



## Participation of Aboriginal people in the MERIT program: Main findings

This bulletin reports the main findings of the **Participation of Aboriginal people in the MERIT program<sup>1</sup>** report, released by the Crime Prevention Division. The full report provides information relating to Aboriginal participation from program commencement in July 2000 to 31 October 2004. As such, it provides an account of Aboriginal participation during the first four years of the MERIT program. At the end of the study period, MERIT was operational in 53 Local Courts across New South Wales, and covered all Area Health Services.

### Background

The Aboriginal population is significantly over-represented in the NSW Criminal Justice System. While Aboriginal people make up only 1.9% of the NSW population,<sup>2</sup> they make up 16.8% of the NSW prison population.<sup>3</sup> Evidence also suggests that once a part of the criminal justice system Aboriginal defendants are more likely to be found guilty (Baker, 2001) and to receive harsher penalties (Baker, 2004). Given these stark realities, it is essential that all criminal justice intervention programs implemented to interrupt the crime/court<sup>4</sup> cycle are reaching the Aboriginal population.

The MERIT program<sup>5</sup> is a court based diversion initiative that is aimed at addressing both the health and criminal justice issues of adults who present at a participating Local Court and who have a demonstrable drug problem. MERIT operates at the pre-plea stage of the court process. Participants must meet specific eligibility criteria, be suitable for release on bail and be motivated to engage in treatment and rehabilitation for their illicit drug problem. The program is designed to deal with offenders facing less serious drug or drug related charges than those appearing before the NSW Drug Court.

The report *Participation of Aboriginal people in the MERIT program* sought to examine access to MERIT on the basis of Aboriginality.

### Data used in this study

Data used in this study was taken from the MERIT Information Management System (MIMS) database. MIMS is a purpose-designed database used to record information on participation in the MERIT Program. It was designed to be both an operational management system and a means of collecting quantitative data for the ongoing monitoring and evaluation of the MERIT Program.

Data are collected at Area Health Service level and downloaded centrally by the Centre for Drug and Alcohol (NSW Health) for monitoring and evaluation purposes. MIMS data for this study was taken from 16 health areas covering the period from 3 July 2000 to 31 October 2004. This was the latest data available and verified at the time the study was undertaken. Aboriginal status recorded in the MIMS database is a self-identified item.<sup>6</sup>

## MERIT acceptances

### The acceptance process

Following referral to MERIT, acceptance into the program is dependent on a three-stage process. The first stage is an assessment of the defendant against stated program eligibility criteria. Eligibility is based on satisfying the following conditions: being suitable for release on bail, having a demonstrable and treatable drug problem, and being 18 years or over. The defendant cannot be charged with an offence that involves serious violence, sexual assault, or have committed an indictable offence. The defendant must also give informed consent to participate in the MERIT program.

The second stage is an assessment regarding the suitability of the defendant for the MERIT program. Suitability is determined following a clinical assessment by the relevant MERIT team. The team may take into account such issues as the defendant's motivation and previous experiences with drug treatment services. Operational issues are also important, such as the availability of rehabilitation services, and the caseload of participants relative to MERIT staff resources.

The third stage of acceptance is the endorsement of participation by a Magistrate. While a defendant may be considered both eligible and suitable, they may not ultimately be accepted into the MERIT program.

### MERIT acceptances during the study period

During the study period, 3,454 (55.5%) of the 6,219 persons referred to MERIT were accepted into the program. Aboriginal persons were less likely than non-Aboriginal persons to be accepted into MERIT following an eligibility and suitability assessment (63% compared with 73%). See Figure 2.

