

## **EXPLORING TE WHARE WHAKAPIKI WAIRUA/THE ALCOHOL AND OTHER DRUG TREATMENT COURT PILOT: THEORY, PRACTICE AND KNOWN OUTCOMES**

KATEY THOM\*

### 1. INTRODUCTION

On 13 June 2017, the Minister of Justice, the Hon Amy Adams, announced a three-year extension to Te Whare Whakapiki Wairua/The Alcohol and Other Drug Treatment Court (AODT Court).<sup>1</sup> The AODT Court pilot commenced in November 2012 in Waitakere and Auckland District Courts and diverts from prison people whose addiction is associated with serious offending. Participants of the AODT Court are closely supervised by the AODT Court as they undertake a rigorous treatment programme. If participants complete their treatment plan, they graduate from the AODT Court and receive an intensive supervision order. The announcement by Minister Adams suggested that although there have been positive outcomes for participants of the AODT Court, it was still too early in the pilot to get a longitudinal perspective on the efficacy of the programme.

This article examines what we know about the theoretical underpinnings, practices and outcomes of the AODT Court. The article concludes with a brief comment on what the current commitment to the AODT Court says about the Government's commitment to non-adversarial justice measures that facilitate therapeutic interventions in the criminal justice system.

### II. THEORETICAL FOUNDATION OF THE AODT COURT

The foundations of the AODT Court have been recently reported in ethnographic research of the AODT Court. The authors outlined an interpretative framework called ngā whenu raranga/weaving strands composed of four key strands: law, "U.S. Best Practice", "Recovery" and "Lore", which we argued strongly underpin AODT Court processes and practices.<sup>2</sup> This section briefly explains each of these strands to provide an overview of the foundations to the AODT Court.

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\* PhD (Auck), Senior Research Fellow, Faculty of Medical and Health Sciences, The University of Auckland. The author would like to thank the Stella Black, Tony O'Brien and Ministry of Justice research and policy staff for their helpful reviews of this paper, and to the AODT Court judges, pou orange and court co-ordinators for their ongoing support of the research.

<sup>1</sup> Hon Amy Adams MP "Alcohol and Drug Court Pilot" (13 June 2017) Beehive.govt.nz <<https://www.beehive.govt.nz/release/alcohol-and-drug-court-pilot-extended>>.

<sup>2</sup> The findings presented in this section were produced through an ongoing research programme on therapeutic specialist courts lead by the author and funded by the Royal Society of New Zealand Marsden Fund. The research on the AODT Court received approval from University of Auckland Human Participants Ethics Committee (ref 011293) and approved by the Ministry of Justice, AODT Court Steering Committee, New Zealand Police, Corrections, Odyssey House, and the Judicial Research Committee. Further details on the findings of this research so far can be found in four reports available at <<http://www.justicespeakersinternational.com/new-zealands-aodtc-court/>>.

The law strand refers to the criminal justice objectives of the AODT Court, the policy and legislation that enable these objectives, and how these objectives fit within a wider legal movement that is therapeutic in nature.<sup>3</sup> The criminal justice aims of the AODT Court are to provide an alternative, non-adversarial approach for responding to criminal offending where it is driven by a dependency on alcohol or other drugs.<sup>4</sup> The AODT Court uses the sentencing process as a mechanism to facilitate positive outcomes for participants, reduce their risk of reoffending and, increase public safety. The AODT Court operates within existing New Zealand legislation. Section 25 of the Sentencing Act 2002 allows for a judge to explicitly adjourn a sentencing matter to enable an offender to access rehabilitation. In other jurisdictions special statutes may be developed for drug courts.<sup>5</sup>

Addiction is viewed primarily as a health problem in the AODT Court, which corresponds with the principle of harm minimisation underpinned by New Zealand's drug policy.<sup>6</sup> In their support of the piloting of an AODT Court, the New Zealand Law Commission suggested that the most fundamental problem with the Misuse of Drugs Act 1975 is that it is poorly aligned with drug policy, indicating that "the use of drugs, even by those who are dependent on them, is treated as a matter solely for the criminal law rather than health policy".<sup>7</sup> The report concluded that "the abuse of drugs is both a health and criminal public policy problem and, as a matter of principle, drug laws should facilitate a multi-sectoral response designed to minimise drug-related harms".<sup>8</sup> The AODT Court aligns with the Law Commission's ambition for drug laws to facilitate multi-sectoral approaches to drug-related harm in a way that balances justice and health priorities.<sup>9</sup>

Linkages can also be made between the AODT Court and the wider international movement focused on therapeutic design and application of the law.<sup>10</sup> Some of the legal professionals who took part in our ethnography described the application of law and legal practice in the AODT Court as a "healing approach" (AODT Court team #12), "holistic" (AODT Court team #38) or a "human approach" (AODT Court team #13).

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<sup>3</sup> Katey Thom and Stella Black "Ngā Whenu Raranga #1: The Therapeutic Framework of Te Whare Whakapiki Wairua/The Alcohol and Other Drug Court" (Report, University of Auckland, 2017). Available at <<http://www.justicespeakersinternational.com/new-zealands-aodtc-court/>>.

