question of what kind of (revised) sanction system is legally and politically possible and palatable and what kinds of effects are preferable is a complex one that requires concerted attention. At first glance, a revised sanction system, in which the court actually uses the wide variety of non-custodial sanctions available to it to respond to non-compliance, should be considered, especially in light of the fact that the high rate at which participants are returned to custody at the end of the program drives the high cost of drug courts. The imposition of sanctions (particularly in the form of short episodes in custody) for non-compliance also increases the cost of the program (Jones, 2013). In such a system, the escalation of sanctions should be gradual rather than abrupt. In the Victorian context at least, the search for alternatives to the use of custodial sanctions becomes especially pressing in light of the appalling experiences of participants serving sanctions in police cells, and other lived, discursive and subjectification effects. Along with existing recommendations on the application of sanctions and rewards in drug court contexts (Burton et al., 2001; National Association of Drug Court Professionals, 2015; Marlowe, 2007, 2012; Marlowe & Kirby, 1999; Marlowe & Wong, 2007), the Drug Court of Victoria should explore the possibility of increasing the use of positive reinforcement (rewards) to incentivise desirable conduct, and avoid the use of custodial sanctions. Conditions in police cells in Victoria should be investigated, acknowledged and improved, and greater attention should be paid to the other adverse effects of the sanctions and rewards system, including those that I identified in this thesis.

4. **The drug testing regimen**: Drug court participants should be given the choice to have their donation of urine samples supervised by collectors of the same gender. Some of the drug court participants I encountered for this research were highly socially and economically disadvantaged and struggling with fundamentals such as food and housing. It is important to ask whether the drug court's particular emphasis on urine tests and urine test results is strictly necessary, given the adverse outcomes I identified. This is not to suggest that alcohol and other drug testing should be abandoned, especially when some participants find it useful, but I want instead to interrogate what drug courts prioritise and how these priorities derive from problem representations embedded in the design of drug courts. Might things be done otherwise? In Victoria, where this research was conducted, a second branch of the drug court was opened after my fieldwork took place (April 2017), and there have been several calls to roll the drug court model out across the state (Parliament of Victoria, 2018). The considerable resources given over to an onerous testing regime might be better directed elsewhere. That is, if dependence is one but not the only aspect that will be addressed by the drug court, more resources such as housing, employment and social support should be prioritised and channelled towards the drug court population.

5. **Further research.** Research that focuses on individuals who began but did not complete the drug treatment order should be conducted to better understand the effects of drug courts. While my research investigated key aspects of how a drug-testing regime unfolds in a drug court, more research is needed as drug testing has become mainstream in several environments yet remains poorly understood. Researchers should employ a science and technology studies approach to explore the alcohol and drug testing process in drug courts. That research should explore the whole process of testing, including the point of sample collection, the types of testing being conducted, the interpretation of results by pathologists and toxicologists, and the reinterpretation of results by drug court professionals. Research remains to be undertaken in other Australian drug courts to establish whether the issues I identified with the drug-testing regime in Victoria apply elsewhere, and to consider the effects of this seemingly inadvertent drift away from harm reduction.

In this thesis, I have argued that the way in which the drug court produces dependence and the dependence–crime nexus is problematic. As Bacchi tells us, the solution to a 'problem' reveals much about what we think 'the problem' is. Bacchi's approach encourages us to ask whether different problematisations and solutions are preferable or less harmful and if so what they might look like. The first and most important question that must be asked is whether a 'problem-solving' court that so fundamentally identifies 'dependence' as the central problem it needs to solve is either necessary and if not, what other model might be better. My research strongly suggests that drug courts must move away from a focus on substances and/or substance dependence *per se* and consider new possibilities. Lastly, my work highlights the need to continue examining public institutions such as drug courts, even though they are frequently presented as progressive and beneficial. As I argued in this thesis, putatively 'progressive' and 'beneficial' institutions can still produce lived, subjectification, and discursive effects, with deleterious consequences for socially marginalised individuals. At a time of rapid expansion of drug courts in Victoria, these effects are at risk of multiplying, and urgently deserve our concerted, sustained attention.

References

Adler, P. A., & Adler, P. (1987). *Membership roles in field research* (Vol. 6). Thousand Oaks, California: SAGE.

Alberti, S., King, J., Hales, J., & Swan, A. (2004). *Court diversion program evaluation.* Retrieved from www.magistratescourt.vic.gov.au/sites/default/files/Default/court_diversion_program_evaluation_overview_and_final_report.pdf

Alcohol and Other Drugs Council of Australia. (1996). *Best practice in the diversion of alcohol and other drug offenders.* Paper presented at the the Alcohol and other Drugs Council of Australia Diversion Forum, Canberra.

Alexander, S. A. and Coveney, J. 2013. 'A critical discourse analysis of Canadian and Australian public health recommendations promoting physical activity to children', *Health Sociology Review*, 22(4): 353-64.

Allard, P., Lyons, T., & Elliott, R. (2011). *Impaired judgment: Assessing the appropriateness of drug treatment courts as a response to drug use in Canada*. Toronto: Canadian HIV and AIDS Legal Network.

American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders (DSM-5®)*. Washington, DC: American Psychiatric Press.

American Society of Addiction Medicine. (2013). *Drug testing: A white paper of the American Society of Addiction Medicine*. Retrieved from http://www.asam.org/docs/default-source/public-policy-statements/drug-testing-a-white-paper-by-asam.pdf

Anderson, B., & Harrison, P. (2016). *Taking-place: non-representational theories and geography*. New York: Routledge.

Angrosino, M., & Rosenberg, J. (2013). Observations on observation. In N. Dezin & Y. Lincoln (Eds.), *Collecting and interpreting qualitative materials* (pp. 467-478). London: SAGE.

Armenta, B. E., Lee, R. M., Pituc, S. T., Jung, K.-R., Park, I. J., Soto, J. A., . . . Schwartz, S. J. (2013). Where are you from? A validation of the foreigner objectification scale and the psychological correlates of foreigner objectification among Asian Americans and Latinos. *Cultural Diversity and Ethnic Minority Psychology, 19*(2), 131-156.

Auerbach, K. (2007). Drug testing methods. In J. Lessenger & G. Roper (Eds.), *Drug Courts: A new approach to treatment and rehabilitation* (pp. 215-234). New York, USA: Springer.

Austin, J., & Krisberg, B. (1981). Wider, stronger and different nets: The dialectics of criminal justice reform. *Journal of Research in Crime and Delinquency, 18*(1), 165-196.

Australian Government. (1991). *Royal Commission into Aboriginal Deaths in Custody: National report*. Canberra: Australian Government Publishing Service.

Australian Injecting and Illicit Drug Users League. (2010). *Handy tips: Information handbook* (4th ed.). AIVL: Canberra.

Australian Law Reform Comission. (2015). *Traditional rights and freedoms: Encroachments by Commonwealth laws*. Retrieved from https://www.alrc.gov.au/publications/common-law-right-6

Bacchi, C. (2009). *Analysing policy: What's the problem represented to be?* Sydney: Pearson.

Bacchi, C. (2012). Why study problematizations? Making politics visible. *Open Journal of Political Science, 2*(1), 1-8.

Bacchi, C. (2014). What's the problem represented to be? Workshop [video-lectures]. Retrieved from https://www.adelaide.edu.au/carst/online-modules/wpr/

Bacchi, C., & Eveline, J. (Eds.). (2010). *Mainstreaming politics: Gendering practices and feminist theory*. Adelaide, Australia: University of Adelaide Press.

Bacchi, C., & Goodwin, S. (2016). *Poststructural policy analysis: A guide to practice*: Springer.

Bacchi, C. L. (1999). *Women, policy and politics: The construction of policy problems*. London: SAGE.

Baker, K. M. (2013). Decision making in a hybrid organization: A case study of a southwestern drug court treatment program. *Law & Social Inquiry, 38*(1), 27-54.

Baldwin, J. (2008). Research on the criminal courts. In R. King & E. Wincup (Eds.), *Doing research on crime and justice*. New York: Oxford University Press.

Bean, P. (2014). *Drugs and crime* (4th ed.). New York, USA: Taylor & Francis.

Belenko, S., Fabrikant, N., & Wolff, N. (2011). The long road to treatment: Models of screening and admission into drug courts. *Criminal Justice and Behavior, 38*(12), 1222-1243.

Bennett, T., & Holloway, K. (2005a). The association between multiple drug misuse and crime. *International Journal of Offender Therapy and Comparative Criminology, 49*(1), 63-81.

Bennett, T., & Holloway, K. (2005b). Disaggregating the relationship between drug misuse and crime. *Australian & New Zealand Journal of Criminology, 38*(1), 102-121.

Boldt, R. (2010). The tomahawk and the healing balm drug treatment courts in theory and practice. *University of Maryland Law Journal of Race, Religion, Gender and Class, 10*, 46-71.

Bouma, G. (2000). *The research process* (4th ed.). Melbourne: Oxford University Press.

Bowers, J. (2008). Contraindicated drug courts. *UCLA Law Review, 55*, 783-835.

Brook, K. (2010). *Drug courts and the treatment of addiction therapeutic jurisprudence and neoliberal governance.* (Unpublished PhD thesis), New York University, New York, NY.