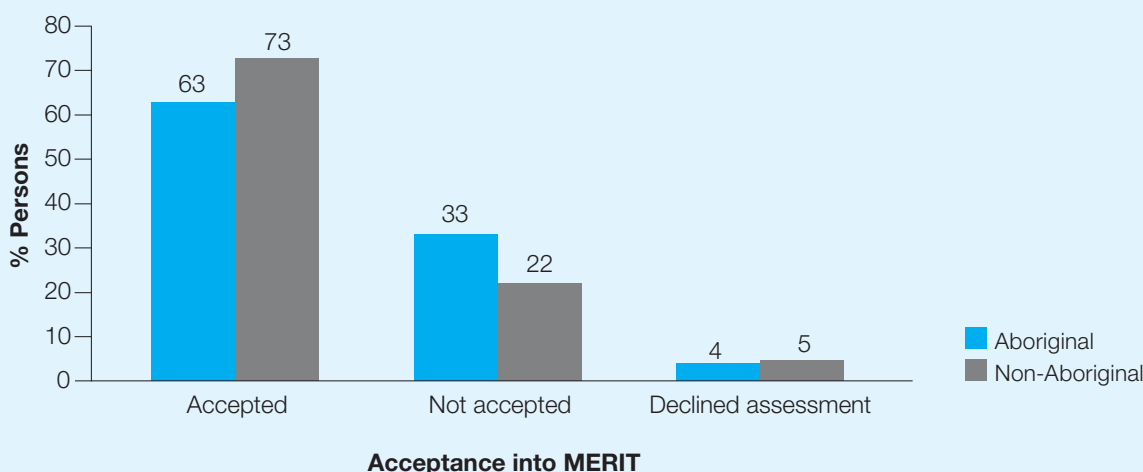
The reasons for non-acceptance provided in the full report are broken down into three categories: ineligibility, suitability and 'other'. The reasons for Aboriginal and non-Aboriginal acceptance into the program are proportionately similar across all eligibility and suitability reasons, except for the finding that Magistrates were less likely to deem Aboriginal defendants as unsuitable (8.5% compared with 12% non-Aboriginal).

There is however a disparity between Aboriginal and non-Aboriginal persons in relation to 'other' reasons for non-acceptance, 21.6% compared with 12.1%. Unlocking the information in this other category is likely to be the key to understanding the reasons behind Aboriginal non-acceptance into the MERIT program.

Over time, there was a downward trend in the number of Aboriginal defendants accepted into MERIT. In contrast, the acceptance rate for non-Aboriginals has remained constant. This general decline coincides with the introduction of the *Bail Amendment (Repeat Offenders) Act 2002*, which reduces the availability of bail for some classes of repeat offender and persons who have previously breached bail conditions.

Another reason for the non-acceptance of Aboriginal referrals may be related to the type of offence committed, as a higher proportion of Aboriginal defendants referred to MERIT are facing charges of assault. The MERIT program excludes persons who have committed significant violent offences. On this basis, it is likely that offences committed by Aboriginal defendants have a bearing on their subsequent acceptance into the MERIT program.

Figure 2: Program acceptance by Aboriginality July 2000 to October 2004



## Referrals to MERIT

### Aboriginal participation in MERIT

The study population was made up of 6,219 persons who were referred to MERIT between 2 July 2000 (date of program commencement) and 31 October 2004. Of these, 853 (13.7%) persons identified as Aboriginal<sup>7</sup> and 4,242 (68.2%) as non-Aboriginal. The Indigenous status of a large number of referred persons was unknown, 1,124 (18.1%). This proportion of persons of unknown Indigenous status is high, and needs to be acknowledged as having the potential to temper the results presented below.

### Aboriginal appearances in the Local Court

The full report compares the proportion of Aboriginal persons referred to MERIT with the proportion of Aboriginal persons charged before the Local Courts. Aboriginals were reported as consistently making up a higher proportion of referrals to MERIT than non-Aboriginals. This information was based on Local Court statistics provided by the Bureau of Crime Statistics and Research (BOCSAR).

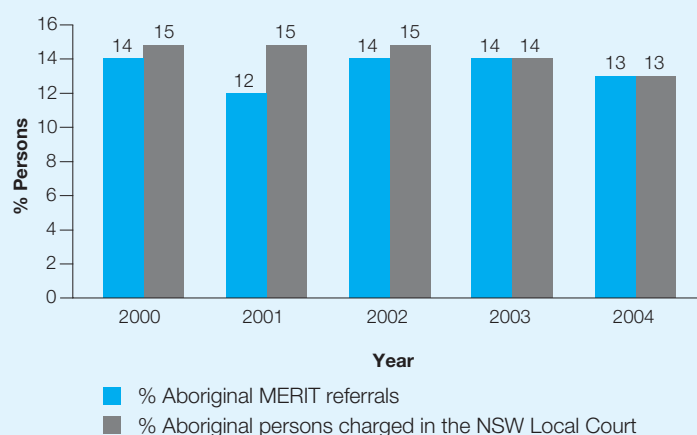
However, since the time the Court statistics were provided for the full report, BOCSAR has revised the way the Indigenous status of persons charged is identified.<sup>8</sup> This revision resulted in a significant increase in the number of Indigenous persons appearing in the Local Courts. Using revised 2000-2004 BOCSAR information,<sup>9</sup> Figure 1 compares the proportion of Aboriginal persons referred to MERIT with the proportion of Aboriginal persons appearing before the NSW Local Court.