<sup>4</sup> Ministry of Justice *Alcohol and Other Drug Treatment Court Handbook – Te Whare Whakapiki Wairua* (October 2014).

<sup>5</sup> Although not a primary aim of the research, during interviews with AODT Court team members, there were inferences as to why New Zealand did not introduce a separate statute for the AODT Court. Reasons were varied, but appeared to mostly relate to pragmatism in that the Sentencing Act already allows judges the discretion to direct access to rehabilitative programmes prior to sentencing and that gaining support for a legislative change may impede the innovation getting off the ground quickly (AODT Court team member #32).

<sup>6</sup> Inter-Agency Committee on Drugs *National Drug Policy 2015 to 2020* (Ministry of Health, August 2015).

<sup>7</sup> New Zealand Law Commission *Controlling and Regulating Drugs: A Review of the Misuse of Drugs Act 1975*. (NZLC R122, 2011) at [4.77].

<sup>8</sup> New Zealand Law Commission, above n 7, at [1.61].

<sup>9</sup> Thom and Black, above n 3.

<sup>10</sup> See David Wexler "Moving Forward on Mainstreaming Therapeutic Jurisprudence: An Ongoing Process to Facilitate the Therapeutic Design and Application of the Law" in Warren Brookbanks (ed) *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomson Reuters, Auckland, 2015).

This different view of legal process and practice resonates strongly with the international scholarship that has been coined the "comprehensive law movement". Daicoff used the term "comprehensive law movement"<sup>11</sup> to describe the collective of alternative non-adversarial approaches to law and legal practice that challenge the current legal system's heavy reliance on the adversarial retributive model. Vectors of this movement include therapeutic jurisprudence, restorative justice, preventative law, procedural justice, collaborative justice and holistic law. Based on research from a judicial perspective, it could be argued that therapeutic jurisprudence, procedural justice, and restorative justice have significantly helped shape the practices of New Zealand specialist court practices.<sup>12</sup>

A second important strand of the theoretical foundations of the AODT Court is the best practice standards that have come largely from the United States.<sup>13</sup> This research-based best practice is summarised in the United States National Association of Drug Court Professionals' "Defining Drug Courts: The Key Components" and supplementary "Adult Drug Court Best Practice Standards" (Volumes I and II).<sup>14</sup> The Key Components (the Ten Key Components) can be succinctly summarised as expectations that drug courts:

1. Integrate alcohol and other drug treatment services within justice system case processing
2. Use a non-adversarial approach
3. Allow early and prompt intervention for eligible participants
4. Provide access to a continuum of treatment and rehabilitation services
5. Monitor participants via drug testing
6. Use a coordinated strategy to govern compliance
7. Use ongoing judicial interaction
8. Evaluate progress and effectiveness
9. Provide continuing interdisciplinary education for the team
10. Forge partnerships with agencies and community organisations.

Research has indicated that drug courts are more likely to reach their goals if they closely adhere to the Ten Key Components. Failure to apply the Ten Key Components has been associated with lower graduation rates, higher recidivism and lower cost savings.<sup>15</sup>

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<sup>11</sup> Susan Daicoff, "The Role of Therapeutic Jurisprudence Within the Comprehensive Law Movement" in DP Stolle, DB Wexler and BJ Winick (eds) *Practicing Therapeutic Jurisprudence: Law as a Helping Profession* (Carolina Academic Press, North Carolina, 2000).

<sup>12</sup> Thom and Black, above n 3.

<sup>13</sup> Thom and Black, above n 3.

<sup>14</sup> The National Association of Drug Court Professionals *Defining Drug Courts: The Key Components* (United States Department of Justice, October 2004); The National Association of Drug Court Professionals *Adult Drug Court Best Practice Standards: Volume I* (Virginia, 2013); The National Association of Drug Court Professionals *Adult Drug Court Best Practice Standards: Volume II* (Virginia, 2015).

<sup>15</sup> SM Carey, JR Mackin and MW Finigan "What Works? The Ten Key Components of Drug Court: Research-Based Best Practices" (2012) 8 *Drug Court Review* 6; Leticia Guitierrez and Guy Bourgon "Drug Treatment Courts: A Quantitative Review of Study and Treatment Quality" (2012) 14 *Justice Research and Policy* 47; JM Zweig and others "Drug Court policies and practices: How program implementation affects offender substance use and criminal behavior outcomes" (2012) 8 *Drug Court Review* 43.

