

# AUDITOR-GENERAL'S REPORT

## PERFORMANCE AUDIT

### Helping Aboriginal Defendants through MERIT

NSW Attorney General's Department  
NSW Department of Health  
NSW Police Force



The Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

The Legislative Council  
Parliament House  
SYDNEY NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Helping Aboriginal Defendants through MERIT: NSW Attorney General's Department, NSW Department of Health, NSW Police Force.**

A handwritten signature in black ink that reads 'Peter Achterstraat'.

Peter Achterstraat  
Auditor-General

Sydney  
August 2009

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## Foreword

Many Aboriginal communities face high levels of social disadvantage including unemployment and financial stress. These are serious issues which lead to many people suffering. Substance abuse compounds these issues and often leads to crime and an over-representation of Aboriginal people in our justice system.

Any program that helps break this cycle will benefit the individual, the family and the community.

While Aboriginal people make up about two percent of the population of NSW, the number of adult Aboriginal offenders in custody has never been higher and now approaches 21 per cent of the prison population. Reoffending rates are also high.

A decade ago, a number of drug diversion initiatives were introduced in NSW. These initiatives were part of a joint Commonwealth and NSW Government response to the increasing number of people with a drug problem being caught up in the criminal justice system.

The Magistrates Early Referral into Treatment program (MERIT) is one of those initiatives. MERIT diverts adult defendants with drug problems from the local court into a drug treatment program.

Aboriginal citizens are entitled to programs directed to Aboriginal specific purposes and also to mainstream programs available to all citizens who meet the relevant program criteria. An example of the first type of program is Circle Sentencing. An example of the second type of program is MERIT.

Good work is being done by other organisations such as the Bureau of Crime Statistics and Research in reviewing Aboriginal specific programs such as Circle Sentencing. I decided to look at a more widespread program and assess the participation of Aboriginal defendants.

It is important to acknowledge programs targeting Aboriginal youth, as raised by many stakeholders, but I have focused in this report on a program for adult defendants because it is a successful program that has been operating for eight years and from which lessons may be learnt.

Equitable access and participation are primary objectives. Any barriers to Aboriginal people participating in MERIT, whether intentional or innocent, will limit its effectiveness.

For MERIT to work for Aboriginal defendants, they must firstly be able to access the program, and secondly, complete it. So we focused our audit on the participation of Aboriginal defendants in MERIT as a means of assessing how well MERIT works for this group.

This audit examines how well MERIT works for adult Aboriginal defendants focussing on the issues of access and participation.

Peter Achterstraat  
Auditor-General

August 2009



## Executive summary

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## The focus of our audit

Aboriginal people are over represented in our justice system. While Aboriginal people comprise around two per cent of the population, nearly 14 per cent of all NSW local court appearances are Aboriginal defendants. Aboriginal defendants are also 12 times more likely to be imprisoned.

Reoffending rates are also high with 53 per cent of Aboriginal people found guilty in court reconvicted of another offence within 24 months. This compares to a reoffending rate of 29 per cent for all people found guilty in court.

Drug and alcohol abuse are primary predictors of involvement in crime for Aboriginal people. Court based early intervention programs seek to break the cycle of drug and alcohol abuse and, through this, decrease crime.

The Magistrates Early Referral into Treatment (MERIT) is the largest mainstream program that diverts adult defendants into treatment. MERIT commenced in 2000 and operates in 61 of the 144 local courts in NSW.

Defendants who are eligible for MERIT and agree to participate undertake a three month treatment program which is completed before sentencing. Treatment is usually by MERIT teams employed by the NSW Department of Health who are also officers of the court.

In 2007-08, 1,253 defendants completed MERIT; 169 of these were Aboriginal defendants.

This audit aimed to assess the participation of Aboriginal defendants in MERIT. Specifically we wanted to find out whether:

- all eligible Aboriginal defendants are able to access MERIT
- MERIT is meeting the needs of Aboriginal defendants.

## Audit opinion

Recent studies of MERIT outcomes indicate that MERIT is a highly appropriate intervention program for Aboriginal defendants. It has improved the health of participants, including significant reduction in drug use and significant improvement in mental health. Better justice outcomes include lower rates of imprisonment and reduced rates of reoffending.

Yet MERIT only reached 273 Aboriginal defendants in 2007-08 out of around 19,000 Aboriginal defendants who appeared before the court. This is not enough.

While the number of Aboriginal defendants referred to MERIT has increased by 22 per cent over the last five years, still only about one in 40 Aboriginal defendants is referred.

Referrals also vary between MERIT courts. In 2007-08, more than half of all Aboriginal referrals came from ten MERIT courts. In contrast, 26 MERIT courts had two or less Aboriginal defendant referrals, including 12 with no Aboriginal referrals. Some of these courts had few Aboriginal defendants, limiting their capacity to refer. At others, however, more than 20 per cent of defendants were Aboriginal.

We think there are a number of reasons for variations in referrals.

Firstly, there is a risk that not all Aboriginal defendants that would benefit from MERIT are identified. Over 40 per cent of referrals come from solicitors. The problem with relying so heavily on solicitors is that if the defendant is not represented or their solicitor is unfamiliar with MERIT, referrals may be missed. Almost half of all local court defendants do not have a solicitor.

Secondly, the eligibility criteria exclude defendants charged with serious violence offences or whose primary presenting problem is with alcohol rather than illicit drugs. This impacts more on Aboriginal defendants than non-Aboriginal defendants as they are more likely to have a problem with alcohol abuse, and are also more likely to be facing charges involving serious violence.

Thirdly, engaging with Aboriginal defendants may be a problem. In fact, Aboriginal defendants are less likely to accept a referral to MERIT than non-Aboriginal defendants. One in three declines the offer.

In addition, MERIT is not available in all courts. Since 2006, despite its success, MERIT has only been rolled out to one additional court. There are a number of very busy courts with a high proportion of Aboriginal defendants where MERIT is not available.

Once into the program, Aboriginal defendants are less likely to finish MERIT than non-Aboriginal defendants. This is often because of breaching program requirements or being removed from the program by the court.

MERIT will have greater impact if more Aboriginal defendants complete it. To do this MERIT needs to adapt better to the diverse needs of defendants.

This is possible. In 2007-08 we saw a 16 per cent increase in the proportion of Aboriginal defendants completing MERIT. This was largely due to a trial of a new service delivery model by seven MERIT teams.

This model heightens the awareness of teams to the specific needs of Aboriginal defendants, and focuses practices on factors that improve program completion.

Overall, the ability to identify MERIT clients, the eligibility criteria, the location and the ability of MERIT teams to engage with Aboriginal defendants are key factors that limit MERIT's capacity to treat Aboriginal defendants.

MERIT needs to overcome these barriers. If MERIT is to be a truly mainstream program, it must adapt to meet the needs of all who should participate.

## Key audit findings

### Chapter 1 What are court diversion programs?

Court diversion programs refer defendants into treatment with the purpose of breaking the cycle of crime, benefitting both the defendant and the community.

This approach is part of a wider movement known as therapeutic jurisprudence. Courts applying therapeutic jurisprudence, or problem solving courts, use the law to address not only the criminal conduct of defendants, but also the health, mental and social welfare issues that have been instrumental in bringing defendants before the criminal justice system.

MERIT provides eligible defendants with a full range of health and welfare services that are matched to their treatment needs. Many defendants have complex needs including mental health disorders, disabilities, unemployment, housing, family dysfunction, health problems, and diseases like HIV and hepatitis.

MERIT has been available since 2000 and receives around \$12 million each year in funding. MERIT originated as part of the Commonwealth Government's illicit drug diversion program and was developed jointly by the Attorney-General's Department, the NSW Department of Health and NSW Police.

As a mainstream court diversion program, MERIT has the potential to impact on a large number of Aboriginal defendants.

For example one study shows that for Aboriginal defendants who entered MERIT before 31 December 2006, 77 per cent who completed the program had not committed another crime within six months of program entry. This compares to a rate of 50 per cent for those who did not complete the program.

Also sentencing data indicates that about four per cent of people who completed the program received a prison sentence, compared to almost 24 per cent of those who did not complete the program.

However, completing the program does not guarantee that participants will cease criminal activity or abstain permanently from drug taking. Rather, knowing that a proportion of defendants have entrenched crime and drug problems and will relapse, MERIT allows participants to repeat the program where needed.

### Chapter 2 Are all eligible Aboriginal defendants able to access MERIT?

Where MERIT is available, eligible defendants are referred by NSW Police, solicitors and Magistrates. People may also refer themselves to the program or be referred by their families.

Initially, around 70 per cent of referrals to MERIT were from Magistrates. While it was anticipated that Magistrates, police and solicitors would be the primary referrers, over 40 percent of referrals now come from solicitors. Police referrals are around five per cent with Magistrate referrals around 30 per cent.

NSW Police is supposed to appoint a MERIT liaison officer in each of its Local Area Commands where MERIT is offered. The role of these officers is to promote referrals to MERIT and liaise with the local MERIT team. However we found that not all commands had liaison officers which may be a reason why referral rates declined.

NSW Police also employ Aboriginal Community Liaison Officers (ACLOs) however these staff were often unaware of MERIT or its benefits.

While Magistrates generally understand the MERIT process, it can be difficult for them to identify appropriate MERIT referrals from the information available to them. And MERIT is not available in all courts including some courts with high proportions of Aboriginal defendants.

In the case of solicitors, whether or not they refer their clients to MERIT depends on each solicitor's knowledge and experience of the program.

1. We recommend that the NSW Police Force by January 2010 appoints a MERIT Liaison Officer at each command where MERIT operates (page 29).
2. We recommend that the NSW Police Force by January 2010 provides ongoing training to Aboriginal Community Liaison Officers (ACLOs) on MERIT (page 29).
3. We recommend that the Attorney General's Department and the NSW Department of Health by July 2010 develop and implement a process for MERIT caseworkers to identify potential defendants before appearing before a Magistrate (page 30).
4. We recommend that the Attorney General's Department in consultation with the NSW Department of Health, by September 2010, expand MERIT to additional courts, particularly those courts with high proportions of Aboriginal defendants (page 32).

#### Referral and assessment practices varied

Once referred defendants are assessed by MERIT caseworkers to determine if the defendant is eligible and would benefit from MERIT. The MERIT caseworker then prepares a report for the court.

We found assessment practices differed with some MERIT teams completing assessments at court and others taking up to four weeks.

When MERIT teams do not have the capacity to take any more clients they may ask the Magistrate for a longer adjournment or ask that referrals cease temporarily. While this is allowed under MERIT, it is not the best outcome for defendants in need.

MERIT team capacity is also affected by staff vacancies. Positions are particularly difficult to fill in western NSW, where local courts have the highest rate of Aboriginal defendants. And there is no standard approach to the training of MERIT teams.

Where police refer defendants to MERIT, they do so in a timely manner.

5. We recommend that the Attorney General's Department in consultation with NSW Department of Health and NSW Police develop a new MERIT operational manual by July 2010 that includes a standard assessment form (page 33).

We recommend that the NSW Department of Health by June 2010:

6. refers MERIT clients to other NSW Department of Health drug and alcohol services or non-government organisations (NGOs) when capacity is reached wherever possible, with the MERIT team remaining as case manager reporting to the court (page 33)
7. reviews MERIT staffing arrangements with a view to establishing permanent positions (page 33)
8. develops and implements an ongoing training program for MERIT teams, including induction training (page 33).

**Barriers to access  
impact more on  
Aboriginal  
defendants**

Over the last five years, the number of Aboriginal defendants referred to MERIT has increased by 22 per cent. However once referred, Aboriginal defendants are less likely to be accepted into MERIT.

The fact that MERIT is designed to treat drug problems, not alcohol abuse, and the exclusion of defendants whose charges include serious violence tend to have a greater impact on Aboriginal defendants.

In some areas defendants who do not strictly meet the eligibility criteria have been included.

Other barriers to access include the location of MERIT courts, the generally poor level of engagement and communication with Aboriginal defendants, and client transport problems.

Acceptance of a program by the Aboriginal community is a key factor in its success. Providers need to understand the values and principles advocated by Aboriginal people, including heritage and culture and its link to improved individual self-esteem.

There are Aboriginal staff in the justice system whose role is to support Aboriginal defendants. These include Aboriginal Client Court Specialists and Aboriginal Community Justice Group Coordinators. We found these officers are generally unaware of the availability and benefits of MERIT.

9. We recommend that the Attorney General's Department, in consultation with NSW Police and the NSW Department of Health by June 2010, simplifies MERIT eligibility criteria to focus on:
  - suitability for release on bail
  - clients with a demonstrable drug or alcohol problem (page 36).
10. We recommend that the Attorney General's Department, in consultation with the NSW Department of Health and NSW Police by December 2010, develops and distribute MERIT promotional literature that is culturally appropriate for Aboriginal people (page 37).
11. We recommend that the Attorney General's Department by July 2010 provides ongoing training for Aboriginal Client Service Specialists and Aboriginal Community Justice Group Coordinators on MERIT so they may identify and support potential MERIT Aboriginal defendants at court (page 37).
12. We recommend that the NSW Department of Health by September 2010, offer MERIT clinics at alternate locations wherever possible (page 38).