While Figure 1 shows there to be slight variation across the years, the number of Aboriginal persons referred to MERIT is proportionately very similar to the number of Aboriginal persons appearing before the NSW Local Court. The largest proportional difference between referrals and appearances is in 2001, with evidence of a 3% difference between referral and charge rates.

### MERIT referral sources

Referral to MERIT can be from a number of sources: Magistrates, Police, Probation and Parole, Solicitors (including Legal Aid and Aboriginal Legal Services), by the defendants themselves or by friends and family. Aboriginal persons were more likely than non-Aboriginal persons to be referred to MERIT by a solicitor (39.3% compared with 28.9%). They were, however, half as likely to self-refer (4.7% compared with 8.2%).

Figure 1: The proportion of Aboriginal referrals to MERIT compared with the proportion of Aboriginal identified persons appearing in the NSW Local Court



### Referrals by Area Health Service

It is difficult to provide an accurate comparison of Aboriginal referrals by Area Health Service (AHS) for two reasons. The first is that MERIT had been in operation in some Area Health for only a short time at the time the research was conducted. Another is due to regional variation in Aboriginal population.

The Macquarie AHS demonstrated the highest proportion of Aboriginal referrals (48.8%), followed by the Mid West (31.8%) and New England (31.5%) AHS. Other AHS regions with Aboriginal referral proportions higher than the referral proportions for NSW were: the Mid North Coast (23.6%), Southern (23.2%), Northern Rivers (17.6%), the Greater Murray (17.1%) and Illawarra (15.3%).

Low levels of Aboriginal referral were observed for AHS Teams in Northern Sydney (0.9%), South West Sydney (4.0%) and South East Sydney (5.0%).

### Charge types

Aboriginal defendants referred to MERIT were twice as likely to be facing charges relating to assaults, justice offences, malicious damage and offensive behaviour. Almost one in eight Aboriginal persons referred to MERIT was facing a charge for Assault (11.8%) or Offence against justice procedures (11.8%). Aboriginal defendants were less likely to be facing charges for drug offences (15.7%).

An important consideration in view of these findings is that MERIT targets persons who have an illicit drug problem. However, it is possible that defendants who are referred to the program may have a secondary alcohol problem. This issue is important as alcohol consumption is implicated in around one third of all assaults reported to the NSW Police.<sup>10</sup>

## MERIT completions

Of the 3,454 persons accepted into MERIT, 2,020 (58.5%) completed the three-month program. An important finding was that Aboriginal participants had a lower program completion rate (50%) than non-Aboriginal participants (60%). The reasons for program non-completion, by Aboriginal status, are provided in Figure 3.

The most common reason for non-completion was the defendant being breached by the MERIT team for non-compliance. This was more the case for Aboriginal participants than it was for non-Aboriginal participants (65.7% compared with 60.1%). Aboriginals were, however, less likely to be removed from MERIT by the Court, and less likely to withdraw voluntarily from the program. Defendants may be breached by the Court as a result of being charged with another offence while on the program or otherwise breaking bail conditions.

## Principal drug and treatments provided

### Principal drug of concern

The MERIT Program Guidelines define the 'principal drug of concern' as being the main illicit problem drug for persons involved program. Aside from a slightly higher proportion of Aboriginal defendants presenting with a cannabis problem and a slightly lower proportion with a heroin problem, there was little difference between Aboriginal and non-Aboriginal defendants with regard to the principal drug of concern.

When considering this issue, it is worth noting that the MERIT Annual Reports (2003 and 2004) report that the principal drug of concern is related to the region in which an individual lives – with cannabis being more of a drug of concern in regional areas.

### Treatment programs

Aboriginal participants were much more likely to be referred to residential treatment programs (48% compared with 18%). However, it is important to consider that differences in treatments provided may be a reflection of the differing philosophies of the health care professionals in any given AHS rather than being due to a person's Aboriginality or presenting drug problem.

