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04

Bail support: A review of the literature

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Terminology

The terminology used in this report acknowledges that people charged with an offence and granted bail are innocent and cannot be considered as offenders with respect to those charges. The eligibility criteria of bail support programs across Australia vary; some require that participants have pleaded guilty to the offences they have been charged with, while others do not. Therefore some programs and services work with both offenders and those who have not been convicted of an offence.

Throughout this report those participating in bail support programs are variously referred to as accused persons, defendants, clients and participants. Unless a particular meaning is required or implied, these terms are used more or less interchangeably.

Executive Summary

This report presents the results of a literature review on bail support programs and services commissioned by the ACT Justice and Community Safety Directorate as part of their Justice Reform Strategy. A wide range of resources in criminological and other social services databases, accessed through the AIC's JV Barry Library, were reviewed, and a number of government agency websites and public internet resources were examined.

The literature search found information on a range of different support programs, including evaluations and reviews of some of these. Each Australian state and territory runs at least one program or service to support people on bail—either directly, to allow the courts to grant bail, or to provide treatment and other services to defendants on bail. In some instances different types of programs have been merged but, overall, bail support programs across Australia have much in common. Their services nonetheless vary in range, extent and duration and the degree to which they are provided directly by government agencies or through referral by non-government agencies. Different Australian jurisdictions have different eligibility requirements for participation in the program; some require defendants to have entered a guilty plea, while this is not a consideration for other programs.

In addition to the programs offered throughout Australia, literature on bail support and supervision responses in New Zealand, Canada, the United States and the United Kingdom (UK) was also reviewed. The program and service responses in these nations are generally similar to Australia's; their offenders and defendants have similar needs and their criminal justice systems and processes are broadly comparable. The literature review also examined practices in a number of European countries, including in Scandinavia. The review found that these countries take quite different approaches from Australia to determining and effecting the release or incarceration of accused persons. In Scandinavian countries, bail is very rarely used.

The examination of bail support practices, and the evaluations and reviews of various programs and services, allowed a set of best-practice principles for the implementation and operation of bail support programs to be identified. These principles apply to both programs targeting adults and those targeting children and young people. However, the principles are applied somewhat differently, reflecting the different legal considerations, responsibilities and needs of adult and youth clients.

Best-practice principles suggest that bail support programs should:

- be voluntary, ensuring that the client is at least somewhat motivated and willing to engage with treatment and make changes to their life;
- be timely and individualised—that is, available immediately upon bail being granted and responsive to the accused person’s immediate needs, even before they have left the court;
- be holistic, addressing the full range of the individual’s criminogenic needs;
- be collaborative, using interagency approaches involving other government and non-government service providers;
- consistently apply a strong program philosophy program-wide, at the individual case-manager level;
- prioritise support over supervision, with response to and treatment of an individual’s criminogenic needs emphasised over monitoring;
- be localised and make use of local community resources and knowledge;
- have a court-based staffing presence and establish good working relationships with court officers and service providers. Working relationships with court officials and the judiciary are important for establishing credibility and instilling judicial confidence; and
- be based on sound guidelines and processes that assist clients to engage with the structured processes of the courts and the requirements of court orders while maintaining program integrity.

The implementation of bail support programs also poses a number of challenges. The foremost is perhaps the availability of suitable, affordable housing. This appears critical to the granting of bail and to participants’ ability to complete a bail program. Housing is also critical to successful longer-term employment outcomes and maintaining a stable, pro-social lifestyle. Housing availability is a challenge across all Australian jurisdictions and will remain an issue for bail support service providers. The establishment of bail hostels like those widely used in the UK may increase housing availability, although hostels raise a range of issues and have had little success in Australia. The availability and accessibility of treatment programs and other services are integral to the provision of bail support. Limited treatment places, particularly outside metropolitan areas, may prevent clients from successfully completing bail programs.

Despite these challenges, experiences in Australia and overseas have shown that government agencies can deliver effective bail support services to a wide range of people who come before the courts. Bail support services have contributed to reduced remand populations, reduced reoffending among participants, and improved sentencing and long-term outcomes for both accused persons and the criminal justice system.

Introduction

This report reviews the literature on Australian and international programs and services that support the granting of bail to accused people who appear before the courts. The review was developed for the ACT Justice and Community Safety Directorate (JACS) to help inform its Justice Reform Strategy. The Strategy is a two-year project, launched in 2014 to review sentencing laws and practices in the ACT. It aims to inform alternatives to imprisonment, improve criminal justice outcomes and reduce recidivism.

This review of bail support literature will contribute to JACS's work on the Strategy by providing evidence of how different jurisdictions support individuals in obtaining bail and remaining out of remand custody. It offers a basic outline of the principle and application of bail in Australian courts and outlines the concept of bail support services and what they seek to achieve. It will then examine different approaches to bail support adopted in Australia and internationally. The report will distil the findings from these evaluations and related discussions in the literature into some guidelines for effective practice in the application of bail support services. This will include consideration of some of the challenges in implementing effective bail support. Finally, the report will conclude with some observations on how bail support might be implemented in the ACT.

What is bail?

Bail is a practice used by police and the courts whereby a person charged with an offence can be released from custody on their signed undertaking that they will appear in court to answer charges at the required time (Anderson 2014; Fitzroy Legal Service 2015; Thomson Reuters 2015). It essentially involves deciding whether an accused person should be at liberty between the time of their arrest and the delivery of a verdict on the charges against them (ALRC 2010). In some circumstances and jurisdictions, bail may be granted subject to a financial surety. A decision to grant bail takes into account the defendant's circumstances and the circumstances of the offence. Where a person is accused of a serious offence—especially a violent offence—likely to carry a sentence of imprisonment, and has been assessed as a high risk of further offending or flight, they will generally be remanded in custody. For minor offences requiring a court appearance, police usually issue a charge and a summons to appear in court (Bamford, King & Sarre 1999; Fitzroy Legal Service 2015; Thomson Reuters 2015). A summons is issued

where there is no reasonable likelihood that the defendant poses a risk to the community or would seek to avoid prosecution by failing to appear. Bail is usually applied to offences that fall between these scenarios—for mid-range offences that may carry a sentence of imprisonment but where there is little risk of reoffending or flight.

The use of bail is consistent with Australia's obligations under the International Covenant on Civil and Political Rights which stipulates that those awaiting trial should not, as a general rule, be held in custody, but that their release may be conditional on a guarantee they will appear when required (ALRC 2010). As a principle of Australian law, bail should only be refused where this is necessary to protect the community and reduce the likelihood of further offending, failure to appear in court or behaviour such as interfering with witnesses. Australian courts have determined that bail should not be used to coerce or punish a person, and its application must be consistent with the presumption of innocence. In the New South Wales (NSW) case of *R v Mahoney Smith* ([1967] 2 NSW 154 at 158), O'Brien J stated:

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But it is, I think, important to keep in mind that the grant or refusal of bail is determined fundamentally on the probability or otherwise of the applicant appearing at Court as and when required and not on his supposed guilt or innocence and that the detention of an accused person in lieu of bail cannot be imposed in any way as a retribution for any guilt which might be supposed from the fact of his arrest and charge and committal for trial. Even more so is it important to keep in mind that such detention cannot be imposed as an expression of resentment of his defence or the answer made by him or through his legal representative to the evidence led against him upon the proceedings for his committal for trial.

There are a number of consequences should a person released on bail fail to appear in court (Anderson 2014; Bamford, King & Sarre 1999; Thomson Reuters 2015). A warrant will usually be issued for the defendant's arrest; any financial surety attached to the bail is forfeited to the court and, therefore, the state. If arrested, the accused is unlikely to be granted bail again, and will be held in remand custody until their matter is heard by the court. Failure to appear may also be used in evidence at the accused's hearing or trial.

Courts considering granting bail will take into consideration not only the nature and severity of the offence but any other circumstances that may impact on the defendant's likelihood of reoffending or failing to appear in court, or of the person being located should they reoffend or fail to appear. The court will consider any previous failure to attend, the individual's character, their background (including their offending history and community ties), how bail is likely to impact on their family, and the strength of the evidence against them (see the *ACT Bail Act 1992*, s22). Other matters that might be considered include the nature and extent of the accused's alcohol and drug use, any mental health issues, whether they are employed or undertaking treatment, and whether they have stable accommodation. For children and young people, the availability of a parent or guardian who can help them refrain from offending and

attend court is an important consideration (see the ACT *Bail Act 1992*, s23, and the ACT *Children and Young People Act 2008*). In some Australian jurisdictions, such as Queensland and Victoria, special considerations will apply to Aboriginal and Torres Strait Islander people (see the QLD *Bail Act 1980* and the Victorian *Bail Act 1977*). For instance, in these jurisdictions, the court can take into account the views of community representatives, any services or programs the defendant participates in, and the defendant's cultural ties and obligations.