**Chapter 3**  
**Does MERIT meet**  
**the needs of**  
**Aboriginal clients?**

Of all Aboriginal defendant referrals that do not progress into MERIT, one in three does not proceed as the defendant is unwilling to participate. And more Aboriginal defendants breach the program requirements.

There may be many reasons for this. However we found that although the MERIT assessment identifies the needs of Aboriginal defendants, the way the assessment is conducted by caseworkers, the way the service is delivered and the options for treatment may contribute to the low completion rate.

MERIT has been going since 2000. A lot has been learned about how to improve Aboriginal defendants' completion rates and the recent increase in completion can be attributed to changes in the practices of seven teams. These practices need to be implemented in other MERIT teams.

We also found that in 2007-08, MERIT rehabilitation beds were underutilised by 57 per cent. The reasons for this are unclear.

13. We recommend that the Attorney General's Department, in consultation with the NSW Department of Health, by July 2010 include the MERIT Aboriginal Practice Checklist in the new operational manual (page 41).
14. We recommend that the NSW Department of Health by July 2010 develop a database of Aboriginal client services for use by MERIT teams (page 43).
15. We recommend that the NSW Attorney General's Department in consultation with the NSW Department of Health by July 2010, develop guidelines for engaging specialist services for MERIT clients and include these in the new operational manual (page 43).
16. We recommend that NSW Department of Health by March 2010 examines the reasons for underutilisation of MERIT rehabilitation beds (page 44).
17. We recommend that the Attorney General's Department, in consultation with the NSW Department of Health, by July 2010 develop guidelines on what constitutes a breach that should be reported to the court (page 45).

**Improving results**

Factors such as location, transport, communication, attendance requirements, service delivery options and program content all contribute to Aboriginal defendants leaving MERIT prior to completion.

There is a significant amount of high quality performance data and research available on MERIT. This data should be made publicly available to improve accountability and awareness.

18. We recommend that the NSW Department of Health, in consultation with the Attorney General's Department, by September 2010 set targets for client completion rates for each MERIT team (page 45).
19. We recommend that the NSW Attorney General's Department, in consultation with the NSW Department of Health and NSW Police by July 2010:
  - regularly publish MERIT annual reports on the website
  - provide quarterly reports on MERIT referral, acceptance and completion rates by court to the Chief Magistrate
  - compare the performance of MERIT teams in regard to referrals, acceptances and completions and investigate inconsistencies (page 46).

## Response from NSW Attorney General's Department

*Thank you for the opportunity to respond to your recent Performance Audit Report, 'Helping Aboriginal defendants through MERIT' which makes specific recommendations on ways to improve the Magistrates Early Referral Into Treatment (MERIT) program for Aboriginal defendants.*

*I support all of the Report's recommendations in principle. I note that many recommendations require implementation by the program's partner agencies and I refer you to the responses of my colleagues in NSW Health and the NSW Police Force in relation to these.*

*The program's partner agencies are committed to continuing to work collaboratively to increase the reach of MERIT, improve service provision and maximise the benefits of the program for all eligible defendants, and for the wider community.*

*Substance misuse continues to be a significant issue for many defendants appearing before Local Courts in NSW. MERIT is one of several innovative diversion programs within the court system that aim to identify defendants with drug issues and divert them into appropriate treatment services.*

*As acknowledged in your Report, MERIT is a highly successful program and an appropriate intervention for Aboriginal defendants. Since its commencement in July 2000 in the Northern Rivers region of New South Wales, the MERIT program has been expanded to cover 61 Local Courts and is now available to more than 80% of the Local Court population.*

*To date, more than 7,000 participants have successfully completed the three-month treatment program offered through the program, including around 1,000 indigenous defendants. Studies show MERIT has been successful in improving health and criminal justice outcomes for participants, through reducing drug use, improving general and mental health and reducing rates of re-offending.*

*In a recent study published by NSW Health, over 90% of participants reported that MERIT had met their needs and helped them deal more effectively with their substance misuse problems.*

*I agree that the opportunity to benefit from a program as successful as MERIT should be equally accessible to all eligible defendants. The overrepresentation of Aboriginal people in the NSW justice system is a serious issue and your Report quite rightly notes that breaking the cycle of substance misuse and crime is particularly important for our Aboriginal communities. The report also notes a recent increase in the proportion of Aboriginal defendants completing MERIT. We are pleased to see this increase recognised as my Department and our partner agencies have made a considerable effort to improve Aboriginal participation in the program over recent years. Recent research has also indicated that Aboriginal and non-Aboriginal participants benefit equally from completing the program.*

*I note the Report's findings that MERIT referral procedures could be improved to increase the identification of both indigenous and non-indigenous defendants who are eligible for the program, and that standardisation of procedures and processes in a new 'Operational Manual' is considered desirable. Work has already commenced within my Department to develop a new Manual, which will contribute to a more consistent approach to MERIT across NSW.*

*I also support expanding the program, both to a greater number of courts, and to include participants whose primary concern is alcohol. This expansion will be dependent on the availability of resources and other factors, including the availability of appropriate treatment services and the anticipated level of demand. Maximising the availability of MERIT to Aboriginal defendants has been, and will continue to be, a key consideration when implementing any program expansion.*

*I note the Audit Office's perspective on improving performance monitoring and reporting procedures within the program and on enhancing existing training for Aboriginal Client Service Specialists and Aboriginal Community Justice Group Co-ordinators. These officers have received this training in the past and my Department will be providing continuing education to them to ensure these skills are further developed.*

*I take this opportunity to thank the Audit Office for its interest in MERIT and for its considered recommendations on how this well-regarded and successful program could work better for Aboriginal defendants.*

*(signed)*

*Laurie Glanfield  
Director General*

*Dated: 23 July 2009*

## Response from the NSW Department of Health

*I am writing in reply to your letter of 24 June 2009 requesting a formal response to the Performance Audit Report 'Helping Aboriginal defendants through MERIT'.*

*Firstly, you may be assured that NSW Health is strongly committed to developing strategies to improve health and criminal justice outcomes for Indigenous offenders including through access to, and participation in, drug diversion programs.*

*In this context, I was pleased to see from the audit report that the key Magistrates' Early Referral to Treatment (MERIT) Program is considered to be a highly appropriate intervention program for Aboriginal defendants, demonstrating both improved health and justice outcomes for many participants.*

*I can further report that my department has already taken steps to increase Aboriginal participation in MERIT by funding the Aboriginal Health and Medical Research Council to develop specific local strategies for this which should start to be rolled out over the next 12 months.*

*Turning to the specifics of the audit report, as an initial comment I would suggest that there needs to be greater acknowledgement that MERIT is a program that is fully funded by the Commonwealth Government and operates under a national policy framework agreed by the Council of Australian Governments in 1999.*

*As such, the program has had to operate and evolve within strict parameters and national eligibility criteria outside the immediate discretion of the NSW Government. Any future changes to the program would, therefore, require Commonwealth advice on what is possible to achieve under relevant national frameworks.*

*In response to the 19 recommendations of the audit report, it is noted that 16 are directly relevant to NSW Health with the department's position on each indicated in the attached advice.*

*It is noted that many of the recommendations are for practice improvement and are either already being actioned or can be implemented through existing processes such as the planned review of the current MERIT Operations Manual. I refer here to recommendations 3, 5, 8, 10, 12, 13-17.*

*As indicated in the attached advice, while several of these recommendations can be supported implementation of others would, of course, be subject to available resources.*

*With regard to the remaining six recommendations relevant to NSW Health (recommendations 4, 6, 7, 9, 18 and 19), these touch more on issues of policy, including clinical policy, and internal performance management. Given this and as detailed in the attached advice, the following qualifications apply:*

- Rec 4 - expansion to more courts. This would be subject to available resources.
- Rec 6 - referring clients for treatment to other services or NGOs if capacity is reached. This is not supported given concerns about clinical governance and risk of displacing voluntary patients. As a principle, programs should operate within approved budgets rather than be an impost on other services and their clients.
- Rec 7 - consider making MERIT staff permanent. This would need to be considered in context of both program funding now being provided under the four year National Healthcare Agreement and the NSW Government's recruitment policy.
- Rec 9 - revise eligibility criteria. This would require Commonwealth advice which is already being sought.
- Rec 18 - set targets for completion rates. This will be considered but could be problematic given relevant factors are at times outside the control of MERIT teams.
- Rec 19 - reporting. Consideration will be given to the proposed comparison of MERIT teams. However, noting issues in relation to Recommendation 18, this would be part of an internal, rather than public, performance management process.

As you would be aware, MERIT is a strong and effective example of a whole of government initiative that has been progressed through the ongoing collaboration of NSW Health, NSW Police Force and the Attorney General's Department.

This will continue under the new phase of Diversion as part of the National Healthcare Agreement with the NSW Government supporting the coordinated approach now operating under the Senior Officers Committee on Drugs and Alcohol. As this committee is convened by NSW Health, I have instructed my officers to ensure that the issues raised in the audit report are considered and progressed through that forum.

Thank you for the opportunity to consider the audit report and its recommendations. Any enquiries may be directed to Ms Fiona Wynn, Associate Director (Government Relations), Mental Health and Drug and Alcohol Office, NSW Health on 9424 5963.

(signed)

Professor Debora Picone AM  
Director General

Dated: 23 July 2009

**Recommendations of the Performance Audit  
'Helping Aboriginal defendants through MERIT'**

RECOMMENDATION	NSW HEALTH POSITION
<p>3. We recommend that the Attorney General's Department and the NSW Department of Health by July 2010 develop and implement a process for caseworkers to identify potential defendants before appearing before a Magistrate.</p>	<p><u>Supported.</u> NSW Health would support this work being progressed as part of the planned review of the current MERIT operational manual in 2009/10.</p>
<p>4. We recommend that the Attorney General's Department, in consultation with the NSW Department of Health, by September 2010, expand MERIT to additional courts, particularly those courts with high proportions of Aboriginal defendants.</p>	<p><u>Supported in principle but subject to available resources and other considerations.</u></p> <p>NSW Health strongly supports the MERIT program which has been independently evaluated as effective and emulated elsewhere as an example of best practice.</p> <p>In considering the recommended action, it is, of course, acknowledged that the preferred position would be to ensure MERIT is available in all courts noting that this is only feasible where there is access to appropriate treatment services for this type of offender.</p> <p>Further, MERIT is a resource intensive program that is fully funded by the Commonwealth with an annual budget determined in advance through a series of national funding agreements. Because of this, since its inception in 1999/2000, MERIT has been rolled out in a very planned staged way responsive to a finite budget, high usage courts and available services.</p> <p>However, noting the above constraints, NSW Health supports an investigation to identify opportunities to expand to additional courts. A key principle of any such work would be to avoid any diminution of, or unintended adverse impact on, existing MERIT services.</p>
<p>5. We recommend that the Attorney General's Department in consultation with NSW Department of Health and NSW Police develop a new MERIT operations manual by July 2010 that includes a standard assessment form.</p>	<p><u>Supported.</u> NSW Health would support this work being progressed as part of the planned review of the current MERIT operational manual in 2009/10.</p>

RECOMMENDATION	NSW HEALTH POSITION
<p>6. We recommend that the NSW Department of Health by June 2010 refers MERIT clients to other NSW Department of Health drug and alcohol services or non government organisations (NGOs) when capacity is reached wherever possible, with the MERIT team remaining as case manager reporting to the court.</p>	<p><b><u>Not supported.</u></b> While MERIT is a key diversion program in NSW, it is one of a range of services aimed at reducing drug use and drug related harm in NSW. Given this, as a general principle, programs should operate within their agreed budgets rather than be an impost on other services and risk displacing their clients from access to that help.</p> <p>In this context, it should be noted that under the original diversion framework agreed by COAG in 1999, specific funding was provided for treatment and education places for offenders so that no displacement of voluntary admissions to treatment would occur. There is clear argument that the recommendation to refer MERIT clients to other services would be inconsistent with this principle.</p> <p>In addition, MERIT is a program that has been designed to provide intensive care for its clients through case management and support across a range of treatment modalities.</p> <p>This is a critical factor in the effectiveness of the MERIT approach and there would be significant issues of clinical governance with a proposal to separate responsibility for case management and treatment as well as discretion in determining what type of treatment is pursued. Even if other services were available, there would also be concern about their capacity to provide the required level of supports for MERIT clients.</p>
<p>7. We recommend that the NSW Department of Health by June 2010: reviews MERIT staffing arrangements with a view to establishing permanent positions.</p>	<p><b><u>Supported in principle.</u></b> While a review will be considered, it should be noted that to date MERIT staffing arrangements have been determined by the fact that the program has been fully funded by the Commonwealth under specific 4 year bi-lateral agreements.</p> <p>Further, funding is now provided under the 4 year National Healthcare Agreement with the staffing-related implications of this change in instrument yet to be clarified.</p> <p>In considering the review, NSW Health will take into account the NSW Government's policy in relation to staffing and external recruitment.</p>
<p>8. We recommend that the NSW Department of Health by June 2010: develop and implement an ongoing training program for MERIT teams, including induction training.</p>	<p><b><u>Not required.</u></b> Training programs currently exist for MERIT staff and will be continued through the current funding cycle. On-going training and induction training is, of course, dependent upon continued Commonwealth funding and available resources.</p>