Bryman, A. (2009). *Social research methods* (4th ed.). Oxford: Oxford University Press.

Bucci, N., Mills, T., & Lee, J. (2015, March 7). The Dandenong drug court that wants to do more. *The Age*. Retrieved from http://www.theage.com.au/victoria/the-dandenong-drug-court-that-wants-to-do-more-20150126-12yuq6.html

Bull, M. (1996). Power and addiction: The making of the modern addict. *Australian Journal of Social Issues, 31*(2), 191-208.

Bull, M. (2003). *Just treatment: A review of international programs for the diversion of drug related offenders from the criminal justice system*. Kelvin Grove, Brisbane: Queensland University of Technology.

Bull, M. (2005). A comparative review of best practice guidelines for the diversion of drug related offenders. *International Journal of Drug Policy, 16*(4), 223-234.

Bull, M. (2006, June). *Just treatment: Testing the limits of therapeutic jurisprudence*. Paper presented at the 3rd International Conference on Therapeutic Jurisprudence, Perth, Western Australia.

Bull, M. (2010). *Punishment and sentencing: Risk,rehabilitation and restitution*. South Melbourne, Victoria: Oxford University Press.

Burdon, W., Roll, J., Prendergast, M., & Rawson, R. (2001). Drug courts and contingency management. *Journal of Drug Issues, 31*(1), 73-90.

Burns, S., & Peyrot, M. (2003). Tough love: Nurturing and coercing responsibility and recovery in California drug courts. *Social Problems, 50*(3), 416-438.

Caldwell, F. (2018, February 1). Drug courts aren't a 'soft option' for criminals, Attorney-General says. *Brisbane Times*. Retrieved from

https://www.brisbanetimes.com.au/politics/queensland/drug-courts-aren-t-a-soft-option-for-criminals-attorney-general-says-20180201-p4yz77.html

Campbell, N. D. (2005). Suspect technologies: Scrutinizing the intersection of science, technology, and policy. *Science, Technology & Human Values*, *30*(3), 374-402.

Cappa, C. (2006). The social political and theoretical context of drug courts. *Monash University Law Review*, *32*(1), 145-176.

Caraniche. (2018). *Justice and Correctional Services.* Retrieved from http://www.caraniche.com.au/forensic-services

Carney, M. (2006). The Ice Age. Four Corners. Retrieved 2 June 2016, 2016, from www.abc.net.au/4corners/content/2006/s1593168.htm archived at www.webcitation.org/6Rop4DYmU

Cary, P. (2011). The fundamentals of drug testing. In D. Marlowe & W. Meyer (Eds.), *The drug court judicial benchbook* (pp. 113-138). Alexandria, VA: National Drug Court Institute.

Charter of Human Rights and Responsibilities Act (Vic) 2006.

Clancey, G., & Howard, J. (2006). Diversion and criminal justice drug treatment: Mechanism of emancipation or social control? *Drug and Alcohol Review*, *25*(4), 377-385.

Cohen, S. (1985). *Visions of social control: Crime, punishment and classification*. Cambridge, UK: Polity Press.

Colyer, C. (2007). Innovation and discretion: The drug court as a people-processing institution. *Criminal Justice Policy Review*, *18*(3), 313-329.

Community Corrections. (2018). Case managers. Retrieved from https://www.correctionsjobs.vic.gov.au/roles/case-managers

Conrad, P. (1992). Medicalization and social control. *Annual Review of Sociology*, *18*, 209-232.

Conrad, P. (2005). The shifting engines of medicalization. *Journal of Health and Social Behavior*, *46*(1), 3-14.

Conrad, P., & Schneider, W. (1992). *Deviance and medicalisation: From badness to sickness*. Philadelphia: Temple University Press.

Cooper, C. S. (1997). *1997 drug court survey report: Executive summary*. Washington, DC: United States Department of Justice.

Courts Administration Authority of South Australia. (2017). Drug Courts. Retrieved from http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Drug-Court.aspx#eligibility

Csete, J., & Tomasini-Joshi, D. (2015). Drug Courts: Equivocal evidence on a popular intervention. Retrieved from https://www.opensocietyfoundations.org/reports/drug-courts-equivocal-evidence-popular-intervention

Dean, M. (2006). Govermentality and powers of life and death. In G. Marston & C. McDonald (Eds.), *Analysing social policy: A governmental approach*. Cambridge: Cambridge University Press.

Deleuze, G. (1994). *Difference and repetition*. Great Britain: Columbia University Press.

Delfabbro, P., Hirte, C., Rogers, N., & Wilson, R. (2010). The over-representation of young Aboriginal or Torres Strait Islander people in the South Australian child system: A longitudinal analysis. *Children and Youth Services Review, 32*(10), 1418-1425.

Denis, C. M., Cacciola, J. S., & Alterman, A. I. (2013). Addiction Severity Index (ASI) summary scores: Comparison of the recent status scores of the ASI-6 and the composite scores of the ASI-5. *Journal of Substance Abuse Treatment, 45*(5), 444-450.

Department of Justice Equality and Law Reform. (2010). *Review of the drug treatment court*. Dublin, Ireland. Retrieved from http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/E933AACE944EB4038025784F0043FD2F/$FILE/Review%20of%20Drug%20Treatment%20Court.pdf.

Department of the Attorney General. (2017). Doing a drug treatment order. Retrieved from https://www.magistratescourt.tas.gov.au/about_us/criminal_division/drug_treatment_orders

Dowden, C. (2007). *Report for the Ottawa Drug Treatment Court (ODTC): Correctional program assessment inventory*. Ottawa: Public Safety Canada.

Dowling, M. (2012). Reflexivity. In M. Given (Ed.), *The SAGE Encyclopedia of Qualitative Research Methods*. Thousand Oaks, California: SAGE.

Droppelmann, C. (2011). Tribunales de tratamiento de drogas en Chile: Material educativo. Retrieved from http://www.pazciudadana.cl/wp-content/uploads/2013/07/2010-04-28_tribunales-de-tratamiento-de-drogas-en-chile-material-educativo.pdf

Drug Court of New South Wales. (2017). Who is eligible? Retrieved from http://www.drugcourt.justice.nsw.gov.au/Pages/dc_program/dc_eligible.aspx

Drug Court of Victoria. (2012). *Drug court policy number 8: Urinalysis and breath testing*. Melbourne: Magistrates' Court of Victoria.

Drug Court of Victoria. (2013). *Drug court policy number 18: Medical certificates*. Melbourne: Magistrates' Court of Victoria.

Drug Court of Victoria (n.d.-a). *The Drug Court of Victoria assessment and interview guide.* Melbourne: Magistrates' Court of Victoria.

Drug Court of Victoria. (n.d.-b). *Drug court participant manual*. Melbourne: Magistrates' Court of Victoria.

Drug Court of Victoria. (n.d.-c). *Drug court policy number 4: Screening & assessment*. Melbourne: Magistrates' Court of Victoria.

Drug Policy Alliance. (2011). *Drug courts are not the answer: Toward a health centered approach to drug use*. Washington, DC. Retrieved from http://www.drugpolicy.org/drugcourts.

Dwyer, R., & Fraser, S. (2015). Addiction screening and diagnostic tools: 'Refuting' and 'unmasking' claims to legitimacy. *International Journal of Drug Policy, 26*(12), 1189-1197.

Dwyer, R., & Fraser, S. (2016). Making addictions in standardised screening and diagnostic tools. *Health Sociology Review, 25*(3), 223-239.

Encyclopaedic Australian legal dictionary. (2017). Chatswood, NSW: LexisNexis.

Fernandez, B. (2012). *Transformative policy for poor women: A new feminist framework*. Surrey: Ashgate.

Fischer, B. (2003). 'Doing good with a vengeance': A critical assessment of the practices, effects and implications of drug treatment courts in North America. *Criminology and Criminal Justice, 3*(3), 227-248.

Fischer, M., & Geiger, B. (2011). What 'works' in drug court: A bottom-up female participants' perspective. *Journal of Human Behavior in the Social Environment, 21*(7), 752-765.

Fitzgerald, J. (2008). Drug diversion: An intersection between law enforcement and the public health approaches to the control of illicit drug use. In P. Dietze & David Moore (Eds.),

Drugs and public health: Australian perspectives on policy and practice. Melbourne: Oxford University Press.

Foucault, M. (1980). Two lectures. In C. Gordon (Ed.), *Michel Foucault power/knowledge: Selected interviews and other writings 1972–1977 by Michel Foucault*. New York: Pantheon Books.

Foucault, M. (1984). The means of correct training [from Discipline and Punish]. In P. Rabinow (Ed.), *The Foucault reader*. New York: Pantheon Books.

Foucault, M. (1991). Governmentality. In G. Burchell, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality*. Chicago: University of Chicago Press.

Foucault, M. (1994 [1981]). So is it important to think? In J. Faubion (Ed.), *Power: Essential works of Foucault 1954–1984* (Vol. 3). London: Penguin.

Foucault, M. (2007). *Security, territory, population: Lectures at the Collège de France, 1977-78.* Hampshire: Palgrave Macmillan.

