



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our Ref: RBG614894  
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8 June 2012

The Hon. Greg Smith SC MP  
Attorney General and Minister for Justice  
Level 31  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Attorney General,

**Participation of defendants with a cognitive impairment in the Magistrates Early Referral Into Treatment program**

The Law Society's Criminal Law (Committee) strongly supports the Magistrates Early Referral Into Treatment (MERIT) program as an effective pre-sentence diversionary program.

Research by the Bureau of Crime Statistics and Research has shown that MERIT is having great success in reducing rates of reoffending.<sup>1</sup> The MERIT program receives a high level of judicial support and provides positive outcomes for both offenders and the community. The Committee considers that the demonstrated success of MERIT in reducing recidivist behaviour, and the associated benefits this creates for the community, justifies the allocation of substantial resources to the program.

The Committee has asked that I write to you recommending that the MERIT Program Evaluation and Monitoring Group consider ways in which the MERIT program can be made more accessible to cognitively impaired defendants.

The MERIT program ensures that the court process has a rehabilitative component for eligible adult defendants who present at a participating Local Court and who have a demonstrable drug or alcohol problem. People with a cognitive impairment often fall into this category and could benefit from participation in the MERIT program.

The Committee notes that in order to be deemed eligible to participate in the MERIT program a defendant must:

- be suitable for release on bail;
- be an adult with a demonstrable illicit drug or alcohol problem;
- be willing to consent to a treatment program;

<sup>1</sup> 'Magistrates Early Referral Into Treatment Program', Bureau of Crime Statistics and Research, Crime and Justice Bulletin, Number 131, July 2009, p11.

- not be involved in current or pending charges related to serious violence or sexual assault, or matters that will be heard in the District Court;
- be deemed suitable for treatment and have a treatable problem; and
- be approved to participate in the program by the Magistrate.

Acceptance into the program is conditional on the defendant being assessed as suitable by the MERIT caseworker and the Magistrate, and the defendant remaining committed to volunteering for the program. The determination of an appropriate treatment module is a matter solely within the discretion of the MERIT caseworker. While a defendant with a cognitive impairment may be considered both eligible and suitable, they may not ultimately be accepted into the MERIT program as a result of perceived literacy requirements for treatment.

The Committee supports changing the way the MERIT program is structured and delivered so that more offenders with a cognitive impairment may participate in, and benefit from, the program. For instance, having a less literacy based method of treatment and a more verbal and narrative based method of treatment would not be an unreasonable variation to the MERIT program.

The Committee submits that:

- the prevention or reduction of offending behaviour is very important both for the protection of the community and to meet the needs of defendants with a cognitive impairment;
- the objects, principles and applications of principles in the *Disability Services Act 1993* should apply to services for defendants with a cognitive impairment;
- there should be established within the MERIT program, a team of caseworkers with specialist capacity in assessing and meeting the drug and alcohol treatment needs of defendants with a cognitive impairment;
- a significant level of funding should be made available for the MERIT program to flexibly meet the needs of defendants with a cognitive impairment.

Members of the Committee would welcome the opportunity to meet with the MERIT Program Evaluation and Monitoring Group to discuss this important matter further.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Dowd", followed by a period.

Justin Dowd  
**President**