RECOMMENDATION	NSW HEALTH POSITION
<p>9. We recommend that the Attorney General's Department, in consultation with NSW Police and the NSW Department of Health by June 2010, simplifies MERIT eligibility criteria to focus on:</p> <ul style="list-style-type: none"> <li>● suitability for release on bail</li> <li>● clients with a demonstrable drug or alcohol problem.</li> </ul>	<p><b><u>Supported in principle.</u></b> Eligibility criteria for diversion programs was originally established under a national diversion framework agreed by the Council of Australian Governments in 1999. A key objective of this was to ensure that the community was not put at risk by the diversion of offenders with serious criminal behaviours including violence.</p> <p>Given the recent COAG decision to streamline Specific Purpose Payments such as Diversion with the latter integrated into the National Healthcare Agreement, advice is now being sought from the Commonwealth about the status of the diversion framework and its criteria including potential to revise the criteria and broaden the range of offenders accessing MERIT by removing current obstacles.</p> <p>Finally, any review of eligibility criteria would need to consider any specific NSW Health policy directives relating to violent offenders and resource implications that may arise from a greater demand for services already operating at capacity.</p>
<p>10. We recommend that the Attorney General's Department, in consultation with the NSW Department of Health and NSW Police by December 2010, develop and distribute MERIT promotional literature that is culturally appropriate.</p>	<p><b><u>Supported in principle.</u></b> However, this work would be dependent upon available resources and will be considered within the current funding levels provided by the Commonwealth.</p>
<p>12. We recommend that the NSW Department of Health by September 2010, offer MERIT clinics at alternate locations wherever possible.</p>	<p><b><u>Supported in principle.</u></b> NSW Health will consider opportunities wherever possible and within existing resource constraints to offer MERIT clinics at alternate locations in order to accommodate clients who have difficulty attending appointments due to transport.</p>
<p>13. We recommend that the Attorney General's Department, in consultation with the NSW Department of Health, by July 2010 include the MERIT Aboriginal Practice Checklist in the new operational manual.</p>	<p><b><u>Supported.</u></b> NSW Health would support this work being progressed as part of the planned review of the current MERIT operational manual in 2009/10.</p>
<p>14. We recommend that the NSW Department of Health by July 2010 develop a database of Aboriginal client services for use by MERIT teams.</p>	<p><b><u>Supported in principle.</u></b> NSW Health supports improved provision of information on Aboriginal Services to MERIT teams.</p> <p>NSW Health is currently undertaking work to scope the development of a database to provide information statewide on Aboriginal health and other relevant services. If feasible, the database content would be made available to MERIT teams.</p>

RECOMMENDATION	NSW HEALTH POSITION
<p>16. We recommend that NSW Department of Health by March 2010 examines the reasons for underutilisation of MERIT rehabilitation beds.</p>	<p><b><u>Not required as action is already underway.</u></b> This issue has been subject to ongoing monitoring and review under the last phase of the Illicit Drug Diversion Initiative agreement. As a consequence, underutilisation of MERIT rehabilitation beds will be addressed through the commencement of a competitive tender process to determine suitable residential rehabilitation services to provide MERIT beds. The tender process will inform funding allocations for the 2010/11 financial year.</p>
<p>17. We recommend that the Attorney General's Department, in consultation with the NSW Department of Health, by July 2010 develop guidelines on what constitutes a breach that should be reported to the court.</p>	<p><b><u>Supported.</u></b> NSW Health would be pleased to support the Attorney General's Department in this work.</p>
<p>18. We recommend that the NSW Department of Health, in consultation with the Attorney General's Department, by September 2010 set targets for client completion rates for each MERIT team.</p>	<p><b><u>Noted.</u></b> NSW Health, in consultation with the Attorney General's Department, will consider this recommendation noting that there are a wide range of factors that would impact on completion rates for individual MERIT teams. These can be outside the control of MERIT teams, making the development of a suitable target problematic.</p> <p>These factors include:</p> <ul style="list-style-type: none"> <li>• variations in severity of clinical presentations;</li> <li>• availability of treatment modalities; and</li> <li>• the discretion of Magistrates in determining the progression of cases.</li> </ul> <p>If targets are progressed, they would be solely for the purpose of internal program and performance management rather than for public reporting on performance.</p>
<p>19. We recommend that the NSW Attorney General's Department, in consultation with the NSW Department of Health and NSW Police by July 2010:</p> <ul style="list-style-type: none"> <li>• regularly publish MERIT annual reports on the website</li> <li>• provide quarterly reports on MERIT referral, acceptance and completion rates by court to the Chief Magistrate</li> <li>• compare the performance of MERIT teams in regard to referrals, acceptances and completions and investigate inconsistencies.</li> </ul>	<p><b><u>Not required.</u></b> MERIT Annual Reports are already published on the website.</p> <p><b><u>Supported in principle.</u></b> NSW Health would be pleased to facilitate the Attorney General's Department in providing regular reports to the Chief Magistrate.</p> <p><b><u>Supported in principle.</u></b> In consideration of the number of factors that may impact completion rates for individual MERIT teams, performance comparison should be used only as a means of internal performance management to identify program issues and not for publication.</p>

## Response from NSW Police Force

*I refer to your letter dated 24 June 2009, regarding the final report of the performance audit Helping Aboriginal defendants through MERIT.*

*Attached is a schedule detailing our response to the recommendations relating to the NSW Police Force.*

*The NSW Police Force is also identified as a partner agency in another 4 recommendations of which the Attorney General's Department (AGD) has primary carriage. The NSW Police Force will continue to work collaboratively and in support of the AGD to address these recommendations.*

*(signed)*

*Dave Owens APM  
Acting Commissioner of Police*

*Dated: 17 July 2009*

**Audit Office - Status of recommendations**  
**Helping Aboriginal defendants through MERIT**

	Recommendation	Accepted/ Rejected	Comment  Any variation to the recommendation including limitations and problems associated with implementation or difficulties in accepting the recommendation	Proposed action  What steps will be taken to implement the recommendation?	Command responsible
1	NSWPF appoints a MERIT Liaison Officer (MLO) at each command where MERIT operates by January 2010.	Accepted	The importance of MLOs to the promotion and uptake of MERIT at a local level is acknowledged. The ongoing maintenance, training, support and updating of MLO status is a challenge due to the transient nature of the workforce. MLO recruitment and ongoing support is a priority for DAC staff.	<ol style="list-style-type: none"> <li>All MERIT LAC Commanders have been contacted and asked to review and renew their appointment of MLOs.</li> <li>DAC staff are supporting this process by providing continuing training in partnership, where possible, with the MERIT managers attached to the local health service provider.</li> </ol>	DAC, LACs
2	NSWPF provides ongoing training to Aboriginal Community Liaison Officers (ACLOs) on MERIT by January 2010	Accepted	DAC have previously identified ACLOs as being an important conduit for Indigenous offenders to access MERIT and other diversion programs. As such, DAC has commenced consultations with the NSW Police Force Aboriginal Policy Advisory Unit (APAU) and relevant LACs on the development of a training package for ACLOs.	<ol style="list-style-type: none"> <li>DAC staff will develop and deliver a training package for ACLOs on drug and alcohol issues in general and more specifically MERIT and other drug diversion initiatives.</li> </ol>	DAC, APAU, LACs

## 1. What are court diversion programs?

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Aboriginal people are overrepresented in the justice system

## 1.1 What are court diversion programs?

Court diversion and early intervention programs seek to break the cycle of drug and alcohol abuse and, through this, decrease drug and alcohol related crime.

One diversion approach is to refer defendants to treatment. This can reduce criminal activity, and improve the health and social functioning of the defendant.

This is often referred to as therapeutic jurisprudence. Courts applying therapeutic jurisprudence, or 'problem solving courts' use the law to address not only the criminal conduct of defendants, but also the health, mental and social welfare issues that have been instrumental in bringing defendants before the court.

## 1.2 Why focus on Aboriginal defendants?

The high rate of Aboriginal people in contact with the criminal justice system in NSW is of continuing concern.

Aboriginal defendants appear in court on criminal charges at a rate that is 13 times that of non-Aboriginal defendants, and the result is that while two per cent of the NSW population is Aboriginal nearly 21 per cent of the NSW prison population are Aboriginal men and women.

Reoffending rates are also high. With one study showing 53 per cent of Aboriginal defendants found guilty in court being reconvicted of another offence within 24 months. This compares to a reoffending rate of 29 per cent for all people found guilty in court.

Court intervention programs that can treat the factors that lead to offending behaviour are a benefit to the individual and the community as a whole.

## 1.3 What is MERIT?

The Magistrates Early Referral into Treatment program (MERIT) is the largest treatment program for defendants in the local court.

MERIT operates in 61 of 144 local courts. See Appendix 2 for locations. In NSW, MERIT courts deal with around 80 per cent of all cases before the local court. MERIT receives about \$12 million from the Commonwealth Government each year. NSW MERIT is funded primarily through the National Illicit Drug Strategy, which was an Australia wide program launched in 1997.

MERIT started in 2000 as a pilot program in Lismore. Since then it has expanded across the State.

MERIT targets not only first time defendants, but also those with entrenched problems. For about one in three MERIT clients it is the first time they have had formal drug treatment.

However, completing the program does not guarantee that participants will cease criminal activity or abstain permanently from drug taking. Rather, knowing that a proportion of defendants have entrenched crime and drug problems and will relapse, MERIT allows participants to repeat the program where needed.

#### **1.4 How MERIT works**

MERIT provides three months treatment and rehabilitation for defendants with demonstrable drug problems. MERIT aims to:

- decrease drug-related crime during and following program completion
- decrease illicit drug use for the duration of the program and in the post program period
- improve health and social functioning for the duration of the program and in the post program period
- increase community protection from drug-related criminal activity
- reduce sentences due to better rehabilitation prospects.

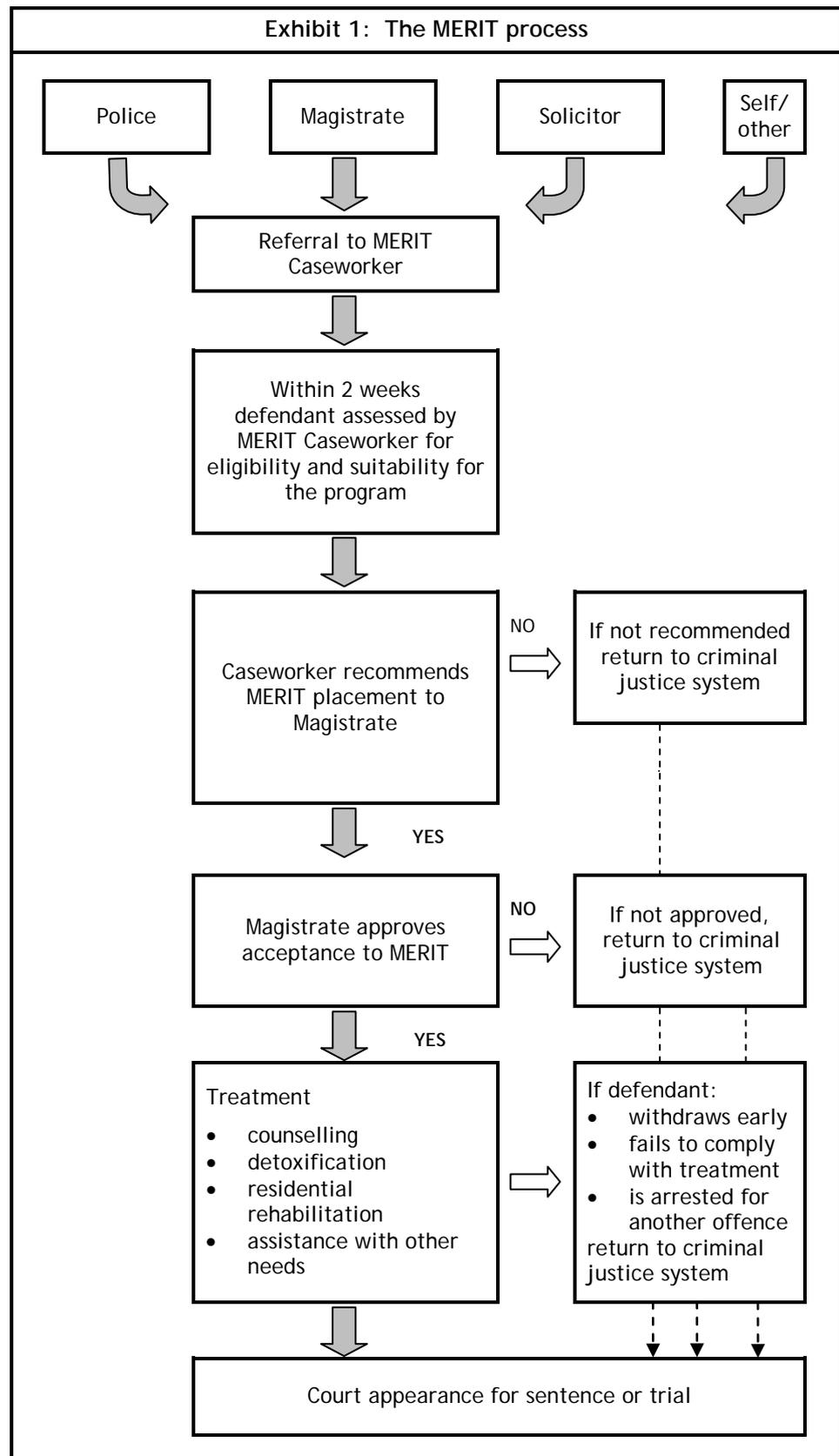
MERIT provides defendants who are eligible and motivated towards rehabilitation with a full range of health and welfare services that are matched to their treatment needs. Many defendants have complex needs including mental health disorders, disabilities, unemployment, financial, housing, poverty, family dysfunction, children at risk, health problems, and diseases like HIV and hepatitis.