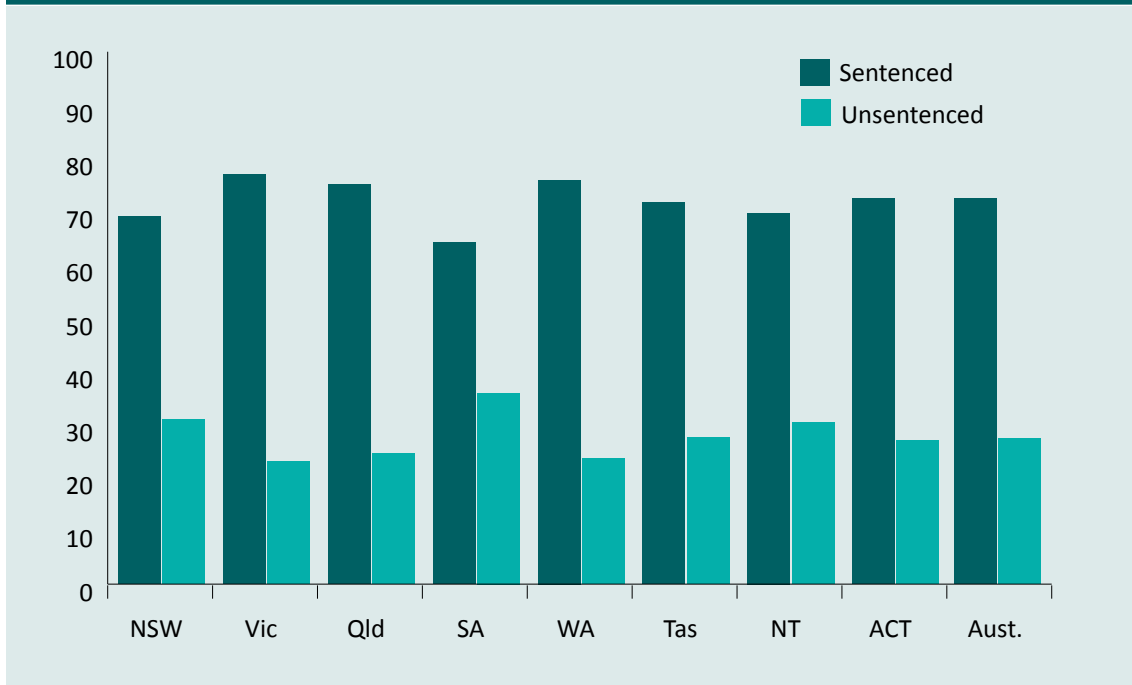
Release on bail is generally subject to a range of conditions as well as an undertaking to appear in court. For instance, under some state law (the NSW *Bail Act 2003*, the Queensland *Bail Act 1980* and the Victorian *Bail Act 1977*) bail can be conditional on:

- conduct requirements—activities that an accused person must or must not do, such as reporting to a police station, residing at a particular address or not associating with or contacting specified people;
- character references, given by a person acceptable to the court, to the effect that the person is acquainted with the accused and regards them as a responsible person likely to comply with the terms of the bail release;
- accommodation requirements—that suitable accommodation is available or can be arranged before the person is released;
- restrictions on movement including requiring the defendant to surrender their passport, or to not enter specified areas or places at specified times; and
- treatment—investigation or treatment for physical or mental health issues, or participation in drug and alcohol or other treatment programs.

Whether or not the defendant should be held on remand or released into the community on bail then becomes a consideration. There is no common-law right to bail (Bamford, King & Sarre 1999; Thomson Reuters 2015). Bail legislation varies between jurisdictions as to whether, and in what circumstances, there is a presumption in favour of the accused being entitled to bail. The law generally establishes a presumption in favour of bail for all other than specified offences. Under state and territory law, there is generally a presumption against bail for murder and serious drug offences (see the ACT *Bail Act 1992* and the Victorian *Bail Act 1977*). For less serious offences, Australian law tends to presume in favour of bail. Legislative changes could shift that presumption, which in turn could drive up imprisonment rates by increasing the number of those in remand.

Refusing bail results in accused persons being remanded in custody; unsentenced prisoners constitute a substantial proportion of the Australian prison population. At the time of the most recent prisoner census, there were 9,898 unsentenced prisoners in Australia, which is over a quarter (27.4%) of the total prisoner population (ABS 2015). The number of unsentenced prisoners in Australia has been growing for some time, and increased by 21 percent between 30 June 2014 and 30 June 2015. The number of sentenced prisoners in Australian jails increased by three percent over the same period (ABS 2015). As shown in Figure 1, the proportion of unsentenced prisoners varied somewhat between jurisdictions—from 23.1 percent in Victoria and 23.6 percent in Western Australia, to 35.9 percent in South Australia (ABS 2015).

Figure 1: Prisoners in Australia by legal status and state/territory, 30 June 2015 (%)



Source: ABS 2015

The proportion of unsentenced individuals in youth detention is higher than in adult prisons. Across Australia in 2013–14, just over half (52%) of children and young people aged 10 and over in detention on an average day were unsentenced (AIHW 2015). On an average day in Queensland this year, the proportion of the youth detention population that was unsentenced was 77.7 percent, the highest in Australia, although this included a small number of young people in police-referred pre-court detention as well as those on remand. In other jurisdictions the proportion of those who were unsentenced was close to the national average. On an average day in the ACT in 2013–14, 57 percent of young people aged 10–17 in detention were on remand (AIHW 2015).

When an alternative justice approach is taken rather than a traditional one, considerations around the use of bail change. The relationships between bail and the alternative justice processes available in Australia, such as drug and other specialty courts, vary between jurisdictions. Generally, the accused must plead guilty (or indicate an intention to do so) to engage in these processes. This is the case, for example, under the Drug Court of NSW model. However, where a defendant's offences are not sufficiently serious to be referred to the Drug Court, and the offender is likely to be granted bail, a magistrate can instead refer them to the Magistrates' Early Referral Into Treatment, or MERIT, program (AIC 2015). Completing drug treatment through MERIT then becomes a mandatory bail condition. Similarly, Victorian defendants who are outside the catchment area for the Victorian Drug Court can be referred to the Court Referral and Evaluation for Drug Intervention and Treatment or CREDIT program (AIC 2012).

To be eligible for the South Australian Drug Court, defendants must plead guilty to both the most serious offence and the majority of offences with which they have been charged, and must live in a residence that is suitable for electronically monitored home detention bail (Courts Administration Authority of South Australia 2012). The application of strict bail conditions is one element of the Drug Court program; it is intended to support drug treatment and other objectives of the program by reducing the likelihood of offending.

What is bail support?

Given the substantial proportions of unsentenced people in youth and adult custodial populations, interventions that increase the likelihood of accused people being granted bail and completing their bail period without breach could reduce the number of people in custody. These interventions are typically known as bail support programs. In the Australian context, bail support has been defined as:

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...the provision of services, intervention or support, designed to assist a person to successfully complete their bail period. These programs may be undertaken on a voluntary basis or mandated as a condition of bail (Denning-Cotter 2008: 1).

Bail support programs generally include an element of supervision. Service providers, particularly those whose programs are designed for children and young people, actively work with the bailee to ensure they comply with their conditions. A more thorough definition incorporating notions of supervision is provided in bail supervision and support guidelines developed in the UK:

“

Community based activities in programmes designed to help ensure that defendants awaiting trial or sentence successfully complete their period of bail by returning to court on the due date, without committing offences or interfering with the course of justice and to assist the bailee to observe any conditions of their bail. Such programmes may be run by the bail supervision and support scheme itself or through referral to specialist organisations (Thomas & Goldman 2001: 5).

Bail support aims to:

- reduce reoffending while on bail;
- increase the likelihood of defendants appearing in court; and
- provide an alternative to detention and remand.

The NSW Bureau of Crime Statistics and Research outlined some of the challenges accused adults face in meeting bail conditions (Jones & Crawford 2007). Some of the barriers adults face in meeting bail requirements included:

- a lack of accessible information about bail laws and conditions;
- a shortage of social support and treatment services; and
- a lack of specific bail support services such as court reminders and transport.

Other barriers include a lack of suitable stable accommodation, and problems arising from ongoing alcohol and substance misuse. Similar challenges are faced by children and young people on bail.

While there are bail support programs for adults, most are targeted at children and young people. This focus recognises the importance of keeping young people out of detention wherever possible, and that young people can only be bailed into the care of an appropriate adult. Bail support can involve a case officer acting as a responsible guardian when the child or young person does not have anyone else available to them. Children and young people also face additional challenges in finding stable accommodation and meeting educational needs.

While distinct from bail support programs, diversionary programs may have a relationship with bail support as the treatment options provided through diversionary programs—commonly for substance use problems—may increase the likelihood of bail being granted. In some jurisdictions, diversionary programs have been combined with bail support programs in a more integrated approach to helping people obtain and remain on bail. The next section describes the nature and role of diversionary programs and discusses the different Australian and international manifestations of bail support programs in more detail.

Bail support programs

A range of bail support programs have been implemented in Australia and internationally. This section provides an overview of the types of programs that are in place, including evidence from evaluations where available. The section will cover the government-provided programs in each jurisdiction as well as a selection of those offered by non-government service providers that directly or indirectly deliver bail support services. Providers like Jesuit Social Services, the Smith Family, Anglicare and others deliver services that may include accommodation support or counselling, either by arrangement with government agencies or directly to those in need. The literature search identified these organisations as among the leading service providers in this field.