The third strand is the particular form of recovery practised in the AODT Court, which is characterised by an abstinence based model that understands addiction as a disease. For example, the AODT Court model was conceptualised by one AODT Court judge as akin to a “chronic disease management model” used in health systems.<sup>16</sup> Treatment of the disease, rather than punishment for moral failure, became the focus of drug courts. The conceptualisation of addiction as a disease also aligns with the idea that abstinence is the only policy to ensure long-term positive change, and links strongly with the 12-step fellowship framework which also underpins some of the treatment services that support the AODT Court.<sup>17</sup>

As with most drug court models internationally, the AODT Courts use “coerced treatment”.<sup>18</sup> Legally coerced treatment aims to divert offenders from imprisonment where their offending is seen as strongly associated with substance use.<sup>19</sup> In providing an alternative to traditional criminal justice processes, the belief is that engagement in treatment will reduce drug-related harm and reoffending.<sup>20</sup> Under this model, addiction-related treatment is determined by the AODT Court team led by the judge, and it is expected that the externally-driven direction to treatment allows participants the opportunity to internalise motivation to change. The ultimate goal is that this process of coercion creates long term positive change in the life of participants, and therefore, by extension, their whanau (family) and the community. The external authority of the AODT Court is harnessed by the incentive of an alternative pathway to imprisonment and the implementation of a range of approaches that compel the participant to comply with the programme.<sup>21</sup>

Finally, although the AODT Court is modelled on similar courts operating in the United States, there are unique and important aspects within the New Zealand context that relate to cultural responsiveness and partnership with Māori. Under the Lore strand, the research described the pou orange role that was established in AODT Court in October 2013. The person employed in the position is Māori and brings knowledge of te reo, tikanga Māori and experience in providing cultural expertise in a treatment setting, as well as extensive knowledge of addiction recovery and treatment issues. The role represents a strong commitment by the judiciary to the principles of Ti Tiriti o Waitangi and tikanga Māori. The pou orange has developed a cultural framework that creates a guide for culturally meaningful and responsive practices in the AODT

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<sup>16</sup> Thom and Black, above n 3.

<sup>17</sup> The 12-Step Fellowship was founded in 1935 by Bill Wilson and Alcoholic Anonymous, which established a tradition of 12 step programs and traditions. 12-step methods have been adapted to address a wide range of alcoholism, substance-abuse and dependency problems. The AODT Court has enjoyed support from Alcoholic Anonymous and Narcotics Anonymous, and whanau are encouraged to seek support from Al-Anon of particular support to friends and family members of people with addictions. See “Twelve Steps to Recovery” (2015) <<http://www.12steps.nz>>.

<sup>18</sup> The National Association of Drug Court Professionals, above n 6.

<sup>19</sup> DA Bright and KA Martire “Does Coerced Treatment of Substance-Using Offenders Lead to Improvements in Substance Use and Recidivism? A Review of the Treatment Efficacy Literature” (2013) 48 *Australian Psychologist* 69.

<sup>20</sup> T Seddon “Coerced drug treatment in the criminal justice system: Conceptual, ethical and criminological issues” (2007) 7 *Criminology and Criminal Justice* 269.

<sup>21</sup> Thom and Black, above n 3.

Court and treatment provision. Examples of such practices are described further below.

### III. THE AODT COURT IN PRACTICE

There are two AODT Court sittings a week, one in Waitakere District Court on a Wednesday and other in Auckland District Court on a Friday. The day begins with a pre-court meeting attended by the multi-disciplinary AODT Court team which is composed of the AODT Court judges, case managers (who have addiction based qualifications), defence counsel, police prosecution, probation, CADs assessors and the pou oranga. Open court begins after lunch where participants are judicially monitored, new participants are officially welcomed and also involve graduations. Whanau, individuals from the recovery community, and AODT Court peer support workers may be in attendance at open court.

To briefly summarise, there are four crucial steps in a participant's journey through the AODT Court: 1) determination of eligibility and suitability; 2) participation in the three-phased programme; 3) graduation; and 4) continuing the journey.<sup>22</sup>

#### *A. Determination of Eligibility and Suitability*

The first step in the participant's journey through the AODT Court is being determined as eligible and suitable. Potential participants are identified as early as possible so that referrals by the District Court and assessments by AOD professionals can be completed swiftly to allow the defendant to enter the AODT Court as soon as possible (ideally within 50 days of arrest, thereby aligning with U.S. Best Practice).<sup>23</sup> The AOD assessment is largely focused on determining a defendant's dependency to alcohol or other drugs using the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) criteria.<sup>24</sup> On the pou oranga's instigation, culturally specific information is also

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<sup>22</sup>For further details on AODT Court processes see Katey Thom and Stella Black "Ngā whenu raranga/Weaving strands: 2. The processes of Te Whare Whakapiki Wairua/The Alcohol and Other Drug Treatment Court" (Report, University of Auckland, 2017). Available at <<http://www.justicespeakersinternational.com/new-zealands-aodtc-court/>>. The Ministry of Justice also contracted Litmus to produce two process evaluations which are available at <<http://datalab.justice.govt.nz/research-and-evaluation-collection/>>. These reports are also referred to in the known outcomes section of this paper.

<sup>23</sup> The '50 day advisory rule' is considered important to the AODT Court programme. This rule draws on the best practice from the United States, which indicates that drug courts have the most positive impact on participants when the period between arrest, offending or violation and entry into the AODT court is no more than 50 days. This rule becomes important in this early stage of identifying and determining the eligibility of potential participants (The National Association of Drug Court Professionals, 2013).