Fox, R. (1992). The compulsion of voluntary treatment in sentencing. *Criminal Law Journal, 16*, 37-54.

Fraser, S. (2004). 'It's your life!': Injecting drug users, individual responsibility and hepatitis C prevention. *Health: An interdisciplinary Journal for the Social Study of Health, Illness and Medicine, 8*(2), 199-221.

Fraser, S. (2006). The chronotope of the queue: Methadone maintenance treatment and the production of time, space and subjects. *International Journal of Drug Policy, 17*(3), 192-202.

Fraser, S. (2013). About social studies of addiction concepts. Retrieved from https://addictionconcepts.com/about/

Fraser, S., & Moore, D. [David] (2008). Dazzled by unity? Order and chaos in public discourse on illicit drug use. *Social Science & Medicine, 66*(3), 740-752.

Fraser, S., & Moore, D. [David]. (2011a). The drug effect: Constructing drugs and addiction. In S. Fraser & D. Moore (Eds.), *The drug effect: Health, crime and society* (pp. 1-16). Melbourne: Cambridge University Press.

Fraser, S., & Moore, D. [David]. (2011b). Governing through problems: The formulation of policy on amphetamine-type stimulants (ATS) in Australia. *International Journal of Drug Policy, 22*(6), 498-506.

Fraser, S., Moore, D. [David], & Keane, H. (2014). *Habits: Remaking addiction*: Springer.

Fraser, S., & Seear, K. (2011). *Making disease, making citizens: The politics of hepatitis C*. Aldershot: Ashgate.

Fraser, S., & valentine, K. (2008). *Substance and substitution: Methadone subjects in liberal societies*: Palgrave Macmillan.

Freestone, M., Stijn, V., Wittouck, C., Dekkers, A., Vanderplasschen, W., & Vander-Laenen, F. (2014). Psychosocial functioning of drug treatment court clients: A study of the prosecutor's files in Ghent, Belgium. *Therapeutic Communities: The International Journal of Therapeutic Communities, 35*(3), 127-140.

Freiberg, A. (2000). Australian drug courts. *Criminal Law Journal, 24*(4), 213-235

Freiberg, A. (2001). Problem-oriented courts: Innovative solutions to intractable problems? *Journal of Judicial Administration, 11*(1), 8-27.

Freiberg, A. (2002a). Drug courts sentencing responses to drug use and drug-related crime. *Alternative Law Journal, 27*(6), 282-286.

Freiberg, A. (2002b). *Pathways to justice: Sentencing review 2002*. Melbourne: Department of Justice.

Freiberg, A. (2003). Therapeutic jurisprudence in Australia: Paradigm shift or pragmatic incrementalism. *Law in Context, 20*(2), 6-23.

Freiberg, A. (2004). Australia's drug courts. *Of Substance: The National Magazine on Alcohol, Tobacco and Other Drugs, 2*(1), 12.

Freiberg, A. (2005). Problem-oriented courts: An update. *Journal of Judicial Administration, 14*(4), 196-219.

Freiberg, A., Payne, J., Gelb, K., Morgan, A., & Makkai, T. (2016). *Drug and specialist courts review*. Brisbane QLD Australia: Queensland Courts. Retrieved from http://www.courts.qld.gov.au/courts/drug-court.

Fry, C., & Dwyer, R. (2001). For love or money? An exploratory study of why injecting drug users participate in research. *Addiction, 96*(9), 1319-1325.

Fulkerson, A., Keena, L. D., & O'Brien, E. (2013). Understanding success and nonsuccess in the drug court. *International Journal of Offender Therapy and Comparative Criminology, 57*(10), 1297-1316.

Fusch, P. I., & Ness, L. R. (2015). Are we there yet? Data saturation in qualitative research. *The Qualitative Report, 20*(9), 1408-1416.

Gallagher, J. R. (2013). African American participants' views on racial disparities in drug court outcomes. *Journal of Social Work Practice in the Addictions, 13*(2), 143-162.

Grebe, C. (2009). *Reconciliation Policy in Germany 1998-2008*: *Constructing the 'Problem' of the Incompatibility of Paid Employment and Care Work*. Germany: Springer Fachmedien Wiesbaden.

Global Centre for Drug Courts. (2014). Drug treatment courts in operation worldwide. Retrieved from http://globaldrugcourts.com/

Goldkamp, J., White, M., & Robinson, J. (2002). An honest chance: Perspectives on drug courts. *Federal Sentencing Reporter, 6*, 369-372.

Goldkamp, J. S. (1994). Miami's treatment drug court for felony defendants: Some implications of assessment findings. *The Prison Journal, 74*(2), 110-166.

Goldstein, P. J. (1985). The drugs/violence nexus: A tripartite conceptual framework. *Journal of Drug Issues*, 15(4), 143-174.

Goode, E., & Ben-Yehuda, N. (1994). Moral panics: Culture, politics, and social construction. *Annual Review of Sociology, 20*(1), 149-171.

Gowan, T., & Whetstone, S. (2011). Diagnosing the criminal addict: Biochemistry in the service of the state. In P. McGann & D. Hutson (Eds.), *Sociology of Diagnosis* (Vol. 12, pp. 309-330). Bradford: Emerald Group Publishing Limited.

Gowan, T., & Whetstone, S. (2012). Making the criminal addict: Subjectivity and social control in a strong-arm rehab. *Punishment & Society, 14*(1), 69-93.

Grissom, G. R., & Bragg, A. (1991). Addiction Severity Index: experience in the field. *International Journal of the Addictions, 26*(1), 55-64.

Hall, W. (1997). The role of legal coercion in the treatment of offenders with alcohol and heroin problems. *The Australian and New Zeland Journal of Criminology, 30*, 103-120.

Hall, W., & Lucke, J. (2010). Legally coerced treatment for drug using offenders: Ethical and policy issues. *Contemporary Issues in Crime and Justice, 144*, 1-9.

Hanman, H. (2013). *Current issues in delivering Indigenous justice: Challenges for the courts*. Paper presented at the Australian Institute of Judicial Administration Indigenous Justice

Conference, Adelaide, Australia. Retrieved from. http://www.aija.org.au/Ind%20Courts%20Conf%2013/Papers/Hannam.pdf

Henry-Edwards, S., Gowing, L., White, R., Bell, J., Brough, R., Lintzeris, N., . . . Quigley, A. (2003). *Clinical guidelines and procedures for the use of methadone in the maintenance treatment of opioid dependence*. Canberra: Australian Government Department of Health and Ageing.

Hoffman, M. B. (2000). The drug court scandal. *North Carolina Law Review, 78*(5), 1437-1534.

Hora, P. (2002). A dozen years of drug treatment courts: Uncovering our theoretical foundation and the construction of a mainstream paradigm. *Substance Use & Misuse, 37*(12-13), 1469-1488.

Hughes, C. (2009). Away from the courts. *Of Substance: The National Magazine on Alcohol, Tobacco and Other Drugs, 7*(2), 20-21.

Hughes, C., & Ritter, A. (2008). *A summary of diversion programs for drug and drug-related offenders in Australia*. Retrieved from https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/16%20A%20summary%20of%20diversion%20programs.pdf

Hulse, G., White, J. M., & Cape, G. (2002). *Management of Alcohol and Drug Problems*: Oxford University Press.

Indermaur, D., & Roberts, L. (2003). Drug Courts in Australia: The first generation. *Current Issues in Criminal Justice, 15*(2), 136-153.

Indermaur, D., & Roberts, L. (2005). Finding alternatives to imprisonment: Drug courts in Australia. *Reform* (86), 28-32.

Inter-American Drug Abuse Control Comission, & Justice Program Office. (2013). Drug treatment courts: An international response to drug-dependant offenders. Retrieved from http://www.civiljustice.info/specialist_courts/1

Jones, C. (2011). Intensive judicial supervision and drug court outcomes: Interim findings from a randomised controlled trial. *Contemporary Issues in Crime and Justice* (152), 1-16.

Jones, C. (2013). Early-phase outcomes from a randomized trial of intensive judicial supervision in an Australian drug court. *Criminal Justice and Behavior, 40*(4), 453-468.

Jones, C., Kemp, R., & Chan, J. (2013). The relationship between delay discounting, judicial supervision, and substance use among adult drug court clients. Psychology, Public Policy, and Law, 19(4), 454-465.

Jørgensen, Martin B. 2012. 'Legitimizing policies: How policy approaches to irregular migrants are formulated and legitimized in Scandinavia', Etikki praksis. *Nordic Journal of Applied Ethics*, 6(2): 46-63.

Julien, R., Advokat, C., & Comaty, J. (eds.). (2011). *A primer of drug action* (12th ed.). New York: Worth Publishing.

Justice Policy Institute. (2011). Addicted to courts: How a growing dependence on drug courts impacts people and communities. Retrieved from http://www.justicepolicy.org/research/2217

Kaye, K. (2013). Rehabilitating the 'drugs lifestyle': Criminal justice, social control, and the cultivation of agency. *Ethnography, 14*(2), 207-232.

Keane, H. (2002). *What's wrong with addiction?* Melbourne: Melbourne University Press.

King, M., Freiberg, A., Batagol, B., & Hyams, R. (2014). *Non-adversarial justice* (Second ed.). Melbourne, VIC: Federation Press.