This section also discusses a range of programs that are not strictly a form of bail support, but do allow people to be released to access treatment, usually drug and alcohol treatment. In some cases, these programs operate alongside other forms of bail support; in Victoria, the drug and alcohol program and bail support service have been amalgamated.

Australian Capital Territory

After Hours Bail Support Service (AHBSS)

The ACT's AHBSS was implemented in 2011 and is delivered through the ACT Community Services Directorate (ACT Community Services 2012). It aims to divert young people from remand in the Territory's Bimberi Youth Justice Centre and support the needs presented by young people facing remand. The AHBSS assists young people to comply with bail conditions and behaviour orders, facilitates access to accommodation, arranges transport, and contacts parents and guardians. The AHBSS operates outside working hours (from 5 pm to 2 am on weekdays and 4 pm to 2 am weekends and public holidays), and is modelled on the Victorian Central After Hours Assessment and Bail Placement Service, described below.

An internal evaluation of the service focused on its first six months of operation, from October 2011 to April 2012 (ACT Community Services 2012). The evaluation showed the service was used by a range of mainly non-government service providers, with most referrals coming from youth homeless services and out of home care services. Other referring bodies included youth justice case management and care and protection services, as well as police, young people and carers. The proportion of Aboriginal and Torres Strait Islander young people accessing the service (28%) was comparable with the representation of this group in the youth justice system.

The evaluation showed that just under half (48%) of the requests made to the AHBSS during the review period related to helping young people comply with bail conditions (ACT Community Services 2012). These included requests to confirm or change bail conditions or directions, help young people return to their residence after absconding, respond to changes in circumstances and facilitate transport for young people. Just under a quarter (22%) of requests were for similar forms of assistance to help young people comply with the conditions of other orders, aside from bail. This activity reflects the fact that many young people are on multiple orders, in addition to bail orders. A slightly smaller proportion of requests (19%) were for bail assistance to young people in police custody to allow them to be diverted from remand by arranging community-based options. The remaining 11 percent of requests were for assistance to young people on both bail and a behaviour order.

The internal evaluation suggested the AHBSS reduced the incidence of remand by 17 percent, relative to the equivalent period in the previous year (the six months from October 2010 to April 2011; ACT Community Services 2012). The evaluation suggested the scope of the AHBSS could be broadened from diverting young people from custody and providing bail assistance, to the provision of support for youth justice orders.

Victoria

Bail supervision

The Department of Human Services, which delivers government youth justice services in Victoria, supervises young people who have pleaded guilty or been found guilty by the courts whose sentencing has been deferred (Richards & Renshaw 2013). Individualised bail supervision is provided statewide. The program helps young people access accommodation, education, training or employment, as well as offence-focused treatment and programs including drug and alcohol counselling.

Youth Justice Intensive Bail Supervision Program

This program, which includes the Indigenous-specific Koori Intensive Bail Supervision program, delivers intensive case-managed services to small numbers of young people in selected areas of Victoria (Richards & Renshaw 2013). It provides typical bail support services including accommodation, education and training, employment services, physical and mental health services, and drug and alcohol treatment.

Central After Hours Assessment and Bail Placement Service (CAHABPS)

The CAHABPS is a statewide after-hours service provided through police by the Department of Human Services. A CAHABPS worker will assess the young person's suitability for bail and provide advice and support to assist the young person obtain bail (Richards & Renshaw 2013). Services available through the CAHABPS include advice about rights and responsibilities, accommodation support and referrals to other service providers.

Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT)

The CREDIT program was established in 1998 to assess and treat defendants on bail. The program was designed to facilitate early access to treatment with the aim of reducing time in custody and the likelihood of drug-related reoffending. In 2004, CREDIT was combined with Victoria's Bail Support Program (Denning-Cotter 2008). The combined CREDIT/Bail Support Program (CREDIT/BSP) operates at eight court locations and helps defendants access accommodation, welfare, legal and other supports to meet their bail conditions (Magistrates' Court of Victoria 2013). Services provided through CREDIT/BSP include:

- assessment and development of an individualised treatment plan, supported by a progress review while on bail (for up to four months);
- provision of brokered drug treatment through the non-government Community Offenders Advice and Treatment Service (COATS), including counselling and residential rehabilitation;
- accommodation in one of the program's 20 transitional housing properties while longer-term housing is secured;
- additional housing support, including assistance with budgeting and life skills;
- referral to services including crisis accommodation, pharmacotherapies, outreach services and employment programs;
- health and welfare services for mental health, disability and acquired brain injury needs;
- assistance with obtaining identification documents and meeting financial needs; and
- court date reminders and diaries (Magistrate's Court of Victoria 2015).

Any accused person who is eligible for bail can be assessed for CREDIT/BSP and clients are not required to plead guilty. Defendants managed by Corrections Victoria who are on an order that does not give them access to alcohol and other drugs treatment or counselling may be assessed for CREDIT/BSP (Magistrates' Court of Victoria 2015).

CREDIT/BSP's bail support elements were evaluated in 2008 (Henderson & Henderson 2008). The comprehensive multi-methods evaluation was based on an analysis of:

- over 2,700 referrals to the program in a two-year period;
- the characteristics of those receiving transitional housing support through the program;
- bail application outcome statistics for each Magistrates' Court for a seven-year period;
- remand statistics for a seven-year period;
- consultations with more than 40 clients and stakeholders; and
- consideration of good practice features and success factors from international literature.

The process aspects of the evaluation concluded that CREDIT/BSP met and exceeded its referral targets. However, the evaluators considered that some overall targets and individual case manager targets were inappropriate, as they were somewhat artificial and not responsive to variations in the take-up rates of the program by individual magistrates (Henderson & Henderson 2008).

The evaluators found that CREDIT/BSP contributed to the successful completion of bail periods by defendants, based on the reasons recorded for exiting the program. Of 1,720 referrals examined, 929 (54.0%) were recorded as having successfully completed the program, while 200 (11.6%) partially completed it (Henderson & Henderson 2008). Of the remainder, 10.9 percent were remanded, 9.9 percent did not attend court and most of the rest did not attend assessment or treatment, or had an unsuccessful program outcome with no further details recorded. This analysis was limited in that it did not appear to include any baseline data, so it was not possible to determine whether the program had contributed to improved outcomes. However, the evaluators considered that the outcomes were ‘reasonably comparable with those reported for bail support programs operating elsewhere’ (Henderson & Henderson 2008: 40). These included the outcomes of the Queensland Conditional Bail Program, discussed below, which achieved a 72 percent successful completion rate (Venables & Rutledge 2003), and a those found in a 2005 national evaluation of bail support schemes in the UK, which reported a program completion rate of 54 percent; the sentencing outcomes of these schemes were commonly community-based orders (Thomas 2005, cited in Henderson & Henderson 2008). Prior to amalgamation with the Bail Support Program in 2002–03, CREDIT had achieved a 61 percent successful completion rate, with 10 percent recorded as partially completed (Alberti et al. 2004, cited in Henderson & Henderson 2008). During stakeholder consultations for the CREDIT/BSP evaluation, magistrates reported they thought the program had a high success rate, with some stating they regarded successful completion of the program as a major factor in applying a non-custodial sentence (Henderson & Henderson 2008).

The CREDIT/BSP evaluation also examined whether the program had an impact on trends in bail outcome decisions at state and individual court levels. The evaluators analysed first bail applications at each Magistrates’ Court for the period from 2000–01 to 2006–07 (Henderson & Henderson 2008). The program had no impact on the proportion of applications granted or refused, and there were no significant differences between courts where CREDIT/BSP did or did not operate. However, the analysis was limited by the inability to examine individual unit record data with only annual data for each court available for analysis, and this may have obscured any changes that did occur.

Further analysis was conducted using data on the number and characteristics of people held on remand in Victorian prisons over a seven-year period. This data did not include information about individual participation in CREDIT/BSP or other programs, so differences in remand rates for participants and non-participants could not be taken into account. The resulting high-level analysis showed the introduction of CREDIT/BSP did not reduce remand populations (Henderson & Henderson 2008). Other conclusions from the evaluation included that the program had reduced the number of defendants remanded due to lack of accommodation or because treatment and support services were not available, and that the program reduced offending (Henderson & Henderson 2008). However, these findings were based on the perceptions of stakeholders and clients rather than on quantitative data.

Court Integrated Services Program (CISP)

Another Victorian program that has elements of bail support program in Victoria is the CISP. The CISP provides short-term assistance for up to four months between charging and sentencing (Magistrates' Court of Victoria 2013). Access to the CISP is by referral and any person who is party to a court proceeding in any jurisdiction of the Magistrates' Court, including accused persons, applicants and respondents, may be referred. Accused persons can access the CISP by consensual referral whether on bail or on remand pending a bail hearing or summons, and regardless of whether they have entered a plea or their intended plea. The CISP aims to address the causes of offending through individualised case management, priority access to treatment and community support services, including referrals and linkages to disability, mental health and accommodation services, as well as drug and alcohol rehabilitation.