<sup>24</sup> American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (5th ed, Virginia, American Psychiatric Publishing, 2013). At the time of our research, the AOD assessment still relied on the DSM-IV-TR. This manual requires a specialist AOD clinician to assess whether the defendant has a "maladaptive pattern of substance use, leading to clinical significant impairment or distress" (American Psychiatric Association, 2000). Significant impairment or distress is defined as composed of three or more of the seven factors listed in the manual occurring within the same 12-month period. Such factors may include indications of tolerance, withdrawal, unsuccessful attempts to control substance use, reduction in daily activities because of substance use and continuing substance

collected during the AOD assessment weaving in aspects of the Lore strand with U.S. Best Practice and Recovery strands described in the previous section that prioritise holistic AOD assessment. If the AOD assessment identifies the defendant as having an AOD dependency, the presiding judge then refers the case to the AODT Court for a determination hearing.

The AODT Court judge leads discussions regarding new referrals with the AODT Court team, where the eligibility of the potential participant is measured against the pre-determined criteria. Various sources of information are considered during these discussions, such as the AOD assessment, RoC\*RoI score (which helps identify whether the defendant may be a medium-high risk offender),<sup>25</sup> previous and current offences, and willingness of the defendant to participate in the AODT Court programme, and plead guilty. The judge may also provide an indication as to the sentence the potential participant is likely to receive if sentenced in mainstream District Court. The AODT Court judge then makes a decision as to the suitability of the defendant taking into account the number of places left in the AODT Court. Once AODT Court participants have been accepted to enter the AODT court, the pou oranga then ensures mihi whakatau<sup>26</sup> processes occur in the AODT Court. The mihi whakatau process was also described by some of the AODT Court team as creating a sense of togetherness for all participants, regardless of ethnicity.

### *B. Participation in Three-Phased Programme*

In alignment with U.S. Best Practice, participants then undertake a three-phase programme of between 12 and 18 months, with random drug testing and graduated incentives and sanctions used along the way. Phase one takes at least four months to complete and involves the creation of a holistic and individualised treatment and rehabilitative plan by the case managers. The participant must be compliant with this treatment plan, report to the case manager at least weekly and engage with 12-step meetings. If a participant is alcohol dependent, he or she will likely be fitted with a SCRAM bracelet.<sup>27</sup> Phase two is approximately four to six months long in total and

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use despite physical or psychological problems occurring and being made worse. The assessment, therefore, involves the collection of information about the defendant's substance use patterns and history, history of previous treatment and clinical diagnosis.

<sup>25</sup> The Roc\*RoI is an algorithm used by the Department of Corrections to predict the offender's potential risk of conviction and risk of imprisonment. The combined measure considers the relationship between demographic variables and criminal history variables, including prison time, time at large, seriousness of offence and offence type. The result is a RoC\*RoI score that indicates the statistical likelihood that the offender will be reconvicted in the future and sentenced to a term of imprisonment for that offence. The score range is 0.0 to 1.0, representing 0 risk to 100 per cent risk of serious reoffending (see Department of Corrections, 1997). The AODT Court considers a score between 0.5 and 0.9 as an indicator of high risk and therefore potentially suitable for the Court. Those with repeat drunk driving convictions, however, often have low RoC\*RoI scores making this assessment less applicable for consideration in these cases and judicial discretion may be applied in these cases. See Ministry of Justice, above n 4.

<sup>26</sup> Official welcome.

<sup>27</sup> See Scram Systems "Beyond Crime: Tackling Alcohol Misuse" (2017) <<http://www.scramsystems.com/nz/>>. A SCRAM bracelet is worn 24/7 and provides continuous alcohol monitoring by automatically sampling participants perspiration every 30 minutes for alcohol consumption.

continues to involve treatment and rehabilitation, inclusive of trauma counselling and behavioural modification programmes and 12-step meetings. There is a gradual increase in intervals between court appearances for monitoring, with participants appearing every three weeks and the SCRAM bracelet may have been removed. A focus is placed on longer term solutions, including building family/whānau bonds, identifying training or employment and working towards personal goals. Phase three should see the completion of all treatment and rehabilitation programmes. Testing requirements continue as in the previous phases. Phase three involves appearance in AODT Court every four weeks and concludes with graduation from the programme. AODT Court participants make preparations for transitioning into living in the community in a stable state of recovery.

Graduated incentives and sanctions are used throughout the three-phase programme. U.S. Best Practice suggested that gradually increasing the severity of sanctions for infractions improves outcomes among offenders with addictions.<sup>28</sup> In the early parts of phase one, verbal praise and small tangible rewards aim to encourage and instil hope in AODT Court participants, who may find it difficult to achieve proximal goals (those goals a participant is able to meet now, for example, attending appointments as directed, drug testing as required). Formal recognition in open court, such as celebratory presentations of 30-day tags and a handshake from the AODT Court judge, aims to foster further positive reinforcement, especially in cases where AODT Court participants are unaccustomed to such praise. Rewards can also be used to incentivise all participants as a group. The AODT Court introduced the “fish bowl” during our observations. This refers to the procedure used in some U.S. based drug courts whereby the names of all participants who have met their proximal goals over the previous monitoring period are put into a bowl. During open court, the judge invites a team member or visitor to the Court to pull one name out of the bowl. The participant whose name is drawn out of the bowl then receives a small reward. This allows the AODT Court to reduce the amount of rewards given to every achievement of individual participants while still acknowledging the achievement.