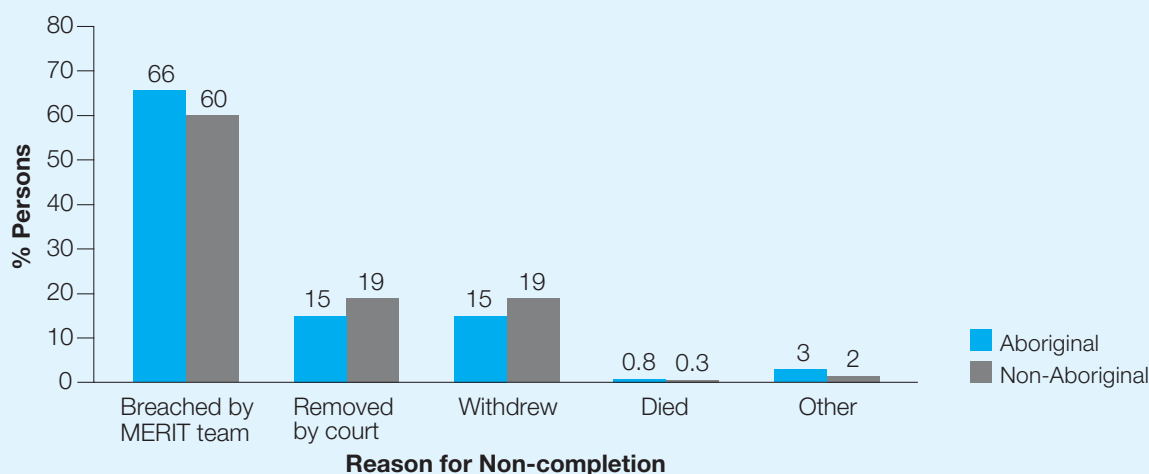
## Demographic characteristics

There were demographic differences between the Aboriginal and non-Aboriginal populations with regard to age, gender, living arrangements, employment status and education level.

The results demonstrated that Aboriginal persons referred to MERIT tended to be younger than non-Aboriginal persons. Aboriginal females made up a higher proportion of referrals than non-Aboriginal females. This finding is likely to reflect the general criminal population figures, as Aboriginal women make up almost one quarter of the females in the NSW Local Court charge (24%)<sup>11</sup> and prison (24%) populations.<sup>12</sup>

A comparison of Aboriginal and non-Aboriginal defendants showed that a higher proportion of Aboriginal defendants were married and/or living with family, were unemployed, had a lower level education and had served time in prison. When considering these results it is important to note that a number of these variables are likely to be correlated.

Figure 3: Reasons for program non-completion by ATSI status



## Discussion

The *Participation of Aboriginal people in the MERIT program* report considered the level of participation of Aboriginal people during the first four years of the MERIT program. The findings relate to the criminal justice intervention/diversion debate due to the significant over-representation of the Aboriginal community in the criminal court and prison environments. Because of the widespread coverage of the MERIT program across NSW, even small gains through the diversion of Aboriginal defendants into drug treatment programs have the potential to significantly reduce the number of Aboriginal people appearing before the courts and being sentenced to prison.

The current study shows that Aboriginal defendants are referred to MERIT in proportion to their rate of appearance before NSW Courts. This finding is encouraging, as it indicates that Aboriginal defendants have an equal opportunity of being referred to MERIT as non-Aboriginal defendants.

An analysis of the characteristics of defendants referred to MERIT revealed demonstrable differences on the basis of Aboriginal status with regard to referral rates by AHS and the range of treatments provided. Demographic differences between the two groups were also apparent. While these issues are of interest – more systemic differences were found between the two groups that warrant further consideration.

Differences on the basis of Aboriginal status were found with regard to program acceptance and program completion rates, with a lower proportion of referred Aboriginal defendants being accepted into the program and subsequently completing the program. Knowledge of the reasons behind these findings is the key to increasing the acceptance and completion rates of Aboriginal defendants.

## Current directions

An encouraging outcome of the report is the implementation of a number of strategies designed to increase the level of Aboriginal participation in MERIT. For example, MERIT teams have established a number of Aboriginal identified caseworker positions across the State. The purpose of these positions is to better engage Aboriginal participants in MERIT and to develop collaborative relationships with local communities.