The treatment is provided primarily by MERIT caseworkers who are employees of the NSW Department of Health as well as officers of the court.

MERIT is a voluntary program for defendants not held on remand. It generally operates before the defendant enters a plea of guilty or not-guilty to the charges. This means they can have treatment to address their drug problem as part of the bail process.

It is entirely up to the Magistrate to decide whether or not a defendant is accepted into MERIT.

During the three months treatment program the Magistrate receives reports on the defendant from the caseworker. The final hearing and sentence generally coincide with the completion of MERIT. Magistrates can then consider the defendant's progress as part of final sentencing.



Source: Audit Office research.

## 1.5 What are the benefits of MERIT?

Research indicates that MERIT has been successful in improving both health and sentencing outcomes for participants.

For example one study shows that for Aboriginal defendants who entered MERIT before 31 December 2006, 77 per cent who completed the program had not committed another crime within six months of program entry. This compares to a rate of 50 per cent for those who started but did not complete the program.

Also sentencing data indicates that about four per cent of people who completed the program received a prison sentence, compared to almost 24 per cent of those who did not complete the program.

### Exhibit 2: How MERIT helps

Mark\*, a 35 year old Aboriginal man, had a 20 year history of chronic cannabis use and alcohol abuse. He is married with 3 children.

Mark has an extensive criminal history and has been charged with break and enter offences, malicious damage, offensive language and common assault.

Mark was referred to MERIT by his solicitor. He was assessed as suitable and was admitted to a residential rehabilitation program for three months.

After completing the residential program, having considered his progress on MERIT, the Magistrate placed Mark on a good behaviour bond for two years.

Mark returned home to his community.

Today Mark's family and friends are very supportive and encourage him to attend Narcotics Anonymous meetings on a regular basis.

Mark now works in the building industry and he also helps coach a young men's football team in the local community. Mark is committed to remaining off drugs and alcohol, believing he is a much better role model for his children when he is drug free.

Source: Audit Office research.

\* This is not an actual case but combines a number of aspects of cases to illustrate how MERIT works.

## 1.6 About the audit

This audit assesses the participation of Aboriginal defendants in MERIT.

MERIT is a mainstream program. That means that any defendant in a local court that offers MERIT, and who meets the eligibility criteria should be able to access the program.

We sought to answer the following two questions:

- are all eligible Aboriginal defendants able to access MERIT?
- does MERIT meet the needs of Aboriginal defendants?

See Appendix 1 for further information on the lines of inquiry, scope, criteria and audit approach.



**2. Are all eligible Aboriginal defendants  
able to access MERIT?**

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**At a glance**

**The key question we wanted to answer was:**

Are all eligible Aboriginal defendants able to access MERIT?

**Our assessment:**

Where MERIT is available, Aboriginal defendants can access MERIT. In fact, the number of Aboriginal defendants referred to MERIT has increased by 22 per cent over the last five years. However the actual number remains low with only 427, or about one in forty Aboriginal defendants being referred in 2007-08.

When MERIT commenced it was expected that NSW Police, Magistrates and solicitors would be the primary referrers. Today, most referrals come from solicitors.

Magistrates can find it difficult to identify potential MERIT participants. And MERIT is not available in all courts, including courts that deal with high proportions of Aboriginal defendants.

Referrals are inconsistent.

In 2007-08, more than half of all Aboriginal referrals came from ten MERIT courts. In contrast, 26 MERIT courts had two or less Aboriginal defendant referrals, including 12 with no Aboriginal referrals. Some of these courts had few Aboriginal defendants, limiting their capacity to refer. At others, however, more than 20 per cent of defendants were Aboriginal.

We also found practices around the assessment of defendants for inclusion in MERIT varied. Once they get a referral some MERIT teams complete a full MERIT assessment of the defendant immediately and others can take up to four weeks.

Also, if a MERIT team does not have the capacity to take any new clients they may ask the court for longer adjournments or ask that referrals cease temporarily. These practices mask demand for places in MERIT.

MERIT team capacity is affected by staff vacancies. Positions are particularly difficult to fill in western NSW, where local courts have the highest rate of Aboriginal defendant criminal court appearances.

Once referred, Aboriginal defendants are less likely to be accepted into MERIT. MERIT is designed to treat drug problems not alcohol abuse. This along with the exclusion of defendants whose charges include serious violence, tend to have a greater impact on Aboriginal defendants.

Other barriers to access include the location of MERIT courts, the generally poor level of engagement and communication with Aboriginal defendants, and client transport problems.

A key to program success is acceptance by the Aboriginal community. Providers need to understand the values and principles advocated by Aboriginal people, including heritage and culture and its link to improved individual self-esteem in order for the program to work.

There are Aboriginal staff in the justice system whose role is to support Aboriginal defendants. These include Aboriginal Client Court Specialists and Aboriginal Community Justice Group Coordinators. We found these officers are generally unaware of the availability and benefits of MERIT.

## 2.1 Are referral processes in place?

### Our assessment

Where MERIT is available, eligible defendants are referred by NSW Police, solicitors and Magistrates. People may also refer themselves to the program or be referred by their families.

Initially, around 70 per cent of referrals to MERIT were from Magistrates. While it was anticipated that Magistrates, police and solicitors would be the primary referrers today over 40 percent of referrals come from solicitors. Police referrals are around five per cent with Magistrate referrals at around 30 per cent.

NSW Police is supposed to appoint MERIT Liaison Officers in each of its commands where MERIT is offered. The role of these officers is to promote referrals to MERIT and liaise with the local MERIT team. However, not all commands had Liaison Officers and referral rates have declined from around 11 to five per cent.

NSW Police also employ Aboriginal Community Liaison Officers (ACLOs) however we found these staff were often unaware of MERIT being available or its benefits.

While Magistrates generally understand the MERIT process, it can be difficult for them to identify appropriate MERIT referrals from the information available to them. And MERIT is not available in all courts including some courts with high proportions of Aboriginal defendants.

In the case of solicitors, whether or not they refer their clients to MERIT depends on each solicitor's knowledge and experience of the program.

### Referrals come from many sources

Eligible defendants may be referred to MERIT by NSW Police, solicitors, and Magistrates. People may also refer themselves to the program or be referred by their families.

To participate in the program, defendants are assessed against a set of criteria.

#### Exhibit 3: MERIT eligibility criteria

Potential clients are eligible for MERIT if they:

- are suitable for release on bail
- have a demonstrated illicit drug problem
- are an adult
- consent to voluntarily participate in the program
- are not involved in an offence related to serious violence, sexual offences or very serious drug offences
- have no matters pending of a violent or sexual assault nature
- have a treatable problem
- have been assessed as suitable for the program, i.e. are suitable for drug rehabilitation treatment
- usually reside in the defined catchment area
- are approved to participate in the program by the Magistrate.

Source: NSW Attorney General's Department 2002.

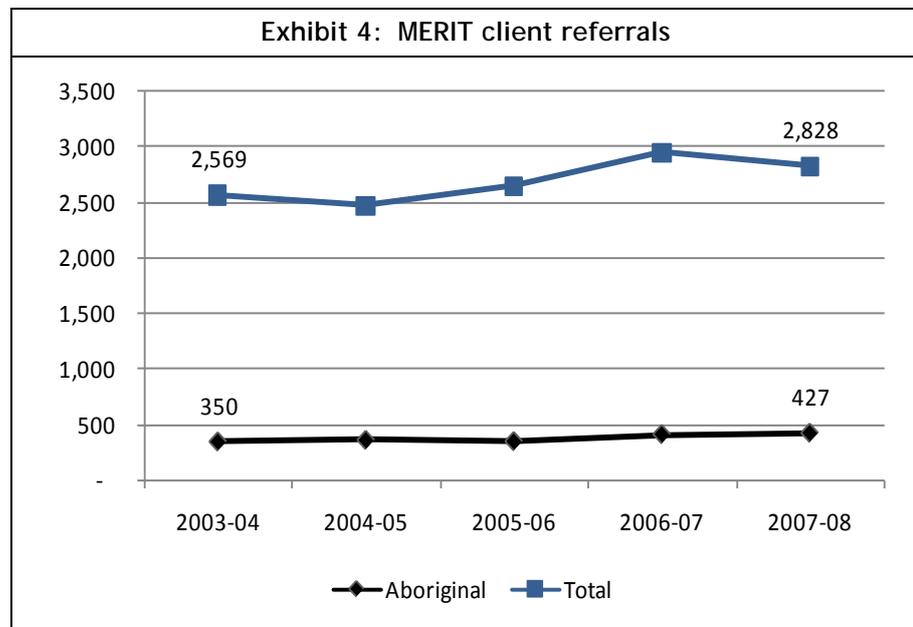
The availability of drug treatment intervention at an early stage in the criminal justice process and ideally shortly after arrest provides support and direction for those defendants with illicit drug problems. The aim is to reduce the risk of further involvement in the criminal justice system in the short and long term. Additionally, if the defendant is assessed as suitable for MERIT by police, he or she may commence treatment immediately, rather than wait to appear before a Magistrate which may take some weeks.

**Most referrals now come from solicitors**

When MERIT started in 2000 it was expected that NSW Police, Magistrates and solicitors would be the primary referrers. Since 2000, Magistrates' referrals have fallen from 72 to 32 per cent of total referrals and NSW Police referrals have fallen from 11 to five per cent. Solicitors today make more than 40 per cent of referrals.

**Referrals have increased**

MERIT referrals have increased by ten per cent over the past five years. Over the same period, referrals for Aboriginal defendants increased by 22 per cent.



Source: NSW Department of Health 2008.

**About 1 in 7 MERIT referrals is for an Aboriginal participant**

Referrals have averaged 2,645 a year over the past five years. Over the same period Aboriginal defendant referrals averaged 373 a year or about one in seven referrals.

While the number of Aboriginal defendants referred to MERIT has increased over the last five years, the actual number of Aboriginal referrals remains low at only 427, or about one in forty Aboriginal defendants being referred in 2007-08.

**NSW Police referrals are below expectation**

MERIT is available in 60 of the 80 Local Area Commands (LACs), corresponding to where MERIT courts are located. Referral by police to MERIT should occur at the time of arrest, once the defendant has agreed to be referred.

Referral procedures have been developed and training provided in LACs where MERIT operates. However, practices vary. At some LACs we found that officers lacked an understanding of the program and its requirements and made no referrals.

In LACs where MERIT operates, the MERIT operational manual requires a MERIT Liaison Officer to be appointed whose role it is to monitor local procedures including the number of referrals and ensure police are aware of MERIT.

We found not all LACs had Merit Liaison Officers.

NSW Police regard their referral rate to MERIT as too low. The reasons for this include:

- a lack of awareness of the procedures for referring a defendant to MERIT
- difficulty in getting informed consent from defendants who were intoxicated
- problems referring defendants who are charged away from the police station.

**NSW Police are implementing changes**

Since the audit commenced NSW Police has implemented changes to help address these issues including:

- procedures to allow referrals in the field
- an additional training DVD
- changes to the Computerised Operational Policing System (COPS) prompt officers to consider MERIT at the point of charge
- police can now record each referral on COPS
- new MERIT promotional material for distribution to police
- requesting all LAC Commanders to review the appointment of a senior officer as MERIT Liaison Officer.

The NSW Police Force also employs 56 Aboriginal Client Liaison Officers (ACLOs) in 26 LACs. The role of ACLOs is to promote communication and consultation between the police and the Aboriginal community as well as supporting Aboriginal defendants.

We found ACLOs had little knowledge of MERIT or its benefits.

**Recommendations**

We recommend that the NSW Police Force by January 2010:

- appoints a MERIT Liaison Officer at each command where MERIT operates
- provides ongoing training to Aboriginal Community Liaison Officers (ACLOs) on MERIT.

**Process for referral at court varied**

Although there are some local variations, most referrals by solicitors and Magistrates are made on the same day as the defendant first appears before the local court.

Most MERIT teams have a caseworker at court on the day new criminal matters are listed to explain the program to defendants and address any concerns of the Magistrate.