### 1. *Graduation*

The AODT Court participants exit the AODT Court via graduation, voluntary exit or termination.<sup>29</sup> The graduation ceremony takes place in open court. Tikanga guides the

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<sup>28</sup> A Harrell, S Cavanagh and J Roman *Final Report: Findings from the Evaluation of the D.C. Superior Court Drug Intervention Program* (The Urban Institute, Washington, DC., 1999); A Harrell and J Roman “Reducing drug use and crime among offenders: The impact of graduated sanctions” (2001) 31 *Journal of Drug Issues* 207; A Hawken and M Kleiman *Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE* (National Institute of Justice, Washington DC, 2009); and DB Marlowe *Research Update on Adult Drug Courts* (The National Association of Drug Court Professionals, Virginia, December 2010).

<sup>29</sup> Some participants may choose to exit the AODT Court, while others may be exited by the AODT Court judge after a full exit hearing on the grounds that one or more of the exit criteria are met. Those criteria are: Further offending; Deliberate and persistent failure to comply with treatment and/or testing requirements; Violence or seriously threatening behaviour within the treatment setting or in court precincts; Being exited from treatment by a treatment provider due to serious breach of rules; Acting

graduation process, beginning by way of karakia<sup>30</sup> and waiata.<sup>31</sup> The AODT Court participant is then asked to introduce any whānau/family/friends/employers that have accompanied them and then read their graduation application. AODT Court team members are invited to provide their perspective and whanau/supporters from the recovery community are invited to contribute to the event. The judge then gives the graduating participant a number of items including a graduation certificate and a recovery haka is also performed, under the oversight of the pou oranga. The ceremony closes by returning to the judge, who sentences the AODT Court participant. Each participant is sentenced to intensive supervision or supervision, the sentence being overseen by the AODT Court designated probation officers who have been members of the Court team throughout the participant's journey and know the participant reasonably well. The ceremony concludes with the pou oranga leading the full court joining in a waiata.

## 2. *Continuing the journey*

The AODT Court participants continue to be supported beyond their journey through the AODT Court programme. The pou oranga leads work in this regards through the development of what he described as a "continuing care body", which is the grouping of graduates from the AODT Court who continue to support one another once they leave the AODT Court. He Takitini<sup>32</sup> ceremonies mark the coming together of graduates outside of the court environment. He Takitini is unique to the New Zealand setting and may be understood as representing belonging and strength in being connected to others. It is a crucial aspect of providing continuing support for graduates as they continue to live in recovery outside the AODT Court in the community.

## IV. EXISTING EVALUATIVE DATA ON THE AODT COURT

This section provides an overview of data made available by the Ministry of Justice on the demographic profile of participants, significant strengths and weakness of the programme processes, and existing cost-benefit analysis of the AODT Court.

### A. *Demographic Profile of AODT Court Participants*

Data obtained by the author under the Official Information Act indicates that a total of 626 people have been referred to the AODT Court for determination hearing

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in a manner which causes the AODT Court to conclude that continued participation is untenable; Failing to appear in the AODT Court within 14 days after the issue of a warrant to arrest for non-appearance. If terminated or voluntarily exited, participants are remanded in custody till they are sentenced in the usual way in the District Court either by the AODT Court judge or another judge. Their progress and achievements in the AODT Court programme are taken into account during sentencing. See Litmus *Process evaluation for the Alcohol and Other Drug Treatment Court: Interim report* (Wellington, 2015). Available at <<https://www.justice.govt.nz/assets/Documents/Publications/process-evaluation-aodt-interim.pdf>>.

<sup>30</sup> Blessing.

<sup>31</sup> Song.

<sup>32</sup> The many who stand together.



between November 2012 and August 2017.<sup>33</sup> Of that total, 65 per cent (n=404) were accepted into the AODT Court programme. Thirty per cent of those accepted have graduated (n=120), 46 per cent (n=185) exited without graduating, and 25 per cent (n=99) were still participating in the programme at the time these figures were received. Although further demographic information was not provided through this request, the final process evaluation by Litmus for the Ministry of Justice does provide further details on the demographic profiles of participants in AODT Court between November 2012 and 13 April 2016. These figures suggested the participants were overwhelmingly male, with 41 per cent European, 44 per cent Maori, and 11 per cent Pacific. Most (68 per cent) had a RoC\*RoI score within the target range and those that did not were reflective of the 30 per cent of participants who had excess breath alcohol charges.<sup>34</sup>