King, M. S. (2006, May). *Challenges facing Australian court drug diversion initiatives.* Paper presented at the court drug diversion initiatives conference, Brisbane.

Klag, S., O'Callaghan, F., & Creed, P. (2005). The use of legal coercion in the treatment of substance abusers: An overview and critical analysis of thirty years of research. *Substance Use & Misuse, 40*(12), 1777-1795.

Knight, K., Flynn, P., & Simpson, D. (2008). Drug court screening. In C. Hardin & J. Kushner (Eds.), *Quality improvement for drug courts: Evidence-based practices*. Alexandria, VA: National Drug Court Institute.

Kornhauser, R. (2016). The effectiveness of Australia's drug courts. *Australian & New Zealand Journal of Criminology, 0*(0), 1-23.

KPMG. (2014). Evaluation of the Drug Court of Victoria. Retrieved from https://www.magistratescourt.vic.gov.au/sites/default/files/141218%20Evaluation%20of%20the%20Drug%20Court%20of%20Victoria.pdf

Lancaster, K., Duke, K., & Ritter, A. (2015). Producing the 'problem of drugs': A cross national-comparison of 'recovery' discourse in two Australian and British reports. *Intenational Journal of Drug Policy, 26*(7), 617-625.

Lancaster, K., Hughes, C., Chalmers, J., & Ritter, A. (2012). More than problem-solving: Critical reflections on the problematisation of alcohol-related violence in Kings Cross. *Drug and Alcohol Review, 31*, 925-927.

Lancaster, K., & Ritter, A. (2013). Examining the construction and representation of drugs as a policy problem in Australia's National Drug Strategy documents 1985-2010. *International Journal of Drug Policy*. Retrieved from http://www.ncbi.nlm.nih.gov/pubmed/23931957

Lancaster, K., Seear, K., & Treloar, C. (2015). Laws prohibiting peer distribution of injecting equipment in Australia: A critical analysis of their effects. *International Journal of Drug Policy, 26*(12), 1198-1206.

Lashley, M. (2017). Observational research, advantages and disadvantages. In M. Allen (Ed.), *The SAGE encyclopedia of communication research methods* (pp. 1113-1115). Thousand Oaks, CA: SAGE Publications.

Law Reform Drugs and Crime Prevention Committee. (2014). *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria*. Melbourne: Parliament of Victoria. Retrieved from http://www.parliament.vic.gov.au/lrdcpc/article/2135.

Lee, J. (2015, March 15). Drug Court the 'only way' to help drug-addicted criminals. *The Age*. Retrieved from http://www.theage.com.au/victoria/drug-court-the-only-way-to-help-drugaddicted-criminals-20150312-1427dm.html

Lindquist, C. H., Krebs, C. P., & Lattimore, P. K. (2006). Sanctions and rewards in drug court programs: Implementation, perceived efficacy, and decision making. *Journal of Drug Issues, 36*(1), 119-146.

Litmus. (2014). Formative evaluation for the Alcohol and other Drug Treatment Court Pilot. Retrieved from https://www.justice.govt.nz/assets/Documents/Publications/alcohol-and-other-drug-treatment-court-formative-evaluation.pdf

Lowenkamp, C. T., Holsinger, A. M., & Latessa, E. J. (2005). Are drug courts effective: A meta-analytic review. *Journal of Community Corrections, 15*(1), 5-11.

Loxley, W. (2005). Interventions for illicit drug users within the criminal justice system: A review of some programmes in Australia, the United Kingdom and the United States. In T. Stockwell, P. Gruenewald, J. Toumbourou, & W. Loxley (Eds.), *Preventing harmful substance use: The evidence base for policy and practice* (pp. 279-289). England: John Wiley & Sons.

Lyons, T. (2011). *A critical ethnography of the Ottawa drug treatment court linking discourses of addiction addicted subjects and treatment practices. (Unpublished PhD Thesis),* Carleton University, Ottawa.

Lyons, T. (2013). Judges as therapists and therapists as judges: The collision of judicial and therapeutic roles in drug treatment courts. *Contemporary Justice Review, 16*(4), 412-424.

Lyons, T. (2014). Simultaneously treatable and punishable: Implications of the production of addicted subjects in a drug treatment court. *Addiction Research & Theory, 22*(4), 286-293.

Mackenzie, R. (2006). Addiction in public health and criminal justice system governance: Neuroscience, enhancement and happiness research. *Genomics, Society and Policy, 2*(1), 92-109.

Mackenzie, R. (2008). Feeling good: The ethopolitics of pleasure; psychoactive substance use and public health and criminal justice governance: Therapeutic Jurisprudence and the drug courts in the USA. *Social & Legal Studies, 17*(4), 513-533.

Mackenzie, R. (2011). The neuroethics of pleasure and addiction in public health strategies moving beyond harm reduction: Funding the creation of non-addictive drugs and taxonomies of pleasure. *Neuroethics, 4*(2), 103-117.

Mackinem, M., & Higgins, P. (2007). Tell me about the test: The construction of truth and lies in drug court. *Journal of Contemporary Ethnography, 36*(3), 223-251.

Mackinem, M., & Higgins, P. (2010). Losing hope: The production of failure in drug court. *New Approaches to Social Problems Treatment, 17*, 179-204.

Magistrates Court of Queensland. (2013). *Annual report 2012-2013*. Brisbane.

Magistrates' Court of Tasmania. (2017). Doing a Drug Treatment Order. Retrieved from https://www.magistratescourt.tas.gov.au/about_us/criminal_division/drug_treatment_orders

Magistrates' Court of Victoria. (2017). Eligibility Criteria. Retrieved from https://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/eligibility-criteria

Makkai, T. (1998). Drug courts: Issues and prospects. *Trends and Issues in Crime and Criminal Justice* (95), 1-7.

Makkai, T. (2002). The emergence of drug treatment courts in Australia. *Substance Use & Misuse, 37*(12-13), 1567-1594.

Makkai, T., & Payne, J. (2005). Illicit drug use and offending histories: A study of male incarcerated offenders in Australia. *Probation Journal, 52*(2), 153-168.

Manning, S. (2014). Parents, policy and playcentre: Developing a critical research proposal. In J. Rath, & C. Mutch (Eds.), Emerging critical scholarship in education: Navigating the doctoral journey. Newcastle upon Tyne: Cambridge Scholars Publishing.

Marlowe, D. (2007). Strategies for administering rewards and sanctions. In J. Lessenger & G. Roper (Eds.), *Drug courts: A new approach to treatment and rehabilitation* (pp. 316-336). New York: Springer.

Marlowe, D. (2012). *Behavior modification 101 for drug courts: Making the most of incentives and sanctions.* Washington: National Drug Court Institute.

Marlowe, D., & Kirby, K. (1999). Effective use of sanctions in drug courts: Lessons from behavioral research. *National Drug Court Institute Review, 2*, 1-32.

Marlowe, D., & Wong CJ. (2007). Contingency management in adult drug courts. In P. Higgins & K. Silverman (Eds.), *Contingency management in substance abuse treatment*. New York: Guilford Publications.

Marshall, N. (2012). 'Digging deeper: The challenge of problematising "inclusive development" and "disability mainstreaming"', in A. Bletsas and C. Beasley (eds) *Engaging with Carol Bacchi: Strategic interventions and exchanges* (pp. 53-70). Adelaide: University of Adelaide Press.

McGlone, D. (2003). Drug courts – a departure from adversarial justice. *Alternative Law Journal, 28*(3), 136-140.

McIntire, R. L., & Lessenger, J. E. (2007). Drug testing scams. In J. E. Lessenger & G. F. Roperd (Eds.), *Drug courts: A new approach to treatment and rehabilitation* (pp. 247-254). New York, NY: Springer New York.

McLellan, A., Parikh, G., Bragg, A., Cacciola, J., Fureman, B., & Incmikoski, R. (1990). Addiction severity index administration manual. *Philadelphia, PA: Pennsylvania Veterans' Administration Center for Studies of Addiction*.

McLellan, A. T., Kushner, H., Metzger, D., Peters, R., Smith, I., Grissom, G., . . . Argeriou, M. (1992). The fifth edition of the Addiction Severity Index. *Journal of Substance Abuse Treatment, 9*(3), 199-213.

McLellan, A. T., Luborsky, L., Woody, G. E., & O'Brien, C. P. (1980). An improved diagnostic evaluation instrument for substance abuse patients: the Addiction Severity Index. *The Journal of Nervous and Mental Disease, 168*(1), 26-33.

McSweeney, T., Stevens, A., Hunt, N., & Turnbull, P. J. (2008). Drug testing and court review hearings: Uses and limitations. *Probation Journal, 55*(1), 39-53.

Menard, S., Mihalic, S., & Huizinga, D. (2001). Drugs and crime revisited. *Justice Quarterly, 18*(2), 269-299.

Miles, M., Huberman, A., & Saldana, J. (2013). *Qualitative Data Analysis* (third ed.). Thousand Oaks, CA: SAGE.

Miller, E. (2004). Embracing addiction: Drug courts and the false promise of judicial interventionism. *Ohio State Law Journal, 65*, 1479-1576.