If a solicitor refers a client to a MERIT caseworker, the caseworker usually does a referral screening before the defendant appears before the Magistrate. If the defendant seems eligible for MERIT, the Magistrate will adjourn the case for about two weeks to allow the MERIT caseworker to do a complete assessment.

After two weeks, the case is listed before the Magistrate and the Magistrate will endorse or reject the defendant's participation in MERIT.

Relying on solicitors to refer defendants presents some risk. If the solicitor is unfamiliar with MERIT or its requirements, potential referrals may be missed.

Almost half of all local court defendants do not have a solicitor.

The Magistrate can also refer defendants to MERIT. However Magistrates may not always have sufficient information about the defendant to know if a referral would be appropriate.

Some MERIT caseworkers check the local court case list to identify potential defendants before court commences. They will often speak to these defendants to see if they are suitable or interested in being assessed for the program before they appear before the Magistrate.

The identification of potential participants by a caseworker has a number of advantages:

- it reduces the dependence on solicitors and Magistrates to identify potential MERIT defendants
- the defendant may be more likely to accept the referral because they have had the opportunity to discuss MERIT with the caseworker.

**Recommendation** We recommend that the Attorney General's Department and the NSW Department of Health by July 2010 develop and implement a process for MERIT caseworkers to identify potential defendants before appearing before a Magistrate.

**Referral rates vary** In some courts the referral rate for Aboriginal defendants is higher than the proportion of Aboriginal defendants appearing in court. For example a third of MERIT referrals at Bathurst were Aboriginal defendants yet only about 25 per cent of defendants were Aboriginal from 2003-04 to 2007-08.

At other courts, the reverse is true. For example, about 40 per cent of defendants in Kempsey were Aboriginal but only one in four MERIT referrals were Aboriginal defendants from 2003-04 to 2007-08.

In 2007-08, we found more than half of all Aboriginal defendant referrals came from ten MERIT courts. In contrast, 26 MERIT courts had two or less Aboriginal defendant referrals, including 12 with no Aboriginal defendant referrals. Some of these courts had few Aboriginal defendants, limiting their capacity to refer. At others, however, more than 20 per cent of defendants were Aboriginal.

We think there are a number of reasons for variations in referrals.

**MERIT is not available in all courts** The location where MERIT is offered affects referrals. Not all courts offer MERIT and even within one Magistrate's circuit, some courts offer MERIT while others do not. For example the Gosford circuit includes Woy Woy. Gosford court offers MERIT but Woy Woy does not.

The MERIT Statewide Steering Committee is responsible for deciding where MERIT is offered and overseeing the program. It is chaired by a representative from the Attorney General's Department and has members from the NSW Police Force and the NSW Department of Health. Factors the Committee uses to select MERIT locations include:

- number of defendants and trends over time
- number of finalised drug-related matters
- availability of treatment services
- cost effectiveness - for example, expansion to a small local court within a circuit may involve little additional expenditure
- advice from the Chief Magistrate
- capacity to work with local non-government organisations (NGOs) to provide treatment
- availability of after-care services to support clients completing MERIT
- maximising the potential for participation by Aboriginal defendants.

Since 2006 only one court has been added. According to the Steering Committee the number of MERIT courts is limited by the availability of funding.

Some MERIT courts see fewer than 200 defendants a year (for example, Albion Park, Junee and Mullumbimby) although they may meet a number of the other selection criteria. There are a number of non-MERIT courts handling more than 200 cases a year that also have high proportions of Aboriginal defendants.

<b>Exhibit 5: Non-MERIT courts with high proportions of Aboriginal and Torres Strait Islander defendants</b>					
<b>Local Court cases 2007</b>			<b>Local government area (LGA) population 2006 census</b>		
<b>Court</b>	<b>Total defendants with finalised cases</b>	<b>Percentage Aboriginal and Torres Strait Islander defendants</b>	<b>Total population</b>	<b>Aboriginal and Torres Strait Islander population</b>	<b>Percentage Aboriginal and Torres Strait Islander population</b>
Taree	1,192	30	45,145	1,928	4
Moree	765	62	13,976	2,705	19
Armidale	622	35	23,368	1,273	5
Inverell	529	38	15,510	825	5
Cowra	418	30	12,475	751	6
Wentworth	368	41	6,779	611	9
Gunnedah	306	29	11,525	1,171	10
Narrabri	279	39	13,119	1,202	9
Bourke	264	86	3,095	910	29
Narrandera	240	36	6,012	561	9

Source: NSW Bureau of Crime Statistics and Research 2008, and Australian Bureau of Statistics 2007.

**Recommendation** We recommend that the Attorney General's Department, in consultation with the NSW Department of Health, by September 2010, expand MERIT to additional courts, particularly those courts with high proportions of Aboriginal defendants.

## 2.2 Are referral processes used in a timely manner?

**Our assessment** We found assessment practices were inconsistent with some MERIT teams completing assessments at court and others taking up to four weeks.

When MERIT teams do not have the capacity to take any more clients they may ask the Magistrate for a longer adjournment or ask that referrals cease temporarily. While this is allowed under MERIT, it is not the best outcome for defendants in need.

MERIT team capacity is also affected by staff vacancies. Positions are particularly difficult to fill in western NSW regions, where local courts have the highest rate of Aboriginal defendants. And there is no standard approach to the training of MERIT teams.

Where police refer defendants to MERIT, they do so in a timely manner.

**Assessments should only take two weeks** The MERIT operational manual requires a suitability assessment and court report regarding MERIT entry and where appropriate, a treatment plan, within two weeks of initial referral.

We found the time taken by caseworkers to complete the assessment ranged from immediate to four weeks.

These variations may be due to different approaches taken by MERIT teams to manage their caseloads.

**Some MERIT teams manage workload by limiting referrals** We found teams took different approaches when capacity was reached. These included:

- limiting the number of new clients accepted for assessment
- asking the court for longer adjournments or to cease referrals temporarily
- referring potential clients to other services or other MERIT teams.

The risks of the first two approaches are:

- it reduces the visibility of the program in the court if no referrals are accepted for a period of time
- it is inequitable as defendants with similar circumstances could be treated differently depending on the practices around managing caseload.

Although only one per cent of referrals were declined in the last five years due to capacity, we found that some MERIT teams stopped accepting referrals (rather than formally declining referrals) when they considered their caseload was full.

This practice may lead to demand for MERIT being understated, perhaps significantly.

Difficulties in recruiting caseworkers due to one year contracts and work location have impacted on referrals.

Our field visits found most MERIT teams were not fully staffed and most staff were temporary employees. The impact of staff turnover on consistent practice is further exacerbated by variations in training.

We found that only 50 per cent of teams visited had received induction training in MERIT. Some training was quite extensive, for example Liverpool MERIT provides new staff with six weeks orientation including supervision at court.

Consistency in practice would be improved by the review and release of an updated MERIT operational manual.

**Recommendation** We recommend that the Attorney General's Department in consultation with NSW Department of Health and NSW Police develop a new operational manual by July 2010 that includes a standard assessment form.

We recommend that the NSW Department of Health by June 2010:

- refers MERIT clients to other NSW Department of Health drug and alcohol services or non-government organisations (NGOs) when capacity is reached wherever possible, with the MERIT team remaining as case manager reporting to the court
- reviews MERIT staffing arrangements with a view to establishing permanent positions
- develops and implements an ongoing training program for MERIT teams, including induction training.

NSW Police has advised it has now introduced a new referral form that is available for use anywhere in MERIT LACs.

Where police refer defendants to MERIT they do so in a timely manner. All necessary documents are generally provided to MERIT on the same day, or the day following the arrest and charge.

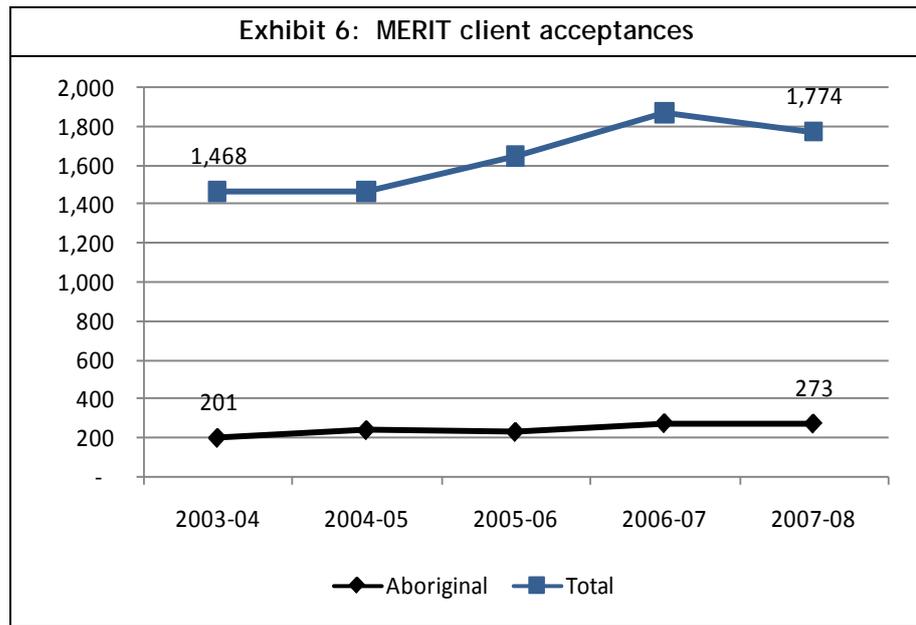
### **2.3 Are eligibility criteria applied in a consistent manner?**

**Our assessment** Over the last five years, referrals for Aboriginal defendants have increased by 22 per cent. However once referred, Aboriginal defendants are less likely to be accepted into MERIT.

The fact that MERIT is designed to treat drug problems not alcohol abuse and the exclusion of defendants whose charges include serious violence tend to have a greater impact on Aboriginal defendants.

In some areas defendants who do not strictly meet the eligibility criteria have been included. In Broken Hill and Wilcannia, MERIT has been expanded to include defendants who have a problem with alcohol abuse.

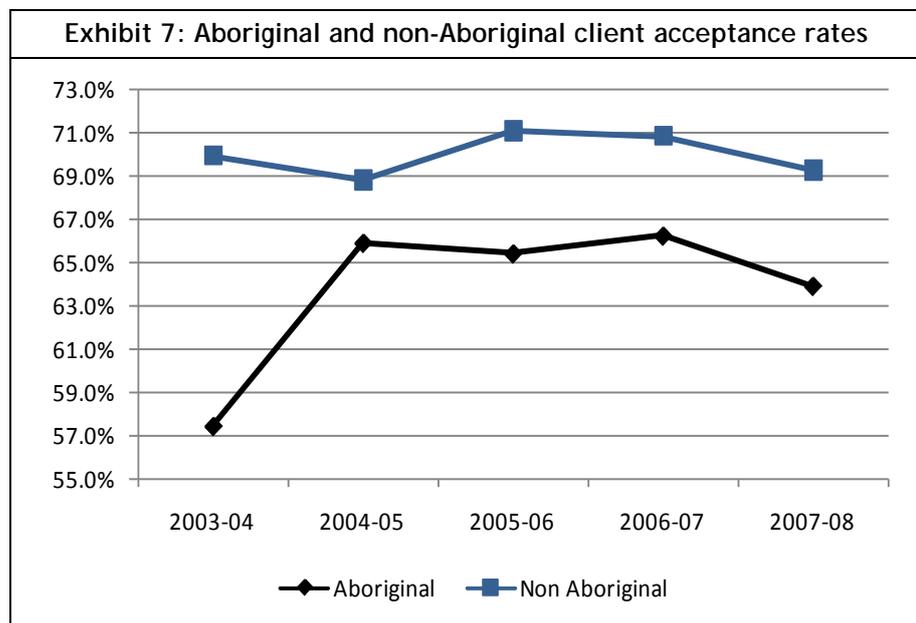
**Acceptances are increasing** Overall, acceptances to MERIT have increased by 21 per cent over the past five years. Over the same period, acceptances for Aboriginal defendants increased by 36 per cent.



Source: NSW Department of Health 2008.

**Aboriginal defendants are less likely to be accepted**

While this is positive, only 64 per cent of Aboriginal referrals were accepted compared to 70 per cent for non-Aboriginal referrals over the past five years.



Source: NSW Department of Health 2008.

Referrers use the eligibility criteria to decide if a defendant will benefit from MERIT and is likely to be accepted onto the program.

After receiving the referral, the MERIT caseworker undertakes a detailed assessment against the eligibility criteria. They also assess the defendant in terms of their social, psychological and medical circumstances.

**MERIT excludes alcohol abuse if it is the drug of primary concern**

In all but two MERIT courts, defendants must have a demonstrable illicit drug problem. Defendants whose primary presenting problem is alcohol abuse should be excluded.

However, in some areas clients who do not strictly meet the eligibility criteria are given access to the program if they have some problem with illicit drugs.

MERIT teams often identified alcohol as the most significant problem for Aboriginal defendants. MERIT has been expanded to include alcohol at Broken Hill and Wilcannia local courts. Both courts have a high proportion of Aboriginal defendants and a significant proportion of offences committed are associated with alcohol abuse.