An evaluation of the CISP by the University of Melbourne (Ross 2010) and a cost-benefit assessment by Pricewaterhouse Coopers (2010) found positive results across these critical outcome areas:

- reoffending rates—the proportion in the treatment group (39.5%) was 10 percentage points lower than in the comparison group (49.5%);
- a reduction in the frequency and severity of offending—data showed reoffending by CISP participants decreased by 30.4 percent after involvement in the program. There was also a demonstrable decrease in the seriousness of their offences based on a standard offence index;
- a reduction in imprisonment—a sample of 200 clients who successfully completed the CISP received a total of 1,592 days sentenced imprisonment, compared with 8,116 days for a control group; CISP clients were sentenced to an average of eight days imprisonment, compared with 41 days for the control group;
- cost savings—the CISP saved a total of \$1.98m per annum in avoided costs of imprisonment, while the total benefits from reduced reoffending were estimated at just under \$17 million over 30 years; and
- cost benefit—every dollar spent on the CISP saved the community an estimated \$5.90.

New South Wales

Bail supervision

Pursuant to a memorandum of understanding with the courts, and to target services at those in need of offence-focused interventions, the NSW Department of Juvenile Justice supervises young people on bail who have pleaded guilty (Richard & Renshaw 2013). Young people are supervised when a court imposes supervision as a condition of bail, and generally have one direct contact per week for up to four weeks or until a risk assessment is completed. Low-risk offenders can be referred to a community-based agency for further support, while medium- to high-risk offenders receive interventions based on offending behaviour.

Bail Assistance Line

The Bail Assistance Line (BAL) was introduced in 2010 and provides an after-hours service. The service allows police to contact a Bail Coordinator who can provide transport, contact parents or guardians, facilitate accommodation and effect referrals to service providers (Richards & Renshaw 2013).

Magistrate's Early Referral into Treatment (MERIT)

The MERIT program is a voluntary referral-based program, based on the Victorian CREDIT program and available to adult defendants in NSW. The program operates out of Local Courts and is not available to defendants charged with serious violent or sexual offences, or with wholly indictable offences outside the local court jurisdiction (Passey et al. 2006). Each individual's program runs for approximately three months, reflecting the typical length of time a matter takes before the local court from first appearance to finalisation.

The program aims to assist those who elect to voluntarily work towards rehabilitation as part of the bail process. According to Passey et al. (2006), MERIT seeks to:

- reduce drug-related crime, both during and post-program;
- reduce illicit drug use, during and post-program;
- improve health and social functioning, during and post-program; and
- reduce sentences through improved rehabilitation prospects.

Review of the MERIT pilot program

MERIT was introduced on the NSW North Coast in 2000 as a pilot program, in an area with known serious drug-use issues. Its introduction followed the establishment of the first NSW Drug Court, a metropolitan court targeting convicted serious offenders facing prison sentences (in contrast to the early stage pre-plea model of MERIT; Passey et al. 2006).

Fifty-three percent of participants completed the initial 12-month trial program, and a third of participants remained clients of the program past the 12-month trial. Caseworkers involved in the pilot provided primary treatment as well as case management, and participants identified the caseworker support as the most important element of the program (Passey et al. 2006).

Further evaluation of the MERIT pilot examined the program's criminal justice outcomes (Passey et al. 2007). The evaluators compared outcomes for those who did and did not complete the program, but did not have separate comparison and control groups. The authors acknowledged that the analysis was further limited by a lack of data on prior criminal history and possible issues of selection bias and coercion, despite the ostensibly voluntary nature of the program (Passey et al. 2007). Bearing in mind these limitations, the study found that those who completed the program were significantly less likely to reoffend during the three-month program and bail period, as well as within 12 months of referral. The study also found that those who completed the program received less severe sentences than those who did not, however the evaluators were unable to control for offence type (Passey et al. 2007). Only one of those who completed the program (representing 1% of completers) received a custodial

sentence, compared with 38 percent of those who were breached or removed from the program.

A later study examined reoffending outcomes from MERIT across 61 NSW Local Courts (Lulham 2009). This study's quasi-experimental design included analysis of data on 2,891 MERIT participants whose details were able to be matched between the MERIT database and the NSW Reoffending Database. Completing the MERIT program was estimated to reduce the number of defendants committing any offence by 12 percentage points, and the number of those committing theft by four percentage points (Lulham 2009). Overall, the study indicated that MERIT achieved positive reoffending outcomes. The evaluation clearly shows that MERIT is an efficacious drug diversion program that reduces reoffending among defendants who complete it (Lulham 2009: 11).

Northern Territory

CREDIT NT

The Northern Territory (NT) implemented a version of Victoria's CREDIT program in 2003. CREDIT NT is a 12-week pre-sentence program that diverts people charged with illicit drug offences into treatment (NT Government nd). It operates in accordance with the NT Bail Act and Sentencing Act, but with no separate legislative basis. The program is partly based on the premise that clients who do well on CREDIT NT are likely to receive a reduced sentence.

CREDIT NT is a voluntary program. To be eligible for participation, accused people with an illicit drug problem must be willing to address this problem through treatment, which is available in Darwin, Alice Springs and Tennant Creek (NT Government nd). Those with significant histories of violence and/or recent assault convictions are not eligible, nor are those who are currently suicidal or have a psychiatric disorder that would prevent them being managed safely in a community drug treatment program. Those who are already subject to a court order with drug treatment conditions are not eligible for CREDIT NT.

Treatment through CREDIT NT is a combination of residential treatment, day treatment, counselling and pharmacotherapy and is monitored by court clinicians (NT Government nd). Residential treatment runs for eight to 12 weeks and subject to rules such as abstaining from alcohol and drug use and refraining from violent behaviour. Clients receiving counselling must attend a minimum of six counselling sessions and maintain weekly contact with court clinicians. Those receiving pharmacotherapy treatment must comply with specific treatment requirements and attend a minimum of six counselling sessions.

An analysis of data from CREDIT NT, derived from face-to-face assessment interviews and records of treatment outcomes, evaluated the effectiveness of the program on participants who were engaged between July 2003 and December 2008 (Rysavy et al. 2011). The study was based on 484 clients who undertook CREDIT NT, while excluding a further 96 people who were deemed ineligible by the court. The client group was 85.4 percent male, and 33.3 percent were Indigenous. Indigenous people were slightly overrepresented compared with the NT total

Indigenous population of 27 percent (Rysavy et al. 2011). However, Indigenous people were under-represented in CREDIT NT compared with correctional populations. Based on average daily numbers during 2011, Indigenous people constituted 82.2 percent of people in custodial corrections in the NT and 75.2 percent of people in community corrections (ABS 2012).

The evaluation found that Indigenous clients were less likely to complete the program than non-Indigenous clients (Rysavy et al. 2011). While 51.9 percent of Indigenous clients in CREDIT NT completed treatment, this figure was 79.6 percent for non-Indigenous clients. This finding may be due to the inability to accept people with alcohol use issues, cultural and language barriers, issues of cultural appropriateness and trust, client instability and lack of motivation, or lack of services in remote areas (Rysavy et al. 2011). The study also found significantly higher treatment completion rates for women, those in employment, those who used cannabis (compared with other illicit drugs or alcohol), older clients, those with higher levels of education, those with no juvenile offending history, those who had not served a custodial sentence, those attending counselling (indicative of less serious drug use problems) and those in residential rehabilitation (Rysavy et al. 2011). There was insufficient data to link types of offences and program completion.

Queensland

Conditional Bail Program

The Queensland Conditional Bail Program for young people otherwise considered an unacceptable bail risk was implemented in 1994, and forms part of a bail condition (Polk et al. 2003). It operates as an intensive support program providing up to 32 hours per week support, with the capacity to extend this to 50 hours per week if necessary. An early evaluation of the program that examined the period from 1994 to 1999 indicated a high level (72%) of successful completion (Venables & Rutledge 2003). Completion rates for Indigenous participants were four percent lower than for non-Indigenous participants, but sentencing outcomes were very similar. There does not appear to have been a more recent evaluation of the program.

Youth Bail Accommodation Support Service

Queensland also operates a Youth Bail Accommodation Support Service for youth in remand or at significant risk of being remanded due to a lack of stable accommodation. It is a last resort when all other options are exhausted (Polk et al. 2003). The service accesses accommodation through a brokerage model, managing and coordinating accommodation and related support. It facilitates a range of support services and developmental interventions including support with living skills, family support, access to education, employment and training, as well as helping participants develop pro-social engagement skills (Richards & Renshaw 2013).

Local services

A range of local bail support, accommodation, mentoring and related services operate in Queensland through local non-government organisations. Organisations providing support include Aboriginal and Torres Strait Islander corporations, Lifeline and Mission Australia (Richards & Renshaw 2013).

South Australia

Bail supervision

Government youth justice services in South Australia provide supervised bail under conditions set by the court. The Community Youth Justice agency may also set additional goals with the young person that are not mandated conditions susceptible to breach action, but can assist the young person in completing their bail period successfully (Richards & Renshaw 2013).