New South Wales Health has commenced funding of 13 residential rehabilitation beds in five Aboriginal agencies across NSW to ensure Aboriginal MERIT participants have easy access to culturally appropriate residential rehabilitation services. Additionally, MERIT teams employ targeted strategies to engage Aboriginal participants in the program.

The NSW Attorney General's Department has established a number of Aboriginal Client Services Specialist positions, located in Local Courts that have high Aboriginal populations, who are able to assist and encourage eligible defendants to access the MERIT program.

The Aboriginal Health and Medical Research Council has received funding to develop a best practice model to engage and retain Aboriginal defendants in MERIT. This project will be conducted over the next two years, with the assistance of the NSW Attorney General's Department and NSW Health.

Monitoring the level of program participation and completion by Aboriginal defendants will be a continuing issue for the MERIT program evaluation strategy.

## References

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## Notes

1. This bulletin was prepared by Tania Matruglio. The information in the bulletin is based on the work conducted by Michael Cain and reported in *Participation of Aboriginal people in the MERIT program*, Attorney General's Department of New South Wales, 2006. Thanks is also given to Brett Furby for his preliminary analysis of the data.
2. Australian Bureau of Statistics, *Census of Population and Housing: Selected Social and Housing Characteristics for Statistical Local Areas, New South Wales and Jervis Bay, 2001*, publication number 2015.1.
3. Corporate Research, Evaluation & Statistics, *Facts & Figures*, NSW Department of Corrective Services, August 2005. Reported in this bulletin is that Aboriginal males make up 16.3% of the male prison population, and females, 24.0% of the female prison population.
4. There is evidence that demonstrates that once an individual has come into contact with the criminal justice system the likelihood that they will continue to do so increases. This revolving door issue is particularly problematic for the Indigenous population for whom the likelihood of having continued contact with the criminal justice system is disproportionately high. Two examples of research that have examined this issue are: Chen, S., Matruglio, T., Weatherburn, D., & Hua, J., 2005, 'The transition from juvenile to adult criminal careers', *Crime and Justice Bulletin*, no. 86, NSW Bureau of Crime Statistics and Research and Weatherburn, D., Lind, B., & Hua, J., 2003, 'Contact with the New South Wales court and Prison systems: The influence of age, Indigenous status and gender', *Crime and Justice Bulletin*, no. 78, NSW Bureau of Crime Statistics and Research.
5. The Magistrates Early Referral into Treatment (MERIT) program was developed following a recommendation of the NSW Drug Summit and diverts adult defendants with primary drug problems on bail from Local Court to a three-month intensive drug treatment program. On completion of the treatment program, defendants return to the court for sentencing. The successful completion (or otherwise) of the MERIT program by the defendant may be considered by the Magistrate when handing down the sentence. MERIT is a joint initiative between criminal justice and health sectors. Further details of the MERIT program and the treatments provided can be found in the full report as well as in the MERIT Annual Reports.
6. 'An Aboriginal or Torres Strait Islander is a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives.' (MIMS Data Dictionary, *MERIT Operational Manual*, 2002, Appendix, p.30).
7. The term 'Aboriginal' is used in this bulletin to describe persons who identified as Aboriginal and/or Torres Strait Islander.
8. BOCSAR changed the ATSI status counting rules in 2004. The BOCSAR reports produced prior to this only counted persons who identified as Indigenous on the occasion of the reference court appearance. Since 2004, BOCSAR has began counting all persons who appeared who have identified themselves as Indigenous at any court appearance since 1994.
9. Figures relating to the proportion of ATSI identified persons charged in the NSW Local Courts was requested from and provided by the Statistical Services Unit of the Bureau of Crime Statistics and Research.
10. Information provided by the Statistical Services Unit of the NSW Bureau of Crime Statistics and Research indicates that in 2004 the NSW police identified 37.9% of all reported assaults as being alcohol related.
11. NSW Bureau of Crime Statistics and Research, requested figures, ATSI status of persons charged in NSW Local Courts, 2004.
12. Corporate Research, Evaluation & Statistics, *Facts & Figures*, NSW Department of Corrective Services, August 2005. Reported in this bulletin is that Aboriginal males make up 16.3% of the male prison population, and females, 24.0% of the female prison population.