The MERIT model has been used successfully to treat alcohol abuse and is currently used in the Rural Alcohol Diversion pilot where the same MERIT team provides both alcohol and drug treatment programs.

Exhibit 8: Rural Alcohol Diversion pilot
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The Rural Alcohol Diversion (RAD) pilot was launched in 2004. Using the MERIT model, it refers defendants with demonstrable alcohol problems from Bathurst and Orange local courts to a three month treatment program.
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In 2007-08, around 130 defendants were referred to RAD and about 80 clients were accepted for treatment.
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Over the past four years Aboriginal defendants have made up nearly a third of all clients on the program.
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Source: NSW Attorney General's Department 2008 and NSW Department of Health 2008.

**MERIT excludes defendants involved in serious violence**

Eligibility criteria exclude defendants involved in offences related to serious violence. Caseworkers judge this on a case-by-case basis. The caseworker will decide whether the level and type of violence represents a treatment risk after meeting with the client and reviewing their criminal history. As charges against Aboriginal defendants frequently include violent offences, this criterion may have a disproportionate impact on Aboriginal defendants.

This was also identified as a potential barrier to Aboriginal defendants' access in a 2006 report on participation of Aboriginal people in MERIT.

In other jurisdictions eligibility criteria are more straightforward.

**Exhibit 9: Eligibility criteria used in Victoria**

There are two Bail Support Programs operating in Victoria's Magistrates Court, the CREDIT/Bail Support Program and the Court Integrated Support Program.

In regard to the CREDIT/Bail program, the client must be eligible for bail and willing to access treatment/support. The client must have matters listed in the Magistrates Court. Where an individual is charged with serious violence offences, details are provided to treatment services to allow them to address any security concerns.

In regard to the Court Integrated Services Program, the client must be on summons, bail or remand awaiting a bail hearing. The client must be assessed as being at risk of reoffending due to issues such as mental disability or illness, drug and alcohol dependency, or inadequate social, family and economic support.

Both programs are voluntary and so the client must agree to take part.

Source: Audit Office research.

**Recommendation** We recommend that the Attorney General's Department, in consultation with NSW Police and the NSW Department of Health by June 2010, simplifies MERIT eligibility criteria to focus on:

- suitability for release on bail
- clients with a demonstrable drug or alcohol problem.

**2.4 Are barriers to access identified and strategies to resolve these implemented?**

**Our assessment** In addition to the eligibility criteria, other barriers to access include the location of MERIT courts, the generally poor level of engagement and communication with Aboriginal defendants, and client transport problems.

There are Aboriginal staff in the justice system whose role is to support Aboriginal defendants. These include Aboriginal Client Court Specialists and Aboriginal Community Justice Group Coordinators. These officers are generally unaware of MERIT and its benefits.

**Eligibility criteria are barriers** As discussed earlier, the eligibility criteria and the location of courts offering MERIT may be barriers to access that have a disproportionate impact on Aboriginal defendants.

Few participants have heard of MERIT prior to being referred. How the referral is made, the nature and extent of information provided on MERIT, and how well it is understood are key factors affecting acceptance, particularly for Aboriginal defendants.

**MERIT may not be well understood** There are a number of difficulties around communicating the benefits of MERIT and how MERIT works. Firstly, intoxicated defendants may be unable to understand what the program is or to give informed consent. In this situation making further contact with the defendant at a later time or providing written information may be appropriate.

Secondly, defendants may be overwhelmed by the stress of the situation. And finally, defendants may have limited formal education.

Current program information is relatively complex. Of all Aboriginal referrals not accepted into MERIT, one in three do not proceed because they are 'unwilling to participate'. This rate varies from 11 per cent in some Area Health Services to 50 per cent in others. While the reasons for this are not clear, a limited understanding of MERIT may well be one.

**Exhibit 10: Communicating positively**

Although English is the dominant language in healthcare, including substance abuse, Aboriginal people may also speak Aboriginal English including unique local words and phrases.

The use of accurate, appropriate and non-offensive language is essential for effective communication with Aboriginal people and an important way of showing cultural respect. The guide 'Communicating Positively' provides NSW Department of Health staff with guidance on appropriate language to be used when working with Aboriginal people and communities or developing policies and programs.

Written information should use:

- simple language and local words
- pictures and diagrams, and
- Aboriginal artwork that reflects the people who will access the program.

Displaying Aboriginal art or using it in publications can help Aboriginal people to recognise services that are culturally inclusive. It can also help to communicate with people with poor literacy and reading skills or poor eyesight.

Source: Commonwealth of Australia, Alcohol Treatment Guidelines for Indigenous Australians 2007, NSW Department of Health, Communicating Positively 2004, and audit fieldwork.

**Recommendation** We recommend that the Attorney General's Department, in consultation with the NSW Department of Health and NSW Police by December 2010, develops and distribute MERIT promotional literature that is culturally appropriate for Aboriginal people.

**Aboriginal staff are available** Local courts employ 17 Aboriginal Client Service Specialists to provide support and advice to Aboriginal defendants and local communities around NSW. They also employ about 20 Aboriginal Community Justice Group Coordinators.

The Audit team met with a number of these officers and found they were not well informed about MERIT. They were, however, interested in learning more so they could help Aboriginal defendants to understand and access MERIT.

**Recommendation** We recommend that the Attorney General's Department by July 2010 provides ongoing training for Aboriginal Client Service Specialists and Aboriginal Community Justice Group Coordinators on MERIT so they may identify and support potential Aboriginal participants at court.

**Location and transport problems**

MERIT teams reported that Aboriginal defendants often have difficulty getting transport to MERIT appointments. While all the MERIT teams we visited conducted some clinics away from their office, there were still many communities without access to transport.

Some MERIT teams reimburse clients for fares paid.

Exhibit 11: Mobile MERIT
The Broken Hill MERIT team looks after defendants from Broken Hill and Wilcannia local courts. More than 90 per cent of defendants at Wilcannia are Aboriginal defendants and many do not have access to private transport. Public transport is limited with only one daily bus service into Broken Hill. The Broken Hill MERIT caseworker does home visits to Wilcannia and is also developing links with local health and community services so that sessions may be conducted in alternate locations, and common client information shared.

Source: Audit fieldwork.

**Recommendation**

We recommend that the NSW Department of Health by September 2010, offer MERIT clinics at alternate locations wherever possible.

### 3. Does MERIT meet the needs of Aboriginal clients?

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**At a glance**

**The key question we wanted to answer was:**  
Does MERIT meet the needs of Aboriginal clients?  
Of all Aboriginal defendant referrals that do not progress into MERIT, one in three is because the defendant is unwilling to participate. And more Aboriginal defendants breach the program requirements than non-Aboriginal defendants.  
There may be many reasons for this. However we found that although the MERIT assessment identifies the needs of Aboriginal participants, the way the assessment is conducted by caseworkers, the way the service is delivered, the options for treatment, and the location of services may contribute to lower completion rates.  
We also found that in 2007-08, MERIT rehabilitation beds were underutilised by 57 per cent. The reasons for underutilisation were unclear. MERIT has been going since 2000. A lot has been learned about how to improve Aboriginal defendants' completion rates and the recent increase in completions can be attributed to changes in the practices of seven teams. There is a significant amount of high quality performance data and research available on MERIT, however not all this data is made public.

**3.1 Does MERIT identify the needs of Aboriginal clients and include measures to meet these needs?**

**Our assessment**

Of all Aboriginal defendant referrals that do not progress into MERIT, one in three is because the defendant is unwilling to participate.

There may be many reasons for this. However we found that although the MERIT assessment identifies the needs of Aboriginal participants, the way the assessment is conducted by caseworkers, the way the service is delivered and the options for treatment may contribute to the low completion rate.

We also found that in 2007-08, MERIT rehabilitation beds were underutilised by 57 per cent. The reasons for underutilisation were unclear.

**Client needs assessments varied**

Once a client is accepted into MERIT, a caseworker completes an assessment. The assessment aims to identify the most appropriate supervision and treatment strategy for each client.

The treatment options available under MERIT include counselling, detoxification, residential rehabilitation, and group meetings.

There is no standard MERIT assessment form. Rather, the caseworkers use adapted versions of their local Area Health Service forms to assess a client's needs. Along with factors that contribute to drug use, common elements that are assessed include:

- bail conditions
- present offences
- past and present drug use and associated issues
- criminal record
- underlying problems and needs

- client's attitude and motivation
- MERIT team/MERIT client relationship
- other relevant people
- previous case plan (if relevant)
- previous treatment episodes (if relevant).

Of all Aboriginal defendants referred to MERIT that do not enter the program, one in three rejects the referral because they are unwilling to participate.

**Adapting the practices to meet specific needs is very important**

There may be many reasons for this, however the way that the assessment process is managed may be a factor influencing participation rates.

A 2006 report considered the lower Aboriginal participation rates may be due to the program not being attuned to the needs and expectations of Aboriginal people with illicit drug problems. In response an Aboriginal Practice Checklist was developed.

The checklist recommends specific practices for Aboriginal clients including:

- using a key worker or team of culturally qualified intake workers for suitability screening and assessment of Aboriginal clients
- with client agreement the caseworker contacting Aboriginal and other agencies who have current involvement with the client
- formalising processes for case managing Aboriginal clients in partnership with Aboriginal workers
- having an active focus on cultural requirements including those of Aboriginal families.

The approach was trialled by seven MERIT teams in 2007-08. Aboriginal completion rates for these teams increased from 55 per cent to 73 per cent.

The checklist has not yet been implemented in MERIT teams across the State.

**Recommendation**

We recommend that the Attorney General's Department, in consultation with the NSW Department of Health, by July 2010 include the MERIT Aboriginal Practice Checklist in the new MERIT operational manual.

**Treatment programs could better meet the needs of Aboriginal clients**

A standard, case plan approach is used by MERIT teams to develop the treatment program for clients. The most common treatment provided is weekly counselling with the MERIT caseworker as well as conducting therapeutic group sessions.

We found that this approach did not recognise any special needs Aboriginal participants may have or recognise alternative treatment models that may be more suitable for Aboriginal clients. Again, this may impact on participation and completion rates.

**Exhibit 12: Factors that help meet the needs of Aboriginal clients**

A recent review found these factors may help meet Aboriginal clients needs:

- culturally relevant program options - one treatment model may not be suited to all Aboriginal clients
- service provision with sensitivity to Aboriginal cultural practices, identity and history
- involve families, partners or significant support people in treatment where appropriate
- services should include staff trained in family-centred counselling and support specific to Aboriginal people
- provision of a range of mental health services to address issues of co-morbidity
- minimise transport issues by providing appointments at locations other than the MERIT office; providing staff with access to vehicles, and reimbursing client transport costs.

Source: Improving Aboriginal participation in the MERIT program Aboriginal Health & Medical Research Council April 2009 and Audit Office research.

**Case plans should include Aboriginal specific services**

In addition, other studies indicate that treatment for Aboriginal clients is often more effective where specialist services are used. These specialist services recognise cultural differences and often link back into the Aboriginal community to establish and strengthen relationships with significant others who can become mentors and role models.

We found that the MERIT teams we visited were aware of Aboriginal services in their local area that could be accessed by MERIT clients, but few had included these as part of the case plan.

Some MERIT teams had included attendance at Aboriginal Men's and Women's Groups for therapeutic group sessions, as part of the case plan for Aboriginal clients. This replaced attending group sessions with other MERIT clients.

We also found that in some cases, MERIT teams did not have up to date information on all services available in their area. In Victoria a database of Aboriginal services is available for caseworkers.

**Exhibit 13: Centralised Information on relevant Aboriginal client services**

The Aboriginal Liaison Officer (ALO) Program operates as part of the Court Integrated Services Program multidisciplinary team at Melbourne Magistrates' Court. The ALO Coordinator and ALO assess the client's risk of reoffending and causes of reoffending in order to develop a treatment/support plan to address the issues identified at assessment. The ALOs maintain a detailed database of Aboriginal services around the State, acting as a contact point for court workers and providing information on service availability and quality.

Source: Audit Office research.

**Recommendation** We recommend that the NSW Department of Health by July 2010 develop a database of Aboriginal client services for use by MERIT teams.

**MERIT teams can buy specialist services** As part of the case plan the caseworker needs to identify the specific needs of the client. In some cases this may include treatments that are outside the expertise of the MERIT team such as specialist psychiatric, neuropsychological and education services.

Drug and alcohol issues can reportedly arise in tandem with mental health issues. MERIT caseworkers working with all clients including Aboriginal clients need to manage such issues as they can impact on the client's ability to engage in drug counselling.

Exhibit 14: Flexible treatment options
<p>Kylie is 28 and has been using heroin for seven years. She has a long history of drug offences relating to her drug use. Kylie appeared before the local court charged with break and enter and was referred to MERIT for assessment.</p> <p>Kylie was assessed as suitable for MERIT and a treatment plan was developed. During the assessment, Kylie disclosed a history of sexual abuse and episodes of depression. Kylie was referred to a psychiatrist for further assessment and treatment.</p> <p>Kylie worked hard on the program, attending support groups and individual counselling sessions with her caseworker. As she had significant debts associated with her drug use, Kylie also received financial counselling to help her manage her money and reduce her debts.</p>

Source: Attorney General's Department - MERIT website 2009.