CARDS

The South Australian Court Assessment and Referral Drug Scheme (CARDS), implemented in 2004, is similar to the CREDIT and MERIT programs. CARDS operates from Magistrates' Courts as a referral-based voluntary program for individuals with substance use problems who have committed minor indictable offences. Individuals must attend four treatment sessions within a three-month period at a health service (OCSAR 2007). This program complements the Drug Court in South Australia, which targets serious drug-related offending, and the Police Drug Diversion Initiative (PDDI). The PDDI diverts those detected by police for simple drug possession towards health intervention rather than the criminal justice system.

An evaluation of the CARDS pilot program, which ran from June 2004 to June 2006, examined the outcomes of 332 referrals to CARDS over this period, including of a number of people referred on multiple occasions. During this time 207 people were accepted into the program, 25 (12%) of them Indigenous. Most participants had issues with amphetamines and cannabis use.

The evaluation identified some issues related to how much information potential referrers had received about the Scheme; some stakeholders found it difficult to identify potential participants as it was not always clear whether drug use a factor in their alleged criminal behaviour (OCSAR 2007). Restrictions on the eligibility of offenders with histories of violence and the complex needs of Indigenous clients were seen as limiting the frequency of their being referred to CARDS (OCSAR 2007). In their evaluation of CREDIT NT, Rysavy et al. (2010) also noted that Indigenous people coming before the courts typically have some history of violent offending that precludes them from participation.

Notwithstanding the positive findings of the CARDS evaluation, the study provided some insights into program limitations that are useful to policymakers examining bail support schemes. Service and treatment limitations identified through the evaluation (OCSAR 2007) included:

- a lack of after-hours treatment services;
- clinicians selecting their clients—choosing only to work with those presenting as motivated rather than with those perceived as mandated or involuntary;
- clients being unable to continue their treatment voluntarily following the four CARDS-provided sessions, due to a lack of information from clinicians and limited appointment availability; and
- variations in the extent to which different clinicians treated participants' issues other than drug use.

Despite some issues related to treatment services, CARDS appeared to contribute to effective criminal justice outcomes for participants (OCSAR 2007). Outcomes were measured through 'criminal events', which referred to instances where an individual was arrested for one or more offences that occurred on the same day. Those who successfully completed the scheme averaged fewer criminal (0.05 per week) than those who did not complete the scheme (0.14 per week). The average number of criminal events involving participants in the six months following CARDS (1.7 events) was significantly lower than in the six months prior to involvement in the program (2.5 events). Participants who offended frequently in the five years before participating in CARDS were significantly less likely to successfully complete the program than those who offended less often (OCSAR 2007). However, the likelihood of completing the program was not related to the seriousness of the offences that led to the offender's participation.

Tasmania

Supporting Young People on Bail

The Tasmanian Supporting Young People on Bail program is run by not-for-profit organisation Save the Children and funded through the Tasmanian Community Fund. Implemented in 2011, it provides individual mentoring and support for 12 to 18 year olds. The service provider states that around 69 percent of young people engaged in the program have received reduced sentences, and 56 percent have not returned to court (Save the Children nd). Other research shows 62 percent of young people choose not to engage with the program as they consider their offence to be a one-off mistake and feel that family support is adequate (Richards & Renshaw 2013).

Western Australia

Metropolitan Youth Bail Service

Bail coordinators in the Perth metropolitan area help to arrange bail and, in some circumstances, can act as a responsible adult (Polk et al. 2003). Where appropriate, young people can stay in a bail hostel where their bail conditions are supervised by a coordinator. Prevention and diversion officers attached to the service can act as responsible persons in the absence of a parent or guardian and the service provides a broad range of accommodation, treatment and support services (Richards & Renshaw 2013). Young people must contact the service by phone three times a week and workers conduct regular home visits. The young person's engagement in the program is monitored by an independent third party. Consultations undertaken for a remand and bail research program identified that approximately 70 percent of bail orders supervised by the program are completely successful, compared with around 50 percent where only a responsible person undertaking is provided (Richards & Renshaw 2013).

Regional Youth Justice Services

Aboriginal communities have been involved in establishing bail facilities in regional WA. At these facilities members of the local community teach work and life skills, provide cultural education and education about substance abuse (Polk et al. 2003). The average length of a young person's stay in a regional supervised bail program is 20 nights, but in some cases can be double that.

New Zealand

Supported Bail Program

The New Zealand (NZ) Supported Bail Program works with youth offenders aged over 12 years at risk of not being granted bail or of breaching their bail conditions. It is aimed at improving and extending options for dealing with the most serious, repeat young offenders (NZ Ministry of Social Development 2015). The Supported Bail Program responds to the child or young person's bail conditions and aims to enable them to remain in the community during the remand period. It is a community-based alternative for children and young people who would otherwise be remanded (NZ Ministry of Social Development 2015).

This program is available to young people with a history of interaction with the criminal justice system who are at risk of escalating the severity of their offending. To be eligible to participate, the child or young person must accept the charges before them. Other eligibility conditions include having breached bail multiple times, a history of failing to appear in court, a demonstrated escalation in the rate and/or severity of offending, and currently or previously in detention. Some or all of these conditions must be met to participate.

The Supported Bail Program is a six-week program of intensive one-on-one intervention through a case management system (NZ Ministry of Social Development 2015). It is guided by supported bail operating protocols and each participant receives 28 to 32 hours of support weekly. Support is available after hours when the child or young person is at risk of noncompliance, and during critical times in the evening and at weekends. The program has not been evaluated at this time.

Canada

Provincial justice systems across Canada provide a range of bail supervision programs. British Columbia has established legal conditions for inclusion in bail orders, including reporting to a bail supervisor at specified times (Government of British Columbia nd). Bail supervisors manage and supervise community release and meet with clients regularly to make sure they follow their bail conditions. These conditions, similar to those applied in Australia, include remaining within a specified area, reporting any change of address or employment, not communicating with witnesses or victims, staying away from specified places, surrendering passports and not possessing firearms or weapons.

Bail Verification and Supervision Program

The Bail Verification and Supervision Program is funded through the Canadian Government and delivered by the John Howard Society (John Howard Society 2010). The Bail Program provides an alternative to remand in custody, in the absence of a surety. It has three major functions:

- identifying the availability of a surety;
- providing verified, neutral and factual information about an accused to help the court to determine the participant's suitability for release under bail program supervision; and
- providing supervision, counselling and referral services (John Howard Society 2010).

The Bail Verification and Supervision Program is also provided in Ontario by the Elizabeth Fry Society (nd). Through this program, a bail worker supervises and meets regularly with the client, reminds them of court dates and bail condition reviews, helps them to develop and implement a case plan, provides case-managed client support and assistance, and initiates referrals to community programs and services. Bail supervision continues until all relevant bail orders are terminated, through successful completion or otherwise.

The bail program accepts referrals from all sources, including lawyers and the accused. It is available to all accused people aged 16 years or older. The program addresses what is known in Canada as 'the primary ground', a concept which encompasses the likelihood of the individual attending court and takes into account any history of noncompliance with court orders (John Howard Society 2010).

A review of justice system efficiencies and access to the justice system in Canada noted that bail supervision programs have been operating in Ontario since 1979 and are highly regarded by police, the judiciary and counsel (Department of Justice Canada 2006). Figures collected for

the review show that, in 2003–04, 81 percent of bail supervision program clients attended all their court appearances, increasing court efficiency. The review found that 37 percent of bail supervision program clients were found not guilty or had all charges against them withdrawn, and would have been detained unnecessarily in the absence of a support program (Department of Justice Canada 2006). Bail supervision and verification programs were shown to be markedly cheaper than holding young people in remand custody; programs cost around CA\$3 per day for each client, compared with CA\$135 a day in custody.

United States of America

Different jurisdictions within the United States of America (USA) run a variety of pretrial services, which include forms of bail support. Pretrial programs operate within federal, state and county/city jurisdictions; a 2009 survey gathered information on 171 of the more than 300 pre-trial programs estimated to be operating across the USA (PJI 2009). A small proportion (4%) of these programs began in the 1960s with more than a quarter (27%) in operation since the 1970s. The greatest proportion (38%) operated from probation departments, with progressively smaller proportions operating from courts, sheriff's offices or jails, independent agencies or private and non-profit organisations (PJI 2009).

Pre-trial services in the USA provide services that appear to straddle bail support and probation functions. Core functions of pre-trial services are set out in the National Association of Pretrial Services Agencies standards (see PJI 2009). These include:

- interviewing defendants pre-trial;
- gathering information that will help the relevant judicial officer reach an informed decision about granting bail;
- assessing the risk of pre-trial misconduct such as offending, risk to the community and failure to appear in court;
- recommending pre-trial release, including whether financial and/or non-financial bail conditions should be imposed;
- supervising pre-trial release conditions;
- reminding defendants of court dates;
- following up failure to appear in court, and
- conducting status reviews of the detained population for any changes in eligibility for release options and to facilitate release of those found eligible.