### *B. Strengths and Weaknesses of AODT Court Processes*

The final process evaluation commissioned by the Ministry of Justice reported the referral and determination processes of the AODT Court were working well. Referrals from defence lawyers and judges to CADs assessors have been lower than expected. Some stakeholders interviewed suggested there may be lack of understanding of eligibility and philosophic opposition to the AODT Court by this group. As the AODT Court does not have a waiting list, other stakeholders suggested that referrals may decrease when there is widespread knowledge of the AODT Court hitting their 50 participant cap per court. It was suggested that flexibility around the cap was needed. Overall, however, those cases that were referred to the AODT Court were more likely than anticipated to be accepted, meaning appropriate cases are being referred. The pilot has continued to maintain, or sit just under, the 50 participant cap.<sup>35</sup>

A concern was raised across the two Ministry of Justice commissioned process evaluations regarding the number of accepted participants remaining on remand. Figures indicate that 58 per cent of cases were on remand in custody when they were accepted into the AODT Court between November 2012 and 13 April 2016. Stakeholders suggested remaining on remand significantly impacts on motivation towards treatment. CADs has introduced treatment readiness programmes assist participants in their transition to treatment settings, but concerns remain about the limited residential beds and safe housing available in Auckland.<sup>36</sup>

The AODT Court team was evaluated positively across the three evaluation reports, with participants reporting a genuine and supportive relationship with team members. A turnover of case managers was sighted as disruptive for some participants, and others felt they did not develop a strong relationship with their lawyers, who they saw

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<sup>33</sup> Information obtained pursuant to request under the Official Information Act 1982 on 28/06/17. Information on file with the author. This data is at 8 August 2017. It is important to note that these figures may include people who have been referred for a CADs assessment and accepted into the AODT Court programme more than once.

<sup>34</sup> Litmus *Final Process Evaluation for the Alcohol and Other Drug Treatment Court: Te Whare Whakapiki Wairua* (Wellington, 2016) at 29 [Litmus].

<sup>35</sup> At 20–21.

<sup>36</sup> At 34.

minimally during the programme. Peer support workers were argued to be extremely important to a participant's recovery through a shared experience of addiction and being involved in crime. The AODT Court judges were acknowledged by participants as fair, consistent in their approach, and impartial. The AODT Court team has reported largely positive experiences of working together and being involved in the AODT Court programme, with concerns largely revolving around making the sitting days more manageable.<sup>37</sup>

As outlined in the previous section, AODT Court participants are expected to take between 12 and 18 months (365–547 days) to complete the three-phased programme. As of 13 April 2016, participants took on average take 543 days to graduate, meaning most are at the upper end of this expected scale.<sup>38</sup> The final process evaluation suggested that this is in accordance with international standards for drug courts, which indicated high-risk, high-need participants can take up to 18–24 months to graduate. As of 13 April 2016, 71 per cent of participants completed their community-based treatment programme, while 25 per cent completed a residential-based treatment programme. Most stakeholders agreed that flexibility in timing is required for participants experiencing complex issues.<sup>39</sup>

The final process evaluation reported mixed results on the use of graduated incentives and sanctions. In total, 65 per cent of participants received one or more incentives, and 60 per cent one or more sanctions. The demographic profile of those receiving either an incentive or sanction matched the demographic profile of those participants accepted into the court. Sanctions largely included verbal reprimands from the AODT Court judges (24 per cent), or additional court appearances (23 per cent), with use of return to custody at 14 per cent. Qualitative data, however, suggested that the application of sanctions for a relapse is an area where "judicial and treatment priorities clash";<sup>40</sup> and international research has been critical of the use of return to custody as a sanction when little treatment is provided. The use of return to custody was considered low by the international standards by one AODT Court stakeholder interviewed. There was little data from participant's perspectives, other than that rewards made them feel "special" and "worthy" and acknowledgement that sanctions are a necessary part of the AODT Court programme.<sup>41</sup>

One of the greatest strengths of the AODT Court programme was detailed in the Lore strand above. This role of pou oranga and the development of a cultural framework was highlighted in the final evaluation as of international significance, in the way it has produced a culturally competent and safe drug court model. Tikanga Māori was reported to have been embraced as a normal part of the AODT Court processes. Stakeholders, participants and whānau were overwhelmingly positive about the work of the pou oranga. Work in this area continues to develop, with training for AODT

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<sup>37</sup> At 39–44.

<sup>38</sup> At 49–50.

<sup>39</sup> At 77.

<sup>40</sup> At 58.

<sup>41</sup> At 52–38.