Miller, E. (2009). Drugs, courts, and the new penology. *Stanford Law & Policy Review, 20*(2), 101-145.

Miller, W. R., & Tonigan, J. S. (1996). Assessing drinkers' motivation for change: the Stages of Change Readiness and Treatment Eagerness Scale (SOCRATES). *Psychology of Addictive Behaviors, 10*(2), 81.

Minichiello, V., Aroni, R., Timewell, E., & Alexander, L. (2000). *In–depth interviewing: Principles, techniques, analysis.* (2nd ed.). Sydney: Longman.

Mitchell, O., Wilson, D. B., Eggers, A., & MacKenzie, D. L. (2012). Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts. *Journal of Criminal Justice, 40*(1), 60-71.

Mol, A. (1999). Ontological politics. A word and some questions. *The Sociological Review, 47*(1), 74-89.

Mol, A. (2002). *The body multiple: Ontology in medical practice*. London: Duke University Press.

Moore, D. [Dawn].(2007a). *Criminal artefacts: Governing drugs and users*. Vancouver: UBC Press.

Moore, D. [Dawn].(2007b). Translating justice and therapy: The drug treatment court networks. *British Journal of Criminology, 47*(1), 42-60.

Moore, D. [Dawn].(2011). The benevolent watch: Therapeutic surveillance in drug treatment courts. *Theoretical Criminology, 15*(3), 255-268.

Moore, D. [David]., & Fraser, S. (2013). Producing the 'problem' of addiction in drug treatment. *Qualitative Health Research, 23*(7), 916-923.

Moore, L. (2012). *Measures of success: Capturing the impact of drug courts* (Unpublished Master of Criminology and Corrections thesis), University of Tasmania, Hobart.

Mosher, C. J., & Akins, S. M. (2014). *Drugs and drug policy: The control of consciousness alteration*. California: SAGE Publications.

Murphy, J. (2011). Drug court as both a legal and medical authority. *Deviant Behavior, 32*(3), 257-291.

National Association of Criminal Defense Lawyers. (2009). America's problem solving courts: The criminal costs of treatment and the case for reform. Retrieved from https://www.nacdl.org/drugcourts/

National Association of Drug Court Professionals. (2004). *Defining drug courts: The key components*: US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

National Association of Drug Court Professionals. (2014). What are drug courts? Retrieved from http://www.nadcp.org/learn/drug-courts-work/what-are-drug-courts

National Association of Drug Court Professionals. (2015). Adult drug court best practice standards. Retrieved from http://www.nadcp.org/standards/

National Health and Medical Research Council. (2007). *Australian code for the responsible conduct of research*. Canberra: Commonwealth of Australia.

Nolan, J. (2001). *Reinventing justice: The American drug court movement*. New Jersey: Princeton University Press.

Nolan, J. (2002a). *Drug courts in theory and in practice*. New York: Routledge.

Nolan, J. (2002b). Drug treatment courts and the disease paradigm. *Substance Use & Misuse, 37*(12-13), 1723-1750.

Nolan, J. (2011). The international problem solving court movement: A comparative perspective. *Monash University Law Review, 37*(1), 259-279.

Office of Police Integrity. (2008). *Standards for police cells*. Retrieved from http://www.ibac.vic.gov.au/docs/default-source/toolkit/policing-and-human-rights---standards-for-police-cells.pdf?sfvrsn=2

Office of Police Integrity. (2010). *Update on conditions in Victoria police cells*. Retrieved from https://lccn.loc.gov/2013481861.

Office of the United Nations High Comissioner for Human Rights. (2017). Basic principles for the treatment of prisoners. Retrieved from http://www.ohchr.org/Documents/ProfessionalInterest/basicprinciples.pdf

Osborne, T. (1997). Of health and statecraft. In A. Petersen & R. Bunton (Eds.), *Foucault, health and medicine* (pp. 173-188). London: Routledge.

Paik, L. (2006). Organizational interpretations of drug test results. *Law & Society Review, 40*(4), 931-962.

Paik, L., & Harris, A. (2015). Court ethnographies. In H. Copes & M. Miller (Eds.), *The Routledge Handbook of Qualitative Criminology* (pp. 283-295). New York: Routledge.

Parliament of Victoria. (2014). *Inquiry into the supply and use of methamphetamines, particularly ice, in Victoria*. Retrieved from http://www.parliament.vic.gov.au/lrdcpc/article/2135

Parliament of Victoria. (2018). *Inquiry into drug law reform*. Retrieved from https://www.parliament.vic.gov.au/images/stories/committees/lrrcsc/Drugs_/Report/LRRCSC_58-03_Full_Report_Text.pdf

Parsons, T., & Lauritsen, P. (2013). *Submission by the drug court of Victoria to the inquiry into the supply and use of methamphetamines, particularly 'ice', in Victoria*. Retrieved from http://www.parliament.vic.gov.au/images/stories/LRDCPC/Submissions/Submission_36_-_Drug_Court_of_Victoria.pdf.

Peters, R. H., & Peyton, E. (1998). Guideline for drug courts on screening and assessment. *Mental Health Law & Policy Faculty Publications, 363*, 1-57.

Powell, C., Bamber, D., & Christie, M. (2007). Drug treatment in the criminal justice system: Lessons learned from offenders on DTTOs. *Drugs: Education, Prevention and Policy, 14*(4), 333-345.

Powell, C., Bankart, J., Christie, M., Bamber, D., & Arrindell, T. (2009). Drug testing in the criminal justice system: Solutions to a costly commodity. *Journal of Substance Use, 14*(6), 393-407.

Prochaska, J. (1999). Stages of change approach to treating addictions with special focus on DWI offenders. In P. Harris & M. Lanham (Eds.), *Research to results: Effective community corrections*: American Correctional Association.

Prochaska, J. O., Velicer, W. F., DiClemente, C. C., & Fava, J. (1988). Measuring processes of change: applications to the cessation of smoking. *Journal of Consulting and Clinical Psychology, 56*(4), 520.

Punch, K. F. (2014). *Introduction to social research: Quantitative and qualitative approaches* (3rd ed.) Melbourne: SAGE.

Roberts, J. C., & Wolfer, L. (2011). Female drug offenders reflect on their experiences with a county drug court program. *Qualitative Report, 16*(1), 84-102.

Roberts, L., & Indermaur, D. (2006). Timely intervention or trapping minnows? The potential for a range of net-widening effects in Australian drug diversion initiatives. *Psychiatry, Psychology and Law, 13*(2), 220-231.

Rose, N. (1999). *Powers of freedom: Reframing political thought*. Cambridge: Cambridge University Press.

Rose, N., & Miller, P. (1992). Political power beyond the state: Problematics of government. *British Journal of Sociology, 61*, 173-205.

Rzetelny, A., Zeller, B., Miller, N., City, K. E., Kirsh, K. L., & Passik, S. D. (2016). Counselors' clinical use of definitive drug testing results in their work with substance-use clients: A qualitative study. *International Journal of Mental Health and Addiction, 14*(1), 64-80.

Sarantakos, S. (1998). *Social research* (2nd ed.). South Melbourne: Macmillan Education Australia.

Satel, S. (1998). Observational study of courtroom dynamics in selected drug courts. *National Drug Court Institute Review, 1*(1), 43-72.

Seddon, T. (2000). Explaining the drug-crime link: Theoretical, policy and research issues. *Journal of Social Policy, 29*(1), 95-107.

Seddon, T. (2005). Searching for the next techno-fix: Drug testing in the criminal justice system. *Criminal Justice Matters, 58*, 16-17.

Seddon, T. (2007). Coerced drug treatment in the criminal justice system: Conceptual, ethical and criminological issues. *Criminology and Criminal Justice, 7*(3), 269-286.

Seddon, T. (2011). Court-ordered treatment, neoliberalism and Homo economicus. In S. Fraser & David Moore (Ed.), *The drug effect: Health, crime and society* (pp. 155-170): New York: Cambridge University Press.

Sedgwick, E. K. (1994). Epidemics of the will. In E. K. Sedgwick (Ed.), *Tendencies* (pp. 130-142). Durham, NC: Duke University Press.

Seear, K. (2017). The emerging role of lawyers as addiction 'quasi-experts'. *International Journal of Drug Policy, 44*, 183-191.

Seear, K., & Fraser, S. (2014). The addict as victim: Producing the 'problem' of addiction in Australia victims of crime compensation laws. *International Journal of Drug Policy, 25*(5), 826-835.

Sentencing Act 1991 (Vic) Subdivision (1C) (Austl).

Seligman, M. E. (1975). *Helplessness: On depression, development, and death.* New York, NY: WH Freeman.

Singleton, N. (2008). Policy forum: The role of drug testing in the criminal justice system. *Drugs and Alcohol Today, 8*(3), 4-8.

Spivakovsky, C., & Seear, K. (2017). Making the abject: Problem-solving courts, addiction, mental illness and impairment. *Continuum, 31*(3), 458-469.

Stafford, J., & Burns, L. (2013). Australian drug trends 2012: Findings from the illicit drug reporting system (IDRS). In *Australian Drug Trends*. University of New South Wales: Sydney.