The service available in the Louisiana city of New Orleans is one example of US pre-trial services. It was developed in response to high rates of pre-trial incarceration (Vera Institute of Justice 2015). Louisiana law allows courts to detain alleged offenders for up to 60 days before prosecutors must file charges, which can have substantial impacts on the individual's employment, accommodation and treatment, and lead to increased risk of future criminal activity (Vera Institute of Justice 2015). The New Orleans pre-trial services include providing information to defendants before their first court appearance, empirical risk assessments to

guide release decisions, supervising defendants to help facilitate their release on bail and sending court date reminders to help defendants plan and meet their court appearance obligations (Vera Institute of Justice 2015).

Europe

No informative examples of bail support or supervision programs used in Europe were identified in the examination of the literature. This is likely due to the different approaches European countries take to criminal justice, both in comparison with other European countries and with Australia. A search for Scandinavian bail programs, for instance, showed that bail does not exist in Sweden (San Diego State University 2011a). Accused people awaiting trial in Sweden are routinely released unconditionally unless they are considered dangerous. In Denmark, release on bail has been used only very rarely and is not a usual aspect of criminal justice system practice (San Diego State University 2011b). Prisoners held on remand in Denmark typically spend two to four weeks in custody. Similarly, Norway has provisions for release pending trial subject to guarantees, but this is rarely used (San Diego State University 2011c). Norwegian law stipulates that time in remand must be as short as possible and not more than four weeks, although provisions exist for extensions of this time in some circumstances.

The use of bail varies elsewhere in Europe. Bail is rarely used in Germany (San Diego University 2011d) and there is no provision for bail in Italy, although a judge may grant provisional liberty to those awaiting trial (San Diego University 2011e). The situation in The Netherlands is similar (San Diego University 2011f). In Italian courts, panels of judges known as liberty tribunals regularly review the cases of those in remand. Bail is more widely used in some other European countries such as France (San Diego University 2011g).

A high-level examination of bail support services in the UK indicates these are similar to services in Australia. In Scotland, Sacro provides supervised bail services pursuant to a bail supervision agreement signed by the accused following a referral from a courts, lawyer or social worker (Sacro nd). This requires the accused follow court-imposed bail conditions, which are monitored and supervised by Sacro through regular appointments, typically three times per week. Sacro also provides and helps clients access assistance in addressing offending behaviours.

A national Bail Accommodation and Support Scheme (BASS) was established in England in 2007, providing a network of supported accommodation across the country (Hucklesby 2009). The BASS filled a gap created by the use of bail hostels—primarily for high-risk sentenced offenders—which allows defendants without suitable accommodation to obtain bail, and those requiring support to comply with their bail conditions (Hucklesby 2009). A 2010 evaluation of a similar scheme in Yorkshire and Humberside, the Effective Bail Scheme, cited the benefits of centralised monitoring to improving the operation, implementation and governance of the scheme (Hucklesby, Jarrold & Kazantzoglou 2010).

Bail hostels

Bail hostels in Australia are used differently to those in the UK. Bail hostels are residential establishments that accommodate people as a condition of bail, generally with some degree of endorsement or regulation by the government (Johns 2002). There are few bail hostels in Australia and these cater to specific client groups, such as a hostel for Aboriginal young people in NSW. In contrast, there are more than 100 approved hostels in the UK for people on bail, licence, or probation or who are serving community sentences (Johns 2002).

While increased use of bail hostels in Australia has been considered—for instance, by the NSW Carr government in response to a 2000 inquiry into prison populations—their use raises some concerns (Johns 2002). These include the possibility of ‘net-widening’, when accused persons who would normally be bailed into the community are instead bailed into the more restrictive conditions of a bail hostel. There is also concern about placing young people in adult hostels and protecting children from some of the other tenants. Other issues include the geographical locations of hostels and whether residents will have difficulties accessing services if hostels are not suitably located; running costs; and how to establish rules that are appropriately strict without being overly onerous (Johns 2002). In an example of these challenges in practice, a bail hostel in Fremantle, Western Australia, which operated from 1983 to 1995, was closed for a range of reasons. These included failure to achieve occupancy rates; changes to legislation that restricted which bailees could be given a hostel condition; the introduction of home detention; security problems at the residence; and the costs of running a secure institution in a metropolitan area (Johns 2002).

Western Australia has since established another bail hostel in the regional town of Kalgoorlie, but little information about this is publicly available (ALSWA 2011). The South Australian government will investigate bail hostels as an option in transforming its criminal justice responses (Attorney-General’s Department 2015).

Nonetheless, some commentators have suggested that bail hostels could be effective in Australia if court processes were changed to allow better assessment of potential candidates’ suitability (Johns 2002). Reviews of the use of hostels in the United Kingdom have suggested they increase the likelihood of a defendant successfully completing bail, have some impact on reducing offending and are much more cost effective than imprisonment (Johns 2002).

Table 1: Summary of bail support services, Australia and overseas

Jurisdiction	Name	Key Features	Target Group
ACT	After Hours Bail Support Service	Assistance to divert young people from remand through community-based options	Children and young people
		Assistance to comply with bail and Good Behaviour Order conditions	
Victoria	Bail supervision	Government agency supervision of young people bailed awaiting sentence	Children and young people
		State-wide assistance with accommodation, education, training, employment, direct or referred treatment programs	
	Youth Justice Intensive Bail Supervision Program	Voluntary but set as bail condition	Children and young people
		Intensive case-managed services to small number of clients in selected areas	
		Covers accommodation, education, training, employment, physical and mental health, drug and alcohol treatment	
	Central After Hours Assessment and Bail Placement Service	State-wide service operating at nights and weekends/public holidays	Children and young people
		Assessment for bail suitability; advice and support to assist grant of bail	
		Advice and support to assist compliance with bail conditions, accommodation support and referrals for treatment and services	

Table 1: Summary of bail support services, Australia and overseas cont.

Jurisdiction	Name	Key Features	Target Group
Victoria cont.	Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT)	Assessment and treatment for defendants while on bail Brokered drug treatment, including counselling and residential rehabilitation	Adults
	Combined with Bail Support Program	Transitional housing and crisis accommodation Assistance with longer-term housing, budgeting, life skills Assistance with mental health needs, disability services, employment, identification document, court date reminders	
	Court Integrated Services Program (CISP)	Assistance between charging and sentencing, up to four months Available to any person who is a party to a court proceeding in the Magistrates' Courts Individualised case management, priority access to treatment and community supports	
New South Wales	Bail supervision	Support and interventions based on assessed risk Generally up to four weeks	Children and young people
	Bail Assistance Line	After-hours phone service for police Assistance with transport, contacting parents or guardians, accommodation, referrals to service providers	Children and young people
	Magistrates' Early Referral Into Treatment (MERIT)	Assessment and drug treatment for defendants while on bail Typically three months' duration Based on Victorian CREDIT program Excludes defendants charged with serious violent or sexual offences, or histories of such offences, or other wholly indictable offences	Adults

Table 1: Summary of bail support services, Australia and overseas cont.

Jurisdiction	Name	Key Features	Target Group
Northern Territory	CREDIT NT	Assessment and drug treatment for defendants while on bail Typically three months duration Based on Victorian CREDIT program Excludes defendants charged with serious violent or sexual offences or other wholly indictable offences	Adults
	Conditional Bail Program	Intensive support to assist with bail compliance Up to 32 hours per week, with extension available	Children and young people
	Youth Bail Accommodation Support Service	For youth in remand, or at significant risk of being remanded, due to lack of stable accommodation Uses brokerage model to access accommodation and services such as living skills, family support, pro-social engagement, education and employment	Children and young people
South Australia	Bail Supervision	Government agency supervision to assist compliance with bail conditions	Children and young people
	Court Assessment and Referral Drug Scheme (CARDS)	For people charged with minor indictable offences who have substance use issues Four drug use treatment sessions within three months, through health service providers	Adults Version for young people also available
	Supporting Young People on Bail	Individualised mentoring and support to assist with bail compliance	Children and young people

Table 1: Summary of bail support services, Australia and overseas cont.

Jurisdiction	Name	Key Features	Target Group
Western Australia	Metropolitan Youth Bail Service	Workers help to arrange bail and can act as responsible adult	Children and young people
		Treatment and support services; can include accommodation in bail hostel	
		Specified telephone and home visit contact requirements	
	Regional Youth Justice Services	Facilitated by Aboriginal communities in regional areas	Children and young people
		Life skills, cultural education and substance use education	
		Typically 20 nights stay	
New Zealand	Supported Bail Program	Serious, repeat young offenders with history of bail breaches	Children and young people
		Six-week intensive support, 28–32 hours per week, to comply with bail conditions	
Canada	Bail Verification and Supervision Program	Assists with finding surety	Adults and young people aged 16 and over
		Provides information about the accused to assist court determine suitability for bail	
		Provides supervision, counselling and referral services, and assistance such as court date reminders	
United Kingdom	Bail support services	Assistance to comply with bail conditions, similar to Australian programs	Adults Children and young people
Europe	Varies	Use of bail varies—rarely used in Scandinavian and other countries	

Principles of best practice

Taking into account the findings of bail support program evaluations and discussions in the literature, this section will present some principles and indicators of best practice in developing and implementing bail support programs. Where evidence is available, this section will indicate which elements of support programs are essential to the delivery of an effective program and which may be considered optional, depending on the target audience and local environment.