Court team members taking place, and engagement with whānau being an area of growth.<sup>42</sup>

The number of AODT Court participants graduating versus exiting is beginning to even out as the pilot progresses. As of April 2016, 79 participants had graduated, and 108 were exited. Graduates and those who were exited matched the demographic profile of those accepted into the programme. Sixty-three per cent of graduates were from Waitakere AODT Court, as opposed to 37 per cent in Auckland AODT Court. Of those who were exited, 40 per cent were via the AODT Court, 32 per cent due to failure to appear, and 27 per cent as a result of voluntary exit. It was noted that a slightly higher representation of participants within the target risk range and periods of being remanded in custody. Although it is difficult to make international comparisons, the evaluation suggested that the termination rate was acceptable.<sup>43</sup>

## V. RE-OFFENDING RATES

Data supplied to the author under the Official Information Act 1982 provides a preliminary glimpse into the reoffending rates of those participating in the AODT Court compared to those who have solely been through the mainstream court process and received a prison sentence.<sup>44</sup> The analysis focused on comparing rates of offending, frequency of reoffending, and imprisonment rates, with follow-up periods of 12 months, two years and three years.<sup>45</sup> In light of the lack of two and three year follow-ups on a larger sample of graduates, the following analysis should be read with these limitations in mind.

In the short-term, the data shows that overall participants of AODT Court were significantly less likely to reoffend, be re-imprisoned and reoffended less frequently.<sup>46</sup> AODT Court participants were 54 per cent less likely to reoffend in 12 months and 58 per cent less likely to be re-imprisoned. When looking at graduates of the AODT Court

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<sup>42</sup> At 64–65.

<sup>43</sup> At 103.

<sup>44</sup> Information obtained pursuant to a request under the Official Information Act 1982 on 28/06/17. Information on file with the author.

<sup>45</sup> There are five models the Ministry of Justice is using to compare the effectiveness of the AODT Court in reducing reoffending. Model one compares reoffending rates over one to three years (up until 13 March 2015, offending for AODT Court participants is calculated from first treatment date, and for the matched offenders date of release from prison). Model two uses the same model as model one but reduces AODT Court sample to those that exited the programme early. Model three was redacted from the official information request and at the time of this publication we had not obtained permission to access further information. Model four compares reoffending rates over 1 year for graduates of the AODT Court and matched mainstream offender sample (up until 18 December 2016, offending for AODT Court is calculated from graduate date, and for the matched offender date of release from prison). Model five is a combination of the results in model two and four. It compares reoffending rates of those who exited AODT Court early (over two years post entry) and graduated from the AODT Court with the matched sample of offenders. Information obtained pursuant to request under the Official Information Act 1982 on 28/06/17. Information on file with the author.

<sup>46</sup> These reductions in reoffending relate to all participants and are measured from the point of acceptance into the AODT Court. When referring to the reductions in re-offending for graduates (against the matched sample), measurements begins from within a year of graduation. This means that graduates will still be benefiting from support described in the section 'continuing the journey' above.

alone, they had a 62 per cent lower rate of reoffending and 71 per cent lower rate of reimprisonment than the matched sample of offenders over a 12-month period. Finally, when comparing the sample of graduates plus those who exited with the matched sample, there was a 14 per cent reduction in reoffending.

However, these positive reductions in the rate of reoffending for AODT Court accepted participants appear to reduce over time. Comparable reductions in offending were - 21 per cent over two years, and -17 per cent over three years, with a similar pattern occurring over reimprisonment and frequency of reoffending rates. A similar pattern occurs with those AODT Court participants who exited the programme prior to graduation. Over the first year, they had 26 per cent lower rates of reoffending compared with the matched sample of offenders and were 20 per cent less likely to be imprisoned. However, two to three years later there is no real difference between the re-offending rates of those who exit early and the matched sample of mainstream offenders.<sup>47</sup>

#### *A. Cost-Benefit Analysis*

With the announcement of the extension of the AODT Court pilot, the Ministry of Justice released some preliminary data related the cost-benefits of the programme. The basis of this analysis is information produced through the re-offending rates above. Figures to date indicate that the AODT Court has reduced recidivism by around 15 per cent in the short term when measured against a matched sample of offenders who go through a standard court process.<sup>48</sup> This is based on very limited data and one of the reasons Cabinet decided to extend the pilot is to better track AODT Court participants over a longer period. From their perspective, this would allow for a longitudinal view of whether the AODT Court reduces reoffending once all supports have ceased for the graduate. As detailed above, the AODT Court participants often receive supports following their graduation from the AODT Court. Due to the AODT Court having a cap of 50 participants at one time and a long-term programme (12–18 months plus 12 months intensive supervision), the Ministry stated:

Measuring reoffending patterns over a longer period would be necessary for a reliable comparison between participants with more independence from the AODT Court and their matched offenders released from prison.<sup>49</sup>

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<sup>47</sup> It is important to note the small sample of graduates used to formulate this finding. Also, the sample of graduates was composed of 57 per cent drink drivers, who were predicted to have lower reoffending rates. Those who exited the court early were not mostly drink drivers and were predicted to have riskier profiles than those graduating. Information obtained pursuant to a request under the Official Information Act 1982 on 28/06/17. Information on file with the author.