Strike, C., & Rufo, C. (2010). Embarrassing, degrading, or beneficial: Patient and staff perspectives on urine drug testing in methadone maintenance treatment. *Journal of Substance Use, 15*(5), 303-312.

Taxman, F. S., Soule, D., & Gelb, A. (1999). Graduated sanctions: Stepping into accountable systems and offenders. *The Prison Journal, 79*(2), 182-204.

Tenzek, K. (2017). Field-notes. In M. Allen (Ed.), *The SAGE encyclopedia of communication research methods* (pp. 563-566): SAGE Publications.

Tiger, R. (2011). Drug courts and the logic of coerced treatment. *Sociological Forum, 26*(1), 169-182.

Tiger, R. (2012). *Judging addicts: Drug courts and coercion in the justice system*. New York, NY: NYU Press.

Tomazin, F. (2016, April 16). Andrews unveils new drug court to help ice users kick the addiction. *The Age*. Retrieved from http://www.theage.com.au/victoria/andrews-unveils-new-drug-court-to-help-ice-users-kick-the-addition-20160416-go7vp0.html

Tonry, M., & Lynch, M. (1996). Intermediate sanctions. In M. Tonry (Ed.), *Crime and justice: A review of research* (pp. 99-144). Chicago, IL: University of Chicago Press.

Took, G. (2011). *NSW drug court: A socio-legal case study* (Unpublished Master of Social Science thesis), University of New South Wales, NSW.

Trask, S., & Inman, M. (2017). ACT government pays $130,000 for UNSW to design drug and alcohol court. *The Canberra Times*. Retrieved from https://www.canberratimes.com.au/national/act/act-government-pays-130000-for-unsw-to-design-drug-and-alcohol-court-20171009-gyx0au.html

Tyler, B. (2016, September 15). Geelong regional drug court push gains traction. *Geelong Advertiser*. Retrieved from http://www.geelongadvertiser.com.au/news/crime-court/regional-drug-court-in-geelong-talk-gains-traction/news-story/5d0f7c72c792e37b4aa926c35299587a

Valverde, M. (1998). *Diseases of the will: Alcohol and the dilemmas of freedom*. Cambridge: Cambridge University Press.

Victoria Legal Aid. (2018). *Police powers and your rights*. Retrieved from https://www.legalaid.vic.gov.au/find-legal-answers/police-powers-and-your-rights

Victorian Alcohol and Drug Association. (2013). *Drug courts in Victoria: Evidence & options*. Retrieved from http://www.vaada.org.au/wp-content/uploads/2013/09/Position-Paper-Drug-Courts-FINAL.pdf

Victorian Auditor-General. (2014). *Prisoner transportation*. Retrieved from https://www.audit.vic.gov.au/sites/default/files/20140611-Prisoner-Transport.pdf

Victorian Council of Social Services. (2015). *Expanding the Victorian drug court model.* Retrieved from http://vcoss.org.au/blog/expanding-the-victorian-drug-court-model/.

Victorian Council of Social Services. (2017). *Homelessness census data a 'wake up call'*. Retrieved from https://vcoss.org.au/news/homelessness-census-data-a-wake-up-call/

Victorian Equal Opportunity and Human Rights Commission. (2007). *Victoria's Charter of Human Rights and Responsibilities*. Retrieved from https://www.humanrightscommission.vic.gov.au/the-charter

Victorian Government. (2017). *New drug rehabilitation plan*. Melbourne Retrieved from https://www.vic.gov.au/system/user_files/Documents/Drug%20policy%20-%2031%20October%202017%20(no%20images).pdf.

Victorian Ombudsman, & Office of Police Integrity Victoria. (2006). Conditions for persons in custody. Melbourne: Victorian Government. Retrieved from https://www.ombudsman.vic.gov.au/getattachment/9825922c-6883-4db4-bca2-4f1405863e8d.

Victorian Ombudsman. (2014). *Investigation into deaths and harm in custody*. Retrieved from http://apo.org.au/node/39111.

Victorian Ombudsman. (2015). *Investigation into the rehabilitation and reintegration of prisoners in Victoria*. Melbourne: Victorian Government.

Vrecko, S. (2009). Therapeutic justice in drug courts: Crime, punishment and societies of control. *Science as Culture, 18*(2), 217-232.

Weekes, J., Mugford, R., Bourgon, G., & Price, S. (2007). *Drug treatment courts: FAQs*. Retrieved from http://www.ccsa.ca/Resource%20Library/ccsa-011348-2007.pdf

Wenzel, S. L., Longshore, D., Turner, S., & Ridgely, M. S. (2001). Drug courts: A bridge between criminal justice and health services. *Journal of Criminal Justice, 29*(3), 241-253.

Whiteacre, K. W. (2007). Strange bedfellows: The tensions of coerced treatment. *Criminal Justice Policy Review, 18*(3), 260-273.

Wilson, W., & Derse, E. (2001). *Doping in elite sport: The politics of drugs in the Olympic movement*. USA: Human Kinetics.

Wincup, E. (2014). Thoroughfares, crossroads and cul-de-sacs: Drug testing of welfare recipients. *International Journal of Drug Policy, 25*(5), 1031-1037.

Wish, E. D., & Gropper, B. A. (1990). Drug testing by the criminal justice system: Methods, research, and applications. *Crime and Justice, 13,* 321-391.

Wittouck, C., Dekkers, A., De Ruyver, B., Vanderplasschen, W., & Vander Laenen, F. (2013). The impact of drug treatment courts on recovery: A systematic review. *The Scientific World Journal, 2013*, 1-12.

Wundersitz, J. (2007). *Criminal justice responses to drug and drug-related offending: Are they working?* Canberra: Australian Institute of Criminology

Zeballos, Z. (2011). *What is otherness?* Retrieved from https://othersociologist.com/otherness-resources/

Zweig, J. M., Rossman, S. B., Roman, J. K., Markman, J. A., Lagerson, E., & Schafer, C. (2011). *The multi-site adult drug court evaluation: What's happening with Drug Courts? A Portrait of Adult Drug Courts in 2004*, Volume 2. Retrieved from https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=259136

Appendix A: Observation schedule

Activity description	Areas of observation relevant to dependence
Case conference The case conferences are held prior to each participant's review hearing and are attended by the drug court registrar, police prosecutor, legal aid Lawyer, clinical advisor and case manager, all of whom provide the Magistrate with updates regarding: - The ongoing performance of the participant in relation to drug use, treatment and compliance on the drug treatment order (order); - Possible variations of the order; - Appropriate rewards and/or sanctions; and - Further offending or dealings with the police. Regardless of what has been discussed and put forward at the case conference by the drug court team, no decision will be made until the participant is given the opportunity to be heard at the review hearing	- How is regular drug use spoken about? What words are used (i.e. addiction, dependence, habit, misuse, abuse, other)? - Do participants define dependence? How? - What constitutes non-compliance with substance treatment? - In relation to substance treatment what behaviours are rewarded and what behaviours are sanctioned? - How are rewards and sanctions delivered? - In what circumstances is relapse tolerated e.g. other research has suggested that initially drug use is not sanctioned if the participant is honest about drug use, at what point does drug use starts being sanctioned, even if the participant is honest about such use? - How are factors such as 'honesty' tested or evaluated? - What type of substance treatment is offered? - In what instances are other substance service providers or people connected to the participants such as family members called in to contribute in the case conference? - Specific contributions by different key professionals - Well established pharmacotherapies such as opioid replacement therapy, does the participant retain some control over the way this type of treatment is provided? Or do the requirements for attendance and dosing become even stricter than normal (where there is room for some flexibility) because it is part of court ordered treatment?
Review hearing These hearings can be held weekly, fortnightly and monthly. The drug court participant appears in court for the magistrate to review progress and to reward or sanction positive and negative behaviours. These court reviews monitor overall progress, the drug treatment court team is also present	- Interactions between magistrate and participant, including: o Language used to describe use (i.e. addiction, dependence, habit, misuse, abuse, other)? - Interventions by other key professional during this hearing? - Is the participant given an opportunity to be heard? - How is their contribution taken into account? e.g. In which cases are the rewards and sanctions put forward in the case conference modified after hearing the participant's response? - How do participants express themselves before the magistrate? E.g. will sanctions be modified if a participant shows signs of repentance as opposed to impenitence? How are these behaviours assessed or evaluated?

	- How do participants react to rewards/ sanctions? - In what ways do concepts of dependence and assumptions about the 'addict' surface in the Court, including: o Assumptions about trustworthiness or untrustworthiness; o Chaos and dis/order; o Weakness; o Emotion. - How are each of these understood to be relevant?
Screening hearing The magistrate will hear and determine eligibility issues that might be contested by the prosecution, such as whether the offences warrant an immediate term of imprisonment not exceeding two years, whether the defendant has links to the prescribed catchment area of the drug court and whether the offences are drug related	How is the association between crime and dependence conceptualized and established in the drug court? How is treatment tailored for addiction/ dependence according to drug type, are there any differences, similarities? How is dependence diagnosed? What diagnostic tools are used? How are the drugs of choice determined? Is it through self-report, urinalysis, other?
Sentencing hearing The magistrate will consider the assessment reports, the court will hear a plea and impose a sentence of imprisonment according to the usual sentencing rules.	- How does the magistrate decide that the potential participant is 'dependent' on drugs and/or alcohol; and that the potential participant's dependence/ addiction contributed to the commission of the offence; - Are there any instances when an applicant has been found not to be eligible because they are not substance dependent or motivated enough to undertake the order? - How is 'motivation' evaluated?
Breaching/termination hearings	What constitutes a major breach of the order?