As indicated in the previous chapter, some bail support programs are designed and implemented for adults while others are targeted towards children and young people. Some, such as the CARDS program in South Australia, operate separate adult and youth variants of the program. The principles of best practice set out below apply to both adult and youth bail support programs; however, due to legal considerations of responsibility, the principles should be applied somewhat differently, reflecting legal considerations of responsibility. In particular, youth-oriented programs need to take into account the requirement for children and young people to be bailed into the care of a responsible parent or other guardian, and whether program workers would seek to fulfil that role in the absence of a suitable alternative. Accommodation considerations for children and young people are different to those for adults. Youth-oriented programs will generally include service elements (involving parents and guardians) and forms of family support that take into account the relationships between young clients and other family members. Adult-oriented programs may also include family support, but typically from the perspective of the client as a partner and/or parent. Generally, youth-oriented programs are more likely to include education support than employment support, depending on the ages, developmental stages and needs of individual clients. Therefore, while these principles of best practice can be applied to any bail support program, their application will vary based on target populations and the outcomes of individualised case planning and management.

Voluntary participation

While bail support programs are underpinned by mandated court requirements and aim to support participants to meet those requirements, best practice suggests that participation in a given program should be voluntary. Voluntary participation allows those eligible for a program to choose not to participate, and in some cases that may be in the individual's best interests. Those who are required to participate in treatment or support services may not be motivated to participate fully and effectively, potentially undermining the program's effectiveness for themselves and other participants. The CREDIT NT program's requirement that participants must have expressed willingness to address their alcohol or drug use issues stems from a recognition that motivation is essential if treatment is to be effective (Rysavy et al. 2011). The

review of Victoria's CISP noted that the program's voluntary nature—with the defendant free to choose whether or not to participate until the court makes the program a condition of bail—was critical in facilitating program commitment and supporting long-term behaviour change (Ross 2009).

Voluntary participation also reflects Australia's international obligations under the United Nations International Covenant on Civil and Political Rights (1996) by taking into account the defendant's unconvicted status (Denning-Cotter 2008).

Timely and individualised

Bail support guidelines in the UK stipulate that programs be timely and individualised (UK Youth Justice Board 2002). For programs to be timely, access to support services should be available as soon as the individual is released on bail. Delayed service provision could lead to the client failing by increasing their likelihood of engaging in negative behaviours and associations. Henderson and Henderson (2008) highlighted the importance of immediate service provision in their review of international literature on best practice. One of the most effective elements of the CREDIT program was its emphasis on immediately addressing client needs such as emergency accommodation, pharmacotherapy and access to Centrelink payments. Trying wherever possible to arrange assessment and treatment and make appointments before the client leaves court is an important element of this.

Services and interventions that begin when bail is granted should be tailored to the needs of the individual and based on sound assessment (Henderson & Henderson 2008). These reviews, particularly that of the CISP, observed that providing a flexible and tailored response to individuals was an important element of program effectiveness. This included allowing case managers who would normally work within program guidelines the authority to go beyond them, when necessary, to meet individual needs.

Holistic approaches

In line with the above discussion, holistic bail support programs stand the best chance of delivering effective outcomes for clients and the criminal justice system (UK Youth Justice Board 2002). Holistic approaches, based on a sound assessment of needs, are effective in reducing recidivism (Mackenzie 2002). In the case of bail support, this finding intersects with findings from developmental research that suggest release on bail is an ideal time for interventions that address offending and antisocial behaviours (Kubiak et al. 2006).

Holistic approaches to bail support involve taking account of the full range of needs and circumstances that led to the client being charged and appearing before a court. An effective program will therefore address issues such as alcohol and other drug use, mental health issues, educational deficits, employment issues, family and relationship problems, intellectual and physical health, accommodation and financial issues, antisocial associations and any other issues affecting the defendant.

Collaboration

Bail support programs should be collaborative, involving intergovernmental and interorganisational responses to ensure the individual's needs are met across different service systems (Denning-Cotter 2008; Henderson & Henderson 2008). Collaborative approaches allow holistic services to be delivered and help overcome some of the barriers that may have so far prevented the individual gaining the support they needed. Effective inter-organisational collaboration will also help prevent miscommunication or procedural anomalies that could cause frustration and interfere with the client's progress in treatment.

The reviews of both CREDIT and CISP highlighted the importance of collaboration and interagency liaison at both a program-wide level and at the level of individual case managers (Henderson & Henderson 2008; Ross 2009).

Program philosophy

Evaluations and guidelines highlighted the importance of a strong, sound and consistent program philosophy (see Henderson & Henderson 2008; Ross 2009; UK Youth Justice Board 2002). While the philosophies of different programs will, appropriately, the literature shows that vary a strengths-based program philosophy that emphasises empowering and motivating clients to change their behaviour and improve their life choices is well suited to supporting clients on bail. A strengths-based philosophy can support the application of therapeutic jurisprudence by seeking to use the criminal justice system and processes as opportunities for improving individual wellbeing.

Where a program is delivered across multiple locations, a consistent philosophy of practice will help to ensure program integrity, allow issues with the program to be more readily identified and improvements made, and support the program's capacity to meet the court's needs. The review of CREDIT/BSP noted that one of its more effective features was the strong consensus about program philosophy that existed across the program and between case managers, and the consistency between this overriding philosophy and the different practices at each court (Henderson & Henderson 2008).

Support before supervision

The literature suggests that the primary focus of bail support programs should be support and the provision of interventions and services, rather than supervision and the monitoring of compliance (Denning-Cotter 2008). This follows from findings that intensive supervision programs do not reduce offending, while treatment-oriented programs are much more effective in this regard (Aos, Miller & Drake 2006).

At the same time, the literature suggests that the supervisory aspects of a program are also important to its success. While programs should primarily focus on support and interventions, this should be within the context of a supervised bail support program. Supervision—for example regular contact between the worker and client, monitoring the client to ensure they

are complying with order conditions and providing reminders—helps to ensure the client maintains a foundation, so treatment and other supports can yield benefits (UK Youth Justice Board 2002). In this sense support and supervision are complementary; supervision establishes a necessary platform, even when it is the supportive aspects of the program that ultimately produce the desired outcomes.

Localised responses

Effective bail support programs should be locally responsive and adaptable to individual and environmental circumstances (Denning-Cotter 2008), including differences in criminal justice systems and processes. The client should be able to access any services and treatments identified in their case plan without unreasonable travel or waiting times that may lead to their failure. Responses should draw on local community organisations and knowledge of the local housing and employment markets, as well as educational and training opportunities.

Localised responses are particularly important in rural and regional areas, for Aboriginal and Torres Strait Islander people and for people from culturally and linguistically diverse backgrounds. Effective localised responses can ensure a program is culturally appropriate and relevant to local circumstances.

Localised responses are related to the recognition that programs for children and young people should involve family as much as is possible and appropriate (UK Youth Justice Board 2002). Programs must appreciate that families can be both a positive and a negative influence, but that they also generally have primary responsibility for the care, supervision and guidance of children and young people. This extends to responsibility for supporting and supervising the young person's compliance with bail conditions, assisted by service providers wherever appropriate.

Relationships with courts

Program staff are vital to establishing and maintaining good working relationships with court officers (see Henderson & Henderson 2008, UK Youth Justice Board 2002). Most of the bail support programs examined for this report engaged court-based specialist staff and coordinators. Being based in the courts allows service provider staff to build relationships with the judiciary and other court personnel and understand the practices of each court and the preferences of court officers. It also helps them build relationships with police, legal representatives and other service providers. These relationships allow clients' immediate needs to be addressed while they are still at court, and any initial misunderstandings or required clarifications in the court orders to be resolved.

An important finding of the CREDIT/BSP evaluation was that case managers are court-based and operate as officers of the court (Henderson & Henderson 2008). This status was seen by stakeholders as lending case managers authority, and was important in promoting compliance. Having case managers serve as court officers was particularly helpful in facilitating referrals to other court services that were court-based or had offices in the court building. Individual case

manager credibility, particularly their credibility with magistrates, was critical in getting referrals to the program. Building credibility through working relationships with the judiciary helped to build confidence, including confidence that case managers would disclose program breaches. This in turn was seen as critical for the credibility of the program as a whole.

Guidelines and processes

The National Standards for Bail Supervision and Support Schemes established in the UK are a good example of a highly detailed and structured set of operating standards and processes for running a bail support program (Thomas & Goldman 2001). While flexibility and adaptability are valuable elements of a bail supervision program, strong guidelines and clear operating processes support their delivery. Bail support programs require connections and linkages to the courts, and involve supporting clients to meet the strict conditions of legal orders. A strong underpinning structure helps the program to interface with the highly structured court environment and its processes. Strong guidelines can also help bridge the gap between the ordered nature of the court and its determinations, and the sometimes disordered and unstructured lives of those appearing before it.

The content of the guidelines and nature of the processes will necessarily vary between criminal justice systems, courts and programs. However, as an indication, the UK standards require:

- that if no parent or carer is present there must be a home visit the next working day, unless the young person is living independently;
- a formal signed agreement with the young person including details of the court order, the program to be provided, the circumstances under which breach action might be taken and the processes involved in taking breach action; and
- a minimum of three contacts with the young person each week, except in exceptional circumstances.