While MERIT allows specialist services to be purchased by MERIT teams, we found the majority of MERIT managers did not have control over the MERIT budget.

**Recommendation** We recommend that the NSW Attorney General's Department in consultation with the NSW Department of Health by July 2010, develop guidelines for engaging specialist services for MERIT clients and include these in the new operational manual.

**Use of rehabilitation beds is mixed** One option for intensive treatment is to recommend residential rehabilitation. Suitable clients are likely to have complex and severe problems. In fact Aboriginal participants are more likely to be placed in residential treatment than non-Aboriginal participants.

While MERIT teams felt they had Aboriginal clients who would have benefited from residential rehabilitation, the use of these facilities varied amongst the teams. Some recommend rehabilitation for around half of all Aboriginal clients, others only occasionally referred a client to residential rehabilitation.

**MERIT beds are underutilised** In total over 24,000 MERIT rehabilitation bed days are available each year costing around \$1.7 million. MERIT purchases residential rehabilitation beds from 24 residential facilities, primarily located along the NSW eastern seaboard, with the most western location being near Orange. See Appendix 3 for these locations. These beds are quarantined for MERIT clients giving them priority over voluntary patients.

In 2007-08, these beds were only utilised at 43 per cent of capacity. The reasons for underutilisation are unclear. Some MERIT teams reported that it was due to the location of beds. In some areas, accepting a placement is likely to mean separation from family and community for up to three months. This may influence an Aboriginal client's decision about participation and their ability to complete the program.

While some MERIT teams assist with transport to residential rehabilitation, where this is not available, the costs may be restrictive. Aboriginal clients may not be able to cover the cost of transport over long distances. For example the nearest rehabilitation centre to Broken Hill is near Orange, some 900 kilometres away.

Other teams reported the admission criteria of facilities limited access. Each of the residential rehabilitation facilities have their own selection criteria. These establish age limits, sex of the client, drug, alcohol and mental health status, and family members who may or must participate.

Underutilisation may also be a result of changes in treatment patterns and approaches, suggesting that residential rehabilitation is no longer the best method of treatment.

Whatever the cause, underutilisation has resulted in MERIT paying almost \$1 million for services that were not used in 2007-08.

**Recommendation** We recommend that NSW Department of Health by March 2010 examines the reasons for underutilisation of MERIT rehabilitation beds.

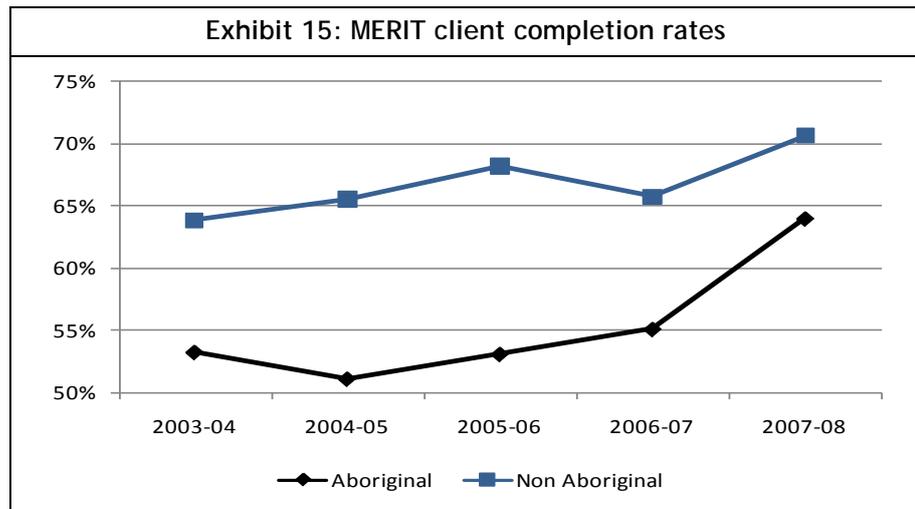
### **3.2 Are barriers to completion identified and strategies to resolve these implemented?**

Factors such as location, transport, communication, attendance requirements, service delivery options and program content all contribute to Aboriginal defendants leaving MERIT prior to completion.

Being removed for non-attendance is a type of breach. Over the past five years, the rate of breach by Aboriginal clients was nine per cent greater than for non-Aboriginal clients.

**Trends in completion rates** In 2007-08, nearly 70 per cent of all people accepted onto MERIT successfully completed the program. The completion rate for Aboriginal defendants was about 64 per cent.

More Aboriginal defendants are completing the program each year. The significant increase in completion rates in 2007-08 appears to relate to the trial of the Aboriginal client service delivery best practice project at seven sites around NSW. At these sites the Aboriginal Practice Checklist was implemented with services better matching the specific needs of Aboriginal clients.



Source: NSW Department of Health 2008.

**Reasons for not completing the program**

The main reasons participants leave the program before completion are due to:

- being removed by the court because they have been charged with another offence
- deciding that they wish to withdraw
- not complying with the treatment plan.

When participants do not meet their obligations to attend treatment appointments, or discharge themselves from residential rehabilitation, the caseworker is obliged to notify the court.

The Magistrate will then decide whether the person will be allowed to continue in the program or be removed.

Being removed for not complying with any of the program conditions is referred to as a breach. Over the past five years, the rate of breach by Aboriginal clients was nine per cent greater than for non-Aboriginal clients.

Non-attendance at appointments is a type of breach. We found inconsistent approaches by MERIT teams in determining what would constitute such a breach. Some teams would permit up to six appointments being missed, others only two.

**Recommendation**

We recommend that the Attorney General’s Department, in consultation with the NSW Department of Health, by July 2010 develop guidelines on what constitutes a breach that should be reported to the court.

We recommend that the NSW Department of Health, in consultation with the Attorney General’s Department, by September 2010 set targets for client completion rates for each MERIT team.

**Local groups help communication**

In some areas, local MERIT stakeholder groups or court user forums meet regularly and discuss program operations and results, identifying local issues, solutions and best practice. Other areas do not have such arrangements meaning that NSW Police, in particular, have little access to information on how MERIT is working in their local area. NSW Police have advised that examples of how MERIT works and information on the progress of defendants may help to encourage referrals.

### 3.3 Are results monitored to check performance and identify and resolve problems?

<b>Our Assessment</b>	<p>There is a significant amount of high quality performance data and research available on MERIT. This data should be made publicly available to improve accountability and awareness.</p>
<b>A MERIT Information Management System has been developed</b>	<p>From its commencement, the MERIT Statewide Steering Committee was required to report to the Commonwealth on MERIT. Therefore the MERIT Information Management System (MIMS) with an overarching MERIT Program Evaluation and Monitoring Framework was developed.</p> <p>A wide variety of performance information is available. Data is collected by the MERIT teams and is provided to the MERIT Statewide Steering Committee and MERIT managers quarterly.</p> <p>As MERIT is funded by the Commonwealth, annual reports detailing both expenditure and activity are also prepared.</p> <p>Detailed performance information is available on MERIT referrals, acceptances and completions by MERIT team and by MERIT court.</p>
<b>Regular reports are provided</b>	<p>MIMS is used to develop quarterly performance reports for MERIT teams. The Attorney General's Department publishes MERIT Annual Reports.</p> <p>These public reports include information on referrals, acceptances and completion by Aboriginal status but their production tends to be slow with the 2007 report still to be released.</p>
<b>Information dissemination and use varies</b>	<p>MERIT is managed by the MERIT Statewide Steering Committee convened by the Attorney General's Department which acts as lead agency. This committee is responsible for overall policy as well as program implementation. This committee has met seven times since March 2006.</p> <p>While the Attorney General's Department is the lead agency, MERIT is delivered by the NSW Department of Health. Various Area Health Services manage MERIT teams in different ways. For example, some MERIT teams are made up of permanent staff whereas others use temporary staff.</p> <p>Variations in results are found at MERIT courts and in teams over time. These differences are reflected in the number of referrals, acceptances and completions. Courts and teams with similar client populations can achieve very different MERIT results.</p>
<b>Recommendations</b>	<p>We recommend that the NSW Attorney General's Department, in consultation with the NSW Department of Health and the NSW Police by July 2010:</p> <ul style="list-style-type: none"><li>▪ regularly publish MERIT annual reports on the website</li><li>▪ provide quarterly reports on MERIT referral, acceptance and completion rates by court to the Chief Magistrate</li><li>▪ compare the performance of MERIT teams in regard to referrals, acceptances and completions and investigate inconsistencies.</li></ul>

## Appendices

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## Appendix 1      **About the audit**

### **Audit objective**

Diversion and early court intervention programs aim to break the cycle of drug and alcohol abuse by affected individuals, and through this to decrease drug and alcohol related crime.

Initially we were to look at how well two programs, the Magistrates Early Referral into Treatment (MERIT) and Rural Alcohol Diversion (RAD) work to improve outcomes for Aboriginal defendants.

MERIT deals mainly with defendants with drug problems whereas RAD is based on the MERIT treatment model and provides rehabilitation services for defendants with alcohol problems.

As the conduct of the audit progressed, we found that the RAD program was only operating at Orange and Bathurst Local Courts and decided the audit would add more value if the scope was limited to focus on MERIT which operates in 61 local courts.

As we have acknowledged in our report, other researchers have found MERIT improves health and justice outcomes for defendants. For MERIT to work for Aboriginal defendants, they must firstly be able to access the program, and secondly, complete it.

So we focused our audit on the participation of Aboriginal defendants in MERIT as a means of assessing how well MERIT works for this group.

The audit objective is to assess the participation of Aboriginal defendants in MERIT.

### **Lines of inquiry**

In reaching an opinion against the objective, we wanted to find out whether:

- all eligible Aboriginal defendants are able to access MERIT
- MERIT is meeting the needs of Aboriginal defendants.

In view of the change in audit focus, the first line of inquiry was amended to remove the reference to RAD. Editorial changes were made to the second line of inquiry to express more clearly what was being tested by the criteria.

### **Audit criteria**

There are three agencies involved in MERIT: NSW Health, NSW Police and Attorney General's Department, which is the lead agency.

In answering the lines of inquiry, we used the following criteria (the 'what should be') to judge performance. We based these standards on our research of current thinking and guidance on better practice. They were discussed and, where possible, agreed with the agencies.

For line of inquiry 1, the audit criteria were:

- are referral processes in place?
- are referral processes used in a timely manner?
- are eligibility criteria applied in a consistent manner?
- are barriers to access identified and strategies to resolve these implemented?

	<p>For line of inquiry 2, the audit criteria were:</p> <ul style="list-style-type: none"> <li>▪ does MERIT identify the needs of Aboriginal clients and include measures to meet these needs?</li> <li>▪ are barriers to completion identified and strategies to resolve these implemented?</li> <li>▪ are results monitored to check performance and identify and resolve problems?</li> </ul>
<b>Audit scope</b>	<p>In this audit we examined MERIT referral practices and program delivery methods to see what impact they have on Aboriginal defendants accessing and completing MERIT.</p> <p>The audit did not examine:</p> <ul style="list-style-type: none"> <li>▪ the effectiveness of MERIT as an intervention program as other studies have concluded that the program has a positive impact on health and justice outcomes for those who complete treatment</li> <li>▪ programs targeted at youth</li> <li>▪ other sentencing or diversion programs such as Circle Sentencing, the Cannabis Cautioning Scheme, the NSW Drug Court or Forum Sentencing.</li> </ul> <p>The audit did not:</p> <ul style="list-style-type: none"> <li>▪ duplicate reviews already conducted in relation to this topic</li> <li>▪ comment on clinical decisions.</li> </ul>
<b>Audit approach</b>	<p>We acquired subject matter expertise through:</p> <ul style="list-style-type: none"> <li>▪ interviews and examination of relevant documents including guidelines, reports, studies, strategies and reviews relating to the MERIT program and diversion programs generally</li> <li>▪ discussions with relevant staff of NSW Health, NSW Police and Attorney General's Department</li> <li>▪ discussions with local court Magistrates</li> <li>▪ discussions with representatives of key stakeholders - including the Aboriginal Legal Service, NSW Legal Aid and the Aboriginal Health and Medical Research Council.</li> <li>▪ comparisons where appropriate with other states and countries</li> <li>▪ government and best practice guidelines relevant to the above.</li> </ul> <p>We also visited six MERIT teams, eight Magistrates and six NSW Police Local Area Commands in metropolitan, regional and rural areas.</p> <p>This report incorporates advice provided by Dr Gaynor Macdonald of the Department of Anthropology, School of Social and Political Sciences, Faculty of Arts, University of Sydney.</p>
<b>Audit selection</b>	<p>We use a strategic approach to selecting performance audits which balances our performance audit program to reflect issues of interest to Parliament and the community. Details of our approach to selecting topics and our forward program are available on our website.</p>

**Audit methodology** Our performance audit methodology is designed to satisfy Australian Audit Standards AUS 806 and 808 on performance auditing, and to reflect current thinking on performance auditing practices. Performance audits commencing after 1 January 2009 comply with the Standard on Assurance Engagements ASAE3500 Performance Engagements.