Other areas of observation in relation to dependence

What language is used to discuss substance use (addiction/ dependence/ problematic use/ other)?

Who uses the language?

How and by whom dependence (related terms) is first mentioned in the proceeding?

How is the relationship between crime and dependence conceptualised and established in the drug court?

How does the drug court operationalise ideas of substance use, dependence and crime?

How is substance dependence language deployed in practice?

What concepts of agency and responsibility are used within the court setting?

How is motivation to complete the drug treatment order established? What language is used?

What aspects are taken into consideration to promote participants to the next phase of the drug treatment order?

What is the source of dependence? Is it within the individual or is it the substance that is addictive? Are some substances more addictive than others? What is the agency of substances? What is the agency of ‘addicted’ participant?

Appendix B: Profile of interviewed drug court participants

Name (pseudonym)	Gender	Cultural background	Age group	Time on drug treatment order
Kermit	male	Culturally and linguistically diverse (CALD) Turkish born	25-30 years	Six months
Mateo	male	Anglo-Australian	25-30 years	One year
Erik	male	CALD Australian born/ Turkish background	30-39 years	Six months
Henri	male	CALD Australian born/ Greek background	30-39 years	Two years
Hugo	male	CALD Pacific islander background	30-39 years	One year
John	male	CALD Australian born/ Spanish background	30-39 years	Six months
Cirilo	male	CALD Australian born/ Greek background	30-39 years	One and half years
Simon	male	Anglo-Australian	30-39 years	One year
Abel	male	Anglo-Australian	40-50 years	Three months
Bernard	male	CALD Australian born/ Greek background	40-50 years	One year
Gabriel	male	Anglo-Australian	40-50 years	Six months
Marco	male	Anglo-Australian	40-50 years	Five months
Simon	male	Anglo-Australian	40-50 years	One and half years
Salman	male	CALD Indian born	Over 50 years	Three months

Appendix C: Interview schedules

Drug court personnel

Common Questions

1. Can you explain briefly what your role is in the drug court?

Defining addiction

2. What language do you use for substance addiction/ dependence? Why?
3. How do you define substance addiction/ dependence?/ What do you think addiction is?
4. How would you describe the approach you take to addiction? Do you follow a particular model or clinical framework? Are there any concepts and models of addiction that you are aware of, but choose not to incorporate in your work? Can you tell me about the reasons for choosing not to use these concepts?

Causes of addiction

5. Do you have a view on what the causes of addiction, if any, might be?
    - Why do you think some people become addicted?

Effects of addiction

6. Do you have a view on what the consequences of addiction, if any, might be?
    - Do you have a view on the relationship between substance use and offending, if there is any?

Questions specific to roles

Magistrate	*Diagnosing/ assessing addiction* 1. When assessing the eligibility and suitability of offenders for the drug court, what are the key things you are looking for? 2. What things do you take into account in assessing whether or not a participant has a dependence or addiction? 3. What things do you take into account when assessing the relevance of that dependence to an applicant/ participant's offending? 4. What things do you take into account when assessing the relevance of that dependence to the issues before you? 5. What things do you take into account when assessing whether and how to manage that dependence or addiction? 6. What sort of things do you take into consideration to assess whether DTC participants should be demoted to a lower phase of promoted to the next phase? - What is the relevance, if any, of lapse or relapse? - When you say a participant has achieved control over their drug use, what do you mean by control?

Victoria Police Representative	*Assessing addiction* 1. Are you tasked with making decisions about whether an individual has a substance dependence or addiction/ How so? 2. What things do you take into account when assessing whether or not a participant has a dependence or addiction? 3. What things do you take into account to assess the relevance of that dependence to the issues before you? (reoffending, protection of the community) 4. What things do you take into account in assessing whether and how to manage that dependence or addiction? 5. What sort of things do you take into consideration to assess whether drug court participants should be demoted to a lower phase or promoted to the next phase? • What is the relevance, if any, of relapse or lapse? 6. When you seek to cancel a participant's drug treatment order, how is drug use relevant?
Housing worker	1. Can you explain the role of housing in addressing participants' substance addiction? Assessing addiction 2. Are you tasked with making decisions about whether an individual has a substance dependence or addiction/ How so? 3. What things do you take into account when assessing whether or not a participant has a dependence or addiction? 4. What things do you take into account when assessing the relevance of that dependence to the issues before you? (participant not paying rent, poor engagement, unkempt property, issues with neighbours) 5. What things do you take into account whether and how to manage that dependence or addiction? • Reporting issues to drug court 6. I understand that through your liaisons with the drug court you receive information about the drug court participant, such as level of drug use and engagement with treatment services. How is this information relevant to your work as a housing worker? 7. What sort of information about the participant's living circumstances are you expected to share with the court? 8. What things do you take into account to decide whether to nominate a drug court participant to a THM (temporary housing management property)? Is the court involved in this decision? How so? • Can you explain how outstanding legal matters and likelihood of going into custody play a role in making this decision?
Alcohol and other drugs clinical advisor	*Diagnosing addiction* 1. When assessing the eligibility and suitability of offenders for the drug court, what are the key things you are looking for? • What things do you take into account in assessing whether or not a participant has a dependence or addiction? • What things do you take into account when assessing the relevance of that dependence to an applicant/ participant's offending? • If motivation is mentioned: Can you tell me why motivation is relevant? How do you assess the applicant's level of motivation to undertake the drug treatment order? • If awareness of a 'problem' is mentioned: What things do you take into account in assessing whether or not the applicant is aware of the nature and extent of their substance dependence/addiction? • How do you establish a candidate/ participant should be on an alcohol ban? 2. During the assessment for program eligibility do you use any addiction screening or diagnostic tools? Can you tell me about those? In what ways are they useful? 3. What sort of things do you take into consideration to assess whether drug court participants should be demoted to a lower phase or promoted to the next phase?

	• What is the relevance, if any, of lapse or relapse? *Other* 4. Do you spend much time confirming information participants have provided such as attendance to treatment appointments, whether medical certificates are genuine, etc. Why is that? 5. What is the difference between working as an alcohol and other drug clinician in the mainstream sector as opposed to being a clinician at the drug court? ▪ Harm minimisation
Community Corrections Case managers	*Assessing addiction* 1. When assessing the eligibility and suitability of offenders for the drug court, what are the key things you are looking for? 2. What things do you take into account in assessing whether or not a participant has a dependence or addiction? 3. What things do you take into account when assessing the relevance of that dependence to an applicant/ participant's offending? 4. What things do you take into account in assessing whether or not an applicant is *capable* of undertaking a drug treatment court? *Other* 5. What sort of things do you take into consideration to assess whether drug court participants should be demoted to a lower phase of promoted to the next phase? ▪ What is the relevance, if any, of lapse or relapse? 6. When you seek to cancel a participant's drug treatment order, how is their drug use relevant? 7. Can you describe the difference between supervising offenders on a drug treatment order and those on mainstream corrections orders? Especially in relation to substance addiction
Defence Lawyer	1. Are you tasked with making decisions about whether an individual has a substance dependence or addiction/ How so? 2. What things do you take into account when assessing whether or not a participant has a dependence or addiction? 3. What things do you take into account the relevance of that dependence to the issues before you? 4. What things do you take into account when assessing whether and how to manage that dependence or addiction?

Treatment of addiction

1. Can you talk about how dependence/addiction is treated in the drug court?
   - Why do you think the court encourages certain treatment approaches such as
     - 12-step meetings
     - Psychological treatment
     - Community work
     - Pharmacotherapy
     - What is your view about the role the sanctions and rewards system plays in addressing addiction in the drug court?
       - Do you have a view on the therapeutic value of time spent in custody serving sanctions, if there is any?

- What is your view about the role drug testing plays in addressing addiction in the drug court?

    - In your view, why is honesty about drug use so important for the court?

2. What non-alcohol and other drug related services does the court offer to participants?
3. How are they important for drug court participants?
4. What, overall, are you hoping to achieve through treatment?
5. What does the participant need to demonstrate in relation to the drug use in order to complete the program (either graduate or simply complete the order after two years)

That concludes our set of questions. Is there anything else you would like to tell me about your perspectives of addiction?

Drug court participants interview schedule

1. Can you tell me a bit about how you became involved in the drug court program?

    - What were your main motivations for being part of the program?

2. How long have you been in the drug court program?
3. Have you participated in this program on more than one occasion?
4. What phase of program are you in?
5. What phases of the program did you complete? (For previous participants)
6. Suppose I was present with you during the assessments for admission into the drug court, what would I see happening?
7. What is your view about the sanctions and rewards system used by the court?

    - Have you served any sanctions during your time on the drug treatment order?
    - How does serving sanctions in prison affect you?
    - Were you able to continue taking pharmacotherapy or other prescribed medication while you were in custody?