Challenges

This section presents some of the difficulties and challenges the literature suggests will arise in the delivery of bail support services.

Housing

As indicated in the best practice section of this report, facilitating access to suitable, stable housing is critical in supporting people on bail. However, this service depends on there being sufficient affordable housing available to meet the level of need, within the overall level of demand for affordable housing. Jesuit Social Services, which provides the Transitional Assistance Information Links Service (TAILS) in Victoria, says it is:

“

...aware of the fundamental importance of settled housing in the lives of young adults. That need is urgent and overwhelming for the majority of TAILS clients and probably represents the greatest gap in services...[D]espite the strenuous efforts of TAILS caseworkers to assist the bailing of remandees, these efforts sometimes break down because it is not possible to provide evidence of stable, secure accommodation (Ericson & Vinson 2010: 68).

While these comments are specific to Victoria, securing accommodation for people on bail is a challenge for services in all jurisdictions. The supply of affordable and/or government-provided housing is limited, and must meet not only the needs of criminal justice clients but also those seeking to escape homelessness or domestic violence, experiencing disadvantage due to mental health or disability, or on lower incomes. Engaging with government and non-government housing providers, including through the private rental market, is accordingly a central and critical element of providing an effective bail support service.

Drug and alcohol treatment

Whether provided directly as part of a bail support service, through linkages with early release treatment services, or by referral to external programs, responding to drug and alcohol misuse is another central component of bail support programs. In evaluating the Victorian CISP program, Ross (2009) noted the lack of availability of treatment places, particularly in residential rehabilitation, was an important constraint on the capacity of bail support programs to deliver services to defendants. Ericson and Vinson (2010) recommended widening the flexibility and scope of accommodation and treatment packages to allow a variety of services to tailor individual programs.

Bail hostels

As discussed above, establishing bail hostels or bail houses is one approach to delivering the combination of accommodation and services required by those on bail. While bail hostels offer opportunities, they also present challenges arising from housing people with challenging behaviours and needs together. Alleged offenders would have to be allocated carefully in line with a comprehensive understanding of their backgrounds and needs (Ericson & Vinson 2010). Determining where bail hostels would be located must take into account proximity to schools and other places frequented by children, relative access to both services and sources of positive support and pro-social engagement, and the proximity of potentially negative places such as licensed premises. Experience with bail hostels and similar services internationally suggests this type of accommodation might not be suitable for those charged with violent or sexual offences (Ericson & Vinson 2010).

Bail support for children and young people

A national examination of bail and remand for young people in Australia highlighted a number of recurring issues with the provision of bail support services (Richards & Renshaw 2013). The study found that bail support for children and young people was limited and sometimes problematic. The study identified issues, including that:

- there were few participants in some jurisdictions, meaning services and staff were underutilised;
- there was a strong metropolitan bias in the location and concentration of services, with a lack of regional, rural and remote supports;
- there was a lack of clarity in some jurisdictions about the purpose of bail support services and programs;
- there was a lack of engagement with more difficult cases, such as young people with complex needs and/or substantial offending histories—some programs actively excluded them, so in some cases those most in need of support were unable to obtain it and had no option other than to be held in remand;

- there were differences between programs, such as whether young people must plead guilty in order to participate and, therefore, whether services and programs should be related to offending behaviour; and
- some services and programs involved increased monitoring and scrutiny of young people, which impacted upon their liberty to an extent that may exceed the expectations of the court.

Conclusions

The decision by a police officer or magistrate to release an accused person on bail or to hold them in custody on remand is an important juncture in the criminal justice process. Those held in custody on remand constitute a substantial proportion of the Australia's prison population. It follows that reducing the number of defendants who are remanded, and increasing the number released on bail, could reduce both the number of people in prison and the costs—both to individuals and to the community through criminal justice expenditure—arising from remand. At the same time, the decision to release an accused person on bail must be consistent with the pursuit of justice and the protection of the community.

While many bail or remand decisions are straightforward, largely because of the seriousness of the alleged offences, in other cases a defendant might be eligible for release but for their circumstances. For instance, a person might present a low risk of reoffending but have no stable accommodation they can safely be released to. A child or young person may be held by police or appear in court without a responsible parent or guardian into whose care and supervision they can be bailed. In these circumstances, the availability of a bail support service that could assist the accused person with accommodation, or assign a caseworker to fulfil the role of a responsible guardian, could allow an individual to be granted bail when they might otherwise be remanded in custody.

In cases where an accused person's legal eligibility or suitability for release on bail is not in question, treatment and support services can give them the opportunity to begin treating the alcohol use, drug use and other problem behaviours that contributed to them being charged. The period between charging and prosecution or sentencing also gives the defendant a chance to stabilise their lifestyle through accommodation, engagement with employment, training or education, stabilisation of relationships and so on. If these issues are addressed, the accused person might receive a lesser sentence; or, if they are not imprisoned, they may achieve a more stable and pro-social lifestyle. Undertaking treatment and accessing programmatic services while on bail can demonstrably reduce reoffending. Supporting the accused person to meet basic responsibilities, such as appearing in court when required, can ensure they receive the benefits of bail, are able to remain in the community and maximise their chances of receiving a non-custodial sentence. For these reasons, the provision of effective bail support and supervision services is an important part of government and non-government responses to people charged with offences.

The literature review that informed this report examined the bail support programs offered in Australia and the treatment and support programs provided to eligible people to address their drug use and other criminogenic needs while on bail. The review found there is at least one program or service available in each Australian state and territory that share substantial commonalities. At the same time, these programs and services differ in their the extent and duration, the degree to which they are provided directly by government agencies or procured from non-government agencies, and the eligibility requirements for defendants to participate.

In addition to the programs offered in Australia, the literature review included bail support and supervision responses in New Zealand, Canada, the US and the UK. The program and service responses in those nations are ostensibly the same as those in Australia: bail is used for broadly comparable purposes and the needs of offenders and defendants are also broadly comparable. The literature review also examined practices in a number of European countries, particularly in Scandinavia, which found these countries take quite different approaches from Australia to determining or effecting the release or incarceration of accused persons. Bail is very rarely used in Scandinavian countries.

The examination of bail support practices—particularly the evaluations and reviews of various programs and services—has provided insights into the principles of best practice underlying bail support programs. Based on these principles, effective bail support programs would be voluntary, even when based on mandated requirements, ensuring the client is at least somewhat motivated and willing to engage with treatment and make changes to their life. Effective bail support programs will be timely and individualised, provided when bail is being considered, and responsive to the accused person’s immediate needs, even before they have left the court. Programs should be holistic in nature and able to address, whether through direct service or referrals, the full range of the individual’s criminogenic needs. They should collaborate with other government and non-government service providers and adopt interagency approaches to meeting client’s needs.

Bail support programs should be based on a strong and consistently applied program philosophy that manifests program-wide and among individual case managers. The literature suggests that bail support programs should prioritise support over supervision, and privilege treating and responding to an individual’s criminogenic needs over monitoring and supervision. Supervision and assisting clients to meet more pragmatic court requirements are nonetheless important as a foundation for ensuring the client successfully completes their period of bail. Programs should be localised, and should make use of known local community resources as well as a knowledge of local services and treatment availability, local housing and employment markets and opportunities. Localisation ensures centrally implemented programs are flexible and adaptable to the local contexts.

As bail support programs are necessarily connected with courts, best practice suggests they have court-based staff and establish good working relationships with court officers and service providers. Importantly, working relationships with court officials and the judiciary establish the credibility of both individual case managers and the program, and this credibility can have a direct impact on whether the judiciary make use of the program. Finally, the literature suggests

it is important to base programs on sound guidelines and processes that will help them engage with the structured processes of the courts and meet the requirements of court orders, while maintaining program integrity.

Implementing bail support programs also poses a number of challenges. The availability of suitable, affordable housing is critical to obtaining bail and completing a bail program. Housing is also critical to longer-term outcomes, such as securing and maintaining employment and developing a stable, pro-social lifestyle. Providing sufficient affordable housing to meet the needs of the broad group of people in housing need is a challenge for all Australian jurisdictions, and this will remain an issue for bail support service providers. Establishing bail hostels similar to those in the UK may increase housing availability, but hostels are problematic in other ways and may not be the best option in an Australian context. Like housing, the availability of a full range of treatment programs and other services is integral to the provision of bail support. Places in treatment programs can be limited and difficult to access, particularly outside metropolitan areas. Where places are available, they may not be culturally appropriate or suited to the presenting needs of individuals.

Despite these challenges, experience in Australia and overseas shows that government agencies can deliver effective bail support services to a wide range of people coming before the courts. These services play a vital role in reducing the number of people held in remand, reducing reoffending among participants and improving sentencing and long-term outcomes for accused people and the criminal justice system. At the same time, bail support programs must be evaluated. Relatively few evaluations have been conducted, and generally quite some time ago. Ongoing evaluations are important for assessing effectiveness and informing ongoing developments in quality practice.

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