We produce our audits under a quality management system certified to International Standard ISO 9001. Our processes have also been designed to comply with the auditing requirements specified in the *Public Finance and Audit Act 1983*.

**Acknowledgement** We gratefully acknowledge the co-operation and assistance provided by NSW Health, NSW Police and the Attorney General's Department. In particular, we wish to thank our liaison officers and staff who participated in interviews, assisted with document review or provided other material relevant to the audit.

We were also assisted by discussions with a number of Aboriginal community members and Aboriginal community groups. In particular we would like to extend our appreciation to those people we met with from:

- Campbelltown Aboriginal Community Justice Group
- Orange Aboriginal Health Service Incorporated, and community members
- Maari Ma Health Aboriginal Corporation, Broken Hill
- Broken Hill Aboriginal Family Violence Prevention Legal Service
- Dubbo Aboriginal Community Justice Group
- Wellington Aboriginal Corporation Health Service
- Aboriginal Justice Advisory Committee.

We also wish to thank the NSW Bureau of Crime Statistics for their assistance with research and data analysis.

Finally we would like to thank the Program Manager and other staff associated with the Court Integrated Services Program and CREDIT/Bail Support Program in Victoria for their contribution to our research.

**Audit team** Our team leader for this performance audit was Penelope Josey, who was assisted by Belinda Archer. Jane Tebbatt provided direction and quality assurance.

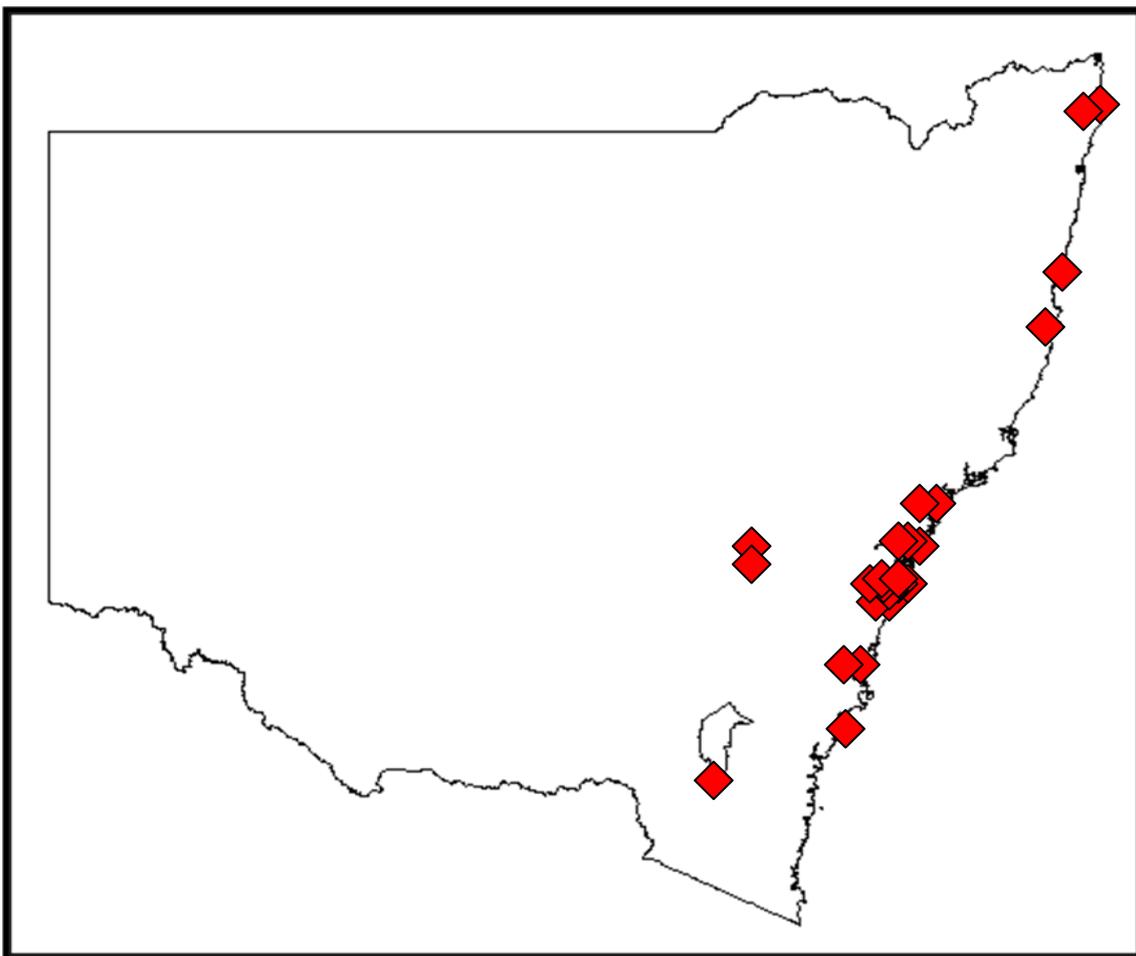
**Audit cost** Including staff costs, printing costs and overheads the estimated cost of the audit is \$377,000.

## Appendix 2 Location of MERIT Courts

MERIT courts	Number of courts	Area Health Service
Gosford, Manly, Wyong, North Sydney, Hornsby	5	Northern Sydney and Central Coast
Liverpool, Campbelltown, Camden, Burwood, Fairfield, Bankstown, Newtown	7	Sydney South West
Tamworth, Cessnock, Muswellbrook, Newcastle, Maitland, Raymond Terrace, Toronto, Singleton	8	Hunter New England
Wollongong, Albion Park, Kiama, Port Kembla, Nowra, Sutherland, Kogarah, Downing Centre, Waverley, Milton	10	South Eastern Sydney and Illawarra
Lismore, Byron Bay, Ballina, Casino, Kyogle, Port Macquarie, Kempsey, Wauchope, Mullumbimby, Murwillumbah, Tweed Heads, Grafton, Maclean	13	North Coast
Bathurst, Orange, Dubbo, Parkes, Oberon, Blayney, Forbes, Wilcannia, Broken Hill	9	Greater Western
Queanbeyan, Wagga Wagga, Junee, Cooma	4	Greater Southern
Parramatta, Katoomba, Penrith, Blacktown, Mt Druitt	5	Sydney West
	<b>61</b>	<b>All NSW</b>

Source: Attorney General's Department 2009.

**Appendix 3 Location of residential rehabilitation facilities used by MERIT**



Area Health Service	Rehabilitation Service Locations	Number of Beds
Northern Sydney and Central Coast	Kanwal, Chittaway Point, Berkeley Vale	7
Sydney South West	Lilyfield, Eagle Vale	13
Hunter New England	Cessnock, Morrisset	9
South Eastern Sydney and Illawarra	Berkeley, Surry Hills, Little Bay, Nowra	15
North Coast	Kinchela, Moonee Beach, Binna Burra, Alstonville	12
Greater Western	Canowindra, Woodstock	7
Greater Southern	Canberra	1
Sydney West	Harris Park, Leura	3
<b>All NSW</b>	<b>Total Beds</b>	<b>67</b>

Source: NSW Health 2008 and Audit Office research.

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## Appendix 4      References

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## Performance Audits by the Audit Office of New South Wales

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## Performance Auditing

### What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements.

If you wish to find out what performance audits are currently in progress, visit our website at [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au).

### Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

Performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also assist the accountability process by holding managers to account for agency performance.

### What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work we will meet with agency management to discuss all significant matters arising out of the audit. Following this, we will prepare a draft performance audit report.

We meet with agency management to check that facts presented in the report are accurate and that recommendations are practical and appropriate. Following this, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of

the final report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope, performance audits can take several months to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our Office.

### How do we measure an agency's performance?

During the planning phase, the team develops the audit criteria. These are standards of performance against which the agency or program is assessed. Criteria may be based on best practice, government targets, benchmarks, or published guidelines.

### Do we check to see if recommendations have been implemented?

Agencies are requested to report actions taken against each recommendation in their annual report so that we can monitor progress.

The Public Accounts Committee (PAC) may conduct reviews or hold inquiries into matters raised in performance audit reports. These inquiries are usually held 12 months after the report is tabled.

### Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards. This includes ongoing independent certification of our ISO 9001 quality management system.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts a review of our operations every three years.

### Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

### Further information

Further information can be obtained from our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au) or by contacting us on 9275 7277.

## Performance Audit Reports

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
189	NSW Attorney General's Department NSW Department of Health NSW Police Force	<i>Helping Aboriginal Defendants through MERIT</i>	August 2009
188	NSW Department of Health	<i>Tackling Cancer with Radiotherapy</i>	23 June 2009
187	Roads and Traffic Authority of NSW	<i>Improving Road Safety - Heavy Vehicles</i>	13 May 2009
186	Grants	<i>Grants Administration</i>	6 May 2009
185	Forests NSW	<i>Sustaining Native Forest Operations</i>	29 April 2009
184	NSW Police Force	<i>Managing Injured Police</i>	10 December 2008
183	Department of Education and Training	<i>Improving Literacy and Numeracy in NSW Public Schools</i>	22 October 2008
182	Department of Health	<i>Delivering Health Care out of Hospitals</i>	24 September 2008
181	Department of Environment and Climate Change	<i>Recycling and Reuse of Waste in the NSW Public Sector</i>	11 June 2008
180	Follow-up of 2003 Performance Audit	<i>Protecting Our Rivers</i>	21 May 2008
179	NSW Office of Liquor, Gaming and Racing; NSW Police Force	<i>Working with Hotels and Clubs to reduce alcohol-related crime</i>	23 April 2008
178	Greyhound and Harness Racing Regulatory Authority	<i>Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority</i>	3 April 2008
177	Office of the Director of Public Prosecutions	<i>Efficiency of the Office of the Director of Public Prosecutions</i>	26 March 2008
176*	Better Practice Guide	<i>Implementing Successful Amalgamations</i>	5 March 2008
175	Department of Commerce Department of Primary Industries	<i>Managing Departmental Amalgamations</i>	5 March 2008
174	Department of Education and Training	<i>Ageing workforce - Teachers</i>	13 February 2008
173	NSW Police Force	<i>Police Rostering</i>	5 December 2007
172	Department of Primary Industries	<i>Improving Efficiency of Irrigation Water Use on Farms</i>	21 November 2007
171	Department of Premier and Cabinet Department of Commerce	<i>Government Advertising</i>	29 August 2007
170	RailCorp	<i>Signal Failures on the Metropolitan Rail Network</i>	15 August 2007
169	NSW Police Force	<i>Dealing with Household Burglaries</i>	27 June 2007
168	Ministry of Transport	<i>Connecting with Public Transport</i>	6 June 2007
167	Follow-up of 2001 Performance Audit: Ambulance Service of New South Wales	<i>Readiness to Respond</i>	6 June 2007

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
166	Follow-up of Performance Audit Department of Education and Training	<i>Using Computers in Schools for Teaching and Learning</i>	9 May 2007
165	Homelessness	<i>Responding to Homelessness</i>	2 May 2007
164	Department of Juvenile Justice NSW Police Force	<i>Addressing the Needs of Young Offenders</i>	28 March 2007
163	Legal Aid Commission of NSW	<i>Distributing Legal Aid in New South Wales</i>	13 December 2006
162	NSW Health	<i>Attracting, Retaining and Managing Nurses in Hospitals</i>	12 December 2006
161	Follow-up of 2003 Performance Audit	<i>The Police Assistance Line</i>	6 December 2006
160	NSW Health	<i>Helping Older People Access a Residential Aged Care Facility</i>	5 December 2006
159	NSW Health	<i>Major Infectious Disease Outbreaks: Readiness to Respond</i>	22 November 2006
158	Department of Education and Training	<i>Educating Primary School Students with Disabilities</i>	6 September 2006
157	Roads and Traffic Authority	<i>Condition of State Roads</i>	16 August 2006
156*	Fraud Control	<i>Fraud Control Improvement Kit: Meeting Your Fraud Control Obligations</i>	20 July 2006
155	Follow-up of 2002 Performance Audit	<i>Regulating the Clearing of Native Vegetation</i>	19 July 2006
154	Follow-up of 2002 Performance Audit	<i>Managing Sick Leave in NSW Police and the Department of Corrective Services</i>	June 2006
153	Performance Information	<i>Agency Use of Performance Information to Manage Services</i>	21 June 2006
152	Roads and Traffic Authority	<i>The Cross City Tunnel Project</i>	31 May 2006
151	Department of Corrective Services	<i>Prisoner Rehabilitation</i>	24 May 2006
150	Follow-up of 2000 Performance Audit	<i>Fare Evasion on Public Transport</i>	26 April 2006
149	Agency Collaboration	<i>Agencies Working Together to Improve Services</i>	22 March 2006

\* Better Practice Guides

**Performance audits on our website**

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au).

If you have any problems accessing these reports, or are seeking older reports, please contact our Office Services Manager on (02) 9275 7116.