8. I am interested about your experience with the drug testing procedures?

- Can you describe what happens after you arrive to the drug court house to test

- Waiting routine
- Admitting to drug use
- Feeling of being supervised

9. How do you find the regular review hearings?
    - Getting the review sheets
    - Facing the magistrate on a regular basis
    - Courtroom setting, presence of audience
10. Have you been asked to complete 'homework' by a member of the drug court team such as keeping a 'drug diary', workbooks, writing reflective essays about using?

What are your thoughts about these tasks?

11. Do you have a view on the relationship between substance use and offending, if there is any?
12. Before coming into contact with the drug court program what did you think about substance use?
13. Since your involvement in the drug court how do you view substance use?
14. How did the different professionals connected to the drug court talk to you about your substance use?
15. During your time as a participant in the drug court, did people talk to you about addiction or dependence? What was said to you about addiction?
16. What do you think addiction is?
17. Why do you think some people become addicted?
18. How do you think the drug court viewed this? Can you tell me whether their approach was similar or different to yours? In what ways?

Let me ask you to think now about how you perceive substance use through your experiences in the drug court.

19. Can you talk about the alcohol and other drug treatment you are currently receiving through the drug court?
20. I understand that there are a number of substance treatment programs encouraged by the court such as narcotic anonymous meetings, early recovery skills group, and psychological treatment?

    What is your view about these different approaches?
21. How appropriate to your situation do you find the substance treatment offered?
22. Have you found out about new treatment approaches that you didn't know about before?
23. What other services do you receive through the drug court? What is your opinion of these services?
24. How has the drug court experience challenged or confirmed your previous ideas about substance use/ addiction/ dependence?
25. How does the routine of attending regular appointments, hearings & testing fit into/ impact on your daily life?
    - Time spent at the pharmacy collecting medications, testing, hearings
26. If you have experienced any other type of mandated substance treatment through community based orders, how do those experiences compare to your experience of substance treatment in the drug court?
27. Would you recommend the drug court to others? Why/not?

Appendix D: List of documents provided by the Drug Court of Victoria

Policy and procedure documents	Policy No. 1.Key policies and principles (n.d.) 2.Program eligibility and selection (2012) 3.Program catchment area (2012) 4.Screening and Assessment (n.d.) 5.Participant requirements (2012) 6.Program structure (2012) 7.Sanctions and rewards (2013) 8.Urinalysis and breath testing (2012) 12.Communications and media policy (2013) 17.Material Aid (2013) 18.Medical certificates (2013)
Other documents (not describing drug processes)	• Drug court of Victoria, Program logic (n.d.) • Drug court of Victoria, Participant manual (n.d.) • Drug court of Victoria, strategic plan 2013-2015 (2013) • International best practice in drug courts (n.d.) • Drug court of Victoria organizational chart (2012) • The Drug Court of Victoria assessment, interview guide (n.d.)

Appendix E: Techniques of operant conditioning

	REWARD	**SANCTION**
GIVE	Positive reinforcement (1)	Punishment (2)
TAKE	Response cost (3)	Negative reinforcement (4)

Basic techniques of operant conditioning or contingency management.

According to Marlowe (2007) there are four ways to influence the behavior of drug court participants through the application of sanctions or rewards:

(1) *Give a reward for good behavior (positive reinforcement).* Praising a drug offender or giving token gifts for attending counseling sessions are examples of positive reinforcement.

(2) *Give a sanction for bad behavior (punishment)*. Giving an offender a writing assignment or jail detention for using drugs are examples of punishment.

(3) *Take away a reward or something of value for bad behavior (response cost)*. Imposing a monetary fine or revoking an offender's driver's license for driving under the influence are examples of response cost. Response cost is similar to punishment in that they both cause distress to the individual and are designed to reduce unwanted behaviors. For response cost, the sanction involves losing something of value such as money or driving privileges.

(4) *Take away a sanction for good behavior (negative reinforcement).* Drug courts often structure their incentives in the negative. That is, participants are commonly rewarded with reductions in treatment or supervisory obligations or with the elimination of a criminal record or avoidance of incarceration. Negative reinforcement is similar to positive reinforcement in that they are both desired by the individual and are both designed to increase wanted behaviors. Negative reinforcement involves relief from unpleasant circumstances, whereas positive reinforcement involves giving a new, prospective reward.

Appendix F: Drug court participant conference and review sheet

DRUG COURT PARTICIPANT CONFERENCE AND REVIEW SHEET

Name:		Phase:		Date:		Previous Sanctions:	

Case Manager:	Clinical Advisor:	Counsellor:	Medical Practitioner:	DCHAP Worker:	Lawyer:

DRUG & ALCOHOL TESTING RESULTS

Date Tested	Admit / Notes	Sample Type: U/B	Clear	Reducing	Cannabis	Opiates	Benzodiazepines	Ethanol/Alcohol	Sympath. Amines	Maintenance meds	Awaiting	Dilute	Prescribed / Dose: / Other(s) / Notes	Sanction Tally
		U	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐		
		U	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐		
		U	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐		
			☐	☐	☐	☐	☐	☐	☐	☐	☐	☐		
	Admit: Methadone, Efexor, Result: Amphetamine: FRESH USE Methamphetamine: FRESH USE Morphine: FRESH USE	U	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐		
	FTA		☐	☐	☐	☐	☐	☐	☐	☐	☒	☐		
	Admit: Methadone, , Vit B Result: Methamphetamine: REDUCING	U	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐		
	Admit: Methadone, Result: Morphine: FRESH USE	U	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐		
	Admit: Methadone Result: Morphine: FRESH USE	U	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐		

Examples of how drug test results are reported

ABEY:		RUNNING TOTAL	

CASE SUMMARY

Date	Event	Description	Attended

DRUG COURT PARTICIPANT CONFERENCE FEEDBACK SHEET

Name:		Phase:	1	Date:		Previous Sanctions:	0/0

Case Manager:	Clinical Advisor:	Counsellor:	Medical Practitioner:	DCHAP Worker:	Lawyer:

CASE MANAGER FEEDBACK

Next Appointment:

CLINICAL ADVISOR FEEDBACK

Next Appointment:

COUNSELLOR FEEDBACK Agency:

Next Appointment:

DCHAP FEEDBACK

Next Appointment:

LEGAL/POLICE ISSUES

Notes:

Next Appointment:

Next Review: **Time:** **TOTAL SANCTIONS:**

Appendix G: Drug Court of Victoria urinalysis and breath testing times

The drug court participant manual lists the following testing times:

Monday	9.30 a.m. to 5 p.m.
Tuesday	9.30 a.m. to 4 p.m.
Wednesday	9.30 a.m. to 5 p.m.
Thursday	1.00 p.m. to 4 p.m.
Friday	9.30 a.m. to 5 p.m.

The manual lists some additional rules around testing times:

- Participants on phase 1 must arrive to test before 3 p.m. (unless they have been given permission to test before 5 p.m.)
- **Testing before lunch**

  The drug court closes for lunch between 1.30 p.m. and 2 p.m. The last participant to test before lunch will be accepted not later than 1.20 p.m. Anyone testing after 1 p.m. must accept that they may not get to test before 1.30 p.m. If there are too many people waiting. It is at the discretion of reception whether participants can test before lunch.
- **Testing before 5 p.m.**

  The drug court closes at 5 p.m. sharp. This does not mean that if you arrive one minute before 5 p.m. that you can still test. It means it closes at 5 p.m.

  Participants arriving after 4. 30 p.m. risk not being able to test if there are too many people who have arrived at around the same time. This is at the discretion of reception.

  Priority will be given to participants who work, and have prior permission to test later in the day

Appendix H: Request to access the drug court

SELECT ONE BOX ONLY

drugcourtdandenong@courts.vic.gov.au

drugcourtmelbourne@courts.vic.gov.au

Accused Surname: Date of Birth: / /

Given Names: CRN:

Current Address:

VIC

Address at time of offending/ link (if homeless) to catchment area:

VIC

Lawyer's name: Name of Firm:

Lawyer's email:

Lawyer's mobile: Office phone:

Have all reports (e.g. medical/psych reports) been attached?

MATTERS REFERRED FOR SCREENING

INFORMANT	NEXT HEARING DATE

By lodging this document with the Drug Court I hereby certify that the cases listed above are ready to proceed as guilty pleas with all negotiations completed **(screening will not progress unless matters are certified as ready).**

Does the accused meet the Drug Court eligibility criteria (Y = yes, N = no, U = unsure):

1. Catchment area: Does the accused qualify?
2. Guilty plea: Is the case ready to proceed as a guilty plea?
3. Serious offences: Would the offences warrant immediate gaol?
4. Is the accused dependant on drugs and/or alcohol?
5. Did the dependency contribute to the commission of the offences?
6. Are any sex offences amongst the charges coming to the Drug Court?
7. Do any of the offences involve the infliction of actual bodily harm?
8. If, yes, is that actual bodily harm of a minor nature?
9. Is the accused subject to the following:
    a) Parole; and/or
    b) A sentencing order of the County or Supreme Court?
10) Are there breach proceedings listed at the County Court?

    When is the breach listed? _____

Please email completed form to the Drug Court ASAP