<sup>48</sup> This analysis is based on model five outlined in above n 45, which compares reoffending rates of those exited the AODT Court early and those graduated from the AODT Court with a matched sample of offenders. See also Office of the Minister of Justice and Office of the Minister of Health *Report-back on the Alcohol and Other Drug Treatment Court Pilot and other AOD-related Initiatives* (Report to Cabinet Social Policy Committee) <<http://www.justice.govt.nz/assets/Documents/Publications/Report-back-on-the-Alcohol-and-Other-Drug-Treatment-Court-Pilot-and-other-AOD-related-Initiatives-Paper.pdf>>.

<sup>49</sup> Office of the Minister of Justice and Office of the Minister of Health, above n 48, at 4.

This concern of the Ministry of Justice is well founded, with international evaluation literature often having been criticised for its lack of longitudinal follow-up and the lack of statistical reliability with short term research programmes.<sup>50</sup> The Ministry of Justice estimates that by late 2018, they should be in a position to better assess the efficacy of the AODT Court in reducing recidivism.<sup>51</sup>

The AODT Court can be considered as part of the Government's "social investment model". This implies that the potential for the benefits to outweigh the costs of the initiative is imperative for it to become a permanent fixture of New Zealand's criminal justice system. Speculative cost-benefit modelling by the Ministry of Justice estimates that a 25 per cent reduction in reoffending by participants generates enough savings in the short-term to recover the \$1.3 million yearly additional investment into AODT Court.<sup>52</sup> This is based on the seven graduates reoffending (within 12 months) and associated costs.

While the Ministry of Justice has acknowledged that savings can also be found through positive health, employment, social and quality of life outcomes of participants, it is unclear just how these kinds of outcomes will be measured and how they may also produce cost-savings and may be related to reductions in re-offending. The Ministry of Justice indicates that the Integrated Data Infrastructure may be able to be used to consider such analysis. As detailed above, existing process evaluations funded by the Ministry of Justice have suggested the AODT Court has positively impacted on those participants who took part in the research.<sup>53</sup> There remains, however, limited in-depth research on the experiences of participants in the AODT Court that could complement statistical information.

## VI. CONCLUSION

This paper has illustrated how the AODT Court weaves the separate sectors of justice, health and social services through a strong focus on recovery from addiction to reduce reoffending. This focus radically transforms the traditional role of the law, legal processes and the roles of the legal professional. The AODT Court has been carefully designed according to an evidence-base provided from over 20 years of drug court practice internationally, and developed alongside recovery and Māori communities to ensure appropriate shaping to localised need. The framework will continue to be developed as the strands are woven together while the AODT Court participants, team and wider community interact with each other, and adapt to any challenges.<sup>54</sup>

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<sup>50</sup> See Ciska Wittouck and others "The Impact of Drug Treatment Courts on Recovery: A Systematic Review" (2013) *The Scientific World Journal* 1.

<sup>51</sup> Office of the Minister of Justice and Office of the Minister of Health, above n 48.

<sup>52</sup> Office of the Minister of Justice and Office of the Minister of Health, above n 48.

<sup>53</sup> See Ministry of Justice "Therapeutic Courts" (14 June 2017) <<https://www.justice.govt.nz/courts/criminal/therapeutic-courts/>> for access to the formative and process evaluations.

<sup>54</sup> For an overview of some of the challenges faced by the AODT Court from the AODT Court team perspective see K Thom and S Black Ngā whenu raranga/Weaving strands: 4. The challenges faced by Te Whare Whakapiki Wairua/The Alcohol and Other Drug Treatment Court (2017) Auckland: University of Auckland. Available at <<http://www.justicespeakersinternational.com/new-zealands-aodtc-court/>>.

Existing evaluations commissioned by the Ministry of Justice have indicated the AODT Court has operated as intended and it is clear from the extension of the AODT Court pilot that the Ministry of Justice is cautiously optimistic of this therapeutic model of intervention. Less is known about how participants experience the AODT Court programme, and such insights are crucial in any future development of research, practices and policy. It is also clear that the AODT Court is being subjected to high cost-benefit expectations before it may be considered a long-term feature of the criminal justice system.

Existing preliminary data suggested significant reductions in re-offending rates for AODT participants in the short term, but that there may be difficulties in sustaining such reductions over time. This indicates the importance of He Takatini as a continuing care body for ongoing support for graduates as they move away from the holistic support the AODT Court and probation provides.

The AODT Court model has received strong support from the international community. Drug court expert Judge Peggy Hora has advocated for its ability to be a leading innovation in the field through its remarkable ability to draw on the existing evidence-based practices, strong engagement with 12-step fellowship and recovery community and commitment to actualising Ti Tiriti o Waitangi through partnership with local Māori communities.<sup>55</sup> Just how the evaluations will capture the holistic benefits to participants of the weaving of strands in the AODT Court is unknown, but are of benefit not just to Aotearoa New Zealand society but the wider international community.

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<sup>55</sup> K Thom and S Black *Ngā whenu raranga/Weaving strands: 1. The therapeutic framework of Te Whare Whakapiki Wairua/The Alcohol and Other Drug Treatment Court* (2017) Auckland: University of Auckland. Available at <<http://www.justicespeakersinternational.com/new-zealands-aodtc-court/>>.